



# **Working Group on Garda Vetting Report**

**February 2004**

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## **Section 1: Summary of Recommendations**

The following are the recommendations of the Working Group on Garda Vetting.

1. All organisations that recruit and select persons who would have substantial unsupervised access to children and vulnerable adults should avail – and should be entitled to avail - of the vetting services of the Garda Central Vetting Unit. In practice, this would mean that all prospective full-time employees, all prospective part-time employees, all prospective volunteers and all prospective students on placement who would have substantial unsupervised access to children and/or vulnerable adults should be vetted prior to taking up their posts (Section 3.2).
2. This entitlement and obligation to avail of the vetting services of the Garda Central Vetting Unit includes the entitlement and obligation to avail of vetting in respect of all prospective teachers and associated staff at the primary and the post-primary level in the education sector (Section 3.2).
3. An Garda Síochána's vetting services should allow for the disclosure of not just 'hard' facts, such as conviction information, but also 'softer' information, such as allegations of a criminal nature in certain circumstances (Section 3.3).
4. An Garda Síochána's vetting services should operate on a three-tier basis, representing three levels of recruitment and selection vetting, as determined by the post applied for and the type of work involved:
  - a 'special' level of vetting should be applicable to posts involving substantial unsupervised access to children and vulnerable adults;

- a 'standard' level of vetting should be applicable to posts within the public service and non-public service, such as the private security industry and areas not covered by the 'special' level of vetting; and
  - a 'security' level of vetting in the interests of national security (Section 3.4).
5. Vetting by An Garda Síochána should continue to be conducted on a centralised basis within Garda Headquarters (Section 3.5).
6. Legislation should be introduced in respect of vetting to provide for, at a minimum:
- the maintenance of a national criminal records system within An Garda Síochána;
  - the disclosure of not just 'hard' facts but also 'softer' information;
  - indemnification against disclosure ; and
  - access to information about – and proof of – criminal convictions for the purpose of litigation (Section 5.2).
7. The Protection of Persons Reporting Child Abuse Act 1998 should be amended so as to offer protection for persons reporting the abuse of vulnerable adults, such as those with certain mental or physical disabilities, and not just the abuse of children (Section 5.2).
8. The Sex Offenders Act 2001 should be amended to require a convicted sex offender to inform a prospective employer of his/her conviction when applying for a position involving unsupervised access to people with a physical disability and not just children or people with a mental impairment (Section 5.2).
9. An additional four Civil Service clerical officers should be provided to the Garda Central Vetting Unit to address the implications of extending

the availability of Garda vetting services, and the adequacy of this augmentation should be evaluated after 6 months (Section 6.1).

10. A new post of Garda Inspector should be considered to ensure the effective management of the Garda Central Records Office, the Garda Central Vetting Unit and the proposed Data Protection Processing Unit (Section 6.1).
11. The accommodation requirements of the Garda Central Vetting Unit should be audited in the context of an augmentation of human resources to ensure that its future operational needs are met (Section 6.2).
12. A two-tier shift system should be introduced within the Garda Central Vetting Unit, with one shift operating from 7.00 am to 3.00 pm and the other operating from 3.00 pm to 11.00 pm, as a means of promoting the best use of information technology resources and maximising the efficiency of work processes (Section 6.3).
13. A fee should be charged in respect of the vetting services of the Garda Central Vetting Unit in order to introduce an element of self-financing. The fee should be set at €20.00 per individual vet (Section 7.1).
14. The Garda Central Vetting Unit should establish a comprehensive register of organisations that are entitled to avail of Garda vetting services, and only those organisations registered would be entitled to have their vetting applications processed. The registration process would involve placing modest administration requirements on the organisations so registered (Section 7.2).
15. Each organisation entitled to avail of the services of the Garda Central Vetting Unit should designate a single, central contact point to be responsible for the forwarding of vetting applications to the Unit, and

this designation would form one requirement of registration (Section 7.3).

16. The vetting application form currently in use by the Garda Central Vetting Unit should be augmented to provide for the gathering of a greater quantity and quality of information (Section 7.4).
17. Every effort should be made to expedite information technology developments to provide for the electronic transfer of court outcomes from the Courts Service to An Garda Síochána (Section 8.1).
18. An Garda Síochána should formally request the Courts Service both to revise its jury summons form, Form J.2, to include a requirement to affix a date of birth of the prospective juror and to standardise its practice of jury vetting across the jurisdiction (Section 8.2).
19. The Department of Health and Children and the Department of Education and Science could give consideration to the development of non-Garda, employment-related vetting registers to provide information on those previously dismissed, suspended, moved or made redundant from posts for harming children or vulnerable adults in the health and education sectors, respectively (Section 9.3).

## Section 2: Introduction

### 2.1 Need for Working Group

2.1.1 In recent times, An Garda Síochána has conducted vetting:

- for applicants for public appointment in accordance with the Local Government Act 1941 and the Civil Service Commissioners Act 1956;
- since 1987, for the Adoption Board in relation to prospective adoptive parents;
- since 1987, in relation to Irish persons applying for positions in the United Kingdom which would give them substantial access to children;
- since 1994, in relation to candidates for employment in children's residential centres (as specified for the purposes of section 61(5)(b)(ii) and section 66 of the Child Care Act 1991) of the health service, following formal agreement between An Garda Síochána and the Health Boards<sup>1</sup>;
- since 1995, in relation to candidates for employment in the health service and in external agencies funded by the Health Boards who would have substantial unsupervised access to children and vulnerable adults, following formal agreement between An Garda Síochána and the Health Boards;
- for those seeking employment in sensitive locations; and
- for those seeking employment as special needs assistants, bus escorts and staff in children residential schools.

2.1.2 By the late 1990s, it was increasingly recognised that the existing vetting arrangements were not adequate to the demands being placed

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<sup>1</sup> As set out in Department of Health letters to the Chief Executive Officers of the Health Boards entitled *Recruitment and Selection of Staff to Children's Residential Centres operated by Voluntary Bodies*. These arrangements were put in place following allegations of abuse in children's residential centres and in the context of a proposed registration and inspection system for such centres.



upon them, thanks to a disjunction between demand and service capacity. In particular, large backlogs were beginning to develop.

- 2.1.3 Accordingly, a comprehensive review of Garda vetting arrangements was commenced in 1999. Arising from this review, it was decided to establish a Central Vetting Unit within An Garda Síochána to expand the vetting work carried out in order to deal with the then known demand for vetting.
- 2.1.4 In recognition of the importance of vetting in our shared responsibility and duty of care for our children and vulnerable adults, additional resources were made available to realise its establishment.
- 2.1.5 The Unit, which operates within the Garda Technical Bureau, became fully operational on 2 January, 2002, and it currently processes vetting requests in respect of, *inter alia*, prospective employees of designated agencies who would have substantial unsupervised access to children and vulnerable adults. In this regard, as at 1 December, 2003, vetting is conducted in respect of more than 900 organisations in receipt of funding from the Health Boards.
- 2.1.6 Since its establishment and with the resources made available to it, the Garda Central Vetting Unit has been operating well, with more than 132,000 applications dealt with in 2003.
- 2.1.7 When the Garda Central Vetting Unit became fully operational and all its backlogs were cleared, it was envisaged that the remit of the Unit would be extended on a phased basis to other groups. In this regard, a number of sectors and organisations dealing with children and vulnerable adults are not currently able to access the vetting process, particularly those in the community, voluntary and education sectors.
- 2.1.8 Moreover, suggestions have been made, correctly and incorrectly, that the nature of vetting arrangements in this jurisdiction does not accord

with international practice, with comparisons drawn, in particular, with Northern Ireland and other common law countries.

## **2.2 Establishment of Working Group**

2.2.1 Accordingly, on 28 November, 2002, then Deputy Commissioner Noel Conroy (now Commissioner) appointed Chief Superintendent John Kelly, Internal Affairs, to review the system of Garda vetting, with terms of reference:

- to examine the present system of vetting in relation to organisations entitled to Garda vetting or otherwise and define the type of organisation which should come within the ambit of the vetting process;
- to consider whether there should be different levels of vetting provided;
- if different levels of vetting are recommended, to consider if some of the vetting should be conducted at local level; and
- to recommend if charges should be levied for the provision of vetting.

2.2.2 A Working Group was duly established with a membership comprising representatives of Divisions within An Garda Síochána that either interact with the vetting process or deliver the principle service, as well as a representative of the Department of Justice, Equality and Law Reform.

2.2.3 In March 2003, following a request from the Department of Justice, Equality and Law Reform, the composition of the Working Group was extended to include representatives of the Department of Health and Children, Department of Education and Science and Office of the Attorney General.

2.2.4 At the same time, it was also agreed to extend the remit of the Working Group to examine all aspects of the vetting of persons coming in contact with children and vulnerable adults, be they full-time, part-time, voluntary or community workers or students on placements.

## **2.3 Work of the Working Group**

2.3.1 In fulfilling its terms of reference, the Working Group actively progressed its work by means of:

- meetings (9 in total);
- the submission of position papers;
- the consideration of written submissions and representations made by a large number of external organisations and umbrella groups;
- a site visit to the Garda Central Vetting Unit; and
- research into vetting arrangements in other jurisdictions.

2.3.2 In the latter regard, the arrangements that pertain in Northern Ireland and our other nearest neighbours - England, Wales and Scotland – have been given full consideration. The situation further afield has also been examined, including in the United States of America, Canada and New Zealand.

## **Section 3: A Vision of National Vetting Arrangements**

### **3.1 Protection of Children and Vulnerable Adults**

3.1.1 Since the publication of the 1987 Child Abuse Guidelines by the then Department of Health, the profile of child abuse as a social problem has risen considerably in Ireland. During this period, significant reforms have taken place in terms of legislation, policies and services established to promote the protection and welfare of children, e.g., the Child Care Act 1991 updated legislation for the welfare and protection of children.

3.1.2 In September 1992, the United Nations Convention on the Rights of the Child was ratified by Ireland and came into force on 21 October, 1992. Article 19 of this Convention states that parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.

3.1.3 There are many organisations providing services to children. Some are statutory, some are voluntary and/or not-for-profit organisations; others are private, for profit, organisations. Whatever the motivation or service provided, there is an obligation on any organisation involved with children to provide them with the highest possible standard of care in order to promote their well-being and safeguard them from harm. Organisations may also be legally responsible for their failure to provide adequate care and safeguards for the children in their care.

3.1.4 Allied to this concern for children, commensurate considerations apply in relation to the welfare and protection of vulnerable adults. Vulnerable adults are those for whom certain mental and physical disabilities render them dependent and lacking the capacities normally enjoyed by adults to safeguard and protect themselves from all forms

of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

3.1.5 It follows, then, that all organisations providing services to children and/or vulnerable adults have an overall corporate duty and responsibility to safeguard them by, *inter alia*:

- promoting the general welfare, health, development and safety of children and vulnerable adults;
- adopting and consistently applying a safe and clearly defined method of recruiting and selecting staff and volunteers;
- raising awareness within the organisation about potential risks to children's and vulnerable adults' safety and welfare;
- developing effective procedures for responding to accidents and complaints; and
- developing procedures to provide specific guidance to staff and volunteers who may have reasonable grounds for concern about the safety and welfare of children and vulnerable adults involved with the organisation.

3.1.6 The Department of Health and Children's *Children First: National Guidelines for the Protection and Welfare of Children* (1999) and *Our Duty to Care: The Principles of Good Practice for the Protection of Children and Young People* (2002) provide guidance on how an organisation may operationalise its corporate duty and responsibility to safeguard children.

## **3.2 Recruitment and Selection of Staff and Volunteers**

3.2.1 An important stage in promoting the welfare and protection of children and vulnerable adults is the appropriate human resource management policy relating to the recruitment and selection of staff and volunteers in an organisation providing services to these groups.

- 3.2.2 Although the overwhelming majority of persons who apply to work for such organisations are interested, well motivated and suitable for the various tasks involved, it is, nonetheless, essential that organisations take all reasonable steps to ensure that only suitable persons are recruited. A proper selection process is one of the most effective means of evaluating an applicant's suitability and may, in itself, act a deterrent to potential abusers.
- 3.2.3 The Working Group considers that a further protection measure that should be availed of by any organisation with a client base of children and vulnerable adults is the vetting of prospective employees and/or volunteers, as a means of further informing the organisation as to the suitability of those persons. It must be emphasised, however, that vetting should be considered as only one element – albeit an important element – of safe recruitment and selection practices. The information supplied by An Garda Síochána is not the sole source of information to be relied upon by an employer.
- 3.2.4 Accordingly, the Working Group recommends that all organisations that recruit and select persons who would have substantial unsupervised access to children and vulnerable adults should avail – and should be entitled to avail - of the vetting services of the Garda Central Vetting Unit (GCVU). In practice, this would mean that all prospective full-time employees, all prospective part-time employees, all prospective volunteers and all prospective students on placement who would have substantial unsupervised access to children and/or vulnerable adults should be vetted prior to taking up their posts.
- 3.2.5 The Working Group would particularly wish to draw attention to the current situation in the education sector, for which only limited vetting is conducted, primarily in respect of the most vulnerable children, i.e., special needs assistants, bus escorts and children detention schools. In particular, prospective teachers and associated staff at the primary and post-primary level are not currently vetted prior to taking up posts,

and this should be rectified in the context of realising the Working Group's recommendation to extend the services of the GCVU.

3.2.6 It is important to note that the Working Group considers that vetting services should only be available in respect of those who would have substantial unsupervised access to children and vulnerable adults. Every organisation with such a client base should have in place proper controls, where possible and appropriate, to effectively limit the range of persons who enjoy such access to their vulnerable clients, as a general protection measure. Accordingly, it is only in relation to those prospective holders of posts within the organisation entitled to such access that warrant the further protection of vetting pre-recruitment and selection.

### **3.3 Nature of Vetting**

3.3.1 The Working Group is aware of the significant role that An Garda Síochána plays through Garda vetting in promoting the welfare and protection of children and vulnerable adults, and this is largely dependent upon the nature of the vetting process itself and, in particular, the kinds of information that are disclosable in a vetting event.

3.3.2 In the interest of protecting the most vulnerable in our communities, the Working Group recommends that vetting in respect of persons entrusted with the care of children and vulnerable adults should provide for the disclosure of the following information:

- all criminal convictions, including relevant convictions in other jurisdictions;
- all past criminal prosecutions, successful or unsuccessful;
- all criminal prosecutions pending;
- the fact that the Director of Public Prosecutions is considering whether a relevant prosecution should be brought; and

- allegations and complaints involving alleged criminal activity and limited to a case-by-case basis.

3.3.3 In making this recommendation, the Working Group recognises that apart from the so-called 'hard' facts of, e.g., criminal convictions, the disclosure of 'softer' information such as allegations involving alleged criminality is a difficult area and requires a careful balancing of rights and obligations. Where such relevant 'soft' information is shared with prospective employers, there is a considerable onus on the recipient organisations to, *inter alia*, use this information in an appropriate fashion, having full regard to the competing rights of, on the one hand, the applicant and, on the other, the vulnerable persons entrusted into their care (see Section 3.6).

### **3.4 Levels of Vetting**

3.4.1 The Working Group is conscious that organisations seeking to recruit and select employees and volunteers who would have substantial unsupervised access to children and vulnerable adults are only one of the legitimate client groups for Garda vetting.

3.4.2 The requirement for vetting extends to what may be referred to colloquially as more generalised character vetting, which includes security vetting for sensitive posts within the public service, as well as for careers in An Garda Síochána. In this regard, some posts naturally require more in-depth and more confidential information about an applicant than other posts.

3.4.3 Accordingly, in addition to the 'special' form of vetting applicable to posts involving substantial unsupervised access to children and vulnerable adults, the Working Group recommends that a 'standard' form of vetting should be available to provide for the disclosure of the following information:



- criminal convictions, including convictions in other jurisdictions;
- all past criminal prosecutions, successful or unsuccessful;
- criminal prosecutions pending;
- the fact that the Director of Public Prosecutions is considering whether a prosecution should be brought; and
- relevant allegations and complaints involving alleged criminal activity and judged on a case-by-case basis.

3.4.4 The Working Group also recommends a 'security' level of vetting for applicants for posts or contractors in security-sensitive areas that are in the national interest.

3.4.5 In essence, the Working Group recommends three levels of vetting, the selection of the appropriate one depending upon the post applied for and the type of work involved. The 'special' level of vetting is aimed at protecting the vulnerable by appropriately vetting persons in particular positions of trust. The 'standard' level of vetting is aimed at safeguarding the integrity of the public and non public service, such as the private security industry and areas not covered by the 'special' level of vetting. The 'security' level of vetting is aimed at safeguarding the integrity of the State.

### **3.5 Vetting at the Local Level**

3.5.1 Historically, An Garda Síochána has maintained criminal records on a regional basis, making possible the checking of such records at a local level. However, in 1953, regional criminal records offices, where they existed, were closed, and the only regional office to remain open until 1999 was the Criminal Records Office in Cork, which was associated with the Garda Criminal Records Office in Garda Headquarters.

3.5.2 Although a centralised infrastructure for vetting has now been developed, in the form of the GCVU, and despite the absence of any regional or local infrastructures, the Working Group recognises that

developments in information technology within An Garda Síochána make possible the option of vetting being conducted at a local level.

3.5.3 Moreover, with the introduction of the Data Protection (Amendment) Act 2003, which extends the definition of data to include not just 'automated' data but also 'manual' data, it is envisaged that, in any event, the GCVU will be required to correspond with Garda Divisional and Garda District officers around the country seeking information to assist it in drafting a reply to the various applicants. This will have significant resource implications for the GCVU, and it will also pose a significant challenge in terms of processing applications within the statutory 40-day period.

3.5.4 However, in the context of its vision of national vetting arrangements, the Working Group recommends that vetting should continue to be conducted at a central level within the GCVU, as a means of developing and maintaining expertise and experience in providing a professional vetting service and by way of promoting overall administrative efficiencies.

### **3.6 Onus on Employers/Organisations**

3.6.1 The disclosure of sensitive information in relation to applicants for posts within a broad range of organisations, whether in the public, private or voluntary sectors, carries with it an onus of care on the recipient organisations that the information is used appropriately and fairly, having regard to the legitimate needs of employers and other organisations; the vulnerable and society as a whole; and the prospective employees and volunteers.

3.6.2 In particular, the Working Group believes that disclosure by An Garda Síochána to an organisation should occur only with the written consent of the individual applicant.

3.6.3 The Working Group also considers that an onus should be placed on each organisation in receipt of disclosed information from An Garda Síochána to:

- make use of the information only for the purposes for which it was sought; and
- maintain the confidentiality of information, in the interest of ensuring that the applicant's entitlement to privacy is not abused<sup>2</sup>.

### **3.7 Realising the Vision**

3.7.1 The Working Group has set out unambiguously how, as general principles, it would wish national vetting arrangements to operate. However, this vision is devoid of context, historical and otherwise.

3.7.2 Accordingly, due regard must first be had to how vetting arrangements currently operate, and this is examined in Section 4.

3.7.3 Thereafter, the Working Group will identify, by theme, how current arrangements fall short of its articulated vision and propose appropriate remedial action.

3.7.4 In particular, the Working Group has identified five thematic areas which require action before national vetting arrangements could be expected to reach the desired standard, as follows:

- legislation (Section 5);
- human, financial and other resources (Section 6);
- mechanisms of service delivery (Section 7);
- miscellaneous issues (Section 8); and
- non-Garda vetting (Section 9).

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<sup>2</sup> This, of necessity, requires that the employer/organisation in question maintains an adequate, documented records management policy.

## **Section 4: Current Arrangements – Garda Central Vetting Unit**

### **4.1 Historical Context**

4.1.1 The origins of maintaining a criminal registry stem from 19<sup>th</sup> Century legislation and the need to control the recidivist criminal, i.e., to monitor releases on licence and to provide for increased sentences for second or subsequent offences. The ingredients for what became known as the Habitual Criminal Registry evolved through various enabling legislations between 1869 and 1891, as well as through various regulations issued by the pre-independence Registrar of Criminals and the General Prisons Board. By 1922, the standard and ingredients for the Registry were well established.

4.1.2 With the foundation of the State, responsibility for maintaining the Habitual Criminal Register rested with the Minister for Justice. However, on 25 April, 1929, the management of this Register, later renamed the Dublin Criminal Register, was devolved to the Commissioner of An Garda Síochána.

4.1.3 Over time, further legislative developments occurred to expand this criminal register, primarily relating to ‘person identifiers’, such as the rules and procedures for the taking of palm prints from convicted and confined prisoners and for the taking of photographs, fingerprints and palm prints of suspects.

4.1.4 Until 1972, two major criminal records offices existed:

- Dublin Criminal Registry (1865 – 2004)
- Criminal Records Office, Dublin Castle (1800s – 1973)

The former was established and maintained in accordance with enabling legislation; the latter was established by the Dublin

Metropolitan Police, for which there does not appear to be any legislative basis. Following an internal Garda review in 1972, the two offices were amalgamated as the Garda Criminal Records Office (GCRO), which exists today.

## **4.2 Establishment of the Garda Central Vetting Unit**

4.2.1 In 1999, an internal Garda working group was established to review the GCRO and the vetting function within An Garda Síochána. Following the issue of its report in June 1999, an implementation team was established to bring forward an implementation plan for the establishment of a Garda Central Vetting Unit (GCVU) to cater for the growing demand for Garda vetting.

4.2.2 This implementation plan was presented in April 2000, and the GCVU commenced operations on the 2 January, 2002.

4.2.3 Upon establishment, the GCVU carried over the list from Crime and Security Division of An Garda Síochána and the principal vetting findings carried out at the GCRO. Since then, the GCVU has been operating according to a structured list of organisations that are qualified for vetting services.

## **4.3 Operation of the Garda Central Vetting Unit**

4.3.1 For vetting enquiries, the GCVU relies upon the Garda PULSE computer system. PULSE, which is an acronym for Police Using Leading Systems Effectively, is a suite of highly advanced information technology systems that employ the most up-to-date technologies to ensure that the Garda organisation has ready access to required information.

4.3.2 The GCVU undertakes the non-security vetting of prospective full-time employees<sup>3</sup> who would have substantial unsupervised access to children and vulnerable adults. This service is provided only to certain designated agencies.

4.3.3 It is important to state that since the establishment of the GCVU, no new agencies, with the exception of the newly structured Mental Health Commission, have been added to the list of designated agencies entitled to Garda vetting services.

4.3.4 In respect of 2003, more than 124,000 vetting applications were carried out, all free of charge to the clients, which was a significant increase on the more than 110,000 vetting applications processed in 2002.

#### **4.4 Resources of the Garda Central Vetting Unit**

4.4.1 The GCVU has a staffing allocation of 13 persons, as follows:

- 2 Garda Sergeants;
- 2 members of Garda rank;
- 1 Civil Service Staff Officer; and
- 8 Civil Service Clerical Officers.

4.4.2 The Unit shares accommodation with GCRO at the Garda Technical Bureau building. Under health and safety requirements, the Unit currently occupies the maximum available accommodation.

#### **4.5 Daily Vetting Working Strategy**

4.5.1 From Monday to Friday, the staff officer or sergeant-in-charge collects post from the Administration Office at 9.15 am each morning and at 2.00 pm each afternoon.

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<sup>3</sup> This specifically excludes prospective part-time employees, volunteers and students on placements who would have access to children and vulnerable adults.

4.5.2 All post is opened in the morning and the afternoon, respectively, and date stamped. Non-vetting post is distributed as appropriate.

4.5.3 In respect of vetting post, checks are made to ensure that:

- the organisation is a Health Board or other designated organisation and is entitled, therefore, to have the query processed;
- the application is signed by an authorised signatory;
- the reason for the vetting has been given;
- the declaration has been signed;
- the remainder details are free from obvious errors; and
- the full address and previous addresses are provided free from unexplained gaps.

4.5.4 A vetting request that fails any of the aforementioned requirements is returned to the organisation with a pro-forma letter attached outlining the reasons for return. Acceptable applications are counted and entered into a Daily Statistics Sheet.

4.5.5 All applications are entered daily on the Disclosure Management System (DMS) and given numbers. Letters are circulated to the Police Service of Northern Ireland (PSNI) and British police services requesting vetting to be carried out on Northern Ireland and British addresses. Interpol letters are issued for Scottish and Welsh addresses, and letters are issued for duplicate enquiries. When replies are received from the PSNI and British police services, these are checked and reconciled. When applications have progressed through the vetting process, they are marked off in the DMS. Three clerical officers are employed full time on this work.

## **4.6 Daily Vetting Workload**

4.6.1 On average, there are 200 envelopes to be opened, some of which involve multiple vetting requests. The correspondence is sorted into the various categories, usually equating to approximately 290 Health

Board/Miscellaneous applications and approximately 60 requests under Section 4 of the Data Protection Act 1988. After review, up to 40 applications are returned for a variety of reasons, ranging from lack of or incorrect information to failure to include an authorised signatory.

Daily Post					
No. of Letters Received	Health Board Applications	Data Protection Applications	Miscellaneous	Time Involved	Staff Involved
200	250	60	40	4 hours	2 COs

4.6.2 Moreover, an average of 46 applications are received each day by facsimile transmission, as follows:

Daily Facsimile			
PSNI & British Police Services	Crime & Security Division, An Garda Síochána	Post Office	Probation and Welfare Service
20	5	8	13

4.6.3 On average, the processing time for one Health Board application is 25 minutes, as follows:

Vetting of One Health Board Application					
Entered on DMS	Vetted	Completed on DMS	Signed & Checked by Sergeant in Charge	Envelope Written & Posted	TOTAL TIME
2 minutes	15 minutes	1 minute	3 minutes	4 minutes	25 minutes

4.6.4 If an application is received which has 1-2 British addresses that need to be checked, it may take 2-3 weeks for a reply to issue from the British police services. If an application has a Scottish or Welsh address, it has to be forwarded to Interpol, and it may take 2-3 months for a reply to be received. If the application has a Northern Ireland address, a reply is usually received the following day, but it may take up to one week. There are approximately 35 applications with non-national addresses received daily in the post.



4.6.5 Telephone enquiries take up a large amount of time each day, with all staff constantly dealing with queries from the PSNI, British police services, Garda stations, Health Boards and the public. On average, 110 telephone enquiries are received each day.

4.6.6 On average, the GCVU processes vetting requests in approximately 1-2 weeks, which is considered to be the minimum practical administrative time frame.

#### **4.7 Co-operation with Non-National Authorities**

4.7.1 Where a particular vetting application involves checks in respect of an address outside the jurisdiction, the GCVU is obliged to make contact with the appropriate non-national authorities, often via the good offices of Interpol.

4.7.2 Although the situation in relation to our nearest neighbours – Northern Ireland, England, Scotland and Wales – is well regularised due to the numbers involved, the situation further afield is complex. In this regard, the London Office of Interpol conducted research by means of questionnaire in 2002 into the sending of information requests of a non-criminal nature, such as vetting checks, to other Interpol offices. Some 77 of the 179 Interpol member states responded to the questionnaire, and a selection of responses is provided below.

Australia	Interpol will facilitate vetting checks.
Austria	Interpol cannot carry out vetting checks.
Belgium	Will perform vetting checks for police information only. Rogatory requests are required for conviction information.
Canada	Interpol will facilitate vetting checks on a reciprocal basis.
Denmark	Interpol cannot carry out vetting checks, but the Kriminalresisterat will do so.

France	Interpol cannot carry out vetting checks, but the Caster Judicaire National Automise will do so.
Germany	Interpol cannot carry out vetting checks, but the Federal Prosecutor General will do so.
Italy	Will perform vetting checks but cannot give details of positive results under privacy laws.
Luxembourg	Interpol will facilitate vetting checks.
New Zealand	Interpol will facilitate vetting checks, but a standard 'consent to disclosure of information' form must first be signed by the applicant so that information may be legally released.
Trinidad & Tobago	Interpol will facilitate vetting checks, provided they receive a name, date of birth, passport number, fingerprints and a fee of \$50.00.

In view of the large number of people who are or have been recruited in the Philippines for the Irish health care system, no response to the questionnaire was received by the London Office of Interpol from that jurisdiction, nor has any response been forthcoming from separate requests for information from the Dublin Office of Interpol.

4.7.3 It should be noted that many Interpol offices around the world have very limited resources, which can mean a long delay in receiving replies to vetting queries. Naturally, such poorly resourced Interpol offices will give priority to criminal cases.

4.7.4 In the case of Africa, for example, which has a population of 400 million and comprises 53 independent states, all of which are members of Interpol, its Interpol offices may experience extended power cuts and poor servicing of equipment, leaving them without communications for long periods of time. There are many Interpol offices outside Africa where similar problems are encountered, due in part to internal political problems and financial difficulties.

#### **4.8 Applicants for Careers in An Garda Síochána**

- 4.8.1 Enquiries are received regarding applicants for careers in An Garda Síochána. Approximately twice per week, 2-3 applications are received in the GCVU from Human Resource Management (HRM), but this figure is much larger during a recruitment campaign.
- 4.8.2 All details of the applicant and his/her family, which are contained on the completed application form, are checked for a criminal record. If either the applicant and/or one of his/her family has a previous conviction, a copy of the conviction is attached to the application form. All application forms are returned to HRM.
- 4.8.3 The vetting of one Garda applicant can take up to two hours, depending on the number of his/her relatives.

#### **4.9 Jury Lists**

- 4.9.1 A list of all persons called for service on a jury panel is received by the GCVU on a computer printout from the Courts Service. The list contains approximately 1,600 names, and each of these names must be checked for previous convictions. Lists are submitted for verification every 2-3 months.

#### **4.10 Data Protection Requests**

- 4.10.1 In addition to vetting requests, the GCVU is also responsible for processing requests pursuant to Section 4 of the Data Protection Act 1988.
- 4.10.2 On average, the Unit receives 60 data protection requests per day, and this number is increasing as a result of the legislative provisions enabling the checking of manual as well as electronic records.
- 4.10.3 Each data protection application is inputted on an electronic database by a supervisor to record the applicant's name and the amount of

money enclosed. Two clerical officers are employed full-time in examining these requests, and a typist is necessary to issue correspondence. Another clerical officer is employed daily in the vetting of these applications. Once a month, a staff officer and a clerical officer reconcile the accounts for the Central Bank. There is an average of 60 telephone queries relating to data protection to be dealt with daily. The processing of the daily quota of 60 applications takes approximately 130 hours in total.

4.10.4 Now that the Data Protection (Amendment) Act 2003 is law, it is envisaged that the GCVU will have to correspond with District and Divisional officers around the country seeking information to assist them in drafting a reply to the various applicants. This will have serious resource implications for the Unit in processing these requests.

4.10.5 To process applications for information within the statutory 40-day period poses a challenge which will be difficult to overcome with the current staffing levels.

4.10.6 The Working Group proposes that a Data Protection Processing Unit should be established separate to but working alongside the GCVU and GCRO. This would have the effect of:

- allowing a dedicated staff process data protection requests without having to drain the resources required to provide Garda vettings;
- combating the misconception that a document issued under the Data Protection Act is the same as a Garda vetting; and
- facilitating decision-making on the release of information, as each case will be determined by the sergeant in charge, in conjunction with senior management at the Garda Technical Bureau.

4.10.7 The staffing requirement suggested for this new Unit is as follows: 1 Garda Sergeant; 1 Garda; and 3 Civil Service Clerical Officers.

## **Section 5: Vetting and the Law**

### **5.1 Current Arrangements**

5.1.1 There is no statutory basis for vetting and, with the exception of some enabling legislation for the Dublin Criminal Registry (see Section 4.1), current Garda vetting arrangements are continued on an administrative basis only.

### **5.2 Need for Legislation**

5.2.1 In the context of the Working Group's stated vision for national vetting arrangements (Section 3) and having regard to the statutory and non-statutory developments in respect of criminal registries within An Garda Síochána (Section 4.1), the Working Group considers that legislation should be introduced to regularise the situation in relation to vetting.

5.2.2 In particular, the Working Group considers that the new legislation should provide for, at a minimum:

- (1) the maintenance of a National Criminal Records System within An Garda Síochána.**

The management of the statutory Habitual Criminal Registry (later renamed the Dublin Criminal Registry (DCR)) was devolved to An Garda Síochána in 1929. The DCR was amalgamated in 1973 with the administratively instituted Criminal Records Office (Dublin) to form the current Garda Criminal Records Office (GCRO). More recently, a Courts Outcomes System has been created for PULSE onto which is transferred the assigning of judicial decisions in criminal cases.

The establishment, on an administrative basis, of the Garda Central Vetting Unit (GCVU) in 2002 involves a clear working relationship between it and the GCRO, with some functions

interchangeable; accurate information on all systems is paramount.

The GCRO and GCVU together can be considered to constitute a *de facto* National Criminal History System. However, due to the gradual loss of statutory identity of the originating criminal registry, the current situation is statutorily opaque and requires corresponding statutory clarification.

Moreover, the precise role of this *de facto* National Criminal History System warrants statutory definition.

- (2) the disclosure of ‘hard’ and ‘soft’ facts according to a two-tiered system of vetting, to comprise a ‘special’ form of vetting applicable to posts involving substantial unsupervised access to children and vulnerable adults and a ‘standard’ form of vetting applicable to posts in the public service and other selected sectors.**
  
- (3) indemnification against disclosure.**

There is no legislation at present in relation to vetting and, consequently, there are no indemnity clauses for An Garda Síochána enshrined in legislation on the disclosure of information to third parties.

- (4) access to information about - and proof of - criminal convictions for the purpose of litigation.**

5.2.3 The Working Group has also identified some other statutory issues that may usefully be provided for in any new legislation orientated towards vetting. In the first instance, the Working Group considers that the Protection of Persons Reporting Child Abuse Act 1998 should be amended so as to offer protection for persons reporting the abuse of

vulnerable adults, such as those with certain mental or physical disabilities. Currently, the 1998 Act provides immunity from civil liability only to persons who report child abuse reasonably and in good faith.

5.2.4 The Working Group is also of the view that the Sex Offenders Act 2001 should be amended to require a convicted sex offender to inform a prospective employer of his/her conviction when applying for a position involving unsupervised access to people with a physical disability. Currently, Part IV of the 2001 Act only requires a convicted sex offender to inform a prospective employer of their conviction when applying for a position involving unsupervised access to children or people with a mental impairment.

5.2.5 The Working Group further notes that there are now movements towards introducing a 'clean slate' policy (sometimes referred to as a 'spent convictions' policy) in respect of old convictions, in certain circumstances and for convictions falling outside a definite time period<sup>4</sup>. This would have significant implications for the weeding of the PULSE system, as well as for the GCRO and the GCVU. Accordingly, should such movements develop into definite policy decisions by Government, the Working Group considers that any new vetting legislation may usefully incorporate their implications, as appropriate.

5.2.6 In conclusion, the Working Group believes that the current administrative vetting process is no longer adequate to meet the demands being placed upon it. Among the required remedial measures, there is a clear need to place the Garda vetting process on a legislative footing, while giving it an ambit that would be sufficiently broad so as to incorporate not only where information could be supplied, but also when, in which circumstances and to whom.

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<sup>4</sup> Section 258 of the Children Act 2001 is a case of a clean slate policy in respect of young offenders.

5.2.7 The Working Group also notes that our neighbouring jurisdictions have afforded the vetting/disclosure process full legal support. In the context of strengthening partnerships within the European Union<sup>5</sup> and a deepening of relationships with Northern Ireland<sup>6</sup>, it is important that Ireland adopts common best practices in the protection of children and vulnerable adults, having regard to the known movement of workers between jurisdictions. Only in this manner can we ensure the greatest possible consistency and complementarity between jurisdictions.

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<sup>5</sup> The establishment of an EU Criminal Records Database is under active consideration, arising from discussions at the Tampere European Council Meeting on 15-16 October, 1999.

<sup>6</sup> In 2000, the North-South Ministerial Council agreed on proposals to provide structures through which persons who are a risk to the safety of children can be prevented from being employed in schools, including proposals on the establishment on a statutory basis of a registry for persons who are considered unsafe to work with children.



## **Section 6: Capacity Constraints on the Garda Central Vetting Unit**

### **6.1 Human Resources**

- 6.1.1 The current arrangements that pertain within the Garda Central Vetting Unit (GCVU) are outlined in Section 4. With a staffing complement of 13 persons in total, the GCVU processed more than 132,000 vetting and data protection requests in 2003.
- 6.1.2 The Working Group considers that this level of processing represents the approximate maximum capacity of the GCVU with its current level of human resources.
- 6.1.3 Should the availability of the services of the GCVU be extended in accordance with the Working Group's vision for national vetting arrangements (Section 3), it is clear that a significant additional burden of work will fall upon the GCVU.
- 6.1.4 Unfortunately, however, it has not proved possible to determine the implications of such an expansion in services in quantitative terms, primarily because clarity cannot be achieved as to either the number of organisations which would – and should – avail of the services of the GCVU or the number of individual vetting applications which could be expected from each such organisation. In this regard, it should be noted that under the proposed national vetting arrangements, all persons with substantial unsupervised access to children and vulnerable adults, whether they are full-time or part-time workers, volunteers or students on placements, would require vetting.
- 6.1.5 The Working Group considers that a doubling in the number of requests now being accepted at the GCVU will give strong indicators as the real demand and the realisation of its users of national vetting arrangements. Accordingly, the Working Group recommends that the

addition of a further four Civil Service Clerical Officers to the staffing complement of the GCVU is a minimum requirement but that the adequacy of this augmentation be evaluated after 6 months.

6.1.6 With an expanded service, the Working Group also considers that a new post at Garda Inspector rank be considered. The Working Group notes that this was previously recommended by the internal Garda working group established to review the Garda Criminal Records Office (GCRO) and the vetting function within An Garda Síochána (see Section 4.2). The function of the Garda Inspector would be to ensure the effective management of both GCRO and the GCVU, as well as of the proposed Data Protection Processing Unit (DPPU).

## **6.2 Accommodation**

6.2.1 The current accommodation of the GCVU is shared with the Garda Central Records Office at the Garda Technical Bureau building and is operating to its maximum occupancy. If the availability of the services of the GCVU is to be extended and its human resources augmented accordingly, health and safety issues arise. Specifically, any additional staff members and their associated information technology supports could not be accommodated in the current work area.

6.2.2 Accordingly, the Working Group recommends that the accommodation requirements of the GCVU be audited in the context of an augmentation of human resources to ensure that its future operational needs are met.

## **6.3 Hours of Operation**

6.3.1 The GCVU currently operates from 9.15 am to 5.15 pm Monday to Friday. Given the large volume of written work received by the GCVU, the constant daily telephone traffic introduces a disproportionately disruption to processing tasks.

- 6.3.2 Moreover, as the GCVU is entirely reliant upon PULSE technology for enquiries, any performance issues with the system in terms of response times result in corresponding delays in the processing of vetting applications. In this regard, the Working Group notes that the GCVU is the single largest user of 'context searches' on PULSE, and this requirement places a particularly heavy burden on the system during the day.
- 6.3.3 To enhance the professional delivery of service, the Working Group recommends that a two-tier shift system should be introduced within the GCVU, with one shift operating from 7.00 am to 3.00 pm and the other operating from 3.00 pm to 11.00 pm.
- 6.3.4 Such an arrangement would mean that, outside of normal office hours, telephone traffic would be considerably reduced, thereby promoting the efficient processing of paperwork. Moreover, outside of peak telephone query times and outside normal office hours, the use of PULSE could be maximised at a time when demand would be more beneficial to operational needs, i.e., there is less general demand on PULSE in the evenings, with commensurate benefits for system performance.
- 6.3.5 The Working Group recognises that the introduction of such a two-tier shift system would require consultation with the relevant staff associations and staff unions.

## **Section 7: Challenges to Service Delivery**

### **7.1 Fee Charging**

7.1.1 With current arrangements, the processing of more than 100,000 applications free of charge has an enormous cost implication for the Garda Central Vetting Unit (GCVU). In particular, to keep up with the constant demand and to ensure a quick turnaround, the expenditure of overtime has had a negative impact upon defined budgets.

7.1.2 Moreover, the Working Group notes that providing the service free of charge introduces a certain lack of discrimination on behalf of clients. For example, the GCVU is aware of situations whereby prospective employers have made block vetting applications in cases where only one to two posts are available, i.e., no attempt is made to narrow the requirement for vetting to those short listed or those most likely to be offered employment.

7.1.3 Furthermore, the Working Group recognises that the GCVU is providing a free service to State, Semi-State and private, profit-making enterprises. All these groupings operate within defined budgets, as the GCVU must.

7.1.4 Accordingly, the Working Group recommends that a fee be charged in respect of the vetting services of the GCVU in order to introduce an element of self-financing, reduce or eliminate undesirable practices by clients and allow overtime savings to be transferred to the front-line delivery of service. The Working Group notes that the introduction of a fee for vetting is in line with existing practices in England, Wales and Scotland (but not Northern Ireland).

7.1.5 In assigning a fee for the vetting service, it is the view of the majority of the Working Group that the fixed charge should encompass all client groups, e.g., statutory, voluntary, community and charitable. However,

the members of the Working Group representing the Department of Health and Children and the Department of Education and Science expressed the view that charging a fee for vetting would be inappropriate for certain organisations and could result ultimately in a charge to the State. It was suggested by these representatives that a line of distinction should be drawn between commercial organisations and non-profit making bodies.

7.1.6 In the case of block applications from public bodies, such as jury vetting from the Courts Service or character vetting in respect of applicants for public appointment, the Working Group considers that it may not be administratively practical to affix a single fee to each vet. However, in such cases, there could be an agreed cross-transfer between Votes of fixed charge annually for the vetting service.

7.1.7 The Working Group considers that it would be a matter of policy solely for the client organisations themselves whether they would wish to request the applicant to reimburse them for the cost of vetting.

7.1.8 In attempting to determine the appropriate level of fee applicable for a vetting request, the Working Group identified the charges imposed for a range of document-type services already provided by State agencies, as follows:

Driving Licence (1 Year)	€5.00
Data Protection Application	€6.35
Birth Certificate (Long)	€6.98
Birth Certificate	€6.98
Marriage Certificate (Long)	€6.98
Dog Licence	€12.70
Freedom of Information Application	€15.00 <sup>7</sup>
Casual Trading Permit	€63.49

<sup>7</sup> Relates to non-personal information only, and a reduced fee of €10.00 is applicable in respect of medical card holders.

Special Exemption Order €145.00<sup>8</sup>

7.1.9 In terms of international experience, the following fees are charged in respect of a single vet in our neighbouring jurisdictions:

England & Wales	=	Stg£10.00 <sup>9</sup>
Northern Ireland	=	Free of Charge
Scotland	=	Stg£13.50

7.1.10 As a measure of revenue generated if specified fixed charged were affixed on the turnover for 2003, the following would have resulted:

€10.00 Fee x 124, 457	=	€1,244,570
€15.00 Fee x 124, 457	=	€1,866,855
€20.00 Fee x 124, 457	=	€2,489.140
€25.00 Fee x 124, 457	=	€3,111,425

7.1.11 Having regard to the costs of operation of the GCVU, the Working Group recommends that a fee of €20.00 be charged for each vet from all organisations and individuals who avail of An Garda Síochána's vetting service.

## **7.2 Register of Organisations**

7.2.1 Within current arrangements, the GCVU does not operate according to an assigned 'register' of clients. Rather, the current list of designated agencies operated by the GCVU is the result of ad hoc understandings.

7.2.2 Such a register would benefit the GCVU by, *inter alia*, providing a means of cross referencing and verifying all submitted applications for the assigned signatories and of ensuring that only applications from registered organisations and assigned signatories would be processed.

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<sup>8</sup> One night - closing time to 2.30 am.

<sup>9</sup> In the case of volunteers applying for standard and enhanced disclosures, the fee payment is waived.

7.2.3 The Working Group recommends that the GCVU establish such a comprehensive register of organisations which are entitled to avail of Garda vetting services, having regard to the vision of national vetting arrangements set out in Section 3. Only those organisations registered with the GCVU, excluding individual applicants from within or outside the jurisdiction, would be allowed to avail of the services of the GCVU.

7.2.4 For those organisations so entitled, the Working Group recommends that registration should comprise the forwarding, in an agreed format, of the following particulars:

- full name/title or organisation;
- full postal address of organisation;
- telephone, fax and e-mail contact details;
- name of chief executive officer, chairperson or head of Department, etc., who would act as the central office for processing all vetting applications in respect of that organisation; and
- nominated lead countersignatory and nominated deputy lead countersignatory.

The onus, of course, would be on registered organisation to promptly notify the GCVU of changes in any of the above-mentioned particulars. Failure to do so would result in the vetting application being returned to the applicant organisation unprocessed.

7.2.6 Moreover, organisations so registered will be obliged to ensure that, prior to forwarding the vetting request, the organisation is fully satisfied as to the identity of the applicant and the information supplied. The registered organisation will also be obliged to ensure that the applicant fee(s) is attached to the application.

7.2.7 The Working Group is of the view that by registering, the organisation would demonstrate its commitment and responsibility to those working with children and vulnerable adults. Moreover, the registered

organisation will be able to control the use, access and security of the vetting disclosure.

### **7.3 Central Contact Point**

7.3.1 The GCVU currently deals with client organisations of its service on both a formal and informal contact basis. To ensure a more professional service, the Working Group has identified a need to structure a single, central contact point for the forwarding of vetting applications to the GCVU from each of the client organisations.

7.3.2 The advantages of such a single, central contact point would be;

- enhanced quality control of the applications by the client organisation, with verification of the applicant's particulars, including photographic identification;
- the submission of applications in batches on a weekly, fortnightly or monthly basis;
- the streamlining of administrative processes within the GCVU arising from the uniform approach taken by each client organisation; and
- enhanced quality control within the GCVU arising from the receipt of the original signed application for vetting from each client organisation.

In essence, the creation of a single, central contact point to the GCVU would greatly enhance the operational efficiency of the vetting process.

7.3.3 The Working Group recommends that only vetting applications received from the single, central contact point of a client organisation should be processed. The Working Group further recommends this understanding should form part of the conditions of the registration process, as outlined in Section 7.2, and that the single, central contact point should be nominated at the time of registering.



7.3.4 By way of example, all vetting applications from a Health Board or hospital in a health administrative area could be processed through one central office in that area, at which the prospective employees' applications could be duly examined for quality content. Moreover, at this office, the prospective employees could sign the vetting application form and have it witnessed by an appropriate signatory designated within that office. In the wake of new structures within the health service, all vetting applications from designated agencies in the health administration area could be processed within that health area.

7.3.5 Similarly, with agreement, the Working Group suggests that the following arrangements could apply in respect of categories of prospective employees and volunteers:

Teacher	-	Board of Management to GCVU.
Agency Nurse	-	Nursing Agency to GCVU.
Airport Employee	-	Human Resource Department, Airport Authority, to GCVU.
Juror	-	Courts Service Central Office to GCVU
Crèche Worker	-	Crèche Owner to GCVU.
FÁS Trainee	-	FÁS Human Resource Department to GCVU.
Youth Worker	-	Youth Organisation Head Office to GCVU.
Charitable Organisation	-	Organisation's Head Office to GCVU.

7.3.6 In respect of vetting applications from individuals, as distinct from organisations, for positions at third level colleges or for certain employment in other jurisdictions, the Working Group suggests that the applications should be countersigned by the head of the prospective college or non-national employer.

## **7.4 Standardisation of Documentation**

7.4.1 Research has been carried out into the kinds of forms used for vetting purposes in other countries. The Working Group found that there is considerable variation in quality between jurisdictions, with some lacking the capacity to extract quality information to assist the vetting process.

7.4.2 Among the better-quality forms, the Working Group identified a number of similarities, namely:

- declarations of past criminal convictions;
- penalties for the provision of false information; and
- authorisation to disclose.

7.4.3 The Working Group concluded that the Disclosure Application Form used by *Disclosure Scotland* appears to be the most comprehensive form currently in use in common law countries.

7.4.4 Accordingly, the Working Group recommends that the vetting application form currently in use by the GCVU be augmented to incorporate the additional, positive features of *Disclosure Scotland's* Disclosure Application Form.

7.4.5 As part of this process of improvement and standardisation, the Working Group also recommends that each Garda vetting letter should include the words '*The information supplied is based upon information available to An Garda Síochána at the time the vetting is carried out and makes no recommendation in respect of the applicant's suitability for appointment to the position sought.*

## **7.5 Data Protection Requests**

- 7.5.1 The Working Group considers it appropriate to mention the use – or misuse – of the Data Protection Act 1988 as a vehicle to vet prospective employees.
- 7.5.2 Section 4 of the 1988 Act provides for data controllers to supply copies of personal data to persons upon written request. Until recently, a practice had developed whereby some employers not entitled to avail of Garda vetting services obligated prospective employees to make such requests for personal data to An Garda Síochána for details of any previous convictions, with an instruction that the results of the requests should be forwarded directly to the employers.
- 7.5.3 This practice was referred to by the then Data Protection Commissioner as ‘enforced subject access’. In November 1998, the Data Protection Commissioner outlined his concerns at the widespread use of this practice by employers and stated that it was ‘against the spirit of the Act’. He advised An Garda Síochána that it should cease supplying details in such cases.
- 7.5.4 However, employers, conscious of this advice, subsequently changed the approach of requesting that the results of the Section 4 requests be sent directly to them. Instead, prospective employees are being advised simply to make a Section 4 request without indication of their purpose. In such circumstances, it will not be possible for An Garda Síochána to refuse such requests.
- 7.5.5 Section 5 of the Data Protection (Amendment) Act 2003 amends the 1988 Act to make it an offence for an employer to require a prospective employee to make such an enforced access request, although this section has not yet been commenced.

7.5.6 The number of applications received under the Data Protection Act has increased due to an abuse of the system, as employers outside the designated groups are advising prospective applicants to make requests under the Act and produce it to them as a quasi police certificate of character.

<b>No. of Requests under Section 4, Data Protection Act 1988-2003</b>	
Year	Number
1999	800
2000	1898
2001	3176
2002	6687
2003	8315

## **Section 8: Miscellaneous Issues**

### **8.1 Linkage between An Garda Síochána and Courts Service**

- 8.1.1 Currently, court decisions are transferred manually onto the PULSE 'Court Outcomes System' by members of the Garda Síochána in attendance in court.
- 8.1.2 The cornerstone of vetting is the quality of the information available to address applications for vetting. Human error may occur in the manual transfer of court decisions onto the PULSE platform, which could negatively affect the availability of quality information. Although the current system works well, the electronic transfer of court data from the court of decision is the ultimate best practice.
- 8.1.3 In view of the significant investment in information technology within both the Garda Síochána and the Courts Service in recent years, the Working Group considers that a greater degree of integration is required to facilitate the online transfer of court decisions.
- 8.1.4 The Working Group acknowledges preliminary progress in this regard. In June 2003, it was agreed that the Courts Service would provide the Garda Criminal Records Office (GCRO) with a hard copy of all conviction details for the Dublin Metropolitan Region courts for the period January 2003 to December 2003. Once supplied, the conviction details can be validated by GCRO against data on PULSE. Where anomalies are detected, the relevant records are returned to the appropriate Garda Divisions for the member in question to update PULSE accordingly.
- 8.1.5 Moreover, as part of PULSE Quality Control, the Courts Service agreed to provide GCRO with a computerised list of court outcome results for the Dublin Metropolitan Region charge courts, commencing with the period 1 January to 31 March, 2003, for validation on PULSE.

8.1.6 Nevertheless, the Working Group notes that the electronic transfer of court outcomes from the Courts Service to An Garda Síochána will not be operational until, at the earliest, late 2006. The Working Group recommends that every effort is made to expedite this development.

## **8.2 Jury Service**

8.2.1 The Juries Act 1976 sets out the legal principles governing jury service and, in particular, the liability, qualification and disqualification, excusal and ineligibility for jury service. The legislation also sets out the sanctions applicable to a range of breaches of the Act, including:

- a fine of up to €63.49 for service on a jury knowing that s/he is ineligible;
- a fine of up to €235.95 for service on a jury knowing that s/he is disqualified; and
- a fine of up to €63.49 for giving false or misleading answers to question put to the presiding judge in relation to qualification for jury service.

8.2.2 Currently, more than 25 per cent of the activities of the Garda Central Vetting Unit (GCVU) is devoted to the vetting of jury lists.

8.2.3 The current processing procedure involves the court forwarding a jury summons to the prospective juror, allowing a detachment to be returned to the Courts Service on the issue of qualification/excusal from jury service. This form, Form J.2, does not contain any requirement for the inclusion of a date of birth, and this adversely impacts upon the capacity of the GCVU to vet in a professional and thorough manner.

8.2.4 To provide an example, in a scenario where a father and son with the same name reside at the same address, the GCVU may determine that a conviction is recorded against the name, both first and surname, but

it is not possible to distinguish between the two persons. As can be seen, the absence of a date of birth is placing the disclosure of the conviction at a very high risk.

8.2.5 As there is no legislation in the 1976 Act to include a date of birth, the Working Group recommends that the relevant Court Service form, Form J.2, be revised to include a requirement to affix a date of birth by the prospective juror.

8.2.6 The Working Group also notes that the vetting of prospective jurors does not occur uniformly across the jurisdiction, as follows:

- Cork - Jury vetting undertaken.
- Limerick - Jury vetting commenced since the assignment of the Central Criminal Court for murder trials to the city in 2003.
- Galway - Jury vetting undertaken with a short time frame for processing provided.
- Waterford - Jury vetting undertaken.
- Portlaoise - Jury vetting not undertaken.
- Sligo - Jury vetting not undertaken.

Accordingly, the Working Group recommends that the Court Service be formally requested by the Garda authorities to standardise the practice of jury vetting across the jurisdiction.

### **8.3 Unsuccessful Applicants**

8.3.1 Situations can clearly be foreseen where applicants for employment or voluntary posts are vetted but are subsequently not offered or do not accept the available posts. The question arises as to what is to be done with the vetting details of the unsuccessful or uninterested applicant.

8.3.2 The Working Group considers that, in such cases, the employing organisation should destroy the vetting details obtained in respect of the unsuccessful or uninterested applicant following the filling of the vacancy by another, as there is no reason why the vetting details should be maintained. According to best practice alone, destruction would promote a professional recruitment and selection procedure.



## **Section 9: Non-Garda Vetting**

### **9.1 Non-Police Vetting**

- 9.1.1 Although its terms of reference provide only that the Working Group addresses the development of Garda vetting arrangements, the Working Group considers that it should make reference to the potential benefits accruing from vetting performed beyond the scope of the criminal justice system, in the interest of promoting the safety and welfare of children and vulnerable adults.
- 9.1.2 In some jurisdictions, non-police, employment-related vetting can be carried to determine whether a person applying for a position involving substantial unsupervised access to children and vulnerable adults has been previously dismissed, suspended, moved or made redundant from posts for harming children or vulnerable adults.
- 9.1.3 The clear advantage is that in cases where incidents of concern arise which are not referred to police services or other criminal justice authorities, employment-related vetting facilities provide an added source of relevant information upon which prospective employers can make informed decisions on recruitment and selection, subject to legal provisions.

### **9.2 Situation in Northern Ireland**

- 9.2.1 The arrangements that pertain in Northern Ireland provide a good example of how non-police vetting services may enhance the safety of vulnerable persons.
- 9.2.2 In Northern Ireland, when a person applies for employment that involves substantial unsupervised access to children or vulnerable adults and if the prospective employer is registered with the Department of Health, Social Services and Public Safety (DHSSPS),

that person will be vetted according to the so-called Pre-Employment Consultancy Service (PECS).

9.2.3 The PECS system provides a means for accessing relevant information on the DHSSPC register, known as the PECS Register, as well as on information on the Department of Education register, known as List 99. These two registers offer employment-related vetting in relation to the health and education sectors, respectively.

9.2.4 Access to the PECS system was extended in 2002 to statutory and voluntary organisations in this jurisdiction that wish to vet prospective employees and volunteers who have lived or worked in Northern Ireland.

9.2.5 Although the PECS system, as with all vetting systems, has natural limitations, it nevertheless constitutes an additional safeguard against unsuitability persons gaining positions of trust with the vulnerable.

### **9.3 Non-Garda Vetting in the Health and Education Sectors**

9.3.1 There is no mechanism in this jurisdiction for alerting prospective employers or organisations of persons with relevant employment history. The Working Group considers that there is merit in the introduction of such non-police vetting procedures in this jurisdiction.

9.3.2 By the nature of employment history registers, information contained therein will likely not have come to the attention of the police services, nor is it considered appropriate that police services should retain information on persons that does not constitute either criminal conviction information or criminal intelligence.

9.3.3 Accordingly, the Working Group recommends that the appropriate authorities in this jurisdiction, namely, the Department of Health and Children and the Department of Education and Science, could give

consideration to the development of employment history registers, akin to the PECS system in Northern Ireland, as a means of further promoting the safety of children and vulnerable adults.

- 9.3.4 Should the appropriate authorities consider it desirable and feasible to development such registers, the Working Group further recommends that their development be carried out in consultation with the Garda authorities.