

# Towards inclusionary policing: a critical inquiry into the pre-trial treatment of suspects with intellectual disabilities in Ireland

Towards  
inclusionary  
policing

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## Abstract

**Purpose** – This paper aims to critically evaluate contemporary Irish police practice, with an emphasis on emergent procedural innovations, in light of the needs of suspects with intellectual disabilities.

**Design/methodology/approach** – A review of published prevalence data in respect of people with intellectual disabilities in the Irish criminal justice system, of the Irish legal and policy landscape and the results of a recent empirical inquiry are used in critical evaluation.

**Findings** – In line with extant international research, the article identifies three sites of concern with respect to the protocols that exist within An Garda Síochána for identifying and responding to intellectual disability, including: (1) barriers to communication; (2) a need to build awareness and skills for police and persons with intellectual disabilities; and (3) a need for institutional change to secure equal access to justice for people with intellectual disabilities. Progress is being made at a systems level towards a human rights approach in Irish policing.

**Originality/value** – In representing the first international analysis of its kind, the article locates the barriers confronting suspects with intellectual disabilities in Ireland within a discourse that is sensitive to ongoing research-led, procedural reforms within An Garda Síochána (Ireland's national police service). Owing to the universalised nature of these barriers across policing systems internationally, the format of these reforms from this will be of relevance to many other policing states, in particular the 162 other signatories to the United Nations Convention on the Rights of People with Disabilities.

**Keywords** Criminal justice system, Policing, Criminology, Police training, Due process, Vulnerable suspects

**Paper type** Research paper

## Introduction

In marking a departure from the federalized, local policing models that exist in many common law jurisdictions, law enforcement in Ireland comes within the purview of a single, unified national authority, An Garda Síochána (meaning, “Guardians of the Peace”). As the sole policing body in the

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jurisdiction – accountable exclusively to the Minister for Justice – members of An Garda Síochána enjoy unparalleled influence over the trajectory of a criminal investigation (Cusack, 2018). Moreover, as first responders to alleged acts of criminality, they are uniquely placed to identify and deploy essential pre-trial, procedural safeguards, which have been specifically designed to protect and vindicate the personal, due process rights of crime suspects (Cusack, 2021a; Zuckerman, 1993). For these reasons, the capacity of Irish police officials to respond appropriately to the concerns of crime suspects at the initial, often traumatic, pre-trial stage of criminal proceedings has long been recognised as a major factor in shaping popular faith in the values, fairness and legitimacy of Ireland’s community-based policing service. Indeed Ireland’s long-standing commitment to a model of policing by consent (Thompson and Payne, 2019; Manning, 2012) is epitomised in the infamous words of Michael Staines, Ireland’s first Commissioner of An Garda Síochána: “We will succeed not by force of but on our moral authority as servants of the people” (Walsh, 1998).

For suspects with intellectual disabilities, the importance of adopting a tailored and calibrated police response is particularly acute. Studies suggest that any failure to adapt the forensic formalities (in particular, the investigative interview) and communication protocols (in particular, the notice of rights) followed by police at the pre-trial stage of the criminal process to account for the unique needs of these individuals can materially bias the accuracy of any elicited testimony (Gulati *et al.*, 2020b; Parsons and Sherwood, 2016; Talbot, 2010; Tully and Cahill, 1984). Beyond raising obvious instrumental concerns with regard to probative integrity of police practices (Clare and Gudjonsson, 1995), such procedural or cultural ableism within a police service cannot readily be reconciled with the international human rights standards mandated by the United Nations (UN) Convention on the Rights of Persons with Disabilities (Article 13) and the European Convention on Human Rights (Article 6) (Gulati *et al.*, 2020a). Nor, moreover, can such an approach be reconciled with the Irish State’s constitutional obligation to secure a “trial in due course of law” for all persons accused of crime pursuant to Article 38.1 of Bunreacht na hÉireann (Ireland’s Constitution).

And yet, despite the reverential juncture that the police station occupies in Ireland as the confluence site for a series of fundamental evidential, human rights and constitutional values, little is known at the time of writing about the unique challenges, which suspects with intellectual disabilities face during their initial interactions with Irish law enforcement officers (Gulati *et al.*, 2021a; Cusack, 2018). In an attempt to address this research lacuna, this paper surveys Irish police procedure – and the wider cultural environment within which it is practiced – with a view to critically evaluating the appropriateness of Ireland’s pre-trial landscape in light of the needs of persons with intellectual disabilities. Drawing upon the findings of Ireland’s first qualitative inquiry into the perceived barriers that confront suspects with intellectual disabilities within the Irish pre-trial process (Gulati *et al.*, 2021a), a number of sites of concern are identified with respect to the protocols that exist within An Garda Síochána for recognising and responding to intellectual disability. These concerns, which were expressed by agents drawn from representative bodies, healthcare professionals and professionals within the Irish criminal justice system relate *inter alia* to the capacity of Irish police officials to meet the communicative needs of persons with intellectual disabilities, the consistent adoption of appropriately adapted forensic techniques, access to understandable information and the availability of heightened procedural safeguards during the investigative process. Through the application of applied thematic analysis (ATA), the paper categorises and frames these sites of concerns (many of which are of universal concern to police services internationally) through the aperture of three over-arching themes, namely, (1) “Barriers to Communication”; (2) “Building Awareness and Skills” and (3) “Institutional and System Changes” (Gulati *et al.*, 2021a).

Importantly, and in representing the first international analysis of its kind, the article locates each of these challenges within a discourse that is sensitive to emergent procedural innovation within An Garda Síochána. By drawing upon a series of ongoing, inclusionary policing exercises that have recently taken hold in Ireland, the article is intended to act as an emboldening reference

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point for other international law enforcement agencies, encouraging them to reappraise their policing strategy in contemplation of the needs and concerns of suspects with an intellectual disability.

### Literature review

Prior to the recent qualitative inquiry (Gulati *et al.*, 2021a), very little was known about the types of barriers that Irish police officials and other Irish criminal justice stakeholders (including lawyers, judiciary and healthcare professionals) perceived to confront persons with intellectual disabilities in their interactions with An Garda Síochána. Similarly, little was also known – and remains known to this day – about how persons with intellectual disabilities subjectively experience their own interactions with An Garda Síochána (Gulati *et al.*, 2020b). In view of the paucity of Irish-orientated research in this area (Cusack, 2021; Gulati *et al.*, 2021a), international studies serve immense heuristic value in the direction of raising concerning insights with regard to extent to which mainstream police procedure globally “takes adequate account of the structural, institutional barriers for disabled people” (Diesfeld *et al.*, 2008, p. 433). Accordingly, these studies, as will be seen below, provide an important contextual basis for any appraisal of the contours of Ireland’s pre-trial landscape and raise awkward pressing questions about the inclusivity of Irish police procedure and the culture surrounding it.

#### *Adapting police procedure: the international context*

At the outset of any exposition of the ontological dimensions of intellectual impairment, it is important to emphasise that there is no cause for automatically discrediting a witness of crime suspect on account of having an intellectual disability (Cusack, 2020a, b). Neither the psychological vulnerabilities of such persons nor any related limitations in social functioning, present evidentiary challenges that are insurmountable within the criminal process (Cusack, 2020c). As Gudjonsson (2003, p. 334) points out, there is no empirical basis for treating as unreliable the evidence of an individual simply because he or she presents with an intellectual disability: “Persons with moderate learning disability may well be able to give reliable evidence pertaining to basic facts, even when they are generally highly suggestible and prone to confabulation”. However, as Cusack (2022) notes, “for best evidence to prevail, the forensic design of proceedings – and, in particular, the availability of targeted testimonial supports – is key”. The type of questions asked, the status of the person asking them and the formality of the arena in which this interrogation takes place have all been found to play a fundamental role in shaping the factual accuracy of the testimony delivered by a witness with an intellectual disability in court (Milne and Bull, 2001; Kebbell *et al.*, 2001).

It is now widely recognised, for instance, that persons with intellectual disabilities provide their most accurate answers to open, free recall questions (e.g. “Describe him?”) (Perlman *et al.*, 1994; Dent, 1986). However, while such persons often respond to these questions with accuracy rates broadly similar to those of the general population, studies suggest that these responses are often less complete in terms of their factual detail (Dent, 1986; Perlman *et al.*, 1994). By contrast, more directive, closed questions (e.g. “Was the shirt he was wearing blue?”) have been found to yield a more detailed response, which is less factually precise (Perlman *et al.*, 1994). Studies have also found that individuals with intellectual disabilities are comparatively more suggestible, more acquiescent, more likely to confabulate and more likely to engage in naysaying than their counterparts within the general population (Cusack, 2020a, c; Clare and Gudjonsson, 1993; Heal and Sigelman, 1995). Moreover, there is evidence to suggest that such witnesses are at an increased risk of obfuscating generic details about an alleged incident such as names, times and dates, that they will entertain a final option bias in response to closed multiple-choice questions, that their knowledge of the legal process is often quite poor and that they struggle to comprehend legal terminology (Beail, 2002; Heal and Sigelman, 1995).

It is clear from these international studies that any failure to adapt forensic procedures at the pre-trial stage of the criminal process to take account of the “ontological realities of intellectual impairment” (Cusack, 2017, p. 448) poses not only a material risk of eliciting inaccurate testimony, but also a wider, more pressing danger of securing a wrongful conviction through the admission of false, self-inculpatory evidence (Gudjonsson, 2010). And yet, notwithstanding these patent dangers, a recent narrative review exploring the experience of law enforcement officers internationally revealed a range of subsisting operational policing concerns with regard to identifying, and communicating appropriately with, persons with an intellectual disability; the absence of procedural safeguards for vulnerable suspects and the existence of a widespread unmet need for specialised training (Gulati *et al.*, 2020c). Faced with the prospect of confronting such ableist, mainstream police practice, persons with intellectual disabilities have reported feeling “frightened and confused” in their interactions with law enforcement agencies and, perhaps unsurprisingly, they have identified significant challenges in understanding information, accessing practical and emotional supports and communicating with officials in police custody settings (Gulati *et al.*, 2020b).

#### *Adapting police procedure: the Irish context*

In Ireland, the prevalence rate of intellectual disability within Irish police custody suites is currently unknown (Cusack, 2021). Consequently, it is difficult to locate the demographic makeup of Ireland’s detainee population within international estimates that indicate an over-representation of this constituency in police custody settings (Gulati *et al.*, 2020a, b; Murphy, 2019). Although focused, Irish-orientated research in this area is sparse in a policing context, emergent research from the penal sphere nevertheless suggests that persons with intellectual disabilities are over-represented within the Irish criminal justice system. The leading study in this field, for instance, discovered a potential prevalence of 28% of “significant intellectual disability” in Irish prisons (Murphy *et al.*, 2000).

This high prevalence rate of intellectual impairment within Irish prisons raises questions with respect to the capacity of Irish criminal justice agencies, including – in particular, serving members of An Garda Síochána – to, at once, recognise and respond appropriately to situations involving a suspect with an intellectual disability. Though research is sparse in the area, the failure of the Irish legal profession, for example, to understand the difficulties posed by the adversarial criminal justice for people with disabilities has been noted in Irish victimological discourse (Kilcommins and Donnelly, 2014). At the pre-trial stage of criminal proceedings meanwhile, the clear need to “mainstream” disability awareness training within the Irish police service was recommended as far back as 1996 (Commission on the Status of Person with Disabilities, 1996) and, once again, in 2018 (Commission on the Future of Policing in Ireland, 2018).

And yet, while – as will be discussed below – some very significant positive steps have recently been taken in the direction of promoting greater disability awareness within An Garda Síochána, this area that has been targeted for further operational activism in the years ahead (An Garda Síochána, 2019).

#### *Causes for concern: the Dean Lyons case and the Custody Regulations 1987*

From a historical perspective, the stark danger associated with failing to adapt Irish police procedure in contemplation of the needs of a suspect with an intellectual disability was highlighted in the Dean Lyon’s case. This case arose following the double murder in March 1997. Both victims had been stabbed and mutilated at their home in the grounds of a psychiatric hospital. Following an investigation into these deaths, Mr. Lyons voluntarily attended at a police station and, following four interviews (spanning 6 h 35 min), he confessed to the murders. At the time of his confession, Mr. Lyons was 24 years old. He was a heroin addict with no fixed abode. He also had a history of having attended a special school and was

described as being “borderline learning disabled” (Birmingham, 2006, p. 149). A number of weeks following Dean Lyons’s confession, Mark Nash, who was suspected of being involved in another double murder in Co. Roscommon, admitted to the Grangegorman murders.

A Commission of Investigation into the Dean Lyons Case was subsequently established to consider the forensic developments, which contributed to the elicitation of his false admission of guilt (Birmingham, 2006). While the Commission ultimately concluded that there had been no deliberate attempt to undermine the rights of Dean Lyons, it noted that inappropriate leading questions were inadvertently asked of him by members of An Garda Síochána, which equipped him with the information to maintain a credible (albeit false) confession. It was also noted that Dean Lyons was abnormally and exceptionally suggestible, and that he had an abnormal tendency to yield to leading questions (2006, p. 7). There was also evidence to suggest that he had a long track record of making up stories that were wholly false and being able to tell these stories in a convincing manner (2006, p. 6).

In the aftermath of the publication of the Commission’s findings, and in contemplation of the publication of similar concerns by the Morris Tribunal with respect to police investigative practices (Morris, 2006), an entirely new interview model – the Garda Síochána Interview Model – was mainstreamed in Irish policing operations (Noone, 2015). As Conway and Daly (2019) explain, this new model involves “a complete shift in how interviews are conducted”:

Interviews, under the model change from confession-seeking to information-gathering spaces. They are conducted in a structured manner, going through the “Generic Phases”: planning and preparing; first contact; rapport building; account of knowledge; assess, corroborate and challenge; and closure. Interviews should be conducted in the same way whether the individual is a suspect, victim or witness with emphasis placed on the specific considerations of the individual being interviewed, including their level of cooperation, intellectual and psychological capacity. There is a competency framework for interviewers, with Gardaí trained to different levels dependent on their involvement in interviewing (2019, p. 108).

The mainstreaming of this reflective interview model across An Garda Síochána represented an important step in the direction of addressing the needs of vulnerable suspects (Smyth Committee, 2017). It also, importantly, built upon a series of existing procedural safeguards mandated by the Custody Regulations 1987, including the provision of a Notice of Rights document, and the introduction of a Custody Risk Assessment protocol (Cusack, 2021; Gulati *et al.*, 2021a).

Although these statutory measures were long regarded as representing a central procedural bulwark against improper police practice in Ireland (Seanad Éireann Debate, 1986), their effectiveness has faltered under recent scrutiny. For instance in *People (DPP) v Darcy* (Unreported, CCA, 29 July 1997), an inculpatory statement made by a child with “low intelligence” was deemed to be admissible as evidence in circumstances where it was elicited in contravention of the Regulations. In the circumstances, the Court of Appeal ruled that, in the absence of unfair or oppressive questioning, trial judges in Ireland enjoy a measure of discretion in determining whether or not to admit statements elicited in breach of the Regulations.

Against the backdrop of the ostensibly porous legal protection afforded by the Custody Regulations, the recent excavation of stakeholder perspectives with regard to contemporary barriers encountered by persons with intellectual disabilities when interacting with An Garda Síochána was particularly timely.

## Empirical inquiry

### Methods

A survey of people from representative organisations for people with intellectual disabilities, people working with voluntary organisations for people with intellectual disabilities, healthcare professionals working with people with intellectual disabilities and professionals

from the criminal justice system (including members of An Garda Siochana, solicitors, judges, officers within the airport police, as well as forensic medical practitioners) was conducted over one calendar month (1–31 July 2020) to elicit perceived barriers for people with intellectual disabilities in their interactions with police. The respondents were identified through a purposive sampling technique (see [Gulati et al., 2021a](#), for a detailed analysis), and all identifiable data were anonymised at the point of collection. The survey responses were subsequently analysed quantitatively for respondent demographics (role, specific role, years of experience) and a qualitative thematic analysis was completed using NVIVO 11 software to identify and extract themes from these replies. Two researchers coded qualitative data independently and achieved consensus on themes arising.

### *Results*

Ninety-five ( $n = 95$ ) responses were received to the survey, all of which were analysed through a codebook model of thematic analysis known as ATA yielding three distinct themes: (1) “Barriers to Communication”; (2) “Building Awareness and Skills”; and (3) “Institutional and System Changes” ([Gulati et al., 2021a](#)).

The “Barriers to Communication” theme revealed an information deficit amongst suspects with intellectual disabilities with regard to the operational formalities of the Irish criminal justice system. Specifically, the analysis yielded a portrait of a pre-trial landscape that can fail to recognise and adapt to the unique communicational needs of suspects with an intellectual disability (see [Gulati et al., 2021a](#), for a detailed analysis). According to the research, suspects drawn from this constituency can encounter significant challenges within the Irish criminal justice system in comprehending, not only their the seriousness of their alleged crime and its impact on others, but also how their own responses may lead to further difficulty for them. They can also encounter difficulty in indicating that they require additional support, which, in turn, can prevent them from understanding information relating to important legal safeguards (including the police caution). There is also a risk that the behaviour of these individuals will be misinterpreted, and their responses under interrogation will be biased by questioning tactics that neglect the ontological dimensions of intellectual impairment, including, in particular, the heightened vulnerability of some individuals to acquiescence and suggestion. The inquiry also highlighted the challenges experienced by law enforcement officers in recognising the presence of a disability and the importance of this as a crucial first step to offering the necessary supports.

The theme “Building Awareness and Skills” found the need for supports for people with intellectual disabilities and their families to better understand the system and develop strategies to manage their interactions with law enforcement officers. It outlined the need for a training programme for law enforcement officers that included skills in recognising people who may have a disability, specific communication strategies and an emphasis on a human rights based approach, informed by the lived experience of people with intellectual disabilities.

The third theme, “Institutional and System Change” outlined the need for ongoing collaboration between law enforcement officers and agencies that support people with intellectual disabilities and fostering organisational responsibility in the criminal justice system in nurturing an ethos of respect and awareness of the complex challenges for people with intellectual disabilities. Further, it highlighted the need for resourcing law enforcement officers training as well as the provision of specialist support to assist law enforcement officers in their work ([Gulati et al., 2021c](#)). A need for people with an intellectual disability to be offered meaningful support and accessible information in written or other formats was seen as important.

### **Discussion**

#### *Psychological vulnerabilities*

The insights excavated from the empirical inquiry ([Gulati et al., 2021a](#)) provide support for the proposition that persons with intellectual disabilities face unique cognitive and



communicative challenges when negotiating the pre-trial forensic formalities of adversarial legal systems (Cusack, 2018; Gulati *et al.*, 2020b). Specifically, the accounts elicited from the respondents not only revealed that persons with this condition were more vulnerable to suggestion, but they also confirmed that this psychological vulnerability can be exacerbated by a range of environmental factors. Research has shown that an individual's response to forensic questioning will be biased by the status of the interviewing actor and the formality of the venue in which the exchange is taking place (Gudjonsson *et al.*, 2000; Kebbell *et al.*, 2004). Tacit support for this finding was uncovered in the guise of a recognition of the corruptible impact that anxiety can have on the behavioural performance of an individual under questioning.

In view of these cognitive and environmental barriers to securing best evidence, it is perhaps unsurprising that the empirical inquiry discovered a concern with regard to the accessibility of communications from Irish police officials with members of this constituency. While this finding is consistent with international literature (Murphy and Clare, 1998; Henshaw and Thomas, 2012), it raises questions concerning the narrative accuracy of testimony elicited from persons with intellectual disabilities at the pre-trial stage of Ireland's criminal process, and it draws clear attention to the importance of mainstreaming procedural safeguards to mitigate against the risk of eliciting biased, inaccurate statements.

#### *Recognising and responding to intellectual disability*

As evidenced by the feedback encapsulated in the "Building Awareness and Skills" theme, the empirical inquiry yielded a portrait of a pre-trial criminal justice apparatus that continues to encounter difficulty in both recognising and responding to the ontological realities of intellectual disability. Members of An Garda Síochána, it should be noted, are not alone in this regard, and international research suggests that law enforcement officials across the common law world routinely struggle to accurately identify vulnerable persons (Gudjonsson *et al.*, 1993; Burton *et al.*, 2006).

This absence of a general cultural awareness amongst law enforcement officials of the cognitive traits and behavioural characteristics of intellectual disability has been attributed to ableist police and legal training regimes, which are predicated almost entirely on mainstream accounts of witnesses (Burton *et al.*, 2006; Keilty and Connelly, 2001). As a result, law enforcement officials have been found to use a variety of informal methods to help to identify someone with an intellectual disability, including facial characteristics and comprehension, as well as behaviour in custody (Douglas and Cuskelly, 2012).

Recognising intellectual impairment is, however, only one part of the solution. Without the consequential adoption by the police of an ontologically sensitive approach to their condition, the meaningful advantages associated with this correct identification can be entirely lost (Cusack, 2018). And yet, responses elicited from the empirical inquiry pointed to a need for increased awareness amongst Irish police with regard to responding appropriately to individuals with an intellectual disability. In the absence of such awareness, there persists not simply a risk that members of An Garda Síochána will fail to pursue forensic techniques designed to secure best evidence in their investigative inquiries, but rather a wider risk that they will presumptively dismiss claims involving individuals with intellectual disabilities on the grounds that they are unreliable. This discovery aligns with extant research at both a national level (Bartlett and Mears, 2011) and international level (Keilty and Connelly, 2001).

#### *Accessible information*

The empirical inquiry highlighted the need for the provision of information in an accessible format. Once again, this finding suggests that Irish law enforcement officers encounter similar difficulties in meeting the communication needs of persons with intellectual

disabilities as their international counterparts (Jones and Talbot, 2010; Parsons and Sherwood, 2016). This finding is particularly important when viewed in light of the obligations resting on An Garda Síochána to adopt inclusionary communication practises under both national (s.28, Disability Act 2005; s.42, Irish Human Rights and Equality Commission Act 2014) and international law (Article 9, UN Convention on the Rights of People with Disabilities (UNCRPD)).

### **Towards inclusionary policing: innovation within An Garda Síochána**

It is important to point out that the recent empirical survey (Gulati *et al.*, 2021a) was conducted against a backdrop of unprecedented human rights-focused activism within the procedural infrastructure and cultural ethos of An Garda Síochána. This transition towards a model of human rights-based policing can be traced to the publication in September 2018 of a landmark report entitled *The Future of Policing in Ireland* which set out a vision for a “reformed and reinvigorated police service” (Commission on the Future of Policing in Ireland, 2018, p. vi; Cusack, 2019). Significantly, a central component of this vision was the architecting of a new human rights infrastructure within the mindset, ethos and operations of all members of An Garda Síochána. At a policy level, this vision is reflected in *An Garda Síochána Human Rights Strategy 2020–2022* (An Garda Síochána, 2019). At a procedural level, meanwhile, this cultural emphasis on adhering to the values of rights-based law enforcement has prompted the introduction on a pilot basis of a series of important and ongoing pre-trial innovations, which have been designed specifically to demonstrate an increased sensitivity for the needs and concerns of persons with intellectual disabilities, including: (1) a review of custody risk assessment practices; (2) a review of the Notice of Rights; and (3) the launch of a pilot Disability Awareness Training scheme.

#### *Review of risk assessment practices*

In response to the publication by the Irish Government of *A Policing Service for our Future* (2018), An Garda Síochána launched a national review of risk assessment practices in April 2020 for the purpose of carrying out “an assessment of the most vulnerable in the criminal justice system” (Government of Ireland, 2018, p. 16). Significantly, this review – which is ongoing at the time of writing – represents the second major reappraisal of Irish risk assessment practices in Ireland in recent years (Smyth Committee, 2017).

Although the precise findings from the ongoing review remain to be seen, early evidence suggests that Irish police risk assessment practices will be re-tailored for the purpose, not singularly of managing risk (through a focus on issues of mental health), but also to facilitate the appropriate identification of suspects with intellectual disabilities at the point of first contact with the Irish criminal justice system (An Garda Síochána, 2020). In proposing to elongate Ireland’s existing risk assessment protocol so as to accommodate a vulnerability assessment (by including a new section relating specifically to intellectual disability), the review’s findings promise to avoid the diagnostic shortcomings historically associated with the exclusive use of risk matrices to identify intellectual disability (Stoneman *et al.*, 2019). Indeed, the urgent unmet need for mainstreaming such a vulnerability assessment within Irish police procedure is evident from the recent empirical inquiry that excavated concerns amongst criminal justice stakeholders with regard to the capacity of Irish police officials to identify intellectual disabilities (Gulati *et al.*, 2021a).

Moreover, by mandating a consideration of a suspect’s intellectual condition at the time of arrest, the proposed new approach will ensure that members of An Garda Síochána give due consideration to a suspect’s eligibility for support under the Custody Regulations at the point of arrest. By architecting, in this regard, a more consistent and comprehensive model for



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identifying and supporting suspects with an intellectual disability at an early stage of Irish pre-trial proceedings, the ongoing review promises to elevate police practice in accordance with the exigencies of Ireland's constitution, the European Convention on Human Rights and the UNCRPD.

### *Review of notice of rights*

As this article has shown, many of the international barriers experienced by persons with intellectual disabilities in interacting with law enforcement officials – including access to information in an accessible format – are also apparent in Ireland (Gulati *et al.*, 2021a). One of the key sites of concern in this regard relates to the timely provision of information to a suspect about his or her rights (Cusack, 2021; Gendle and Woodhams, 2005). As Parsons and Sherwood (2016, p. 556) explain: “if someone finds it difficult to understand crucial information regarding their rights, entitlements and processes within the [criminal justice system] . . . there is a significant risk of disadvantage and the potential for miscarriage of justice”. Indeed, this risk was recognised by the courts of Strasbourg in *Z.H. v Hungary* (Application No. 28973/11, judgement 8 November 2012) where Hungarian police authorities were adjudged to have breached both Article 3 and Article 5 of the European Convention on Human Rights by failing to take special measures to address the communication needs of a detainee who was “*innately deaf and dumb and has medium-grade intellectual disability*”.

And yet, until recently, Irish police procedure failed to acknowledge the importance of providing the statutory Notice of Rights Form in an easy-to-read format to suspects with an intellectual disability. Indeed, quite to the contrary, Irish jurisprudence operated for many years to actively relieve members of An Garda Síochána of any duty to take proactive steps to ensure that vulnerable suspects understood their rights and entitlements. In *DPP v O'Kelly* ([1998] IEHC 22), for instance, McCracken J. ruled that the requirement to provide a Notice of Rights under the Custody Regulations (discussed above) was met by simply issuing an accused with the document without making any meaningful inquiry into his capacity to understand it.

Recent evidence, however, points to a growing operational willingness within An Garda Síochána to take proactive steps to tackle this embedded, ableist pre-trial practice and, at the time of writing, a major multi-disciplinary review of Ireland's existing Notice of Rights Form is in the process of being concluded (Cusack, 2021). By employing a focus group methodology – involving national and international experts in the fields of psychiatry, psychology, law and speech and language therapy, as well representatives from national disability bodies, active members of An Garda Síochána, and, most importantly, people with lived experience of intellectual disability – the review promises to yield the world's first “lived experience-informed” Easy Read Notice of Rights. Given that, less than 5% of signatories to the UNCRPD currently report progress in developing information materials accessible for people with learning disabilities (Gulati *et al.*, 2021b), this innovative, user-led approach may provide a best practice template to allow other international police forces to adjust their custody practices to align with their international obligations.

### *Disability awareness training*

In April and June 2021, An Garda Síochána launched a disability awareness training pilot study for police officers (Gulati *et al.*, 2021c). Significantly, the design and content of this training scheme were informed by the findings from the recent empirical inquiry into the perceived barriers that confront persons with intellectual disabilities in seeking to access justice in Ireland (Gulati *et al.*, 2021a). On the basis of the latter findings, a four-point training model was devised, which was intended to equip participants with the knowledge to “(1) *Recognise* when a suspect might have an intellectual disability, (2) *Provide information* to the

vulnerable suspect, (3) Improve *communication* skills including crisis situations, and (4) *Support the person with an intellectual disability in custody*" (Gulati *et al.*, 2021c). The training was delivered by a team of medical and legal experts who used an interactive, online seminar format (90-min duration) with vignettes and video interviews of persons with an intellectual disability in reference to law enforcement interactions.

The success of this quadripartite training model was recently revealed in an empirical evaluation of the pilot programme, which noted that "statistically significant improvements were found in participants' self-rated knowledge of intellectual disability, their understanding of the challenges faced by people with intellectual disabilities in law enforcement interactions, their communication skills and their knowledge of how to approach a person with a disability in crisis" (Gulati *et al.*, 2021c, p. 1). These findings, it is submitted, are highly apposite in light of the thematic findings from the recent empirical inquiry and provide an empirically sound blueprint for addressing the challenges that suspects with an intellectual disability are perceived to currently experience within Ireland's criminal justice system (Gulati *et al.*, 2021a).

### Conclusion

In mimicking extant international literature with regard to the difficulty associated with adapting mainstream police procedure to accommodate the needs of suspects with intellectual disabilities, this paper has revealed a series of embedded challenges to accessing justice for members of this constituency in Ireland. At the time of writing, barriers to communication, as well as a deficit in awareness and skills and an unmet need for institutional and systemic changes, have been identified as representing key challenges for suspects with intellectual disabilities in their interactions with An Garda Síochána (Gulati *et al.*, 2021a). However, a series of research-led inclusionary reform exercises – including an ongoing review of custody risk assessment practices; a review of the Notice of Rights; and the launch of a pilot Disability Awareness Training scheme offer reasons to be hopeful that a paradigmatic shift towards a model of inclusionary policing is at hand within An Garda Síochána.

At the time of writing, these initiatives remain in an early implementation stage, and both the trajectory and timeline of their roll-out on a national scale remain to be seen. However, based upon the findings of this paper, the urgent need for their progression is clear. In particular, the prevailing unmet need to mainstream tailored, disability awareness training – designed and delivered in collaboration with disability services and persons with lived experience of intellectual impairment – has emerged as a central underlying theme from this research. In addition, the planned unveiling of a more accessible Notice of Rights Form for use in cases involving vulnerable suspects, in addition to the introduction of a more sophisticated Risk Assessment Record framework, is to be welcomed for promising to compliment this training by equipping Irish police officers with important screening tools that will assist them in understanding and identifying intellectual impairment. Other signatory states to the UNCRPD, it is submitted, might usefully consider piloting similar inclusionary schemes in the future with a view to fulfilling their human rights obligation to secure effective access to justice for persons with disabilities on an equal basis with others in accordance with Article 13 of the Convention.

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