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NOTES ON THE CONTRIBUTORS

SUPERINTENDENT A.J. NOLAN a native of County Laois joined An Garda Síochána in 1977 and served in Barrack St. Cork, Rathdowney and Abbeyleix in Laois/Offaly Division, Clones in Cavan/Monaghan Division, Tullamore in Laois Offaly Division and Change Management Section, IT Division, Garda H.Q. engaged on Pulse Release 2 and the Government e-Services Catalogue work.

He is currently a Superintendent serving in the Office of Deputy Commissioner, Strategic and Resource Management.

He holds a Diploma in Applied Social Science and B.Sc. (Hons) degree in Social Science from the Open University. He also holds a M.Sc. in Criminal Justice Studies from the University of Leicester, U.K. where his research interest centred on the Impact of Civilianisation on a Police Organisation.

He is currently studying at Trinity College Dublin, towards a Ph.D. in the area of 'Organisational Change and Collaboration'.

Background to the Tribunal of Inquiry set up Pursuant to the Tribunal (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division

Superintendent A.J. Nolan

INTRODUCTION

The Tribunal of Inquiry Set up Pursuant to the Tribunal (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division was established by resolution of the Dáil and Seanad Éireann on the 28th March 2002. Mr. Justice Frederick Morris was subsequently appointed as its chairman and the Tribunal commenced its work in the first week of June 2002.

This edition of Communiqué, which contains six articles based on the substantive matter of what has now become known as "The Morris Tribunal", purports to provide the background to the setting up of the Tribunal and concentrates on the findings of Modules One and Two which have been published to date. The first article sets out the chronological series of events that led the Minister of Justice, Equality and Law Reform to establish the Tribunal of Inquiry.

TERMS OF REFERENCE

The Terms of Reference of the Morris Tribunal of Inquiry provided for an examination of:

- Complaints that some Gardaí in County Donegal may have been involved in hoax explosives and bomb-making equipment finds (in particular discoveries on 11th September, 1993, 19th November, 1993, 11th January, 1994, 14th March, 1994, 4th June, 1994, 13th June, 1994 and 18th July, 1994) and a review of the management and investigation of these issues.
- The making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on 9th November, 1996 and the subsequent Garda investigation into that complaint
- Investigations in relation to the death of Mr. Richie Barron of Raphoe, County Donegal on 14th October, 1996 with particular reference to the arrest and treatment of persons in custody in connection with that investigation, the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants.

BACKGROUND

GENESIS AND SCOPE OF THE TRIBUNAL'S INQUIRIES

The matters under consideration by the Tribunal, though varied and complex, commenced in 1988 when it appears, as was alleged at the

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Tribunal, that some Gardaí in County Donegal may have been involved in hoax explosives and bomb-making equipment finds.

In October 1996, the body of Mr. Richie Barron was found at Townparks, Raphoe County Donegal. The subsequent investigation and murder inquiry resulted in considerable public disquiet. The Garda Commissioner appointed Assistant Commissioner Kevin Carty to carry out an investigation in to the conduct and manner of the investigation of the death of Mr. Richie Barron.

4 The conduct of the Carty Investigation brought forward the scope of the Tribunal's investigations through to 2001. This was a thirteen-year period. The Tribunal commenced with the issues which had arisen at the earliest period of the Tribunal's Terms of Reference.

ALLEGED HOAX EXPLOSIVE AND BOMB-MAKING EQUIPMENT FINDS

Detective Garda Noel McMahon was attached to the Detective Branch at Letterkenny Garda Station. By 1999, his marriage to Mrs. Sheenagh McMahon had broken down. Both parties were in dispute and Mrs. McMahon, who was legally represented by her sister, Ms. Moya Jane O'Doherty Solicitor, alleged that on the 15th of March 1999 Detective Garda McMahon had left a telephone message which she perceived to be of a threatening nature (para. 1.10, p 6).

When interviewed about this incident Mrs. McMahon disclosed misconduct by her husband Detective Garda McMahon, Superintendent Kevin Lennon and others. Mrs. McMahon went on to recount events, which implicated her husband Detective Garda McMahon and Superintendent Lennon in manufacturing and planting caches of homemade explosives at a number of sites around County Donegal. This extended to these officers involving themselves in hoax subversive activities in Northern Ireland.

Mrs. McMahon alleged that these activities centred around Adrienne McGlinchey, a person represented to her at the time, and to the Gardaí generally in County Donegal, as an informer against the 'Provisional IRA'. Ms. McGlinchey was interviewed by the Carty Inquiry and further serious allegations emerged.

THE DEATH OF MR. RICHARD BARRON

At approximately 00.55hrs. on the 14th of October 1996, the body of the late Mr. Richard Barron was found on the roadway at Townparks, Raphoe County Donegal. It was initially believed that he had been the victim of a hit and run accident. The ensuing Garda investigation proceeded along those lines for a short time, before developing into a murder enquiry.

Numerous complaints were made as to the manner in which Gardaí in Donegal completed this investigation. This resulted in the setting up of an investigation by the then Garda Commissioner into allegations that members of An Garda Síochána engaged in criminal and unethical behaviour in the course of carrying out enquiries into Mr. Barron's death. The investigation, headed by Assistant Commissioner Kevin Carty became known as the "Carty Inquiry" and commenced early in 1999. Its remit was originally confined to the complaints relating to the Garda investigations into the death of Mr. Barron.

During the course of the Carty Inquiry other allegations came to light, to the effect that explosives finds from 1993 and 1994, that were presented as excellent police work, were in fact planted by officers for later recovery, to the enhancement of their reputations. Accordingly, the scope of the Carty Inquiry was extended to include these additional matters (para. 1.03, p.4).

ADRIENNE MCGLINCHY AND DETECTIVE MCMAHON

In 1988, Adrienne McGlinchey, made the acquaintance of some uniform Gardaí and some Detective Gardaí stationed in Letterkenny. In July of 1991 Ms. McGlinchey was arrested, for the first time, under Section 30 of the Offences Against the State Act, 1939. The arrest took place as part of an operation by Gardaí to foil a plan by the 'Provisional IRA' to explode a trailer attached to a lorry at a border checkpoint. It has been referred to in evidence and Garda reports as the 'Wachopes Bomb' (para. 1.13, p.8).

After her arrest Ms McGlinchey left the family home in Letterkenny and moved to Buncrana. On her move to Buncrana, she claims that Detective Garda McMahon sought her out on a pretext that she might be of assistance on various Garda enquiries related to the 'Provisional IRA'. Adrienne McGlinchey claimed that Detective Garda McMahon abused her trust in him and in the Gardaí. She asserted that he used his powers as a Garda in order to threaten her and made her into an instrument of deceit with his colleagues and superiors (para. 1.15, p.8).

On leaving Letterkenny, she had accessed a current bank account belonging to her family business without their permission. Learning of complaints to the Gardaí by the holders of these worthless cheques, Ms. McGlinchey claims that Detective Garda McMahon offered to help her avoid prosecution, if she was to pretend, on his precise instructions, to be a member of the 'Provisional IRA' and act as informer. She was to meet Gardaí and to pretend to feed them information on terrorist activities that she had been briefed about beforehand by Detective Garda McMahon. In order to enhance the credibility gap she took charge of

quantities of materials that would otherwise denote 'Provisional IRA' activities and presented herself to Gardaí as a subversive operative. These items were given to her by Detective Garda McMahon or were procured by her at his request.

Adrienne McGlinchey asserts that she felt forced into this first serious breach of the criminal law because Detective Garda McMahon threatened her that if she did not follow his wishes she would be prosecuted for the cheque fraud incidents. From September of 1993 up to July of 1994, Ms. McGlinchey asserts that Detective Garda McMahon got her to prepare material that was to lead to various fraudulent finds detailed in the Terms of Reference of the Tribunal of Inquiry (para. 1.17, p.9).

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The first discovery was made on the 11th of September 1993 at Strabane in Northern Ireland. This is referred to as 'the Strabane incident'. The second find was made on the 19th of November 1993 at Ardchicken near Donegal town. The third find was made on the 11th of January 1994 at the roundabout beside the border crossing at Bridgend. The fourth find was made on the 14th of March 1994 at Adrienne McGlinchey's apartment at an address known as The Crescent, Buncrana. The fifth and sixth finds were made on the 4th of June 1994 and the 13th of June 1994, in the area of the McGlinchey family property in Letterkenny, at, respectively, Oatfield and Covehill. The seventh find was made on the 18th of July 1994 in two farm outhouses, some hundreds of metres apart, in the Rossnowlagh area of Donegal, which is to the south of Donegal town (para. 1.20, p.10).

THE CARTY INQUIRY

The report of the Carty Inquiry on these matters was submitted to the Garda Commissioner and to the Department of Justice, Equality and Law Reform. Three criticisms were made of the Carty Inquiry (para. 1.59, p.26).

The first addressed the validity of the Carty Inquiry report. It was alleged by persons (not identified) to (then) Deputy Jim Higgins, T.D., the Fine Gael spokesman on Justice and to Deputy Brendan Howlin, T.D., the Labour spokesman on Justice that the Carty Report was not to be relied upon by reason of the allegation that senior officers of An Garda Síochána, in the interests of self-preservation, would falsify the report's findings.

A second criticism of the report was that since the original remit of the Carty Team was to examine the quality and validity of the work of the Gardaí that investigated the death of Mr. Barron, the Carty Team should

not in these circumstances include any members of the original team who carried out the investigation into Mr. Barron's death as they would in effect be investigating their own work. A few members of the Carty Team were in fact among the original 'murder' investigating team. The Tribunal has examined the role which these officers played in the Carty investigation. No impropriety whatsoever has so far been uncovered relating to these members (para. 1.51, p.26).

A third criticism was that the Carty Team were activated by malice and prejudice against Superintendent Lennon as it was he who had criticised the work of his colleagues who had investigated the death of Mr. Barron. He criticised their work in comprehensive terms and it was alleged that this had built up a resentment towards him. In these circumstances it was suggested that an element of revenge might have existed among the Carty Team. The Tribunal rejected those criticisms. The Tribunal is satisfied that the Carty Team set out to do a professional job and pursued their investigation thoroughly.

It was in all these circumstances that the then Minister for Justice, John O'Donoghue, T.D. obtained the opinion of Senior Counsel Shane Murphy. On the 30th of January 2002, Shane Murphy advised the Minister of the necessity to establish a Tribunal of Inquiry to examine and report on the designated matters and consequently the Morris Tribunal was established.

TERMS OF REFERENCE OF THE TRIBUNAL OF INQUIRY – MODULES ONE AND TWO

The Tribunal considered that an examination of the issues relating to allegations made by a number of persons that some members of An Garda Síochána 'planted' subversive paraphernalia and later purported to discover it or have it discovered by third parties should be the subject matter of the Module One of the Tribunal of Inquiry.

Accordingly, the first report of the Morris Tribunal of Inquiry proposed to

- (i) Enquire into and establish the facts in relation to these events;
- (ii) Enquire into and establish what 'finds' were actually made, if any;
- (iii) Identify the nature of the materials said to have been found on these occasions;
- (iv) Enquire into and establish the events and circumstances which led to the making of these 'finds';
- (v) Enquire into and establish the identity of such members of An Garda Síochána, if any, who acted with regard to these finds and attempt to discover whether their actions were proper or improper;

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- (vi) Enquire into the normal Garda procedure and/or practice (if any) relating to the making of such 'finds' including practice and procedures relating to preservation of materials found, forensic analysis of same, the reservation and examination of the apparent crime scene, and any other follow-up procedures and practices applicable to such a find and consider whether such procedures and practices were followed in relation to these 'finds';
- (vii) Consider the adequacy of the procedures and practices applicable to the making of such 'finds' having regard to the facts which may be established in evidence at the Tribunal;
- (viii) Enquire into the course and management of the investigations relating to these incidents;
- (ix) Consider the use and role of informants in this matter: in that regard the approach already set out in relation to Term (b)(3) of the Terms of Reference will be applied;
- (x) Enquire into and establish the manner in which the complaints made in relation to these events were dealt with by members of An Garda Síochána including complaints made to the Garda Síochána Complaints Board;
- (xi) Enquire into and consider the relationship, if any, between the events which are the subject matter of this Term of Reference and any other Term of Reference.

The Tribunal considered that the subject matter of Module Two should be two-fold

- (i) an examination of the issues relating to the making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on the 9th November, 1996 in connection to the death of Richard Barron, and the subsequent Garda investigation into that complaint
- (ii) the investigations in relation to the death of Mr. Richie Barron of Raphoe, County Donegal on the 14th October, 1996 with particular reference to the arrest and treatment of persons in custody in connection with that investigation, the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants. (The Chairman of the Tribunal, Mr Justice Morris, proposes to deal with the issue of the treatment of persons in custody in connection with the Barron investigation at a later stage).

Accordingly, the Second Report of the Morris Tribunal of Inquiry (in relation to the Extortion issues) proposed to;

- (i) Enquire into and in so far as is possible, establish the basic facts relating to these alleged phone calls;
- (ii) Attempt to establish the origin of such telephone calls;
- (iii) Enquire into the identity of the person or persons making the alleged calls and to the telephone lines used in that regard;

- (iv) Attempt to establish the motive for the making of such calls;
- (v) Enquire into the manner in which the complaint made by Mr. and Mrs. Peoples about these calls was dealt with by An Garda Síochána;
- (vi) Enquire into an application made on the 18th December, 1996 under Section 13(2)(2a), and (2b) of the Interception of Postal Packets and Telecommunications (Regulations) Act, 1993, seeking information as to such calls and the handling of same within An Garda Síochána and in Eircom Plc (or Telecom Eireann Plc as it then was);
- (vii) Enquire into the part which may have been played by any informer in the making, or arranging for the making, of these telephone calls;
- (viii) Enquire into the connection, which there may be between the making of these calls and any other matter referred to in the Terms of Reference.

In relation to the investigations regarding the death of Mr. Richie Barron of Raphoe, County Donegal on the 14th October, 1996 the Tribunal proposed to;

- (i) Enquire into and in so far as is possible, establish what were the basic facts in this regard;
- (ii) Enquire into the steps taken by An Garda Síochána in carrying out the investigation;
- (iii) Enquire into and establish the normal approved practices and procedures which are prescribed or followed when investigating crimes in the apparent circumstances in which Mr. Barron died;
- (iv) Enquire into whether the normal approved practices and procedures which are prescribed or followed in such circumstances were carried out or followed in the course of the investigation into the death of Mr. Barron;
- (v) Enquire into the adequacy of the Garda practices and/or procedures;
- (vi) Enquire into the efforts made by An Garda Síochána to obtain expert evidence and the use made of such evidence by them in the course of the investigation;
- (vii) Enquire generally into the progress, management and effectiveness of the entire investigation into the death of Mr. Richard Barron;
- (viii) Enquire into the course of the investigation into the death of Mr. Barron and the decisions which may have been taken in the course of the progress and management of the investigation, and enquire as to whether the investigation was in any way influenced by any external or improper factor and whether there is any connection between any of these matters and any other matter referred to in the Terms of Reference.

In relation to the management of informants the Tribunal proposed to

- (i) Enquire into the basis upon which a person may be classified by the Garda Síochána as an informant and whether procedures and practices exist which apply to the classification and management of informants and whether these are adequate and appropriate and/or whether recommendations may be made for improvements in this regard;
- (ii) Enquire as to whether the procedures and practices for the classification and management of informants were applied in this investigation adequately, appropriately or at all;
- (iii) Enquire as to the procedure and practice (if any) by which the information gleaned from informants is marshalled, analysed, processed and/or verified by the Garda Síochána and if and how that was done in this investigation and whether recommendations may be made for improvements in this regard;
- (iv) Enquire into whether there was a misuse and/or over-reliance upon informants arising either as a result of the actions of the informants themselves or those dealing with informants or in the handling of the information supplied by members of An Garda Síochána;
- (v) Enquire into any aspect of this Term of Reference in so far as it may be connected to any other Term of Reference.

CONCLUSION

This article sets the context, the background and Terms of Reference of Modules One and Two of the Morris Tribunal of Inquiry. The subsequent articles in this issue of Communiqué will outline the findings and recommendations of both Modules and An Garda Síochána's response, to them.

REFERENCES

1. Report of The Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division, "Report on Explosives 'Finds' in Donegal", Government Publications 2004.
2. Report of The Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division, "Report on The Investigation into the Death of Richard Barron and the Extortion calls to Michael and Charlotte Peoples", Government Publications, 2005.

Findings and Recommendations of the First Report from the Morris Tribunal of Inquiry.

Superintendent A.J. Nolan

INTRODUCTION

This article, the second in this edition of *Communiqué* on the Morris Tribunal of Inquiry provides a synopsis of the recommendations of the Tribunal's First Report. The Tribunal's First Report was published in July 2004 having examined:

'Complaints that some Gardaí in County Donegal may have been involved in hoax explosives and bomb-making equipment finds (in particular discoveries on 11th September, 1993, 19th November, 1993, 11th January, 1994, 14th March, 1994, 4th June, 1994, 13th June, 1994 and 18th July, 1994) and a review of the management and investigation of these issues'.

The Tribunal noted the helpful evidence given to it by the Garda Commissioner, Mr. Noel Conroy and other named Garda officers while also severally criticising a number of serving and former members of An Garda Síochána who were principals throughout the period under inquiry by the Tribunal.

A SYNOPSIS OF THE RECOMMENDATIONS OF THE FIRST REPORT FROM THE MORRIS TRIBUNAL OF INQUIRY.

The Tribunal's First Report makes numerous recommendations as to the structure and management of An Garda Síochána, its obligation to account for itself to the Government and the management of Garda Informants in particular. The full text of the recommendations is set out in Chapter Thirteen of the Tribunal's First Report. For ease of reference this article adheres to the structure set out in Chapter Thirteen of the First Report.

1. The Role of Headquarters

The Tribunal was informed that Garda Headquarters is responsible for the management of An Garda Síochána in its operational and day-to-day activities. The Tribunal commented on the shortfalls noted in the relationship of the Donegal Garda Division, to Garda Headquarters and, in turn, the management of that Division by Garda Headquarters. The Tribunal also commented on the role which Headquarters has in informing the Department of Justice, Equality and Law Reform of developments of importance so as to ensure that the Department is kept appropriately informed as to the proper functioning of the national police force.

The Tribunal commented that the Department of Justice, Equality and Law Reform is isolated from Garda Headquarters noting that the Minister of Justice expects his officials should be briefed on developments

of importance so that he will be able to answer for them before Dáil Éireann and, in respect of developments which attract publicity, make an informed comment, if that course is chosen, to elements of the national media.

The Tribunal's analysis of the Donegal Division provoked it to comment that it is imperative that Garda Headquarters should take a more active role in the management of Garda Divisions stating that there can be no basis upon which Garda Headquarters, or indeed the Regional Assistant Commissioners as representatives of Garda Headquarters, can be entitled to see themselves as merely the receivers of information.

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The Tribunal recommends that those with management roles need to direct and control operations for without knowledge, neither Garda Headquarters, nor its Regional Assistant Commissioners, can offer advice or issue commands. In the past it has been too easy for senior Garda Management to be deceived and misled by those with a propensity to so do. This was evident in the obstruction and lack of cooperation given to inquiries established by Garda Headquarters in an attempt to uncover the truth of the events that occurred in the Donegal Division.

An Garda Síochána, has the responsibility for completing criminal investigations. If it fails in the most fundamental and important aspect of the preparation of files, that are later turned into disclosed documents and books of evidence, then the entire criminal justice system will break down. Therefore, the Tribunal recommends that a new system of review in respect of important cases must be implemented as a matter of urgency.

2. Reporting to Headquarters

The Tribunal identified a number of faults at the time, in the system of reporting incidents (explosive finds etc) to Garda Headquarters, and the responses thereto. The Tribunal's enquiries led it to the conclusion that there was no document template upon which a report, in whatever format of transmission, could be made. There was no Garda Circular, and nothing in the Garda Manual of Crime Investigation Techniques, dealing with the minimum requirements of reporting a major incident to Garda Headquarters. The Tribunal recommends that Garda Management rectify this area by the implementation of instructions, coupled with an appropriate form in the way of a template, requiring minimum information on matters that are of importance.

The role of Garda Headquarters is not the role of the Department of Justice, Equality and Law Reform. It is not adequate that Garda Headquarters should simply be receiving information without engaging in the process of checking on the ongoing course of an investigation.

Some of the explosive finds dealt with in the Tribunal's First Report were the subject of one communication to Garda Headquarters, many were the subject of more than one. What characterises all of them, however, is that they were signed off with some such phrase as "further developments will be reported". The reality is that no further developments were reported because there were never any developments to report. Investigations were being stymied and stopped in their tracks by a combination of corruption and negligence.

Garda Headquarters has to respond to major incidents on a countrywide basis by taking an ongoing interest in important events that are reported to it. Each event should be classified and given a number. A follow-up communication should be a minimum requirement. A template must be devised, indicating the status of an investigation, the eventual outcome of a search or the consequences of an interrogation, or indeed any other important step in an investigation. When the matter is disposed of, through the submission of a file to the Director of Public Prosecutions, or through the matter being dropped without the submission of a file, that should be reported to Garda Headquarters. The template proposed should indicate the minimum consequential reporting that is necessary and the minimum information that must be included in such communications.

On such communications being made, they should be passed to the relevant Superintendent, Chief Superintendent or Assistant Commissioner for the purpose of him or her allowing such incidents to be part of the paper file review already recommended.

3. Informants

The responsibility for the handling of Garda Informants rests with Crime & Security Section, at Garda Headquarters. The use of police informers has been a tool in the investigation of crime for centuries. Within the period relevant to the Tribunal's investigations, from 1988 to 1994, the use of informers was subject to directions set out in Garda Headquarter's Circulars.

The Tribunal examined the current system used by An Garda Síochána, which had been reviewed and reformed in the late 1990's. The Tribunal heard expert evidence in respect of the handling and use of informers in the Royal Canadian Mounted Police. It considered the relevant sections of the report of the Royal Commission into the New South Wales Police Service together with recent legislative changes in the United Kingdom on this topic. This material was used by the Tribunal as a basis upon which to consider what constitutes best police practice in the area of police informants.

The Tribunal found that An Garda Síochána's policy at that time governing the handling of informers was unnecessarily restrictive. Investigations carried out by the Tribunal and the information supplied to it by An Garda Síochána, indicate this policy was restricted to higher officers within An Garda Síochána. There was no manual for rank and file Gardaí that governs the handling of informants. The Tribunal notes that the Garda handbook "Crime Investigation Techniques" does not set out in any useful detail the procedures to be followed in respect of the cultivation and handling of an informer. It refers generally to the importance of people as a source of information, and to the fact that members engaged in outdoor duty should make every effort to cultivate good relationships with persons who might be a source of casual information. The Tribunal engaged in lengthy examination of the prevailing systems relating to Informant Handling in Canada, New South Wales and the current approach in the UK.

The Tribunal recommends that a full review take place of An Garda Síochána's policy governing the handling of informants and its implementation, with a view to considering whether the present practice and procedure applicable to the handling of informers by members of An Garda Síochána, can be improved in line with best police practice, or indeed, whether the regime covering the handling of informers should be the subject of legislation and a statutory code of conduct. The Tribunal is concerned that if the review of the policy is not thorough in its nature and implementation in the future, that abuses of the system, possibly worse than those chronicled in the Tribunal's First Report, will be facilitated.

The Tribunal makes seventeen recommendations concerning the handling and use of informants:

1. An informant handling manual should be produced and circulated to every member of An Garda Síochána which should include a code of conduct for the handling of informers.
2. A proper level of training should be introduced for members of An Garda Síochána in respect of the handling of informants, and should incorporate instruction on procedures required in, and the dangers associated with, the handling of informers.
3. There should be compulsory in-house refresher lectures from time to time for all members of An Garda Síochána in respect of the handling of informers, with particular emphasis on any changes made to the procedure.
4. There should be an independent outside audit of the present state of the implementation of the new Garda policy on the handling of informants. This should be by some person having appropriate security clearance and experience in police operational matters and who should examine the operation of the system and recommend improvements if thought appropriate.

5. A periodic independent audit of the operation of the informant handling procedure should be carried out. Provision should be made for an outside authority, perhaps the proposed Ombudsman, to be involved. Such a body should be vested in such a person to make such inspections and see such documents as are necessary to carry out the audit, and to attend at Crime & Security, at Garda Headquarters or at any Garda station, at such times as they think appropriate in order to carry out this task. Part of the auditor's remit should be to carefully monitor and review the informer management system.
6. A system of registration of informants should be compulsory and not optional for each member of An Garda Síochána.
7. Prior to registration of a person as an informer, authority should be obtained from Crime & Security on the basis of a full and detailed assessment of the person proposed as an informant, which should include a full and detailed background assessment and, if possible, an interview with that person. Every meeting with an informer should be properly logged, noted and recorded in detail.
8. A separate and complete file containing all records relating to the informer and all dealings with the informer by members of An Garda Síochána should be maintained and kept up to date at Crime & Security.
9. There should be at least two persons involved in the handling of an informer, who should be present together at all meetings with the informer.
10. The relationship with the informer and members of An Garda Síochána should not be overly familiar and, specifically, the informer should not have social contact with the member and/or members of the member's family or attend at the member's residence.
11. There should be a high level of supervision of the informer's relationship with members of An Garda Síochána by a superior officer. Any assessment or comments made or directions given by the superior officer arising out of such supervision, or any review of the relationship, should be recorded and furnished to Crime & Security for inclusion on the informer's file.
12. There should be a periodic review of the relationship between the informer and the handlers by an officer who is not a supervisor of the handler, but serves in Crime & Security, or has an appropriate level of security clearance.
13. An officer from Crime & Security should maintain close contact with the local supervising officer and the handlers on a regular basis and keep himself/herself fully informed in relation to the activities of the informer.
14. Handlers should receive such communication from Crime & Security as will assist them in understanding the value or lack of value of the information which has been supplied by the informant unless it is thought that this might compromise a Garda operation and the informer or another informer.

15. It is proposed that the implementation of Garda policy in relation to informants should be computerised. It is understood by the Tribunal that this has not happened to date. The process of computerisation should be completed as a matter of urgency. The strengths of computerisation will be the ability to cross-reference data in relation to information supplied by informers and to give those who assess the intelligence a greater access to and a clearer overview of information received.
16. A failure to comply with the informant management procedure should lead to prompt management action. Failure to comply with the procedure or to familiarise oneself with procedure should be regarded unfavourably. It should lead to disciplinary action of some kind. Members should clearly understand that such failure will have an adverse affect on a member's application for promotion. In this context, any foot dragging by officers or members of An Garda Síochána in relation to the implementation of Garda policy in this area should not be tolerated. The Tribunal feels compelled to make this comment on the basis that it is not satisfied that there is complete commitment to full implementation of this new policy in light of the evidence heard, or submissions made, and the Tribunal's visit to Garda Headquarters.
17. Although no specific submission was made on behalf of Crime & Security or the Commissioner in respect of lack of resources in terms of the funding of Crime & Security, it seems to the Tribunal that the premises in which Crime & Security is housed are cramped. Insofar as the recommendations of the Tribunal involve further work for the personnel engaged at Crime & Security, it is recommended that the appropriate level of additional resources be given to Crime & Security in terms of personnel and infrastructure to enable them to carry out their highly important business in the most modern facilities and environment available.

4. Officer's Journals

The obligation for all Gardaí of Inspector rank and above to keep an officer's journal was removed during the period subject to the Tribunals investigation. During that period it was a matter of personal practice as to what note of a day's duties and events was kept. The Tribunal recommends that the old system should be immediately restored. The Tribunal recommends that all issues as to arrests and the reasons therefore; warrants and the reasons therefore; investigations and the reasons for commencing same; all other tasks of importance; and reports of importance should be recorded by all personnel of Inspector rank and higher on a strictly daily basis.

Such records should never be destroyed without the permission of a designated Assistant Commissioner in Garda Headquarters. The books should be surrendered on retirement. They should be subject to inspection as and when required.

5. The Role of the Department of Justice, Equality and Law Reform

The Tribunal recommends that the Department of Justice, Equality and Law Reform must in consultation with the Garda Commissioner, address the structural defects and deficiencies that have been identified in the Tribunal's First Report to ensure that it is empowered by knowledge and that adequate steps are being taken to address the problems that have been identified.

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6. Duty to Account

A duty to account for one's actions as an employee is a fundamental aspect of any employer/employee relationship. No employee has the right to act in an independent and unaccountable manner. In any ordinary employment relationship, duties are set down, tasks are allocated and an account is to be made of the fulfillment of these. An employer who sets a task to his or her employee is entitled to know that it was fulfilled. If any difficulty arises in relation to it, for instance a claimed injury potentially resulting in a negligence suit, an employer is entitled to a full account of the actions of the relevant employee. The difference between any ordinary employment relationship, and that of engagement as a member of An Garda Síochána, is that the former are not vested with powers to use force in order to implement the law, whereas the latter are.

The Tribunal was set up, in part, because the thorough and detailed examination of the facts carried out by Carty Inquiry was unable to completely answer all of the questions, which surrounded this, and some of the other Terms of Reference. There was a clear failure on the part of various members of An Garda Síochána to account for their actions while on duty when appropriate enquiries were made of them by senior officers. The attitude adopted by these members ranged from an unhelpful lack of candour and detail to an absolute refusal to cooperate other than by blanket rejections of the propositions put to them. This is completely at variance with the minimal standards of behaviour to be expected of members of a disciplined police service.

It is no more than a statement of commonsense that a member of An Garda Síochána should be immediately obliged to account for anything that he or she has done in the course of a tour of duty or otherwise while using the powers invested in him or her as a member of the force. The employer, in this instance the Garda Commissioner and ultimately the Government, is entitled to know how the law enforcement powers vested in a member of An Garda Síochána are being, or have been, exercised.

At present failure to account for ones actions is not a breach of discipline under An Garda Síochána (Discipline) Regulations 1989. The Tribunal is of the view that every member of An Garda Síochána should be immediately obliged to account for any action taken by him or her as a member of An Garda Síochána or while on a designated duty. Within the context of the powers vested in An Garda Síochána and the need for a disciplined force, any member who does not comply should be suspended from duty. It should be a specific breach of discipline to fail to account in that regard and one, which, in the Tribunal's view, merits dismissal.

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The Tribunal recommends that all members of An Garda Síochána must be obliged to account truthfully for their duties. A failure to answer, or to answer truthfully, should be regarded as a major breach of discipline inviting dismissal. This is not to trespass on the rights of a person suspected of a crime. If the result of that obligation is the admission of a criminal offence then the Irish Constitution, prohibits its subsequent use in a criminal trial. Any such admission can, however, and should, be used to restore discipline to An Garda Síochána.

The Tribunal also recommends that An Garda Síochána should move away from the application of a discipline system involving what are, in effect, internal criminal trials, to one where managers have online responsibility in dealing with the work of their subordinates.

7. The Effect of Dismissal

The Tribunal notes that early dismissal can lead to the loss of pension. In the majority of instances, this is an unnecessary and unfair consequence. A member of An Garda Síochána may work for years, legitimately building up credits on his or her pension fund, and then require to be dismissed by reason of a single, or a series, of evil actions. It is conceivable that a person who has been commended, even for bravery, might fall to the degree that requires their dismissal. The Tribunal is of the view that it does not seem logical that the consequence of a short period of bad service should result in the removal of the benefits legitimately gained, perhaps through years of hard work and application.

8. Recruitment and Promotion

The Tribunal notes the unimpressive performance by members of An Garda Síochána of Superintendent and Chief Superintendent rank during the relevant period in County Donegal.

The Tribunal is unable to make a recommendation as to how promotions should be looked at in the future. The Tribunal is able to say, however, that the system of promotion, in its experience, too often produces people who do not bring to the task the requisite level of enthusiasm,

commitment and ability. The Tribunal states it is a matter, which the Department of Justice, Equality and Law Reform should look at in consultation with the Garda Commissioner.

The Tribunal highlights that An Garda Síochána has not yet made any effort to recruit from religious or ethnic minorities. The Tribunal acknowledges An Garda Síochána's reports entitled 'Review of Recruitment Methods in An Garda Síochána' and 'Report of the Garda Promotions Review Group'. The Tribunal states it is a matter for the Department of Justice, Equality and Law Reform and the Garda Commissioner as to whether these reports provide sufficient answers.

9. Tenure

The Tribunal is of the opinion that anyone coming into a responsible job needs time to familiarise themselves with their new position, and with the personnel at their disposal. An unfortunate feature of the situation in Donegal was the manner in which senior officers came and went at rapid intervals.

The Tribunal proposes that anyone promoted to the higher ranks within An Garda Síochána should be given a posting only on condition that they are prepared to give that minimum period of service in any particular position that would be of benefit to their colleagues and the organisation as a whole. The parameters for this are matters to be considered by the Department of Justice, Equality and Law Reform in consultation with the Garda Commissioner.

CONCLUSION

At paragraph 13.101 and 13.102 the Tribunal concluded that An Garda Síochána is losing its character as a disciplined force and that the gradual erosion of discipline will sooner or later lead to disaster.

The first Report of the Tribunal of Inquiry posed the question: Could it ever happen again? The Tribunal answered its own question by indicating that if there was a lack of proper management at senior level, corruption at middle level, and a lack of review throughout the force, that a similar situation could occur again.

The next article in this edition of Communiqué will set out An Garda Síochána's response to the findings and recommendations of the First Report of the Morris Tribunal of Inquiry.

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1. Report of The Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division, "Report on Explosives 'Finds' in Donegal", Government Publications 2004.
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An Garda Síochána's Response to the First Report from the Morris Tribunal of Inquiry.

Superintendent A.J. Nolan

INTRODUCTION

This article, the third in the series on the Morris Tribunal of Inquiry, provides a synopsis of An Garda Síochána's Response to the First Report of the Morris Tribunal of Inquiry.

The Garda Commissioner Mr. Noel Conroy, wholeheartedly accepted the findings of the Tribunal's First Report and subsequently requested Mr. T.P. Fitzgerald, Deputy Commissioner, Strategic and Resource Management, to conduct a review of its findings and prepare a report on its implications for An Garda Síochána. The methodology adopted for the review entailed both immediate and medium term actions. The immediate actions initiated included the:

- Review of the First Report of the Tribunal of Inquiry.
- Synthesis of the findings and recommendations into nine categories.
- Reintroduction of the Officers' Journal (effective from 1st September 2004).
- Resignations of members.
- Retirement of members.
- Dismissal of members.

In order to comprehensively consider the implications and recommendations of the Tribunal's First Report, An Garda Síochána established nine working groups to reflect the nine identified areas of concern as follows:

- Management development.
- Migration management and policy of tenure.
- Internal audit.
- Religious and ethnic minorities.
- The role of Assistant Commissioners.
- An Accountability Framework.
- The erosion of discipline.
- Issues arising involving personnel.
- Informant management.

Each of these working groups furnished reports which are synthesised hereunder.

SYNOPSIS OF THE RECOMMENDATIONS OF THE NINE WORKING GROUPS.

1. The Management Development Working Group Report

The Terms of Reference for the Management Development Working Group Report were:

" to present a discussion document and make recommendations on management development; to consider further management development

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training following promotion courses, in-service training etc.; and to examine the possibility of introducing integrated management development from Sergeant right up to the Executive Leadership Programme ".

The report of the working group concluded that at the core of the Tribunal's inquiry, findings and recommendations lies three key public policy imperatives, namely

1. Moral conduct.
2. Personal responsibility.
3. Transparent accountability.

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The Working Group identified two distinct yet connected training and development needs for members following promotion. The *immediate needs* are classed as '*vocational*' *training requirements* and these refer to the specific policing/managerial knowledge, skills and abilities the newly promoted person requires to effectively perform in the new role. In addition, there is a clear requirement to provide broad *professional learning and development opportunities* for staff of Inspector rank and above which is designed to build on existing knowledge and skills and expose participants to a range of core environmental and organisational factors which impinge on and influence the effective management of the Garda organisation going forward.

The Working Group made the following key recommendations:

- An Garda Síochána's Management and Supervisory Development Programmes should focus on the key public policy imperatives of moral conduct, personal responsibility and transparent accountability.
- The training/development programmes should deliver vocational and professional training and development.
- The appropriate and professional management of goal-focused professional relationships become a core value and strategic guide for Supervisory and Management Development Programmes.
- An Garda Síochána's Mission Framework and the Declaration of Professional Values and Ethical Standards become an integral part of each training/development programme in order to guide values and standards.
- The Supervisory Management Development Framework be adopted as a framework to guide the overall training/development of supervisors and managers.

- The onus of responsibility for personal and professional development rests with the individual supervisor and manager supported by developmental relationships and the training and development function.
- The Bachelor of Arts Degree Programme in Police Management or equivalent qualification be adopted as desirable for promotion to the rank of Superintendent.
- The Garda Executive Leadership Programme be adopted as a pre-requisite for progression to Assistant Commissioner rank.
- The approach to delivery of training/education/development be facilitated by the development of an e-learning portal.
- Obtain approval in principle from the Department of Justice, Equality and Law Reform for the Executive Leadership Programme, the establishment of an Executive Development Centre and associated costs.
- Following approval in principle from the Department of Justice, Equality and Law Reform, Assistant Commissioner, Human Resource Management should develop an implementation plan for the Working Group's recommendations.
- Consultation should be commenced with a suitable "Learning/Academic Institution" to accredit the "Executive Leadership Programme". This would allow participants to use qualifications as credits for further personal development.

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2. The Migration Management and Policy of Tenure Working Group

The Term of Reference of the Migration Management and Policy of Tenure Working Group was:

" to present a discussion document on migration management and policy of tenure within An Garda Síochána ".

The Working Group examined the extent to which the movement of managerial personnel within An Garda Síochána was an issue in the overall context of the allocation of personnel. It also considered best practice in similar large organisations both public and private. Overall the evidence suggests that most if not all comparable organisations experience similar difficulties to An Garda Síochána in permanently filling some vacancies at out of the way locations.

The working group analysed the movement of senior Garda management. The analysis shows that while there may be some movement by Officers upon initial allocation the overall trend has been that personnel tend to occupy a more permanent posting within a short

period of time. Another aspect of policy examined was the extent to which the movement of managerial personnel is concentrated in particular locations.

The working group also examined possibilities concerning the selection processes relating to issues of pre-notification of vacancies and the publication of an order of merit.

The Working Group made the following key recommendations:

- An Garda Síochána publish promotion lists of successful candidates in alphabetical format as opposed to an order of merit list. The advantage of this procedure is that successful candidates are selected to fill the most suitable vacancies as they arise. This provides for additional flexibility within the promotion system.
- There should be a principle of a minimum period of tenure for personnel on their first allocation subsequent to promotion. This will enable the office holder to acquaint themselves with the required roles and responsibilities whilst at the same time providing a reasonable level of managerial continuity.
- A stated principle of tenure as opposed to a distinct policy should be adopted as there are factors, which may from time to time necessitate a deviation from this principle in respect of particular posts. This deviation however should where possible be kept to a minimum.
- In terms of the duration of the period of allocation, a period of 2 years would be the very minimum period of tenure.
- A formal procedure for the transfer of responsibility including the use of a "Checklist of Responsibilities" between office holders should be put in place for senior management when handing over responsibility to replacements.
- The working group does not recommend any extra remuneration or incentives to facilitate tenure of office holders.

3. The Internal Audit Working Group

The Terms of Reference of the Internal Audit Working Group were:

"to examine the role of the Garda Internal Audit Section (GIAS) under the following areas- (a) an expanded role for the unit – quality assurance, (b) the title Internal Audit – Internal Inspectorate, (c) size of the unit and rank structure, (d) research best practice elsewhere, (e) training required, (f) relationship with the organisation and the Commissioner, (g) reporting lines and (h) authority to access all areas within the organisation".

The term of reference centred on expanding the role of the Garda Internal Audit Section and the development of a more robust audit system to address the identified weaknesses arising from the Tribunal's First Report and to ensure procedures for corporate governance comply with best practice.

The Working Group made the following key recommendations:

- An Garda Síochána should adopt the HMIC (Her Majesty's Inspectorate of Constabulary) Baseline Assessment model, with appropriate modifications. The model will be known as the Garda Audit and Inspection Framework and assess fifteen identified police activities and functions.
- Audits/Inspections be conducted at District as opposed to Divisional level. The most effective way is to compare like with like on a national basis i.e. inner-city District with inner-city District and rural with rural etc. The 109 Garda Districts together with the accompanying Specialist and Functional areas, which now total 196 unique locations be classified as **Area Command Units (ACU's)** and be grouped into 10 distinct '**Comparative Command Groups**' of most similar types based on uniqueness, workloads as well as social and demographic factors for audit purposes. Inspections should be conducted on a biennial basis at each Area Command Unit.
- The audit and inspection methodology follow an eight-stage process.
- A Whistle-blowing Charter be introduced to provide a forum for the reporting of corruption and malpractice within the organisation.
- The staff complement of the GIAS be increased and incorporate a wide mix of skills.
- The GIAS should report to an independent Audit Committee on financial probity and to a Standards Committee on operational and administrative matters.
- Inspectors on Superintendents' Promotion lists should be required to spend a short secondment with the GIAS.
- The services of the HMIC be utilised to train/equip the GIAS in the initial stages.
- A Performance Management Framework be adopted for An Garda Síochána.
- The benefits of the central sourcing of information be examined leading to the creation of a Statistics Bureau within the organisation.

4. The Religious and Ethnic Minorities Working Group

The Terms of Reference of the Religious and Ethnic Minorities Working Group was

"to examine this issue in relation to recruitment to An Garda Síochána and produce a report with recommendations".

The report of the Working Group acknowledges that An Garda Síochána needs to be representative of the multi ethnic population it serves if ethnic minorities are to have confidence that they share parity in service delivery. As a result, the next step for An Garda Síochána as an evolving organisation must be to encourage members from ethnic and religious minority groups to play a role in the policing of the country. Representation within An Garda Síochána must also include the indigenous minority of the travelling community, and traditional ethnic Irish who have converted to a new religion not traditionally associated with Ireland's history, e.g. Muslim, Mormon or Buddhist.

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The Working Group made the following key recommendations:

- Irish born applicants joining An Garda Síochána must have English and Irish whereas Non-Irish born applicants must have English and one other language.
- Where possible and within the exigencies of the service, cultural diversity should be accommodated.
- The appointment of religious chaplains from a variety of faiths, Muslim, Sikh, Buddhist etc on an honorary basis for the time being should be considered.
- Changes to the uniform to reflect diversity would require consideration i.e. to cater for Sikh, Muslim headwear etc.
- Representatives of the key ethnic and religious minorities should be invited to a press launch, along with personnel from the Equality Authority, the National Consultative Committee on Racism and Interculturalism and the Minister for Justice Equality and Law Reform, to introduce a complete package tailored to facilitate recruitment from ethnic and religious minorities.
- Build on the work of Garda Racial Intercultural Office and mainstreaming anti-racism and diversity training within the organisation.
- Develop the capability within the Garda Racial and Intercultural Office to facilitate a mediation role in situations where greater diversity in the organisation may lead to transitional teething problems.
- The Garda Racial Intercultural Office may involve an evaluative role for initiatives to improve diversity within the organisation.
- The language skills and cultural specific competencies of Garda staff should be enhanced in the area of policing a multicultural society.

5. The Role of Assistant Commissioner within An Garda Síochána

As a result of the Morris Tribunal findings, the Garda Commissioner established a Working Group to review the role and strategic contribution that the Assistant Commissioner rank makes to An Garda Síochána. This Working Group Report considered the critical issues touching on the performance, achievement and accountability of Assistant Commissioners within An Garda Síochána, namely:

- The role and strategic contribution of the rank of Assistant Commissioner,
- The integrated management of performance and achievement in an open and accountable manner.

The Terms of Reference of the Working Group were to:

- Identify critical areas of strategic management,
- Establish clarity in relationship management, internal and external,
- Examine support structures.

The Working Group concluded that Assistant Commissioner level Officers, regardless of their portfolio should be regarded as Headquarters Officers, who have prime Corporate Governance and Strategic Managerial Strategy roles.

This report brings forward an integrating performance and achievement framework to enable Assistant Commissioners to deliver value propositions, drawing on the strategic framework set out in the Commissioner's Corporate Strategy and the strategic management/leadership opportunities which the rank and role of Assistant Commissioner affords such Officers.

The Assistant Commissioner role in An Garda Síochána represents a key part of the senior management layer. Assistant Commissioners can be responsible (i) for a specific geographical region, or (ii) have national responsibility for a key policing functions. Regardless of whether a particular Assistant Commissioner has vertical or horizontal responsibilities, there are two key managerial principles and domains that underpin the role, and on which the majority of this report concentrates:

- (a) The Assistant Commissioner, as a member of the Garda Commissioner's Governance Board, is a key strategic influencer and driver of the development, implementation and evaluation of Garda Corporate Strategy and associated operational Policing Plans and Performance and Achievement Strategies.
- (b) Each Assistant Commissioner is the primary operational managerial strategist for his/her domain of responsibility, and is individually accountable for delivering on the strategy for that area. The Assistant Commissioner role is a vital tool for the Commissioner in

driving strategy and plans down through the organisation, as well as managing accountability together with the coherent flow of information both vertically and horizontally through the organisation. To achieve these goals, proper role definition must be developed and applied to the rank of Assistant Commissioner. In clarifying and activating the role of Assistant Commissioner, An Garda Síochána will achieve benefits in terms of effectiveness and accountability at all levels.

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The role of an Assistant Commissioner within An Garda Síochána has widespread impact across the organisation. This role is characterised by interaction with others, decision-making and completion of work tasks. These activities span several different groupings and their consequences impact upon the strategic and operational effectiveness of An Garda Síochána.

The Assistant Commissioner, whether he/she fulfils a regional or a specialist role, must appreciate the over-arching impact of their position and that he/she plays an integral role in the strategic as well as the operational management of An Garda Síochána.

Assistant Commissioners through their own performance, ethical conduct, achievement and accountability, guided by the Corporate Strategy of An Garda Síochána must deliver value and assure the achievement of the Garda mission, vision and values.

6. Performance and Accountability Framework

A Performance and Accountability Framework includes the collection, collation and reporting of information about how an organisation is performing on specified criteria. Performance and Accountability has to be about improvement, not blame. It should be about getting Districts and Units working together to improve efficiency and effectiveness. Listed below are four important benefits, which can be gained from the operation of a robust Performance and Accountability Framework:

- 1) It can identify whether An Garda Síochána is providing an efficient and effective service to the Public. How do we know that we are providing the services that the Public require?
- 2) It helps us identify and understand problems, it can confirm what we know or reveal what we don't know.
- 3) It can show where improvements need to be made. Where can we do better? How can we improve? It can also show if improvements actually happened.
- 4) It can ensure decisions are based on fact, not on emotion. It can assist in revealing problems that bias, emotion, and longevity cover up. If we have been doing our job for a long time without Performance and Accountability, we might assume incorrectly that things are going well.

Best Police Practice, Performance and Accountability

Three models have been examined for examples of best Police practice with regard to Performance and Accountability. The Compstat Model in North American Police Forces, the National Intelligence Model in the UK (including Northern Ireland) and the best practice currently in operation in An Garda Síochána.

Annual Policing Plans

The Commissioner's Annual Garda Policing Plan should be at the core of the Performance and Accountability System. Well developed and prepared Divisional and District Policing Plans should give effect to the Annual Garda Policing Plan. Preparation of the Divisional and District Policing Plans is a four stage process which should take place in the last quarter of the year October / November for the following year. The four stages are as follows:

- Stage One** – **External Consultation**
- Stage Two** – **Policing Plan Conference**
- Stage Three** – **Drafting Stage**
- Stage Four** – **Presentation**

Proposed Performance and Accountability Framework

A pragmatic system of accountability at District, Divisional, Regional and Strategic level can be formulised, which can bring a greater focus to Divisional and District Policing.

Accountability Review involves structured conferences held Quarterly, Monthly, Fortnightly and Daily. Chaired by Deputy Commissioner, Regional Assistant Commissioner, Chief Superintendent and Superintendent respectively. The purpose of the Conferences will be to focus attention on a variety of different categories identified in Annual Garda Policing Plan and explicitly expressed in Divisional / District Policing Plans i.e. Operational Performance, Human Resource Management and Leadership and Direction.

Performance and Accountability Review

The Performance and Accountability Review process involves a series of Conferences, which are designed to formalise Performance and Accountability for all sections within An Garda Síochána. The process includes the following:

- District,
- Divisional,
- Regional and
- Strategic Performance and Accountability.

District Performance and Accountability

District Performance and Accountability should take the form of:

Daily Briefing Meeting

Chaired by a Superintendent/Inspector and attended by Patrol Officers, Sergeant In Charge, Duty Station House Officer, Detective Inspector, Detective Sergeant, Criminal Intelligence Officer, Specialist Unit Sergeants, District Clerk. The focus should be on reviewing the previous 24 hours occurrences / crimes.

Weekly Performance and Accountability Conference

A District Conference chaired by the Superintendent. In attendance should be all Supervisors in the District including Inspectors / Patrol Officers, Sergeant in Charge, Duty Station House Officer, Detective Inspector, Detective Sergeant, Criminal Intelligence Officer, Specialist Unit Sergeants, District Clerk. Garda rank should be represented.

Divisional Performance and Accountability Conference

Weekly Conference with all Superintendents in the Division chaired by the Chief Superintendent and attended by all Superintendents in the Division.

Regional Performance and Accountability Conference

Fortnightly Conference with all Chief Superintendents in the Region, chaired by the Assistant Commissioner, and attended by all Chief Superintendents in the Region, who may have Superintendents present, if required.

Strategic Performance and Accountability

Corporate Level Management meetings, which currently take place, should of course continue, but obviously will need reform in light of the deliberations concerning corporate governance contained in this report

In addition, an end of quarter Performance and Accounting Conference, under the executive chairmanship of the Deputy Commissioners and presided over by the Garda Commissioner should be established. Each Assistant Commissioner may have Chief Superintendents present if required.

Recommendations

- The strategic and operational management of An Garda Síochána should be processed through a Performance and Accountability Framework, incorporating a performance and achievement core process which must be cascaded and worked at every level of An Garda Síochána.
- Assistant Commissioners should be considered Headquarters Officers with twin senior managerial responsibilities of Corporate Governance and Senior Managerial Strategists. Assistant Commissioners should seek to add strategic value through the active pursuit of high level, high impact Strategic Priority Initiatives.

- Assistant Commissioners' Strategic Performance Initiatives should be influenced in a balanced and integrated way by the key tenets of the Commissioner's Corporate Strategy and the strategic enabling opportunities of their role and rank.
- Structured performance management business processes, incorporating performance and achievement matrices, structured management meetings, and integrated goal focused trend data should be incorporated as a normal part of the operation of the performance management process at each structural level of the managerial hierarchy.
- Priority should be given to developing the strategic business knowledge and skills (conceptual and practical) of Assistant Commissioner Officers, thereby enabling them to perform and contribute at the unique value adding level set out in this report.
- Senior Management should move to improve the information technology and other business processing tools which have the potential to enable and improve the strategic performance capability and achievements of Garda managers and supervisors.
- Structured, shared managerial performance and accountability responsibilities, which the emerging matrix management structures of An Garda Síochána requires, should be incorporated as an opportunity at strategic management and operational levels to promote team integration and team performance.
- Commencing at Deputy Commissioner level, managers and leaders at strategic and tactical operational levels, should engage actively in coaching and mentoring developmental activities, thereby providing reporting Officers with the support, guidance, direction and correction which are necessary for performance excellence and career progression.

7. Issues arising involving personnel

Chapter Two of the First Morris Tribunal Report listed a number of persons both Garda and non-Garda that the Tribunal considered central to its inquiries. Throughout various other sections of the Report many other members of An Garda Síochána were commented upon, some very favourably and others less so. Indeed some members were commented upon as being unhelpful, negligent or in one particular case the Tribunal remarked that "their evidence is so contradictory and unbelievable that it comprises a tissue of lies" (para. 14.28, p.507).

Following the publication in July, 2004 of *'The Report of the Tribunal of Inquiry'* a further Working Group under Assistant Commissioner, Human Resource Management was established to analyse "issues resulting from the criticism levelled at both former and serving members of An Garda Síochána in the Donegal Division".

A number of members of An Garda Síochána subsequently intimated that they intended to retire from the organisation. This included Chief

Superintendent Denis Fitzpatrick and Superintendent John O'Connor who retired with effect from 1/9/04. Several other former members of An Garda Síochána named in the report are not subject to the authority of the Garda Commissioner or indeed the Garda Síochána Disciplinary Regulations 1989.

Superintendent Kevin Lennon, who was at that time the subject of disciplinary proceedings was suspended from duty from August 2002 until his dismissal with effect from 5/10/04. Detective Garda Noel McMahon was also the subject of disciplinary proceedings on matters arising from the Carty report that were also addressed by the Tribunal when he resigned with effect from 3/8/04. Table 1, below outlines the current position with regard to current or former members of An Garda Síochána who were commented upon by Mr. Justice Frederick Morris.

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Table 1:

Name	Rank	Station	Current Status
1. Denis Fitzpatrick	Chief Superintendent	G.N.T.B.	Retired with effect from 1/9/04
2. John Mc Loughlin	Chief Superintendent	Opp. Support	Retired with effect from 26/1/05.
3. John P. O'Connor	Superintendent	Tralee	Retired with effect from 1/9/04
4. Kevin Lennon	Superintendent	Garda Headquarters	Dismissed with effect from 5/10/04
5. Hugh Smith	Detective Sergeant	Letterkenny	Retired with effect from 3/12/04
6. Michael Murray	Sergeant	Malin	Retired with effect from 2/6/05
7. Noel Mc Mahon	Detective Garda	Letterkenny	Resigned with effect from 3/8/04.
8. John O'Dowd	Detective Garda	Convoy	Dismissed with effect from 6/1/05
9. Patrick Mulligan	Garda	Sligo	Dismissed with effect from 6/1/05
10. Philip Collins	Garda	Raphoe	Resigned with effect from 28/10/04
11. John Nicholson	Garda	Sligo	Retired with effect from 4/9/02
12. P.J. Thornton	Garda	Letterkenny	Retired with effect from 2/11/04
13. Thomas Rattigan	Garda	Buncrana	Ordered to transfer to Cabra on 24/6/05
14. Martin Leonard	Garda	Letterkenny	Transferred to Harcourt Tce. on 24/6/05.
15. Martin Anderson	Garda	Letterkenny	Ordered to transfer to SDU on 24/6/05
16. James Mc Dwyer	Garda	Ballybofey	Ordered to transfer to Garda Headquarters on 24/6/05
17. P.J. Mc Dermott	Garda	Lifford	Retired with effect from 3/8/05
18. Joseph Shelly	Superintendent	Mullingar	Retired with effect from 31/7/05
19. John Mc Ginley	Superintendent	Galway	Retired with effect from 31/7/05
20. John Fitzgerald	Superintendent	Sligo	Retired with effect from 3/12/04
21. Martin Moylan	Sergeant	Letterkenny	Retired with effect from 10/6/05
22. John Birney	Garda	Lifford	Retired with effect from 16/9/99

On receipt of the Tribunal's Report the question of formal disciplinary proceedings were considered against several named members. The advices of the Chief State Solicitor and those of the Attorney General were sought on the status of Mr Justice Frederick Morris's report in the context of the adverse findings set out therein in respect of named members of An Garda Síochána. In particular, advices were sought on the extent to which the interim report's findings could be utilised in the context of any disciplinary proceedings that were to be contemplated against any of the said members.

On receipt of this legal advice, the report of the Tribunal and the transcripts of the evidence of those members in respect of whom adverse findings were made were studied.

In light of the advice given by the Attorney General it is not now proposed to commence formal disciplinary proceedings.

8. Erosion of Discipline

This working group chaired by Assistant Commissioner, Human Resource Management was requested to prepare a discussion document on how best to address what Mr. Justice Morris identified as a perceived emerging trend of the erosion of discipline within An Garda Síochána.

The Working Group comprised representatives from Divisions within An Garda Síochána as well as representatives from the Association of Garda Sergeants and Inspectors, Garda Representative Association, and the Department of Justice, Equality and Law Reform. The working party considered the present state of discipline within the organisation and all existing disciplinary procedures with a view to:

- Maintaining high standards and developing higher professional standards in An Garda Síochána.
- Enhancing the reputation of An Garda Síochána as a disciplined organisation.
- Developing streamlined and less bureaucratic procedures.
- Improving levels of transparency.
- Developing a mechanism of accountability for all members.

Annual Statistics for Discipline Section, Garda Headquarters

The Working Group analysed the current position relating to discipline within An Garda Síochána and found that in 2003 a total of 231 new cases of discipline were reported to Internal Affairs Section, Human Resource Management. Fourteen (14) were dealt with by way of Sworn Inquiry Board. Sixty three (63) cases were dealt with by way of the Regulation 13 procedures i.e. where matters are disposed of at Divisional Officer level. Reduction in pay as a penalty was imposed in fifty four (54) cases and in nine (9) cases members were cautioned. The total monetary value of reductions in pay was €17,105.

At year-end 2003 there were twenty (20) members on long-term suspension from the Service.

Strengths and Weaknesses of Existing Discipline Regulations

Strengths

- The present Discipline Regulations are perceived by members of An Garda Síochána to give protection to them when carrying out a very difficult, very often complex and confrontational job.
- The operation of the current Regulations is open and transparent.
- The Regulations, being a Statutory Instrument, are a recognised legal process.
- The spirit of the Regulations is to be fair to members under investigation.
- Given the unique position of members of An Garda Síochána, and the prohibition to engage in work stoppages the Regulations allow for fair procedures and good discipline while balancing the rights of individual Gardaí.

Weaknesses

- The current system is regarded as being inflexible, unwieldy, complex, lengthy, and resource intensive.
- There appears to be a lack of consistency with regard to invoking of the Discipline Regulations and the penalties imposed.
- There is no measure for the rehabilitation of a member who is found in breach of discipline.
- A considerable amount of time is expended on investigating and addressing issues relating to discipline, as the present regulations are resource intensive.
- There is a lack of clarity regarding what may be considered a minor breach of discipline.
- At present the mechanism for dealing with minor breaches and serious breaches of discipline are the same. Other than Regulation 7¹ there is no other informal process for addressing minor breaches of discipline.
- At present there is a difficulty in addressing a situation where a member fails, refuses, and neglects to answer questions put to him/her by a supervisor in respect of any action or inaction on their part as a member of An Garda Síochána.

¹Regulation 7: Nothing in these Regulations shall affect the right of the Commissioner or any other member whose duties include the supervision of another member to deal informally (whether by advice, admonition or warning as the circumstances may require) with a breach of discipline of a minor nature.

Summary of Recommendations

The Working Group was of the opinion that separate and less formal procedures could be adopted for handling minor breaches of discipline, which could be classified as non-commitment to expected standards of behaviour. Additionally it was proposed that where disciplinary penalties are imposed more emphasis could be placed on remedial action where appropriate.

The Working Group made a number of recommendations that suggest a new way forward for An Garda Síochána in relation to Disciplinary matters. Representatives of both AGSI and the GRA disagreed with some of the recommendations. However it is not proposed to explore these recommendations here because one of the Working Groups established under the Garda Síochána Act 2005 Implementation Group has also been mandated to bring forward new Disciplinary Regulations for An Garda Síochána and it may be appropriate to await the outcome of those deliberations before making comment.

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9. Informant Management

This Working Group was established to examine the areas of concern identified by Mr Justice Frederick Morris relating to how An Garda Síochána handles informants and agents. The Working Group was mindful of the comments and recommendations contained in the Tribunal's First Report and have consulted widely, before drawing up recommendations for the Garda Commissioner. It acknowledges and accepts the comments expressed by Mr. Justice Morris. In particular, the Group has taken cognisance of Mr. Justice Morris's comments that such a policy must include stringent safeguards, subject to reviews in order to minimise the risks and potential pitfalls.

The Working Group Report is set out in two sections, the first section is an analysis of all the material considered and the discussions and research undertaken. It details the logic for the recommendations arrived at and is intended to articulate the basis for the contents of a Code of Practice for the management and use of Covert Human Intelligence Sources by members of An Garda Síochána. The second section comprises a Code of Practice for the management and use of Covert Human Intelligence Sources by members of the An Garda Síochána. It contains what is considered by the Group, following its extensive research, current best practice standards.

The Garda Síochána policy document issued in June 2002 entitled "Intelligence Source Management System Guidelines" was found to be of significant assistance and was recognised by the Group as a firm template and basis for developing and refining Garda policy and procedures in this area. Many of the concepts and procedures contained in that document are now replicated in the new proposed structure.

The scope of the research conducted by the Working Group, included:-

- The findings of the Royal Commission of Inquiry of Mr. Justice Woods in New South Wales, Australia.
- The UK statutory provisions in respect of the handling of informants, including the non-statutory UK Code of Practice.
- The Canadian system of informant handling.
- The existing Garda Síochána document relating to informant handling.
- Europol best practice document entitled "European Best Practices on the Use of Informants".

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The Working Group had the benefit of consultation, presentations and briefings from a number of police and related services in Europe. These included a number of police forces in the United Kingdom and Germany as well as Europol, and international networks and expert groups. In addition to the examination of best international practice, the Group has given consideration to the issue of the benefits or otherwise of placing the informant management system on a statutory or non statutory footing. The Working Group has drawn a number of conclusions and makes recommendations arising from its review.

RECOMMENDATIONS

The following is a summary of the key recommendations contained in this report:-

- The term Covert Human Intelligence Source, or its acronym CHIS, should be adopted by An Garda Síochána when describing a person previously referred to as an Informant or Informer.
- Assistant Commissioner, Crime & Security, to have overall responsibility for the CHIS system.
- A Code of Practice will govern the handler/CHIS relationships and will be adopted as the organisational policy in respect of the management and use of Covert Human Intelligence Sources by An Garda Síochána.
- A rigid system of registration will be compulsory for each member of An Garda Síochána. Such registration will be subject to authorisation on the basis of a full and detailed assessment of the proposed CHIS. This assessment will include a full and detailed background and risk assessment and, in certain circumstances, a face-to-face interview, in accordance with the procedures outlined in the Code of Practice.
- A minimum of two persons will be involved in the handling of a CHIS, who should be present together at all meetings with the CHIS.
- Assistant Commissioner, Crime & Security, shall ensure that such arrangements as he considers necessary exist to limit to the minimum the disclosure of the True Identities of and any information received

from CHIS, and to secure that copies of all communications relating to CHIS are not made to any extent greater than is necessary. Such arrangements will include provision that:

- Only the appropriate number of staff is to have access to the True Identities and information provided by CHIS.
- There must be a secure means of transmitting reports between Handlers, Controllers, Divisional Advisory Groups, Assistant Commissioners and the Holder of True Identities.
- Staff and all material relating to the CHIS system will be accommodated in secure accommodation.
- All Garda personnel, including Controllers and Handlers, dealing with information in relation to the True Identities of and information provided by CHIS will undertake, in writing, not to disclose or cause to be disclosed, save as is provided for in this Code of Practice, any such information.
- Failure to comply with CHIS management procedures, as set out in the Code of Practice should lead to prompt managerial intervention and disciplinary action, as appropriate.
- A decision on the possible introduction of a system of written agreements between CHIS and An Garda Síochána should be deferred until a period of two years following the full implementation of the Code of Practice has elapsed.
- The Commissioner should publish a public statement on the general workings of the system at implementation stage, including publication on the Garda website.
- The Code of Practice will be issued to every member of An Garda Síochána and every Garda Station by way of Headquarters Directive.
- A National Source Management Unit, adequately resourced and appropriately structured, should be established under the control of Assistant Commissioner, Crime & Security and under the operational direction of Detective Chief Superintendent Security and Intelligence. Included in its remit will be to maintain best practice standards and to manage the functioning of the revised system for the management of CHIS. The Unit will maintain close contact with local supervising officers and controllers on a regular basis, in the context of the evaluation of the intelligence and the source, and conduct periodic reviews of the relationship between the CHIS and the handler. It will have primary responsibility in assisting Detective Chief Superintendent, Security & Intelligence, in advising local management, monitoring progress in relation to intelligence matters and intelligence led operations, and communicating relevant feedback to assist local officers in the constant evaluation of the intelligence and the source.

- A separate and complete file containing all records relating to the CHIS and all dealings with the CHIS by members of An Garda Síochána will be maintained locally and at the National Source Management Unit.
- Each Assistant Commissioner, with responsibility for operational units, should, in consultation with their Divisional Officers, establish and maintain a dedicated source-handling unit within his/her area of responsibility, under the operational direction of a Detective Superintendent (Controller). The size and structure of such unit will be determined by local requirements.
- Every contact with a CHIS must be recorded in detail, in accordance with the procedures set out in the Code of Practice.
- Assistant Commissioner, Human Resource Management, in consultation with Assistant Commissioner, Crime & Security, will immediately undertake the development and delivery of a training programme as outlined at the various levels hereunder:-
 - Level 1 - Basic Awareness of CHIS System to be delivered to ALL members of An Garda Síochána. Such training to be delivered during Probationer training, Promotion and Development Courses and appropriate Continuous Programme Development Courses.
 - Level 2 - Every member of An Garda Síochána employed full-time on CHIS Handling duties will be provided with this training. It will take account of CHIS assessment, risk assessment, dangers and pitfalls associated with this type of duty, administrative and other functions.
 - Level 3 - Every member of An Garda Síochána employed in the recruitment and handling of CHIS in High Risk situations and in operations involving substantial difficulty or risk, will be provided with this training.
 - Level 4 - Provided to members of An Garda Síochána of Superintendent rank and above, who are performing the functions of Controllers, as described in the Code of Practice.
 - Level 5 - Provided to all Assistant Commissioners and Divisional Officers, addressing the areas of responsibility and functions as described in the Code of Practice.
 - Level 6 - Provided to members of An Garda Síochána attached to the National Source Management Unit and addressing the areas of responsibility and functions as described in the Code of Practice.

- Note: Levels 4 to 6 are to be interpreted as stand-alone training, not necessitating the prior completion of levels 2 or 3. No member should be permitted to undergo Level 3 training without having first successfully completed Level 2.
- A customised and fully integrated computerised system to support the revised CHIS structure, providing comparable functionality to PIMS², should be developed for An Garda Síochána.
- A review of all office systems, processes and procedures at Security & Intelligence Section should be completed within a maximum timeframe of three months, with immediate implementation of the resultant recommendations thereafter.
- An annual external audit of the operation of the system should be conducted by an independent person such as a High Court Judge.
- The Commissioner should appoint an appropriate Officer, of Deputy or Assistant Commissioner rank, to carry out an independent annual review of the operation of the system.
- The provision of a legislative basis for the system of CHIS management by An Garda Síochána should be given strong consideration by the legislature. Such consideration may be more informed if it takes account of the experiences gained from the implementation of the Code of Practice over a defined period of perhaps two years. Equally the outcome of the UK review of RIPA³ may also offer some useful insights.
- The opportunity presented by the relocation of some units within Crime & Security Branch to a new purpose built facility should be availed of to carry out much needed renovation. In this regard, a working group under the Chairmanship of Detective Chief Superintendent, Security and Intelligence should be tasked with drawing up proposals to progress this issue as a matter of urgency.
- Chief Superintendent Change Management should be tasked with developing a change programme, in consultation with Assistant Commissioner, Crime & Security, which will be implemented at Regional/Sectional levels. Each Assistant Commissioner will adopt a key leadership role and take personal responsibility for managing the transition process within his/her area of control.
- To achieve the full implementation of the revised system within the shortest possible time frame, an Implementation Group should be immediately established to draw up a detailed Implementation Plan with key milestones identified.

² Police Informant Management System

³ Regulation of Investigatory Powers Act 2000

CONCLUSION

This article provides an overview of An Garda Síochána's response to the findings and recommendations of the Morris Tribunal's First Report. It must be recognised that while the Garda Commissioner has wholeheartedly accepted those findings, the practical implications of their implementation must be carefully analysed and structured in a fashion that allows An Garda Síochána to continue to operate at optimum effectiveness, while engaging with the change process outlined in the nine Working Group Reports.

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This is a major undertaking for any organisation and one which is deserving of considerable diligence for the overall good of all stakeholders both Garda and others in this country. Many of the changes envisaged require a substantial building programme to support the changes. Much of this is already underway e.g. a substantial new building at Garda H.Q. to facilitate the work of Crime & Security Section. A very substantial building programme is underway at the Garda College and the outsourcing of Garda in-service training to Nenagh together with the development of an e-Learning capability within the organisation. A new Corporate Strategy document 2005-2007 has been introduced and the Garda Policing Plan 2005, the first of three, is actioning our Corporate Strategy. We have also been working on and will shortly publish our new ICT Strategy document 2005-2009 which will introduce many new initiatives that will facilitate many of the proposed actions outlined in this statement.

All of this indicates the importance and seriousness, which the Garda Commissioner has attached to the First Report of the Morris Tribunal of Inquiry. The resultant changes and improvements even though many were already in train, while Mr Justice Frederick Morris was deliberating, will undoubtedly result in a better Garda organisation into the future.

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3. Working Group report on Review of Role of Assistant Commissioner, An Garda Síochána (Unpublished).

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Background, Main Findings and Recommendations of the Morris Tribunal of Inquiry Report - Module Two

Superintendent A.J. Nolan

BACKGROUND

The Second Report of the Tribunal of Inquiry was published in June, 2005. The Terms of Reference of this Module focused on:

- (a) *The making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on 9th November, 1996 and the subsequent Garda investigation into that complaint;*
- (b) *Investigations in relation to the death of Mr. Richie Barron of Raphoe, County Donegal on 14th October, 1996 with particular reference to the arrest and treatment of persons in custody in connection with that investigation, the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants;*

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The Tribunal was mandated in its Terms of Reference for this module to inquire into the way in which the Gardaí conducted the investigation into the death of the late Mr. Richard Barron. The need for this element of the Inquiry arose because it was perceived that the Gardaí had made a mistake and that two innocent people in Raphoe, Mr. Frank McBrearty Junior and his cousin Mr. Mark McConnell, were arrested for Mr. Barron's murder. Considerable public disquiet was caused by the apprehension and that not only were there mistakes involved in the investigation of this incident, but that, in addition, the two suspects had been deliberately targeted and framed by the Gardaí. The Report of the Tribunal is very specific that its Terms of Reference did not expressly provide that the Tribunal inquire into who was responsible for the death of the late Mr. Barron, nor does it provide that the Tribunal should make any finding as to the guilt or innocence of either of the suspects for Mr Barron's death. It does, however, state that "these two suspects were wrongly considered to have been responsible for Mr Barron's death" (para. 1.04, p.5).

As stated in the first article in this edition of Communiqué, the main focus of the inquiry was the discovery of the body of Mr. Richard Barron, on the roadway outside Raphoe, County Donegal, in the early hours of Monday the 14th of October 1996. His death looked like a hit and run incident and it was initially treated that way by investigating Gardaí. As a result of a rumour at Mr. Barron's wake, the Chief Superintendent of the Donegal Division came to believe that the death was a murder, committed by two local men: Frank McBrearty Junior and his cousin Mark McConnell. Mr. Barron's remains were examined by a hospital pathologist and subsequently interred. The murder theory was subsequently pursued as the cause of Mr. Barron's death. A 'Mr. X' was introduced as a witness who saw the two suspects coming from the scene of the killing. 'Mr. X' was revealed on the 29th of November as Robert Noel McBride, a local man of suggestible mind. Suspects were arrested a



week later and an apparent confession statement is said to have been obtained from Frank McBrearty Junior. Further statements from alleged witnesses were added to the equation during the early months of 1997 which purported to show that the two main suspects were behaving very strangely on the night of the death. 'Mr. X', and others also, claimed that Mr. McBrearty Junior and his father were attempting to suborn witnesses to refuse to give evidence against them. In September of 1997, 'Mr. X' admitted that his statements were lies. He admitted that on the night in question, he was not in Raphoe. The theory that Mr. Barron was murdered was never built on firm foundations (para. 1.07, p.7).

The Tribunal was also concerned with a number of other elements of the Garda case as follows:

- The relationship between the source of the original information that launched the murder inquiry, a local petty criminal named William Doherty, and Garda John O'Dowd together with Superintendent Kevin Lennon (para. 1.08, p.7).
- The failure of a number of members of An Garda Síochána to account for their duties on the night in question (para. 1.13, p.9).
- The fact that Garda Pádraig Mulligan was actually drinking in a public house with the off duty Garda John O'Dowd (para 1.13, p.8).
- The lengthy delay by the Lifford patrol car in responding to the call to the scene of the fatal accident (para 1.13, p.8).
- The manner in which the crew of this patrol car subsequently went about its duties at the scene of the fatal accident at Townparks, Raphoe, County Donegal, (para. 1.13, p.9).

FINDINGS

The main points documented in this article refer to the findings of Mr Justice Frederick Morris relating to organisational issues and not especially to all points of evidence tendered to the Tribunal. They are categorised by theme as follows.

NEGLECT OF DUTY

The Tribunal found and commented upon several serious instances of neglect of duty by Gardaí evident during the course of the Barron investigation and later during the oral hearings of the Tribunal itself. These have been synthesised as follows:

- The fundamental imperative that Gardaí, of whatever rank, 'be obliged to account truthfully for their duties' (para. 9.39, p.614).
- Tribunal did not accept the evidence of Superintendent John McGinley relating to the arrest and detention of Robert Noel McBride (para. 5.121, p.410).
- The investigation of the Barron death while not corrupt in its leadership was, "prejudiced, tendentious and utterly negligent in the highest degree. The Tribunal found that the following Garda members all share

in various degrees the burden of fault in this regard, Chief Superintendent D. Fitzpatrick; Superintendent J. Fitzgerald; Superintendent J. Shelly and Superintendent J. McGinley" (para. 1.40, p.17).

- Drinking on duty by Garda Mulligan and its concealment from senior management.
- Failure to respond immediately to a call for assistance is unacceptable. This related to the performance of the crew of the Lifford patrol car on the night in question. (Gardaí McDwyer and Birney). The Tribunal did not accept their evidence.
- Failure of the Garda who took the initial call of the road traffic accident to follow basic procedures.
- Failure to adopt proper investigation procedures at the scene of the fatal traffic accident (para. 3.122, p.122).
- Professional ineptitude at the scene of the fatal accident, not indicating the presence of hair / tissue particles and failing to preserve the scene.
- Failure to preserve the scene of the fatal traffic accident.
- Failure to preserve clothing of the deceased Mr. Barron.
- Role of Gardaí performing Station Orderly⁴ duty in Lifford Garda Station – Garda McDermott – (Tribunal did not accept his evidence).
- Failure to record telephone calls and messages.
- Taking of statements from witnesses improperly (para 1.28. p. 13).
- Taking of statement from Robert Noel McBride in oppressive circumstances – Gardaí Collins and O'Dowd, and acquiescence by Sergeant Moylan to the taking of a false statement (para. 1.33, p. 15 and para. 5.130, p.415).
- Failure to adequately perform duties of member in charge (Treatment of Persons in Custody in Garda Stations Regulations.) – Garda M Leonard (para. 5.132, p.415).
- Hiding evidence of calls from superiors - Garda Boyce (para.3.58, p.100).
- Performance of Gardaí in Communication Centre Letterkenny – Garda Boyce (Tribunal did not accept his evidence).

CRIMINAL BEHAVIOUR

- Deliberate doctoring of evidence by Gardaí in Donegal (para. 1.34, p.15).
- The Tribunal believes that Superintendent Lennon deliberately suppressed an investigation into telephone calls from the home of Garda O'Dowd to the Peoples family (para. 6.70, p.487).
- The failure of Donegal Gardaí to actively pursue the telephone records of Garda J. O'Dowd from June 1997 – January 1998 (para. 6.32, p.469).

FAILURE TO OBSERVE PROPER GARDA MANAGEMENT PROCEDURES

The Tribunal commented that there were many instances where good management practice were evidently lacking in the Donegal Division

⁴The Station Orderly is the Garda member performing Station duty, such as answering the telephone, dealing with public queries and passing requests for assistance to the members on mobile patrol duties.

during the period in question. Examples of this are drawn from the Report of the Tribunal and are set out hereunder.

- District Officer's and Acting District Officer's obligations to visit the scene of fatal accidents.
- Chief Superintendent Fitzpatrick failed utterly to control the Division of Donegal (para. 1.71, p.24).
- Call for better leadership and management in An Garda Síochána (para 1.109, p.42).
- Breakdown of trust between officers in the Donegal Division at the time (1.87, p.30).
- Consequent inability to operate effectively in atmospheres of lack of trust.
- Senior management failure in Donegal.
- Discipline, professionalism and Divisional leadership.
- Evidence of wilful blunders, gross negligence, laziness, emotionally wrong-headed rushes to judgements (para. 5.02, p.359).
- Continual lack of objectivity in the R. Barron investigation.
- Judgement ability of Chief Superintendent Fitzpatrick.
- Lack of professionalism on the part of Chief Superintendent Fitzpatrick (para 3.615, p. 304).
- Gross negligence in the treatment of intelligence and handling of informants on the part of Chief Superintendent Fitzpatrick (para. 8.66.9, p.579).
- Senior management in Donegal must shoulder the main bulk of responsibility for events during this investigation (para. 1.40, p.17).
- Chief Superintendent Fitzpatrick was in complete derogation of his duty as a leader and might as well not have headed up the division at all. He behaved as if Superintendent Lennon was in charge of the division (para. 5.205, p.447).

UNETHICAL AND PROFESSIONAL BEHAVIOUR

The ethical conduct of several members of An Garda Síochána both during the Barron investigation and the Peoples aspect of that investigation, together with the performance of many of those members while giving evidence before the Tribunal is the subject of much stringent comment in the Second Report of the Tribunal.

- Superintendent Fitzgerald's evidence relating to contacting Professor Harbison was rejected by the Tribunal (para. 1.54, p.19).
- There was a continual litany of lies, obfuscations, concealments and conspiracies by Gardaí (para. 1.105, p.19).
- Garda John O'Dowd refused to tell the truth to the Tribunal (para. 5.114, p.405).
- Garda Philip Collins after much reluctance attended and gave evidence at the Tribunal (para. 5.116, p.406).
- The Tribunal rejects Garda Philip Collins evidence as 'completely deceitful (para. 5.117, p.407).
- Detective Superintendent J. McGinley was untruthful to the Tribunal (para. 5.121, p.410).

- Sergeant Martin Moylan should have known better and have enough experience not to involve himself in the Robert Noel McBride interview. He also was untruthful to the Tribunal (para. 5.126, p.414).
- Detective Sergeant Henry was being fed lies by colleagues and superiors (para. 6.102, p.503).
- There was a complete lack of trust between Garda members. This was evident where Garda O'Dowd taped Chief Superintendent D. Fitzpatrick.
- The arrest of the Peoples indicates an abuse of the power of arrest.
- Detective Sergeant White did not tell the truth to the Tribunal (para. 6.96, p.501).

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TRAINING

The Tribunal made a number of comments in relation to Garda training as follows:

- The need for Criminal Collision Investigation Teams.
- The need for a databank of "Vehicular footprints".
- Interviewing witnesses in inappropriate locations e.g. members' houses.
- The taking of statements from suspects – Robert Noel McBride (para. 5.130, p.415).
- Failure to take statements for prolonged periods of time. Statement from Eamonn Strain was taken 13 months after death of R. Barron (para. 3.144, p. 132).
- Trained crime analysts may be suitable for use in Incident Rooms etc.

PRESERVATION OF GARDA RECORDS

The Tribunal observed with dismay the fact that the following could occur:

- Destruction or concealment of official notebooks (para. 5.160, p.427).
- Deliberate destruction of official documents (para. 9.26, p.608).
- It is stunning to the Tribunal to realise that official Garda records can be falsified and destroyed virtually at will (para. 6.38, p.472).
- Garda Collins and O'Dowd entered into a conspiracy to ensure that the station records were falsified (para. 6.41, p.473).
- The destruction of notes by senior Officers is incredible (para. 9.28, p.609).

ROLE OF AN GARDA SÍOCHÁNA AND HQ IN HANDLING INFORMERS:

- Informant handling – the Tribunal challenged the credibility of William Doherty as an informant. This is a similar issue to the McGlinchey scenario deliberated upon in Module 1.
- Witnesses from Crime and Security Section, Garda Headquarters claimed it was not their job to act on information received. They are an information gathering and analysis unit (para. 8.45, p.570).

- Crime and Security Section, Garda Headquarters did not make specific follow-up inquiries (para. 8.61, p. 575).
- Crime and Security Section, Garda Headquarters ought to have done more (para 8.66, p.581).

INCIDENT ROOM MANAGEMENT:

The Tribunal Report made considerable reference to how the Incident Room in Letterkenny Garda Station was managed during the course of the Barron investigation. In particular it commented upon the following:

- Delays in obtaining telephone records.
- Incident room management was chaotic and notebooks, jobs books etc., went missing.
- Policy concerning retention of notebooks is required.
- Destruction of records is a scandal (para 9.28, p.609).
- Little Garda objectivity in the investigation of the R. Barron death (para. 3.05, p.81).
- Detective Sergeant Henry's treatment when voicing alternative propositions was scandalous – he was ridiculed (para. 9.28, p.609).
- It is difficult to understand how two separate investigation teams were subject of the same inadequacies (para, 3.05, p.81).
- Senior management failure in Donegal.
- Lack of objectivity on the part of the Incident Room and investigation team (para. 5.207, p.477).
- Senior officers were emotionally caught up in the desire to prove the guilt of Mark McConnell and Frank McBrearty Jr. (para. 3.615.12, p.305).
- Considerable delay in taking statements from some witnesses (John Patton and Eamonn Strain).
- Leaders of investigation not interested in proving the innocence of any suspects.
- Case conference notes were sloppy and some are missing completely.
- The ready acceptance of fraudulent statement as evidence to support arrest of suspects in Raphoe 'murder'.
- This investigation was characterised by incompetence and lack of objectivity throughout.
- The Tribunal was dismayed by the patchy nature of conference notes, their virtual disappearance to nothing in 1997 and thereafter, the destruction of these notes.
- The Barron investigation was a corrupt and negligent investigation (p.448).

DISCIPLINE IN AN GARDA SÍOCHÁNA

The Tribunal commented that the apparent deterioration of discipline in An Garda Síochána has to be addressed by the Commissioner and the Minister.

- Industrial relations issues in An Garda Síochána must be addressed.
- Deception and cloak of legal formalism which is facilitated by the current disciplinary process is not good.
- Gardaí looking to protect their own self interests rather than the public good. It is time for the Minister of Justice, Equality and Law Reform to consider a root and branch review of the Garda disciplinary regulations.
- As a prominent member of the GRA⁵, Garda Martin Leonard was consistently deceitful in respect of every item to which he was asked to account. He regarded his role within the GRA as a mischief maker. He is incorrigible and unbidable (para. 5.131, p.415).
- The chaotic state of Garda discipline regulations continues to this day.

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CRIME REPORTING, RECORDING AND OBLIGATION TO NOTIFY GARDA HEADQUARTERS AND THE DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

- The Tribunal observed that the system of reporting major incidents through Garda Headquarters to the Department of Justice, Equality and Law Reform is unsatisfactory and should be replaced with a system that "shows the end as well as the beginning" (para. 9.06.6, p.599).

PROFESSIONAL STANDARDS AND ETHICAL CONDUCT WITHIN AN GARDA SÍOCHÁNA

- Proper Garda investigation techniques as described to Tribunal by Garda experts are on a par with best international standards.
- Garda Síochána forensic experts impressed the Tribunal (para. 6.38, p.471).
- The evidence of Deputy Commissioner T. P. Fitzgerald, Strategic and Resource Management impressed the Tribunal greatly. The Tribunal noted the helpful and forward thinking evidence given to it by the Deputy Commissioner (para. 9.06, p.598).
- Evidence of Assistant Commissioner Callinan, National Support Services also impressed the Tribunal (para. 9.11, p.602).
- Evidence of Chief Superintendents Keane and McCarthy similarly impressed the Tribunal (para. 5.20, p.369 and para. 3.123, p.124).
- Chief Superintendent Keane is held up as an example of competence and of the Garda promotion system working properly outside the Donegal Division.

RECOMMENDATIONS

Mr Justice Frederick Morris made a large number of recommendations in the Second Report of the Tribunal. (In fact, he also repeated the full contents of his recommendations outlined at Chapter 13 of the First Report. It is not proposed to recount those recommendations again here as they have been reported upon elsewhere in this Journal). The recommendations made in the Second Report are synthesised in the following section. For ease of reference these recommendations follow the structure of Chapter Nine of the Second Report of the Tribunal of

⁵ GRA is the Garda Representative Association, the body that represents all rank and file Garda members.

Inquiry. They are not intended to be as comprehensive as those outlined in the Second Report of the Tribunal of Inquiry but they give a flavour of the Tribunal's reasoning in this regard.

ROLE OF GARDA HEADQUARTERS

1. The Tribunal reiterates that the Department of Justice, Equality and Law Reform is too isolated from Garda Headquarters.
2. There should be an obligation on District Officers to review the files of Inspectors, Sergeants and Gardaí by physically examining them on a periodic basis. Divisional Officers should interest themselves in major cases as they occur, and engage to a much greater extent than is currently the practice.
3. The Tribunal is concerned by the lack of any independent body to receive legitimate concerns (complaints) about Garda behaviour. The provisions of the Garda Síochána Bill need to be reviewed by the Oireachtas, so as to satisfy the legitimate disquiet that arises from the Tribunal's study of the documents in this case.

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A FRESH APPROACH

1. The Tribunal is concerned that by the time of the publication of its Second Report, the Garda Internal Audit Section has not been strengthened by the presence, at least, of a number of Officers from other police forces.
2. The revision of the Civil Service entry requirements to allow transfer, in appropriate cases, of persons below the rank of Superintendent, and under appropriate conditions of service and re-training, into An Garda Síochána from within the European Union or from friendly countries outside it.

INFORMANTS

1. The urgency in reviewing the area of handling and use of informants is reinforced by the Tribunal's Second Report.
2. The Tribunal recommends that the current process of searching for and implementing an appropriate system for dealing with informers should involve real consultation, as to the final forum of such system, with an independent expert of genuine standing.
3. The Tribunal recommends the strengthening of the Crime & Security Section of Garda Headquarters to ensure that as a valuable resource in the fight against terror, its personnel have appropriate training and resources.

ANALYSIS

1. The Garda Commissioner, and the Minister for Justice, Equality and Law Reform, should give consideration to the introduction of civilian analysts into An Garda Síochána.
2. Progress towards the development of an ideal computerised model of a major criminal investigation should be researched and encouraged. This would allow the integration of all sources of information in a major investigation.

RESPONSE TO THIS REPORT

1. The Tribunal's First Report was published in July of 2004 and the Second Report was published in June 2005. The Tribunal notes that Garda Headquarters welcomed the first Report of the Tribunal. It responded to it by an analysis of the issues with a view to considering whether the recommendations made by the Tribunal in its First Report could be implemented and, if so, in what form. This led to the setting up of nine independent committees to examine various issues.

ETHNIC DIVERSITY

1. The Tribunal points out An Garda Síochána should actively seek an intake of recruits from a wider ethnic and religious diversity than is currently the case. The Tribunal notes the desire within An Garda Síochána to ensure the diversity of the force in religious and ethnic terms into the future. The Department of Justice, Equality and Law Reform should support these efforts.

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EXHUMATION ORDERS

1. Exhumation orders can never be put on hold, or deferred, once an application by a Coroner is made to the Minister.

DOCUMENTS

1. In accordance with its previous recommendations, the Tribunal recommends that Officers of the rank of Inspector and above, should keep journals indicating their duties on a day to day basis, and that such journals should become part of the case papers.
2. Relevant entries from Garda diaries should be always kept available for later purposes. The destruction of any Garda documents should be a specific disciplinary offence meriting dismissal.
3. That major case conferences should have a designated note taker who would keep a clear and reasonable account, in brief form, of the proceedings of case conferences. These, again, would become part of the case papers, like original statements and admissions from suspects.

TELEPHONE ASSISTANCE

1. The Communications Regulator, (ComReg), should make it a condition of all future licenses that a response should be made to Garda queries in relation to fixed and mobile phone communications within a maximum period of five working days.

SPECIALIST UNITS

- 1 The Tribunal observes that it should be possible for a Superintendent to either set up, or readily gain authorisation for the setting up, within the resources available to him or her, of specialist units within their own Division or District.

ACCOUNTING FOR DUTY

1. The creation of a special offence of failure to account for duty. This should be a dismissal offence and a failure to account truthfully and immediately in respect of duties should result in immediate suspension.
2. No one apart from an individual Garda should write any document putting himself or herself on duty or taking himself or herself off duty.
3. Consideration should be given to revising the discipline regulations to make these more streamlined, less cumbersome and swifter.

DISMISSAL

1. The Tribunal notes that several members of the Gardaí continue to serve, despite being the subject of severe criticism in its first report. The Tribunal therefore recommends that a new means of removing Gardaí from office should be considered.

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CONCLUSION

This article has attempted to synthesise the Second Report of the Morris Tribunal. By its nature it cannot hope to capture all of the evidence tendered to the Tribunal, but it does provide an overview of the main issues and the main findings and recommendations of Mr Justice Frederick Morris. As will be demonstrated in the following article, An Garda Síochána immediately set about remedying much of what Mr Justice Frederick Morris found to be at fault with An Garda Síochána and accelerated other issues that were already under improvement consideration.

REFERENCES

Second Report of The Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division, "Report on The Investigation into the Death of Richard Barron and the Extortion calls to Michael and Charlotte Peoples", Government Publications, 2005.

An Garda Síochána Response to the Second Report of the Morris Tribunal.

Superintendent A.J. Nolan

Following the publication of the Tribunal's Second Report, the Garda Commissioner having accepted the Report, once again requested Deputy Commissioner, Strategic and Resource Management, T. P. Fitzgerald, to examine its contents and to make recommendations. Deputy Commissioner Fitzgerald, who had given evidence himself to this particular module of the Tribunal, on the status of progress concerning the recommendations of Mr Justice Frederick Morris relating to Module 1, established five further working groups to examine the additional issues raised in this report as follows:

1. Review of the Role of Crime & Security Branch
2. External Professional Assistance
3. Training
4. Reporting within An Garda Síochána (including reporting to the Department of Justice, Equality and Law Reform)
5. Professional and Ethical Conduct.

Each working group is chaired by an Assistant Commissioner. The working groups report to a Steering Committee, chaired by Deputy Commissioner Fitzgerald, which oversees the work of each group.

THE TERMS OF REFERENCE OF THE WORKING GROUPS

ROLE OF CRIME AND SECURITY

This working group, chaired by Assistant Commissioner, National Support Services⁶, will focus on the area of Security and Intelligence. In particular it will examine the relationship between Crime and Security and the operational field. It will examine the role of Crime and Security in actioning information reported to Garda HQ and the processes in place to verify and follow-up on information received. The group will also review accommodation, staff levels, processes and procedures within Crime and Security Section.

EXTERNAL PROFESSIONAL ASSISTANCE

This working group is chaired by Assistant Commissioner, Southern Region, and is mandated to examine the areas where An Garda Síochána can benefit from employing external professional assistance. Such assistance may take the form of former or serving police officers from other jurisdictions whether on a consultative or lateral entry basis into An Garda Síochána. It may also take the form of individuals qualified and experienced in areas that would benefit An Garda Síochána who could be hired as consultants or full time employees.

⁶ National Support Services is the section of An Garda Síochána which co-ordinates the operations of crime investigation specialists; fraud, drugs, detectives, forensics, fingerprints etc.

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TRAINING

This working group, chaired by Assistant Commissioner, Human Resource Management was set up to examine the training needs of the organisation in relation to the management of major investigations, crime scenes, incident room management and the production of a new Manual of Criminal Investigation.

It will research the need for the formulation of Standard Operating Procedures for possible inclusion in a revised Manual of Criminal Investigation. It will also produce recommendations on all the areas of training identified by the Morris Tribunal including a tracking template for investigation files.

REPORTING WITHIN AN GARDA SIOCHANA (INCLUDING REPORTING TO THE DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM)

This working group chaired by Assistant Commissioner Western Region, will examine reporting systems, matters to be reported, reporting lines, and accountability in relation to reporting within An Garda Síochána. It will also examine similar issues in respect of An Garda Síochána reporting to the Department of Justice, Equality and Law Reform.

PROFESSIONAL AND ETHICAL CONDUCT

An Garda Síochána as a public service organisation, empowered to exercise controls and restrictions over the rights of individuals, must at all times be fully accountable and verifiable for the behaviour, decisions and actions of its members.

This working group chaired by Assistant Commissioner, Human Resource Management, will consider An Garda Síochána's current policy on ethics and professional standards. It is required to produce a report with clear recommendations to address the shortcomings identified in the Second Report from the Morris Tribunal of Inquiry. It may engage expertise from external organisations with experience in this area.

The five Working Groups are expected to furnish their reports to the Main Steering Group in late October 2005.

What Has Been Achieved To Date?

Superintendent A.J. Nolan

Following the publication of the First Morris Tribunal Report in July 2004 and the Second Report of the Tribunal in June 2005, considerable effort and industry has been expended within An Garda Síochána in attempting to remedy the defects and problems identified by Mr Justice Frederick Morris.

Following the publication of both Reports of the Tribunal, several members of An Garda Síochána opted for retirement as they were entitled to do so. Other members were dismissed from the organisation while five members were ordered to transfer from the Donegal Division.

To-date substantial progress has been achieved in relation to the Reports of the nine Working Groups established after the publication of the First Report of the Tribunal of Inquiry. This article will set out where An Garda Síochána stands at this point in time in relation to the recommendations of the Tribunal of Inquiry Modules 1 and 2. It will also indicate other areas where significant progress has been made.

The Officer's Journal has been re-introduced since September 2004 and a H.Q. Directive issued to the organisation outlining specific instructions relating to management continuity, station records and the completion of Officer Journals.

MANAGEMENT DEVELOPMENT

This area has been subject of continual Garda effort and endeavour before, during and since the Morris Tribunal Reports. An Garda Síochána as an organisation places considerable emphasis on management development and offers its Officers and Inspectors the opportunity of third level education in Police Management (B.A.) at the Garda College. It also has a comprehensive programme of funded graduate and post-graduate education in diverse areas from business administration, public management, personnel administration, and industrial relations to criminal and civil law. It also offers a partially funded education programme (F.13) to a considerable number of Garda members of all ranks. As of 2005 all Garda trainees graduating from Templemore will be awarded a Bachelor of Arts in Police Studies, accredited by HETAC. Negotiations are ongoing with several educational bodies to accredit the Garda Executive Leadership Programme; these discussions are expected to be concluded this autumn.

MIGRATION MANAGEMENT AND POLICY OF TENURE

Following on from the recommendations of a Working Group in this particular area, An Garda Síochána has developed a policy document on 'Responsibilities Handover Checklist' for all Superintendents, Chief

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⁷ Officers are those members of An Garda Síochána of the rank of Superintendent and above.

⁸ F(13) is the Garda Code Section referring to refunds for educational expenses.

Superintendents, and Assistant Commissioners. Similarly office holders are expected to spend a familiarisation period with the previous incumbent prior to taking up a position.

INTERNAL AUDIT

The Garda Internal Audit Section (GIAS) has prepared an implementation plan to action the recommendations of the Report of the Review Group on Internal Audit. This plan includes a Whistleblowers Charter which is currently under consideration at senior management level. The plan also includes a business case for new personnel and the identification of common control weaknesses.

RELIGIOUS AND ETHNIC MINORITIES

The report of this Working Group has been implemented in many respects. An Garda Síochána has changed its policy on the Irish language requirement for entry to the organisation. The recent admissions campaign has specifically targeted non-nationals and EU citizens to increase cultural diversity within the organisation. A new style training programme in Irish language studies has been designed to cater for non-Irish speaking trainees. This programme will ensure that new entrants progress to a satisfactory standard of Irish in line with the their Training Programme and also ensure a ready supply of Irish-speaking Gardaí capable of serving the organisation's commitments in Gaeltacht areas.

ROLE OF ASSISTANT COMMISSIONER RANK

This Working Group report has been accepted by the Commissioner and a clear definition of roles and responsibilities has been formulated.

PERFORMANCE AND ACCOUNTABILITY

The Working Group in this area completed its report in February 2005. At the same time, Deputy Commissioner, Strategic and Resource Management, initiated a twice-yearly Divisional performance review associated with the Strategic Goals of the Annual Policing Plans.

The recommended Performance and Accountability Framework is currently at pilot in twenty six Garda Districts and also in six Divisions. The results from these pilots will be evaluated in the coming months prior to a decision on future roll-out. Considerable progress is being achieved with the staff associations on the development of a performance framework model.

EROSION OF DISCIPLINE

This Working Group on Discipline completed a sizeable body of work with regard to the wide area of discipline within An Garda Síochána. The issues discussed, and in particular the requirement to produce new

Disciplinary Regulations, were overtaken by the Garda Síochána Act, 2005. As a result the tasks of this Working Group have been subsumed into the Garda Síochána Implementation Group, who will draft new Disciplinary Regulations for consideration.

ISSUES INVOLVING PERSONNEL

Significant work was completed on this issue by the Working Group as a result of the Morris Tribunal work. Table 1 in Article 3 sets out the current position with regard to the individuals who attracted adverse comment from the Tribunal.

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INFORMANT MANAGEMENT

The Working Group in this area produced a significant report that sets out a strategic framework for the handling of informants within An Garda Síochána into the future. This report includes a Code of Practice and a detailed Implementation Plan. The report is grounded in best international practices while retaining a national uniqueness that should serve An Garda Síochána, intelligence sources, and the People of Ireland well into the future. A copy of the report is available on the Garda website (www.garda.ie). A Headquarters Directive which will detail the findings and recommendations of the report, as well as the new procedures is being prepared for circulation within An Garda Síochána, and training in the new procedures has commenced at the Garda College.

CONCLUSION

An Garda Síochána has been significantly challenged by the findings and recommendations of Mr. Justice Frederick Morris. In response the organisation has addressed or is in the process of addressing many of the issues raised in both Tribunal Reports to-date. Other significant concerns will be addressed within organisational strategies such as the ICT Strategy 2005-2009 and by the Continuous Professional Development Programme.

Overall An Garda Síochána is committed to learning from mistakes of the past, rectifying deficiencies and embracing a continual improvement programme.