

My experience

Dear Sir,

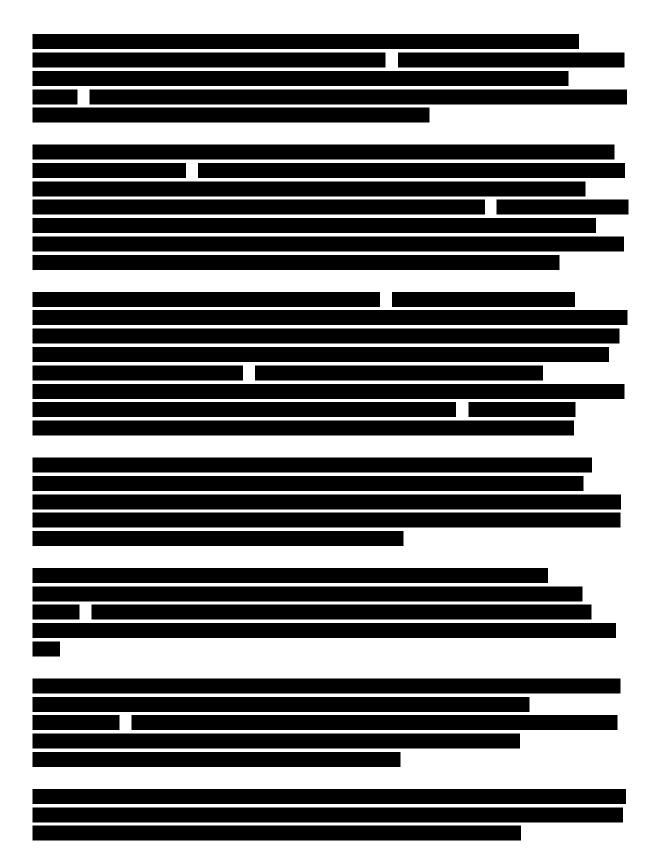
I make the following submission relating to two of the headings of proposals which you plan to address.

1. that there are open, accessible and independent means of investigating and adjudicating fairly upon complaints against the police

My concern lies with any allegation of misconduct against a Garda Commissioner who is not subject to the Garda Siochana (Discipline) Regulations and does not come within the jurisdiction of the Garda Siochana Ombudsman Commission (GSOC). Any serious misconduct must be adjudicated in a criminal court but there is no guidance as to whom the complaint should be made and who will carry out the investigation.

2. that policing is constrained by, accountable to and acts only within the law

I am concerned about a particular common law offence, Misconduct in Public Office, which is triable only on indictment and for which the maximum penalty is life imprisonment. There does not appear to be any record of a prosecution for this offence since the foundation of the State but Mr Justice Carney made the following statement in DPP v Bartley [1997] IEHC 94 (13 June 1997) paragraph 4. "Where a credible complaint of felony is made to a policeman, he has no discretion under ther Common Law not to investigate it and apprehend a named offender. A failure to carry out this duty vigourosly constitutes an illegality on the policeman's part and renders him liable to prosecution on indictment." Classifying an offence as a felony no longer exists but the Garda Siochana remain under the same obligation to investigate a serious offence. Following experience of making a complaint of Misconduct in Public Office to the Gardai I have come to believe that there is an unlawful policy not to investigate complaints of Misconduct in Public Office. This policy may have arisen following the comments of Mr Justice Carney.



Conclusion

If I am correct that An Garda Siochana have an unlawful policy that complaints of
Misconduct in Public Office should not be investigated then it should be brought to an
end. Otherwise moves to improve the force will be seriously undermined.

Yours sincerely,