

Policing Authority commentary in relation to the Crowe Horwath Final Report

31 October 2017

1. INTRODUCTION

Crowe Horwath has concluded the review undertaken on behalf of the Policing Authority in relation to the:

- overstatement by the Garda Síochána of the number of mandatory intoxicant tests (MIT) carried out at checkpoints over a number of years; and
- prosecution and wrongful conviction of persons in respect of offences which should have been disposed of by the Garda Síochána by way of a fixed charge notice (FCN).

Road safety and the importance of strong and visible enforcement by the Garda Síochána in reducing road fatalities and injuries is the central context for the Authority's oversight of Garda performance in this regard. The Authority does not look at one aspect of policing in isolation and, in consideration of these issues, it is mindful of the implications of the issues and themes arising across all areas of the policing performance.

Crowe Horwath finalised its report on Monday 23 October and it was considered by the Authority at its meeting on 26 October. The Authority appreciates the cooperation that was provided to Crowe Horwath and the openness that they experienced across the Garda Síochána as they did their work. The work done by Assistant Commissioner O'Sullivan and his team from March to August 2017 greatly facilitated Crowe Horwath performing this independent review on behalf of the Authority.

Common themes and conclusions arising from the review work include:

- Inadequate and inconsistent performance management and a deficit of accountability throughout the Garda Síochána that created an environment in which these issues arose and remained undetected;
- Management that failed to ensure that adequate processes, training and supervision were in place that would have prevented these issues arising;
- Inadequate pace of the response to issues arising and a lack of organisational curiosity and urgency to understand why they occurred;
- A culture that displayed a casual approach to data and a lack of appreciation of its value, and that enabled unethical behaviour by members who falsified checkpoint data;
- Inadequate supervision of activity by managers which created an expectation that reported performance would not be checked;
- A cumbersome and ineffective approach within the organisation to training and CPD; and
- Poor or inadequate IT systems and technology.

The concerns this raises about management and supervision echo findings of the Garda Inspectorate, Mr. Justice O'Higgins and others and raises questions about the way Gardaí go about their daily work. These issues still endure. The Garda response in the form of the O'Sullivan report does not give comfort to the Authority that the organisation has yet grasped their importance, has taken ownership of them or is focused on addressing them. While lack of adequate training is cited in the Report, and it is certainly a

factor in the context of complex legislation, the Authority feel strongly that training is not necessary for people to be honest.

It is welcome that technical fixes have been put in place to address specific issues concerning the IT systems and technology, but the Report finds that these do not offer assurance to the Authority, either in respect of the issuing of FCNs and summonses or in respect of the reporting of breath tests and MIT checkpoints, that such issues could not reoccur. This lack of assurance is troubling.

In the Authority's view, the Garda response to the FCN and MIT issues conceives of these matters as primarily administrative and technical and the emphasis in the remedial actions taken reflect this view. The Authority acknowledges that there are technical issues involved but from an oversight perspective it is more concerned with the organisational context that permitted these issues to occur, failed to detect their occurrence at an early point and inadequately responded once highlighted.

The Commissioner needs to now visibly lead on providing a permanent solution to the issues of culture, supervision and performance management outlined in this Report and indeed which also pervade many external reports relating to the Garda Síochána over the past 20 years. If it is visibly and unreservedly embraced, the Code of Ethics established by the Authority can provide the necessary framework and the urgent implementation of long promised performance management systems for both Gardaí and civilian staff can provide the tools for this work.

2. THEMES EMPHASISED IN THE CROWE HORWATH REPORT

Inadequate accountability and management

Accountability is not just about holding people to account, but entails a responsibility to ensure that there is an understanding as to why work is being undertaken and its value. Inadequate management is demonstrated throughout the report, with some significant examples including:

- Not adequately planning and developing processes for the implementation of new legislation;
- Assignment decisions which did not prioritise ensuring that supervisory numbers in regular units and roads policing units were protected;
- Some senior Garda managers seemingly not being aware of what was contained in their own policing plans;
- Information and expectations around performance being communicated in lengthy documents with no follow up to ensure that these were either read or understood, let alone executed properly;
- Inadequate probing supervision by all managerial ranks from Sergeant up to Commissioner; and
- The apparent lack of an appreciation as to the strategic imperative for the accurate recording of data, its importance in terms of public policy making, its ability to inform evidence based policing decisions around resource deployment and the distorting consequences of wrong data.

Management response

The Report raises concerns as to the pace of management response to the breath test issues in particular. The scale of the issue across the organisation was apparent once it was clear that its occurrence was not limited to specific areas or regions. The failure of so many Divisional Officers to respond to the Commissioner adequately or at all is deeply concerning and raises questions as to why a quality response

from senior management, once requested by the Commissioner, was not urgently delivered on a matter of such evident public concern.

This breakdown of authority occurred for example in March 2015 when the Commissioner “...issued an instruction to deputy commissioner of operations who subsequently directed all regional assistant commissioners, chief superintendents and superintendents to ensure effective mechanisms were in place to monitor the operation of Mandatory Alcohol Testing, MAT, checkpoints within their respective divisions and districts.”¹. Again in March 2017 when despite a call from their Commissioner to report, only 14 out of the 28 Divisional officers responded² and of those who did respond, almost all were either superficial or lacked analysis. Equally worrying is that this is not the first time that an external report has identified such a casual attitude. It compounds already serious concerns about governance and authority within the Garda Síochána.

This is also about a lack of management analysis as to why these issues occurred. The Garda internal report on the FCN and MIT issues sets out what happened and how it happened but it stops short of an analysis of the management inadequacies that occurred which facilitated an environment in which the FCN and breath test issues could occur. It seems to the Authority that there is a disconnect between the public reaction to the FCN and breath test issues and the Garda response. That response suggests that there is not full appreciation within the Garda Síochána of the impact of these issues on public confidence not just in relation to roads policing but the manner in which the full breadth of the policing service is managed and governed.

Organisational Culture

The Crowe Horwath findings raise a number of issues regarding the organisational culture within the Garda Síochána. These issues are not new and relate to speaking up and ethical behaviour. Garda performance in terms of the numbers of breath tests and checkpoints being undertaken was publicly reported as increasing at the same time as human resources and overtime budgets were being cut. It is unlikely that the illogical nature of this went unnoticed and yet it appears it was not raised – nobody spoke up. If it did go unnoticed, it raises further questions with regard to management capacity to understand and know what is going on in their organisation.

Complex Legislation

Assistant Commissioner O’Sullivan’s finding that the current system for FCNs is complicated and confusing compared to other jurisdictions is supported in the Crowe Horwath Report. The Authority agrees that overly complex legislation can inhibit effective implementation and will encourage the Criminal Justice (FCPS) Working Group to continue its work to resolve this cross-departmental issue.

Supervision

The Report presents a disturbing description of an organisation that has significant problems with supervision. The lack of expectation amongst Gardaí that their performance in relation to MIT checkpoint recording would be checked and their confidence that they would not be held to account begs a question as to the level and nature of supervision that was actually carried out by sergeants.

The Garda Síochána response highlights the impact of the reduction in the numbers in supervisory ranks during the recession as a significant causal factor in the MIT Checkpoint recording issues. The Authority

¹ Evidence provided by Garda Commissioner Nóirín O’Sullivan to the Joint Oireachtas Committee on Justice and Equality on 30 March 2017.

² Section 5.4 of Crowe Horwath report

notes that the number of sergeants was reduced during this period, but so too was the number of Gardaí and at an organisation-wide level the ratio of Gardaí to sergeant remained relatively stable. The reduction in sergeant numbers cannot of itself account for the seemingly wholesale lack of meaningful supervision right across the organisation at District and Division level.

Crowe Horwath reported examples of good practice and good supervision and there were a number of districts where the discrepancy was significantly less than the national average. There may be lessons to be learned from the good behaviours that this outcome reflects. In spite of these, it is notable that the discrepancies occurred right across the country, and that poor training and comprehension of the legislation never seemed to cause underestimation.

The precise discrepancy between the numbers of breath tests carried out and those reported will probably never be known. Crowe Horwath found that the methodology used by Assistant Commissioner O'Sullivan which identified a potential discrepancy of 1,458,221 tests was robust. Adding some additional analysis, however, they conclude that it would not be unreasonable to assume that the discrepancy is higher by an estimated 404,700 tests.

Data quality and technology;

There is a common thread across a number of work areas for the Authority related to data quality and absence of appropriate technology (both hardware and software) for the Garda Síochána to go about their daily work. The Authority acknowledges this as a significant deficit and welcomes recent and planned increased investment in technology and equipment. However, the Authority considers it a mistake to think that technology can ever be the complete answer. Technology is an important enabler but data quality is dependent on the accuracy and timeliness of the data that is gathered at source and inputted. No IT system can compensate for deficiencies that may exist in this regard.

It is a source of concern that there appears to have been no appreciation of the importance of knowing the accurate percentage that failed tests represented of the total number tested. Nor did there appear to be any understanding of the importance of that information in the shaping of public policy in an area of behaviour that causes so many deaths and injuries on the roads every year and blights the lives of families the length and breadth of the country.

Training and Professional development

The Report finds a cumbersome and ineffective approach to training within the Garda Síochána. Issues around training have been highlighted by the Authority, most recently in its third Report to the Minister on the implementation of the Garda Inspectorate's recommendations in the *"Changing Policing in Ireland"* report. The Authority recognises the importance of continued professional training and will encourage the Garda Síochána to think creatively about how it approaches training, both in terms of its content but also delivery. Approaches to training that prioritise centralised events in the Garda College pose challenges in terms of resources, flexibility and abstraction from work.

Non-issuance of Manual FCN Summons

Effective enforcement activity by the Garda Síochána is an essential part of the strategy to improve road safety and reduce road fatalities and injuries. While wrongful summoning and conviction is a serious lapse, so too is the failure to issue summonses which ought to have been issued.

Crowe Horwath sought to identify the scale of non-issuance of summons for FCNs and were advised by the Garda Síochána that a review of District manual summons offence reports since 1st January 2014

identified that 57% of the 12,061 FCNs should have had manual summons issued, i.e. 6,881 were not issued. Prosecution for these offences is now statute barred which is unfair to those who paid a fixed charge. The Authority is also concerned that this practice may potentially raise integrity issues.

3. WHO IS RESPONSIBLE?

The Garda Síochána is an organisation with an annual statutory policing plan and which describes itself as having a well-developed process of divisional plans, a Performance Accountability Framework (PAF) and regular management meetings. Against this background, the fact that the behaviours outlined in the Crowe Horwath Report were endemic and seemingly went unnoticed and unchecked over nearly a decade is a serious management and governance failure for which top Garda management are responsible.

Senior Garda ranks are responsible for not reacting to information in management reports (PAF Reports), for failing to investigate their own Divisions and Districts when doubts first emerged about the misuse of breath test equipment in 2014 and inflated data in 2015. The majority of Divisional Officers are also responsible for failing to adequately investigate their own Divisions when requested by the Garda Commissioner in March 2017.

This does not however displace the enduring view of the Authority that issues in respect of training, supervision or management, do not absolve the considerable number of Garda members, of varying ranks, across the country who made, or encouraged others to make, inaccurate and dishonest returns in respect of mandatory intoxicant tests. Nothing has displaced the truism that no training is required for behaving honestly and ethically.

4. NEXT STEPS

While it is important to look to the future and to a Garda organisation where such things do not happen, the Authority will want to hear from the Commissioner urgently, on the steps he has taken or is in the course of taking to deal with these issues and the measures introduced so that nothing like this can ever again blight the name of the Garda Síochána or seriously dent the public confidence in policing.

Specifically:

1. In relation to the specific recommendations contained in the Report, the Authority will expect that the Garda Commissioner presents his initial response at the Authority's meeting in public on 23 November 2017.
2. The Authority will be seeking an assurance from the Garda Commissioner that specific controls are put in place to ensure that the non-issuance of manual summons for FCNs is not allowed to continue.
3. The Authority has previously stated that the projects in the Garda Modernisation and Renewal programme related to Supervision, Culture and Data Quality are among its top oversight priorities. It will continue to press the Garda Commissioner to demonstrate progress in each of these areas and to report publicly.
4. The Authority will continue to urge the Garda Commissioner to demonstrate evidence based deployment decisions which prioritise ensuring that supervisory numbers in regular units and roads policing units are enhanced. In particular, the commitment in the 2017 Policing Plan to incrementally increase resources allocated to Roads Policing Units by 10% will be expected to be achieved across all regions by 31 December 2017.

5. The Authority understands that the Garda Síochána is currently engaged in a process of assessing whether and what action should be taken against individual Gardaí in relation to these matters. While this is a matter for the Garda Síochána, the Authority will advise that the Commissioner focus his consideration on:
 - a. taking appropriate action against any Member where there is prima facie evidence of either a criminal offence or a disciplinary breach having been committed; and
 - b. giving specific regard to what steps should be taken in relation to the failure of so many Divisional Officers to respond to the Commissioner adequately or at all, in March 2015 and again in March 2017.
6. Poor performance on a pervasive scale can seldom be appropriately addressed by disciplinary processes. In this context, the Commissioner must implement a meaningful performance management system for both Garda members and civilians during 2018 so that there is a framework for the delivery of policing plans and ensuring accountability of all his staff.
7. The Authority will retain its oversight focus on ensuring that the Garda Commissioner fulfil his statutory function to embed the Code of Ethics across the organisation and to support this oversight decided to maintain a dedicated Authority Code of Ethics Committee for a further year to 31 December 2018.
8. The Garda Commissioner will be advised to accelerate the finalisation and presentation of a Training Strategy for the organisation that sets out a vision for and approach to training across foundation level training, continuous professional development and the many training demands within the Modernisation and Renewal Programme.
9. The Authority will provide a copy of the report to the Department of Transport, Tourism and Sport and the Chief Executive of the Authority will meet later this week with the Criminal Justice (FCPS) Working Group to understand the status of actions required to resolve the legislative problems which were identified by the Garda Inspectorate report in 2014 and are again identified in this Crowe Horwath report.
10. The Authority will provide a copy of the Report to the Road Safety Authority and will solicit its views on any implications for the Government's Road Safety Strategy 2013-2020.
11. The Authority's oversight work will continue and, of particular relevance is a high level review of governance in the Garda Síochána which is currently.