



## **Response of the Law Society of Ireland**

**to**

### **Request from Department of Justice for observations regarding CPT recommendation on right of access to a solicitor**

#### **Request**

As advised by the Department, the Recommendation from the CPT is as follows:

‘The CPT recommends that the Irish authorities place the current practice of the right of access to a lawyer, as set out above, on a statutory basis. It would also welcome any comments by the Law Society or An Garda Síochána regarding detained persons’ effective access to a lawyer, notably in more remote rural areas’

The Department has sought any observations on this question that the Law Society may have, in addition to any comments on detained persons’ effective access to a lawyer, notably in more remote rural areas, would be particularly appreciated.

At the outset, the Society would like to note that it does not have access to the Report arising from the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Ireland in 2019. Therefore these observations are being provided purely within the context of the limited information provided by the Department.

#### **Observations**

The Law Society has repeatedly called for equal access to legal advice for suspects in Garda detention. The Society has been a long-term advocate for reform in the area of detainee rights, and has sought to identify and resolve areas of improvement in the system. As part of its 2015 submission to the Government’s *Review of the Garda Station Legal Advice Revised Scheme*, the Law Society outlined a number of key recommendations, including:

- Ensuring equal and unrestricted access for everyone to vital legal advice during detention by removing the financial threshold at which people become eligible for free legal advice during detention – it is likely the reason people are not availing of

solicitors during interviews is because they can't afford it and yet they are also not eligible for legal aid.

In its 2018 submission, '[Law Society of Ireland Proposals for the Fifth Programme of Law Reform](#)', the Society recommended that the 5th Programme explore the adequacy of current mechanisms for the facilitation of the role of solicitors in Garda stations by evaluating whether the basis upon which solicitors attend Garda stations to provide legal advice and attend interrogations should be placed on a statutory footing. It advised that solicitors play a vital role in overseeing Garda powers of detention by challenging, when necessary, actions which directly encroach upon a citizen's right to liberty or silence. A detainee in a Garda station is in a position of considerable vulnerability. Access to a solicitor presents the opportunity for this vulnerability to be tempered slightly by a professional who can advocate for detainees' legal, constitutional and human rights.

As it currently stands, the [Criminal Justice Act 1984](#) requires Gardaí to inform a person who is detained that they are entitled to consult with a solicitor. However, that is as far as the statutory obligation on Gardaí goes. This ignores the reality of the dynamic of investigation during the detention and interrogation process. If the solicitor cannot rely on statutory requirements then preference will always be given to the requirements of investigation over the rights or needs of a client. The [Criminal Justice Act 2011](#), which has yet to be fully implemented, states that a detained person shall not only be informed of their right to consult a solicitor, but that person also has the right to consult with a solicitor before questioning starts.

In addition, people who are arrested and detained on arrival into the country under section 12 of the [Immigration Act 2004](#) as amended by the Civil Law (Miscellaneous Provisions) Act 2011 are not entitled to legal advice or representation through the Garda Station Legal Aid Revised Scheme. Upon arrival in the State, international protection applicants and immigrants are particularly vulnerable as often they are not aware of their rights and fear deportation/risk of detention. Access to a solicitor would ensure, in these circumstances, rights to liberty and the ability to apply for international protection if required.

For those persons detained in more remote rural areas, access to a solicitor can be even more challenging. The Society has previously expressed its concern over the viability of the current criminal legal aid fees and that the resilience and integrity of the criminal legal aid system is being threatened due to longstanding and continued reductions in rates. The increased complexity in criminal law practice makes such rates uneconomical and results in practitioners leaving criminal law for other disciplines that provide a more attractive work-life balance and a more financially viable practice. This may particularly impact on the provision of criminal legal aid in rural areas where solicitors tend to provide services across a range of issues and cannot specialise in criminal law. As a result, detainees may face significant difficulties in sourcing a suitably experienced solicitor to attend during interview.