



**Preliminary Views of the Ombudsman for Children's Office on the preparation of a
Code of Ethics for the Garda Síochána**

6 May 2016

I. Introduction

The Ombudsman for Children's Office (OCO) is an independent human rights institution established in 2004 under primary legislation¹ to promote and monitor the rights and welfare of children in Ireland. The Ombudsman for Children is appointed by the President of Ireland on the nomination of the Oireachtas (Parliament) and is directly accountable to the Oireachtas. This Office has dealt with over 11,000 complaints regarding the administrative actions of civil and public administration and has frequently submitted advice to Government on legislation relating to children's rights and welfare. The Ombudsman for Children is mandated to promote the UN Convention on the Rights of the Child (UNCRC) and aims to ensure that Ireland complies with its international human rights obligations.

The OCO welcomes the opportunity to make the present written submission to the Policing Authority on a Garda Síochána Code of Ethics, and welcomes the forthcoming consultation process on the text of a draft Code in Autumn 2016.

The OCO recommends that the Policing Authority consult with children and young people as part of this consultation process, particularly children who are or have been involved in the youth justice system. Such a consultation should be undertaken in accordance with good practice having regard to the principle of the voice of the child under Article 12 of the UNCRC.

The respect for and protection of human rights, including children's rights, is safeguarded in the Garda Síochána Act 2005 which states that it is the Garda Síochána's function to provide policing and security services for the State with the objective (amongst other objectives) of vindicating the human rights of each individual. In addition to that, each member of the Garda is required to solemnly declare to discharge its duties with regard for human rights;² Along the same lines, the UN Code of conduct for law enforcement officials

¹ Ombudsman for Children's Act, 2002.

² Garda Síochána Act 2005, Section 7c).

of 1979³ reiterates that, in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

In the context of the administration of justice and conflict with the law, children are to benefit from all of the human rights guarantees available to adults. In addition to that, specific national and international human rights standards and norms on children's rights and on the administration of juvenile justice shall be applied to children given their special status.

The European Code of Police Ethics (Council of Europe) clearly states that police investigations shall be objective and fair and that they shall be sensitive and adaptable to the special needs of persons, such as children and juveniles.⁴ More recently, the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice state that the police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties.⁵ It is also emphasized that the police should apply the Guidelines. This applies to all situations where children might come in contact with the police, and it is of particular importance when dealing with vulnerable children.⁶

This submission proposes that all sections of the Garda Code of Ethics be child-rights proofed. To that extent, the principles and provisions of the Convention on the Rights of the Child and the United Nations standards and norms in juvenile justice⁷ mentioned below should inform and be reflected, as appropriate, in the text of the Code. This is with a view to guaranteeing the rights of children, preventing the violation of their rights, promoting children's sense of dignity and worth, and fully respecting their age, stage of development and their right to participate meaningfully in, and contribute to, society.

II. Current Good Practice which should be reflected in the Garda Code of Ethics

An Garda Síochána plays an important and influential role in the Irish juvenile justice system, before, during and after judicial proceedings. In addition to their work in the Garda Diversion Programme, Gardaí investigate incidents of offending by young people and where appropriate bring charges against them. In the Children's Court, they undertake the role of prosecutor and are thus largely responsible for the conduct of proceedings over which they have considerable influence.

³ Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution 34/169 of 17 December 1979, Article 2.

⁴ The European Code of Police Ethics, Recommendation Rec (2001)10 adopted by the Committee of Ministers of the Council of Europe, 19 September 2001, para. 49.

⁵ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, 2010, para. 27.

⁶ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, 2010, para. 86.

⁷ See United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines"), and the Guidelines for Action on Children in the Criminal Justice System ("Vienna Guidelines"). See also, "10 Basic human rights standards for law enforcement officials", Amnesty International, 1998.

The OCO welcomes the commitments to divert children away from the criminal justice system contained in the Youth Justice Action Plan 2014-2018 and An Garda Síochána Children and Youth Strategy 2012-2014, which is in line with the principles and provisions of the Children's Act 2001. This commitment reflects the obligation under Article 40(3) of the CRC which requires States to promote measures for dealing with children alleged as, accused of or recognised as having infringed the criminal law without resorting to judicial proceedings, whenever appropriate and desirable. This commitment should be reflected in the Garda Code of Ethics. The OCO also welcomes continued Government investments in Community Based Programmes and Garda Youth Diversion Projects. In relation to children who have been deemed unsuitable for diversion, the OCO would welcome data from An Garda Síochána in relation to the reasons for unsuitability. The Garda Code of Ethics should reflect the commitments of the Youth Justice Strategy to work collaboratively with other agencies and services to ensure appropriate interventions for young people, including health, education and welfare services, and with the community and voluntary sector.

Further ways in which the Garda Diversion Programme could be enhanced were identified in a recent report by the Garda Síochána Inspectorate. They included: bringing different agencies engaging with young people in this context together in a co-located team to tackle current difficulties with interagency cooperation; further promoting the use of restorative approaches; and addressing the information deficit on outcomes for young people who enter the Diversion programme in order to understand which interventions have the greatest impact on recidivism rates.

In relation to children who are deemed unsuitable for diversion, particularly repeat offenders, the OCO welcomes the commitment in An Garda Síochána Children and Youth Strategy 2012-2014 to utilise the Youth Crime Case Management system and extend this process nationally. Under the case management system, the Garda Case Manager acts as a single point of contact for information about the child and liaises with all agencies working with the child. The aim is to help coordinate appropriate interventions and services to meet the child's needs, while providing courts with greater clarity regarding the child's situation and circumstances. The Garda Code of Ethics should reflect the aim of the Case Management Scheme to have a single point of contact with for children who are repeat offenders.

III. Leading principles of the Convention on the Rights of the Child which should be incorporated into the Garda Code of Ethics.

The Garda are the first point of contact with the juvenile system. It is most important that when dealing with children and young people, their actions are informed by the leading principles of the Convention on the Rights of the Child contained in articles 2 (Non-discrimination), 3 (Best interests of the child), 6 (Right to life, survival and development) and 12 (Right to be heard).

Non-discrimination (Article 2)

All children in conflict with the law should be treated equally. Particular attention must be paid to de facto discrimination, which may involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are repeatedly in conflict with the law, etc.

Best interests of the child (Article 3)

In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.⁸

The right to life, survival and development (Article 6)

This basic right should result in a policy of responding to juvenile offending in ways that support the child's development. The use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) of the CRC explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured.

The right to be heard (Article 12)

The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the juvenile justice process. Article 12 (2) of CRC requires that a child be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law. This right should be fully observed at all Garda interactions with children and in all stages of the process, starting with pre-trial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. In other words, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child (art. 12 (1)), throughout the juvenile justice process.⁹

⁸ General Comment N. 10 (2007) on Children's rights in juvenile justice, CRC/C/GC/10, para. 10.

⁹ General Comment N. 10 (2007) on Children's rights in juvenile justice, CRC/C/GC/10, para. 43-45.

IV. Fundamental principles of juvenile justice which should be incorporated into the Garda Code of Ethics

These principles are enshrined in Articles 37 and 40 of the Convention on the Rights of the Child.

The child's sense of dignity and worth

Article 40(1) requires that *"States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."*

In its *General Comment N. 10 on Children's rights in juvenile justice*, the Committee on the Rights of the Child, highlighted that article 40(1) provides a set of "fundamental principles" for the treatment of children in conflict with the law, namely:

- **"Treatment that is consistent with the child's sense of dignity and worth.** This principle reflects the fundamental human right enshrined in Article 1 of the Universal Declaration of Human Rights.... This inherent right to dignity and worth ... has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child.
- **Treatment that reinforces the child's respect for the human rights and freedoms of others.** This ... means that, within the juvenile justice system, the treatment and education of children shall be directed to the development of respect for human rights and fundamental freedoms ... [and] requires [the juvenile justice system to give] full respect for and implementation of the guarantees for a fair trial recognized in Article 40 (2).
- **Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.** This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children.

- **Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented...**¹⁰

Prohibition of torture, cruel, inhuman or degrading treatment or punishment

Article 37(a) of the CRC provides that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”. In other words, whatever offence a child has committed, even if it is reprehensible, it cannot justify the use of torture or inhuman and degrading treatment or punishment. Prohibited forms of cruel, inhuman or degrading treatment or punishment include the use of solitary confinement, the use of pain techniques to restrain children, corporal punishment, deprivation of food, deprivation of contact with the family and any other measure that may compromise the physical and mental health of the juvenile concerned.¹¹

Deprivation of liberty as a measure of last resort and for the shortest appropriate period of time

Article 37 of CRC contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.¹²

The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.

Article 37(d) provides that *“Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”*

The same article foresees that every child deprived of liberty shall be separated from adults and has the right to maintain contact with his/her family through correspondence and visits (Article 37 c). A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate.

¹⁰ General Comment N. 10 (2007) on Children’s rights in juvenile justice, CRC/C/GC/10

¹¹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the “Havana Rules”, Rule 67.

V. The importance of Children's Rights training for members of An Garda Síochána

One of the best ways to ensure that children's dignity and worth are respected is through continued training of all those working within the juvenile justice system. Rule 12.1 of the Beijing Rules provides that police officers who frequently or exclusively deal with juveniles, or who are primarily engaged in the prevention of juvenile crime, shall be specially instructed and trained.

The Committee on the Rights of the Child also underscores how "It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings."¹³

Specific training should be provided to Garda in relation to dealing with children who are victims of crime. In this regard, specialist Gardaí should be trained in appropriate techniques to best support child victims. Gardaí should expedite matters involving child victims and ensure that the child only deals with one member of An Garda Síochána.

VI. The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice

The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice should also be reflected in the Garda Code of Ethics. The guidelines emphasise that the right of all children to be informed about their rights, to be given appropriate access to justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children's views, having regard to their maturity and any communication difficulties they may have in order to make this participation meaningful. The guidelines also state that children should be considered full bearers of rights and should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views and the circumstances of the case.¹⁴

¹³ General Comment N. 10 (2007) on Children's rights in juvenile justice, CRC/C/GC/10, para. 97

¹⁴ The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, Section III, Fundamental Principles

The urgency principle is set out in the guidelines which emphasises that children have a different perception of time to adults and that the time element is therefore very important for them. The guidelines state that cases in which children are involved need to be dealt with expeditiously and a system of prioritising them should be considered. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.¹⁵

The Guidelines emphasise that all professionals working with children should receive necessary interdisciplinary training on the rights and needs of children of different age groups. For professionals with direct contact with children, this should include training in communicating with children at all ages and stages of development, and with children in situations of particular vulnerability. The Guidelines also advocate a multi-disciplinary approach with co-operation between different professionals encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation. The Guidelines further recommend the establishment of a common assessment framework for professionals, including police officials, in proceedings or interventions involving children, to provide necessary support to make decisions that are in the child's best interests.¹⁶

The Guidelines contain a specific section in relation to children and the police which states that: *"Police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties."*¹⁷ The Guidelines also state that police should use language that is appropriate to the child's level of understanding when taking children into custody and that access to a lawyer the opportunity to contact their parents or a person whom they trust is provided.¹⁸ Also included is that, as far as possible, no child in police custody should be detained with adults, that children in police custody are kept in conditions that are safe and appropriate to their needs, and that child-friendly approaches are used throughout the investigation process.¹⁹

VII. Conclusion

The Garda Code of Ethics presents an opportunity to reflect the key fundamental principles of children's rights to influence Garda Practice when interacting with children. International Children's Rights instruments and Guidelines from the Council of Europe provide useful guidance in this regard. Consultation with children and young people with experience of dealing with An Garda Síochána as part of this process is crucial.

¹⁵ Ibid, Guideline 50

¹⁶ Ibid, Guidelines 16-18.

¹⁷ Ibid, Guideline 27.

¹⁸ Ibid, Guideline 28

¹⁹ Ibid, Guidelines 30-33