

**The Experiences of Criminal Defence Solicitors
in Garda Stations during Covid 19**

-
March to May 2020



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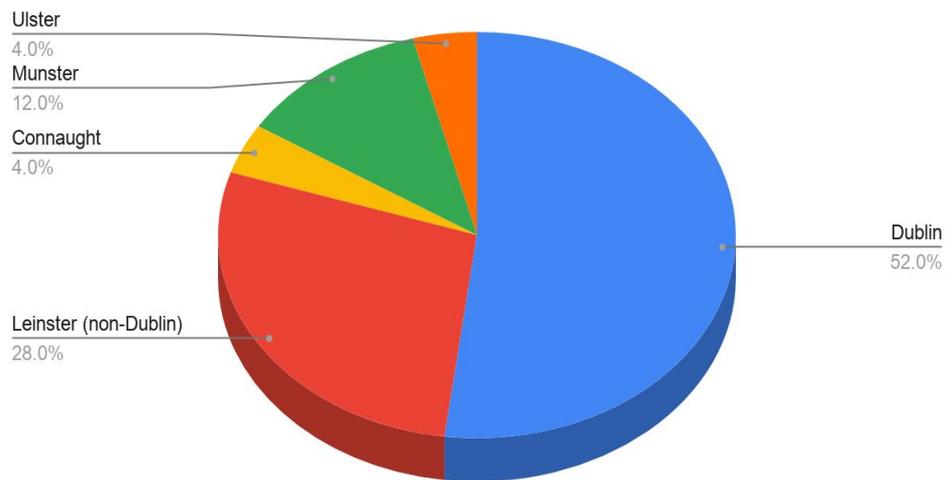
1 Introduction

From the 1st to the 13th of May 2020, Shalom Binchy Solicitors hosted an online survey asking colleague defence solicitors about their recent experiences of providing legal advice to suspects detained in Garda Stations during the initial stage of the Covid 19 public health emergency.

The findings of the survey are based on the responses of the twenty five respondents nationwide. The findings are qualitative in nature and provide a narrative snapshot of recent experiences of criminal defence solicitors in the early days of this Covid 19 Public Health Emergency.

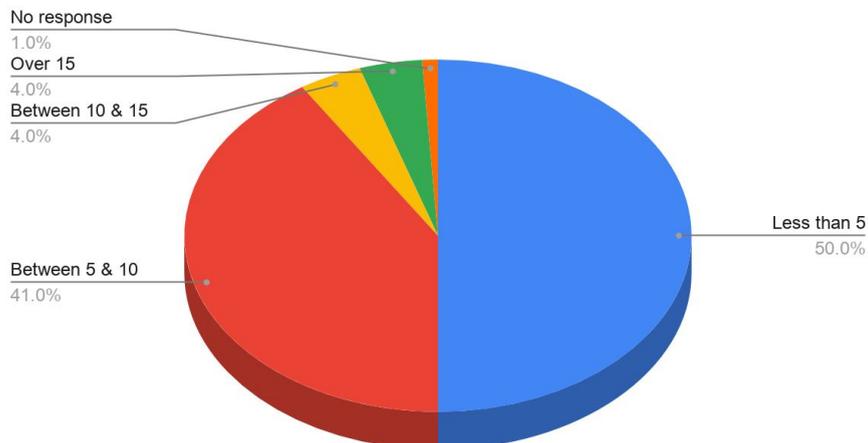
2 Geographic Response to Survey

The responses were provided by colleague solicitors nationwide. The below graph shows the geographic range of the participants.



3 Frequency of Attendance at Garda Stations

The following graph provides a picture of the number of times the participant solicitors attended at Garda Stations since the commencement of the Covid 19 Public Health Emergency.



4 **The Legal Framework**

There is no detailed statutory framework in place to facilitate the right of persons detained for questioning by An Garda Síochána to have a solicitor of their choice present during interviews. In May 2014, the DPP permitted solicitors to be present to advise during questioning when so requested by the suspect.

a) Case Law of the European Court of Human Rights

In 2019, the European Court of Human Rights made it clear in *DOYLE v. IRELAND* (Application no. 51979/17), as it had in other previous cases (see *Salduz v Turkey* (2008) ECHR 1542, *Dayanan v Turkey* (2009) ECHR 2278, *Beuze v Belgium* App no 71409/10 (ECtHR, 09 November 2018)), that the right of access to legal advice at Garda stations is part of the right to a fair trial, protected under Article 6 of the European Convention on Human Rights. We refer in particular to the following paragraphs (full judgement available at Application no. [51979/17](#)).

67. The right of everyone “charged with a criminal offence” to be effectively defended by a lawyer, guaranteed by Article 6 § 3 (c), is one of the fundamental features of a fair trial (see Salduz cited above, § 51).

74. First, suspects must be able to enter into contact with a lawyer from the time when they are taken into custody. It must therefore be possible for a suspect to consult with his or her lawyer prior to an interview, or even where there is no interview (see Beuze, cited above, §§ 124 and 133 and Simeonovi, cited above, §§ 111, 114 and 121). The lawyer must be able to confer with his or her client in private and receive confidential instructions.

Second, suspects have the right for their lawyer to be physically present during their initial police interviews and whenever they are questioned in the subsequent pre-trial proceedings. Such physical presence must enable the lawyer to provide assistance that is effective and practical rather than merely abstract, and in particular to ensure that the defence rights of the interviewed suspect are not prejudiced (see Beuze, cited above, §§ 132-134 and Soytemiz v. Turkey, no. [57837/09](#), §§ 43-46, 27 November 2018).

Third, one of the lawyer’s main tasks at the police custody and investigation stages is to ensure respect for the right of an accused not to incriminate himself and for his right to remain silent (see Salduz, cited above, § 54, Beuze, cited above, § 128, with further references, and Soytemiz v. Turkey, no. [57837/09](#), §§ 43-46, 27 November 2018).

b) The Law Society Of Ireland Guidance for Solicitors Providing Legal Services in Garda Stations December 2015: [Guidance for Solicitors Providing Legal Services in Garda Stations](#)

c) An Garda Síochána Code of Practice on Access to a Solicitor by Persons in Garda Custody December 2015
<https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Code-of-Practice-on-Access-to-a-Solicitor-by-Persons-in-Garda-Custody.pdf>

5 Key Findings of the Survey

The survey asked 9 questions:

1. Please detail any positive experiences you have had in advising a suspect or attending interviews at Garda Stations since Covid-19 restrictions were put in place.
2. Please detail any negative experiences you have had in advising a suspect or attending interviews at Garda Stations since Covid-19 restrictions were put in place.
3. How have you received disclosure from An Garda Síochána remotely? Any Issues?
4. Have you used video-link to advise your client before and after the interview?
5. Have you used video-link to advise during the course of the interview?
6. Have you used the telephone to advise during the course of the interview?
7. Did the Garda Station provide protective measures, such as masks, hand sanitiser, protective screens etc?
8. Have you used any particular techniques to assist in communicating with your client remotely, in terms of building trust, establishing rapport and so on?
9. Do you have any suggestions to improve the quality of consultations with your client and attendances in Garda stations in the context of Covid-19 restrictions

Questions 1 and 2: Review of some of the Positive and Negative Experiences of Criminal Defence Solicitors in Garda Stations.

Positive	Negative
<ul style="list-style-type: none"> ● Efforts made by An Garda Síochána to comply with Social Distancing Guidelines including changes to seating arrangements. ● Urgent arrests only. ● Hand sanitiser provided and gloves provided. ● Gardai wore face masks and gloves. ● Large rooms provided for consultations and interviews. ● Perspex screen between Garda and suspect. ● Time provided to have a lengthy telephone consultation. ● Interview and detention process focused and shorter. 	<ul style="list-style-type: none"> ● No Social Distancing being practiced. ● No ventilation. Air circulating heater in use. ● Non-urgent arrests being carried out. ● No PPE. Solicitor told to bring their own. ● No PPE used by Gardai or suspect. Solicitor only person in the room using masks and gloves. ● Perspex screen too small and ineffective. Screen between one garda and detainee only. ● Lack of space to provide safe and confidential advice. ● No Pre-interview medical check in respect of Covid 19. ● Gardai encouraging suspects to ring another solicitor who will attend at the Garda Station.

Question 3: Have you received disclosure remotely from An Garda Síochána?

While some Gardaí are furnishing disclosure by email, overall the survey showed little or no change in the furnishing of disclosure in advance of the interview since this health emergency began. The furnishing of disclosure as shown in the survey is inconsistent.

Questions 4 and 5: Have you used video-link to advise your client before and after the interview? Have you used video-link to advise during the course of the interview?

Videolink was not used by any of the respondents to consult or advise during the interview. It was not available when requested.

Question 6: Have you used the telephone to advise during the course of an interview?

Telephone advice was not used by any of the respondents to advise on a contemporaneous basis during the interview. It was not available when requested.

The survey shows that suspects had access to telephone legal advice with solicitors before the interview. Suspects have also been permitted calls to consult with their solicitors in circumstances where they appear to be permitted a call from outside the interview room. The interview is suspended for this period. Concerns have been raised as to whether the suspect was able to consult confidentially with their solicitor as often this phone is located in the custody area and does not facilitate confidentiality.

Question 7: Did the Garda Station provide protective measures, such as masks, hand sanitiser, protective screens etc?

The overall finding of the survey was that the provision of protective equipment and the implementation of protective measures such as social distancing was unpredictable.

Positives

- Large rooms were used for both consultation and interview in a few cases.
- Hand-sanitiser was provided by a number of stations but not all.
- Gloves were made available in a very small number of cases.
- Chairs, including the fixed chair for the suspect, were moved to attempt to comply with the 2 metre guidelines in some cases.
- Interview room was sanitised in one case.
- New glass screen installed at reception area in one case.

Negatives

- No screen between solicitor and suspect and/or solicitor and Garda.
- Masks were worn by only one party in a small number of cases.
- Use of small interview rooms
- Furniture not arranged to facilitate social distancing.
- Electric air heater used during the course of one interview
- An indoor identification parade was proposed by AGS in one case.

Question 8: Have you used any particular techniques to assist in communicating with your client remotely, in terms of building trust, establishing rapport and so on?

The survey did not make any significant findings in this category.

Question 9: Do you have any suggestions to improve the quality of client consultations and attendance at Garda Stations in the context of Covid19 restrictions?

The respondents suggested the following improvements:

- The use of larger rooms and better spacing between the persons involved in consultation and in interviews.
- The use of video-link to permit remote advice for consultations and during interviews.
- The provision of PPE – such as masks, gloves, sanitiser and a protocol that requires all parties to comply.
- The permission of the use of laptop instead of paper and pen on the basis that the laptop can be sanitised post attendance.
- The avoidance of non-urgent arrests.
- The use of telephone to permit advice for the duration of the interview.
- Pre-interview health screening to include Covid 19 screening of the suspect, interviewers and AGS.

6. Practices in other Jurisdictions and State Bodies in Ireland involved in the Administration of Justice.

1 United Kingdom Access to Legal Advice in Police Stations

A National Protocol is available in the UK which includes guidance in respect of charging priorities and importantly the following section on access to legal advice in custody.

- 1. It is acknowledged that the Coronavirus crisis involves the application of PACE Code C in circumstances which are unlikely to have previously been anticipated. The signatories to this Protocol accept that remote interviews by video and audio link are not within the current letter of the Code of Practice, but in the present circumstances of the Coronavirus pandemic they are within the spirit of recent amendments to criminal procedure, law and evidence in the Coronavirus Act 2020. Therefore, we take the view that they are a fair, reasonable and proportionate option to be made available to a suspect who has the benefit of legal advice and who having been fully informed and advised and together with their appropriate adult (where one is required) consents to a remote interview. This enables the rights and interests of detained persons to be protected during the unprecedented circumstances of the Coronavirus crisis.*

[Interview Protocol between National Police Chiefs' Council, Crown Prosecution Service, The Law Society, Criminal Law Solicitor](#)

Sadly a solicitor in the UK died after contracting Covid 19 in a police station in April 2020.

[\(Lawyers risking their lives at police stations and courts due to lack of social distancing\)](#)

2 Northern Ireland

Following the preaction proceedings by Ciarán Kerr, Solicitor with Brentnall Legal, ([NI: Solicitor acts remotely for client in police interview in Northern Ireland first](#)) in Northern Ireland, solicitors are now advising and attending investigative interviews remotely. Practice to date has included Skype and Zoom. Solicitors are asked to confirm who they are and who is present in the room to ensure confidentiality.

The Department of Justice NI are hosting 'A Consultation on Proposals on the use of Live Links for Police Detention/Interviews'. The consultation will be open for a six week period, with submissions due before midnight on 1 June 2020.

[The Law Society of Northern Ireland](#)

3 Irish Courts Service

The Court Service is putting in place measures to comply with the Guidelines of the National Public Health Emergency Team, including remote hearings and staggering of lists to allow for social distancing. In a notice titled “Gradual and careful planning for creating a pathway to opening some courts” published on the Courts Service website and issued on the 8th May 2020 wherein the Chief Justice confirmed

“that more use of Virtual Courts and the extended use of safe physical courts, with organised physical distance, will allow for an increased number of cases to be heard in the coming weeks. As safety is paramount it will be necessary to ensure that all measures are in place before a significant increase in throughput can take place.”

“The Chief Justice went on to say that these measures may well be in play until the second half of 2021.”

[Gradual and careful planning for creating a pathway to opening some courts - Courts Statements Friday May 8th 2020](#)

4 Irish Prison Service

The Irish Prison Service has introduced video-link consultations with solicitors and clients. Again, such consultations cover every type of case including those of a serious nature. There are no restrictions as the right to legal advice is recognised as being essential and a way has been found to provide this essential service and protect the health of lawyers, prisoners and prison service staff.

[How to Guide Video Link Professional Visits March, 2020](#)

7. Summary Conclusions & Recommendations

A Summary Conclusions:

It is clear from the qualitative narrative of colleague defence solicitors who contributed to the survey that there is no comprehensive or consistent approach being taken to protect the right to legal advice of suspects in Garda Stations.

When attending a garda station, a solicitor uses the public area, custody area corridors, consultation room, interview room and bathroom. It is submitted that it is impossible to comply with social distancing public health guidelines as issued by the HSE in these circumstances.

Solicitors are entitled to a safe workplace and employer solicitors must comply with Health and Safety Public Health Practices.

A significant number of the respondents stated that they are not attending Garda Stations in person at this time.

The following are summary findings of the above narrative:

The provision of legal advice to suspects in custody has been difficult to effectively vindicate whilst complying with Government and HSE social distancing and hygiene guidelines.

- 1 Currently when a solicitor attends a Garda station there is no consistency in approach in complying with social distancing and PPE HSE Guidelines.
- 2 There is no provision for remote advice during questioning.

This leaves solicitors and suspects with a choice of

- a) A solicitor attends the station in circumstances where it is difficult if not impossible to comply with Government Public Health Guidelines.
- or
- b) Reverting to the pre-2014 practice ie the right of access to legal advice before and after questioning but not during questioning. We acknowledge that clients have been allowed to step outside and get legal advice during the interview but this is very different to having constant contemporaneous advice and having a solicitor present during the interview.

B Recommendations

Recognising and commending the work of An Garda Síochána over the last few months in responding to a public health crisis, now is the time to reflect, consider the Guidelines of the National Public Health Emergency Team and put in place protocols that will comply with those Guidelines and guarantee a suspect's right to legal assistance. Solicitors must know what to expect in a station so they can make an informed decision whether or not to attend in person.

In light of the National Public Health Emergency Team Guidelines, social distancing is key to preventing the spread of the virus. These recommendations are made with a view to complying with these guidelines.

A Coordinated Approach - The Law Society of Ireland, The DPP, An Garda Síochána and the Department of Justice

Given the evolving and fluid nature of the public health emergency, a working group of key stakeholders should be established to ensure that the right of a suspect to legal advice during questioning is vindicated while also balancing the rights of solicitors and gardaí to work in a safe environment. This group should meet on a monthly basis.

Recommendations for An Garda Síochána

- Develop a clear Protocol governing arrests, charging and detention during the current Public Health Emergency.
- Facilitate access between a solicitor and the suspect by videolink for the consultation and during the interview.
- If exceptional circumstances arise where attendance of the solicitor is required, Garda Stations should be identified that comply with social distancing guidelines
- The consistent provision and use of PPE by all parties
- Allow laptop to be used for note-taking
- Medical screening of suspect
- Indoor ID parades should not be conducted.
- Where a client does not have a solicitor the use of the The Law Society of Ireland [Find a Garda Station Solicitor](#) link should be mandatory. Gardaí should not be suggesting an alternative solicitor if the solicitor chosen by the suspect does not attend stations at this time. The choice of solicitor is entirely the suspects.

Recommendations to the Department of Justice and Equality and Law Reform

- ❑ Enact amendments to the Garda Station Legal Advice Scheme (GLAS scheme) to allow for payment for remote consultations and advice during interviews.
- ❑ Facilitate payment for remote consultations and advice during interviews or request amendments to GLAS scheme to provide for same.
- ❑ Implement a legislative framework for the provision of legal advice to a suspect as provided for under Article 6 of the European Convention on Human Rights.

Recommendations for the Law Society of Ireland

- ❑ Issue guidelines for solicitors advising clients detained for questioning in Garda Stations. The guidelines should recognise and address the inherent difficulties solicitors have vindicating their client's rights and upholding public health recommendations in respect of social distancing. Guidance on the Issue of employer liability would also be helpful.
- ❑ Liaise with the Department of Justice and Equality and An Garda Síochána on the implementation of all necessary safeguards to ensure a safe place of work for solicitors
- ❑ Liaise with the Legal Aid Board to ensure the necessary amendments are made to the Garda Station Legal Advice Scheme

Recommendations for Solicitors

- ❑ Be clear and frank with suspects on their rights and the type of service that can be provided by your office. In particular, advise early if you are not able to attend the station and advise that another solicitor may be able to provide this service if the suspect so chooses.
- ❑ Inform Gardaí as early as possible if you will or will not be attending the station.