

Joint Committee on Children and Youth Affairs

Opening Statement

Professor Geoffrey Shannon, Special Rapporteur on Child Protection

I would like to take this opportunity to thank the Committee for the invitation to address it in on the use of section 12 of the Child Care Act by An Garda Síochána. Section 12 is the principal legal mechanism through which An Garda Síochána performs its child protection function. The section authorises a Garda member to remove a child from the care of his or her family, or a person acting in loco parentis, in circumstances where that Garda believes “there is an immediate and serious risk to the health or welfare of a child”, and where that Garda also believes “it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by [the Child and Family Agency] under section 13”. Section 12 grants members of An Garda Síochána exceptional powers to enter any place without warrant, and remove a child to safety. Exercise of this power is not dependent on prior authorisation of a court, a member of the judiciary, or any other Garda member. Section 12 is a power exercisable on the judgement of the individual Garda faced with what he or she believes to be a serious and urgent child protection risk.

In the section 12 audit, we see the increasingly diverse and demanding roles expected of members of An Garda Síochána, of which child protection is now firmly a part.

In various interviews throughout the interview stage of the audit, a number of Garda respondents cited their overriding professional obligations in terms of public protection, which flowed from their roles in An Garda Síochána. Many spoke with pride on the role of An Garda Síochána as “first responder”.

What was unquestionably clear from the audit is that members of An Garda Síochána are very concerned to ensure the child’s experience in Garda care is not traumatising. Indeed, the overwhelming finding is that Garda members commit great efforts to treating children sensitively and compassionately when a child has been removed under section 12.

For example, the audit found numerous instances of Garda members staying long beyond their rostered working hours to organise the care of a child removed under section 12. This finding is broadly consistent with, and reflective of, the audit’s findings of compelling evidence that members

of An Garda Síochána demonstrate very high levels of commitment to the welfare of children they have removed under section 12.

The audit also shines a light on a truth the Irish public are somewhat uncomfortable with: some parents, or others acting in loco parentis, for various reasons fail to protect their children, and it is then the responsibility of An Garda Síochána to protect those children by removing them from their care. Therefore, the powers granted to members of An Garda Síochána to remove children from parental care under section 12 of the Child Care Act are an essential tool in the broader child protection framework within the Irish State.

The audit's largely positive findings on the attitude by Garda members to the treatment of children following their removal under section 12 must, however, be contextualised. This audit's remit was confined to an examination of the treatment of children when removed under An Garda Síochána's child protection powers and functions. It did not examine any cases where the child was arrested for suspected commission of a criminal offence – though, admittedly, there may be some overlap between these two legal and material categories of Garda intervention in the care of children.

The audit found inadequacies in the operation of the Garda PULSE system, risking the operational and accountability functions of the PULSE system.

The PULSE system was not able to provide a consistent and accurate picture of section 12 use by members of An Garda Síochána. Months of repeated inquiry found numerous gaps, flaws and variations in the data captured and saved on the PULSE system in relation to instances of section 12 removal of children.

The audit also identified outstanding questions and ambiguities in relation to Garda practices in recording case narratives on the PULSE system. An Garda Síochána has confirmed that systemic reform of PULSE is underway, and this process of reform is clearly to be welcomed. However, ambiguities exist in relation to the role of the Garda Information Services Centre (GISC), in particular in how narratives are recorded on PULSE, and whether it is aiding or undermining comprehensive and accurate reporting of cases on the system, and more generally its role in the management of key statistical data on the work of An Garda Síochána.

Evidence from all stages of the audit demonstrated inconsistencies in terms of data collection and data management. It is clear that crucial demographic data in relation to individuals who engage with members of An Garda Síochána is not routinely recorded on their PULSE file. There are also inconsistencies in the quality and detail of PULSE entries regarding particular incidents involving An Garda Síochána. Consistent, comprehensive and accurate data collection, and the careful and secure management of that data, is an essential part of contemporary best practice and evidenced-based policing strategies. Comprehensive and rigorous data collection practices facilitate effective and reflexive policing practice, and enable the efficient management and deployment of limited policing resources towards addressing risks identified through careful data analysis. More fundamentally, proper data collection and management is also central to the realisation of appropriate transparency, and full accountability of An Garda Síochána in its performance of all its duties, including child protection.

The audit echoes the call from the Garda Inspectorate for systemic reform of the Garda PULSE system, and recommends an audit of the role and operation of GISC in light of the central operational and accountability functions of proper data collection and management by An Garda Síochána.

One of the principal objectives of this audit was to examine the appropriateness, proportionality, and legality of section 12 removals of children by members of An Garda Síochána. The grounds upon which a Garda member removes a child are the main factual antecedents to the authority of a Garda member to remove a child under section 12 of the Child Care Act 1991. In documenting and critically evaluating these grounds for section 12 removal, the audit sought to account for the circumstances that members of An Garda Síochána encounter, which require the use of extraordinary powers of intervention in the private life of the family. In the overwhelming majority of cases, the audit found that members of An Garda Síochána exercised their powers following a period of careful consideration of the circumstances and available evidence. The audit found no evidence that section 12 is being used in an over-zealous manner by members of An Garda Síochána.

The most frequent circumstance encountered by Garda respondents requiring removal of children under section 12 was some form of failure by a parent or person acting in loco parentis, or a temporary lack of capacity or competence to care for the child. The nature of these failures and losses of capacity were manifold, including addiction-related failures on the part of some parents, and a parent's inability to control a violent and disruptive child.

The evidence from each stage of the audit suggests that exercising section 12 removal of children is a rare occurrence for the average member of An Garda Síochána. It appears that an individual member may only invoke the section 12 power a handful of times over his or her entire career.

Garda respondents demonstrated, on the whole, a significant degree of critical sophistication when exercising their section 12 powers. Many respondents engaged in some degree of information-gathering before deciding to remove a child under section 12, with some undertaking considerable effort, investigations and research to ensure the appropriate decision was made. There was no evidence that decisions to exercise section 12 are taken lightly, or that alternatives to removing the child were not considered by respondents. Insofar as the information available or provided enabled the audit to determine, the cases examined involved an appropriately restrained use of section 12 powers by respondents.

The audit's findings clearly show there is no standard case in which a child is removed under section 12. The power is invoked in a highly diverse and contextualised range of circumstances.

The interview stage of the audit found some evidence that the fallout from the 'Tallaght' and 'Athlone' cases¹ has resulted in a degree of anxiety among some members of An Garda Síochána in the exercise of the child protection powers under section 12 of the Child Care Act 1991. This general finding of Garda reluctance to use section 12 may create a situation where children are not removed from situations where it would be best to do so. In this regard, it should also be noted that the terms of reference of the audit did not include cases where section 12 was considered, but not invoked.

A further finding in the audit is that there is little or no emphasis on formal training of new Garda recruits in relation to child protection. It is, however, acknowledged that problem-based learning has been introduced as part of the training regime currently in place, which is a positive development. That said, the audit found little evidence of discrete training on child protection. The overwhelming majority of current serving members of An Garda Síochána have received no such training. Moreover, the overwhelming majority of Garda respondents in this audit had not received training that emphasised children's rights or child welfare during their time as new recruits in the Garda College in Templemore, or subsequently in their career.

¹ These cases refer to two incidents of section 12 removal of Roma children in October 2013. The children were removed in separate circumstances from their families in Tallaght and Athlone during extensive international media coverage of the "Maria" case in Greece. These cases were the basis for the 2014 Report of the Ombudsman for Children, which recommended this audit.

A more general finding of this audit relates to a deep-seated culture within An Garda Síochána privileging 'on-the-job' training and learning, over, and possibly to the detriment of, formal core training in the Garda College.

This dearth of appropriate training is also significant for a more general thematic finding of this audit: the increasingly diverse role of An Garda Síochána in contemporary Irish society. Findings from the interview and focus group stages of this audit highlighted the increasing societal expectations and demands on what functions Garda members must fulfil, particularly in the realm of child protection (but also, for example, mental health), and the new and diverse range of responsibilities these expectations place on An Garda Síochána. These findings also highlight an emerging risk of role ambiguity in An Garda Síochána, as the boundaries between its proper functions and responsibilities become blurred as they overlap with the functions and responsibilities of other State agencies and actors.

It is important that Garda members should not be propelled into bypassing their own risk assessments under section 12 by being influenced by a risk assessment by Tusla. No such evidence of influence was found by the audit. That said, it is of paramount importance to appreciate that the risk assessment under section 12 is separate to, and independent of, a general welfare risk assessment. Accordingly, An Garda Síochána risks being exposed to litigation under the Child Care Act 1991, the European Convention on Human Rights and Article 42A of the Constitution, where it does not adopt its own independent risk analysis.

In England and Wales, the requirement of internal oversight of police emergency child protection powers is an important organisational gatekeeping check on the exercise of section 46 of the Children Act 1989. It may be appropriate to consider a similar approach in this jurisdiction in any revised protocols on the exercise of section 12 powers.

The audit sought to evaluate the nature of inter-agency communication between Tusla and An Garda Síochána. It sought to examine the processes and cultures, if any, in which Tusla social workers provide feedback on cases to Garda members, following their removal of children under section 12. Interview respondent Gardaí described a general situation where Tusla do not routinely provide feedback or updates to Garda members following the handover of children into Tusla's care. The audit found that as well as being personally and professionally frustrating, this absence of routine and meaningful feedback also reinforces a 'mystification' experienced by Garda members in

relation to their understanding of Tusla's practices and procedures. Additionally, the absence of consistent feedback undermines the valuable learning potential for both Gardaí and social workers from these cases, and reinforces the institutional silos between agencies tasked with pursuing the same child protection objectives. There is no evidence of formal routine follow-up from Tusla regarding the progress of a particular case after a member of An Garda Síochána has handed over responsibility. Moreover, there is no evidence of effective and robust systems for inter-agency information-sharing and cooperation after the invocation of section 12. Despite respondents clearly articulating a desire and need for feedback on how they handled a case, and how it progressed, there is no systemic provision for such feedback. Unless a member of An Garda Síochána commits a significant degree of his or her own time and energies to following up on a case, or unless he or she has an existing strong professional relationship with the local social work team, he or she is likely to be left in the dark about how a child's case progressed.

The audit found continually poor and limited levels of inter-agency cooperation and coordination between An Garda Síochána, the Child and Family Agency (Tusla), and other agencies within the broader child protection infrastructure in Ireland during and after the invocation of section 12. Examples of these failures were most pronounced in the audit's findings of very low levels of provision for joint training programmes on child protection between Garda members and Tusla social workers. The audit also consistently found low levels of meaningful communication between agencies, and that the most significant cooperation appears to be confined to Garda members occupying higher levels within the organisation's hierarchy; to particular Garda regional divisions; or to the sporadic, informal development of strong professional relationships between Gardaí and social workers. The vast majority of respondents never participated in case conferences in relation to a child – with a handful of instances where respondents were not permitted to attend such meetings due to overtime restrictions. The evidence from the interview and focus group stages of the audit also strongly indicated that good inter-agency cooperation and coordination was largely dependent on the organic development of good, informal, personal relationships with individuals within other agencies with child protection functions and responsibilities. There is little evidence that An Garda Síochána, Tusla and related agencies have developed formal structures to foster good inter-agency cooperation. The few existing mechanisms for such cooperation, provided on a national basis, such as HSE/Tusla notification forms, appear to only serve a minimum superficial level of inter-agency communication. The critical theme of "notification is not communication" emerged again and again at every stage of the audit.

While An Garda Síochána has rhetorically committed to the inter-agency ‘partnership’ model of child safeguarding and protection, the practices and working ideologies of child protection within An Garda Síochána fall far short of this international best practice paradigm.²

This audit also found an almost total absence of training, or strategic policy direction felt at an operational level, in how An Garda Síochána should respond to Ireland’s increasing ethno-cultural diversity. This finding, consistent across multiple stages in this audit, raises issues in relation to the central overarching question in this audit, namely racial profiling in the exercise of An Garda Síochána’s child protection function. The audit found no evidence that racial profiling influences the exercise of section 12 powers of removal by An Garda Síochána. In each instance examined that involved a minority ethnic child or family, there were very strong factual grounds for removing that child under section 12. That said, this finding must be tempered by the finding that certain ethno-cultural demographic information does not appear to be routinely documented by An Garda Síochána on the PULSE system. For example, whether a child or parent is an Irish Traveller does not appear to be routinely documented by Gardai, as the PULSE system does not include a specific field for Irish Travellers. At a quantitative national level, this means any finding that there was no racial profiling in the exercise of section 12 powers by An Garda Síochána must be somewhat qualified because of an absence of consistent documenting of a child’s ethno-cultural background. However, the interview and focus group stages of the audit found no evidence that Garda respondents were wrongfully influenced³ by a child or parent’s nationality or ethnicity when deciding to remove the child under section 12. It should be noted that it was beyond the remit and focus of the audit to examine the treatment of ethnic minorities by An Garda Síochána more generally in the performance of their statutory duties. These qualified findings in relation to the question of racial profiling are confined to the exercise of section 12 of the Child Care Act 1991 by members of An Garda Síochána.

The audit found evidence of repeated removal of some children under section 12, from the same family circumstances. Such findings suggest some systemic failings with regard to child protection systems in Ireland. The audit also found evidence in each stage highlighting systemic failures to help children with challenging behaviour. Despite this particular finding, the audit found no evidence of

² Among the most developed policies on inter-agency child protection working are those in the UK: Department of Education, *Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children* (HM Government, 26 March 2015).

³ There were some cases where a child or parent’s nationality was a legitimate factor in the decision-making around section 12 removal by a Garda – particularly where the nationality (among other factors) suggested to the Garda that the family may be a ‘flight risk’. Such instances of considering nationality are legitimate and appropriate in the context of child protection, though nationality should not be the sole determiner of whether a family is a flight risk.

over-zealous use of section 12 removal of children from families living in social or economic deprivation. Removal in all instances was generally well within the subjective risk threshold under section 12. However, the audit's findings also indicate that the children and families in which section 12 is invoked are typically experiencing some level of social dysfunction, trauma or insecurity.

The audit found that in the majority of Garda districts, the Garda station is used as the de facto 'initial place of safety' for children removed under section 12. The audit's findings from the interview and focus group stages also emphasise the inappropriateness of using the Garda Station as the initial place of safety, where most Garda respondents described a Garda station as a completely inappropriate and unsafe environment for children. For example, Garda respondents working in busy urban stations advised the audit on how busy the station was, with a high level of "prisoner traffic" throughout the day.

The audit also found that public hospitals serve as the de facto 'initial place of safety' in a minority of Garda districts. Garda respondents from these areas were also emphatic on the inappropriateness of a hospital as a place of safety, as these hospitals were not equipped or appropriately resourced to deal with this responsibility.

The audit found very positive evidence on the operation of the specialist child protection units in An Garda Síochána. These units have been set up on an ad hoc basis in a handful of Garda stations throughout the State, and do not operate on a 24-hour basis. However, the members of these units generally have the most extensive training and experience in child protection, and the strongest links with colleagues in Tusla and related agencies. The continued expansion and formalisation of this model on a nationwide basis is recommended.

The provision, or lack, of out-of-hours social worker services by Tusla was the subject of considerable criticism from Garda respondents. Where there was an out-of-hours Tusla social worker service available, Garda respondents suggested it is systemically inadequate, as it is often under-resourced, and cannot facilitate access to case files on particular children. This finding suggests the absence of a comprehensive and unified system containing information on the children and families with whom Tusla is engaging, and to which all Tusla social workers have access.

The use of private fostering service providers as the de facto 'official' out-of-hours child protection service by An Garda Síochána was among the most prominent themes that emerged throughout this

audit. As a significant number of the cases reviewed as part of the audit occurred outside of Tusla's standard hours of service, a number of respondents placed the child removed under section 12 with emergency foster placements arranged through the Five Rivers organisation. Respondents who expressed opinions on the quality of this service were generally very positive. However, it is crucial to note that no Garda respondent was able to give the audit a detailed insight into the nature of the Five Rivers organisation. In a number of instances, Garda respondents appeared to confuse the Five Rivers organisation with the Child and Family Agency/Tusla.

These findings in relation to the handover of the child indicate gaps in support for Gardaí undertaking their child protection function from other outside agencies – principally Tusla. The audit's findings also detail serious weaknesses within An Garda Síochána in terms of procedures for managing post-section 12 removal of children, and how Garda resources are managed and deployed to deal with post-section 12 circumstances.

The audit found a pattern of private foster care services refusing to organise placements for children with challenging behaviour. These findings highlight a key issue with heavy reliance by the Irish State on private, non-statutory frontline service providers. In these cases where placements were refused by private providers, there was no agency available out-of-hours with an express statutory obligation to take the child into care. Where Tusla provides no service, the private service providers who have filled the gap are under no statutory obligation to take children they deem to be too problematic or difficult. Additionally, it is not clear upon which criteria private foster care service providers such as Five Rivers determine children too problematic to take into care. That said, the audit made no criticism of Five Rivers in that it is not Five Rivers' function to ensure facilities exist to accommodate children with challenging behaviour.

In November 2015, Tusla commenced an Emergency Out-of-Hours Social Work Service (EOHS) which cooperates with and supports An Garda Síochána in relation to the removal of a child from his or her family under section 12 of the Child Care Act 1991 and separated children seeking asylum. Through the service, An Garda Síochána can contact a social worker by phone or arrange access to a local on-call social worker. The EOHS is to be welcomed as it strengthens inter-agency cooperation. That said, there continues to be no comprehensive national social work service that is directly accessible to children or families at risk outside of office hours.

I would like to thank you very much for taking time to listen to me and I would be happy to answer any questions you might have.

Dr. Geoffrey Shannon

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