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POLICY BRIEF

EmpRiSe
Ireland

Executive summary

The right to silence (RTS) is a constitutionally protected right in the Irish legal system and is a critical component of the right to a fair trial. Individuals can exercise their RTS long before a case is heard in court as this right applies from the initial stages of criminal proceedings, including throughout garda (police) questioning. The rationale for this right is linked to the broader concept of the presumption of innocence, ensuring that the burden is on the state to prove that an individual has committed an offence. Despite the significance of the RTS, little is known about its operation in the pre-trial phase of criminal proceedings.

In this EU-funded project, entitled 'The Right to Silence and Related Rights in Pre-Trial Suspects Interrogations in the EU: Legal and Empirical Study and Related Best Practice' (the EmpRiSe Project), we address this gap in knowledge by conducting legal and qualitative empirical research in four European jurisdictions. This policy brief focuses on the research conducted in Ireland, presenting findings and recommendations based on analysis of legislation, case-law and practice.

Key findings: Legislative provisions that enable the drawing of adverse inferences based on silence significantly curtail the RTS in Ireland. The scope of these provisions has been expanded over the years, further compounding the legal inroads on the RTS. In practice, inferences drawn under the legislative provisions are not central to the evidence at trial, though this does not hold true for trials before the Special Criminal Court, where they can be extraordinarily significant.

Other negative consequences of reliance on the RTS were identified, such as the potential for numerous garda interviews, increased pressure on the accused to give evidence at trial and the inability to access mitigation at the sentencing stage. Further issues identified as impacting the RTS in garda stations related to deficiencies in disclosure and garda tactics used to encourage suspects not to rely on that right. The importance of access to legal assistance for suspects was clear throughout the research.

Key Recommendations:

- **Retain the position whereby no reference to a suspect's reliance on their right to silence is made at trial, except in the context of legislative inference provisions.**
- **Retain the "inference interview" as a separate interview towards the end of the detention period, which has a specific caution.**
- **All legislative adverse inference provisions should clearly state the need for existing evidence to ground the request for a suspect's account or explanation.**
- **The statutory regulation of interviews should be modernised.**
- **Gardaí should provide sufficient pre-interview disclosure to allow suspects (and their legal advisors) to make an informed decision on any reliance or otherwise on the right to silence, where it would not interfere with the investigation.**
- **Both gardaí and judges should be alive to the fact that a failure or refusal to answer garda questions may be influenced by factors other than guilt, including a suspect's concern for their safety and that of their family members, particularly in the context of organised criminal groups. Inferences from silence in such circumstances ought not to be relied on as evidence at trial.**
- **A permanent joint working group of An Garda Síochána and legal practitioners should be established to engage on matters relating to the questioning of suspects in garda detention.**

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The Emprise Project

The EmpRiSe Project is an EU-funded study, examining the law and practice relating to the right to silence (RTS) during suspect interrogations at the investigative stage of the criminal justice process. Little is known about the exercise of the right to silence in the pre-trial phase of criminal proceedings – for instance, what influences suspects' decisions to remain silent or otherwise, how do legal professionals form their advice in relation to silence and are there any practical consequences of exercising one's right to silence?

By comparing the different processes and issues in four European jurisdictions (Belgium, Ireland, Italy and the Netherlands), the EmpRiSe Project hopes to identify good practice in relation to safeguarding the RTS in the pre-trial phase of criminal proceedings. A review of the law on the RTS has been carried out in each jurisdiction, followed by qualitative empirical research that used interviews and focus groups to unpick the perceptions held by professionals working within the criminal process in relation to the RTS. This has facilitated the development of recommendations that will improve the practice of suspect interviewing and decision-making in the criminal justice system.

This policy brief focuses on the research findings in the Irish context. Legal analysis of the relevant legislation and case law that applied in Ireland was conducted. The empirical phase of the research in Ireland consisted of 2 focus groups with 19 criminal defence solicitors and interviews with 10 barristers, 11 staff from the Office of the Director of Public Prosecutions, 4 judges (covering the Circuit Criminal Court, the Central Criminal Court and the Special Criminal Court), and 6 recently retired members of An Garda Síochána (AGS).

Through these focus groups and interviews with 50 professional actors across various roles within the Irish criminal process this study has garnered previously unrecorded insights into the operation of the RTS and the perceptions of those who frequently encounter it within their roles.

Background

The pre-trial landscape of criminal proceedings in Ireland has undergone significant changes over the past four decades, since the introduction of arrest for the purposes of detention and questioning. Garda powers and suspect rights have been expanded and contracted in various ways over the course of that time, and different iterations of procedural safeguards have come and gone also. Garda interviews have been audio-visually recorded since 1999 and since 2014 solicitors have been permitted to attend garda interviews.

The right to silence is both a constitutional right and a right protected under the European Convention on Human Rights (ECHR), and yet it is also a controversial right. Legislative provisions which allow adverse inferences to be drawn against individuals who remain silent in certain circumstances represent significant curtailments of the RTS in Ireland.

In 2007, a number of safeguards were inserted into the adverse inference legislative provisions. These were aimed at reflecting both constitutional and ECHR jurisprudence on the right to silence/privilege against self-incrimination, and seem to ultimately have had the effect of promoting usage of the inference provisions by providing a more solid basis for their operation.

A further recent, yet underexplored development in the context of the right to silence is the roll out of the Garda Síochána Interview Model. This was developed in 2008, but not operationalised until 2014. This involved a complete shift in how interviews are conducted, moving from a process based on seeking confessions, to an information-gathering approach. The current research, the first of its kind to examine the reality of the operation of the right to silence in garda interviews, is set against this backdrop. It provides a snapshot of contemporary practice, as well as grounding recommendations for improvement in ensuring the protection of suspect rights in the criminal process.

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Research findings: legislation

Where is the RTS protected?

Under the Constitution of Ireland, the right to silence is both a corollary of the right to freedom of expression and a constituent element of the right to fair trial. Therefore, a statement which is obtained under the compulsion of potential criminal sanction is likely to be deemed involuntary and inadmissible at trial. The Irish courts have increasingly recognised the importance of police custody as a part of the overall trial process, and seek to insist on fairness therein. The rules governing police interviews and custody are contained in European Union law, domestic primary and secondary legislation, as well as case law. Relevant issues have also been canvassed before the European Court of Human Rights, and the RTS is protected within the Art 6 ECHR right to a fair trial.

This study confirmed that some of the rules and practices relating to police interviews in Ireland are in need of reform. In particular, the Judges' Rules are antiquated and in need of modernisation. The requirement that statements be taken down in writing is unnecessary, given that interviews are now audio-visually recorded. Moreover, this study identified that the contradiction between the traditional caution issued and the explanation of adverse inference provisions is confusing and inaccurate. In this regard, we recommend that the Judges' Rules be repealed and replaced with legislation, and that the Minister make regulations providing for two separate cautions: one to be given at arrest and at the beginning of most interviews, and the second at the beginning of inference interviews.

What are the limits on the RTS?

This study reviewed multiple offences on the statute book that criminalise the failure to provide certain information. While a person may be compelled to give information for fear of prosecution, such information cannot be used for the purpose of evidence against them in a trial for another offence. In 2001, the European Court of Human Rights (ECtHR) found that one such provision, section 52 of the Offences Against the State Act 1939, was contrary to the European Convention on Human Rights because it "destroyed the very essence of [the accuseds'] privilege against self-incrimination and their right to remain silent" (*Heaney v Ireland* (2001) 33 EHRR 334 para. 55). This provision was never repealed.

The legislature has largely moved away from criminalising failures to provide information, and towards providing for the drawing of evidential adverse inferences from silence in certain circumstances. While these were initially introduced to apply to limited offences, and only where certain grounding evidence had been adduced by the gardaí, it appears that over time they have expanded in remit and the threshold for invoking such provisions has lowered.

What other procedural rights are relevant to the RTS?

A related recent procedural rights development is the entitlement to have a solicitor in attendance at garda interviews. In 2014, the Supreme Court ruled that interrogation of suspects should not commence until after legal advice, where sought, has been obtained. While the Court declined in that case to find that there was a right to have a solicitor present in the interview with the suspect, the Court indicated that such a right might be found in an appropriate case. Following that judgment, the DPP and An Garda Síochána initiated the practice of allowing solicitors to attend the interviews. In the 2019 case of *DPP v Doyle* [2018] 1 IR 1, a majority of the Supreme Court refrained from recognising that the constitutional right of reasonable access to legal advice extended to having a solicitor present in the interview. When the case was appealed to the European Court of Human Rights, that Court clarified that the presence of a lawyer at interview is an integral aspect of the ECHR right to legal assistance, and the right to a fair trial (Application No 51979/17; 23 May 2019). Other important, related, procedural protections include the right to information, legal professional privilege, and the exclusion of improperly obtained evidence.

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Research findings: practice

How often do people rely on their RTS?

Participants pointed to a spectrum of response patterns that fell between a fully "no comment" interview and individuals who answered every question. For instance, some individuals may shift from "no comment" in early interviews to a more responsive position. There appeared to be a general consensus that maintaining a position of full silence was rare but beyond this, participants across all groups found it difficult to make definitive statements about how often individuals relied on their RTS partially or intermittently.

When participants did indicate their perception of the proportion of accused people availing of silence in some manner, there was variance in their opinions. Such differences may be explained by the impact that remaining silent may have on the progression of criminal proceedings, the different courts that they might operate in, and different offences in which they may specialise. Therefore, without quantitative data it is not clear if these different perceptions are as a result of non-prosecution in the context of suspect silence or perhaps guilty pleas taking effect. Currently, without such data, the role that silence may play in influencing these events and knowing how often they occur is hard to distinguish.

Who tends to rely on silence?

The findings showed that there were categories of individuals that legal professionals perceived to be less likely to avail of their RTS than others. These included people with little or no experience of the criminal justice system and vulnerable individuals (those with drug addictions, severe mental ill-health and/or intellectual disabilities). These individuals may be unaware of or may not have a full understanding of the protection that exercising their RTS may afford them. The research suggested that such individuals may have difficulty focusing on the long-term consequences of their approach to garda questioning over the short-term desire to be released from custody. Additionally, they may be more susceptible to garda interviewing techniques.

> *"If they're very needy and very dependent and have a difficulty or any type of intellectual difficulty of any kind, then they're more than likely going to not observe the right to silence because they just want to get out and want to get home"*
>
> (Solicitor Participant 1, Focus Group A)

> *"My own guess would be that you'd want to be certainly very psychologically tough and probably have experience of the criminal justice system at the wrong end to say 'no comment' completely throughout an interview."*
>
> (Judge participant 3)

Participants also reported different proportions of individuals remaining silent depending on offence type. People questioned about more minor offences may answer questions to facilitate a speedy release from custody. It was generally suggested that suspects being interviewed in relation to serious crimes tend to rely on their right to silence and respond "no comment" in interviews more often. In some cases participants suggested that this was due to certain suspects having more experience in the criminal justice system and being more confident in asserting their rights. Those suspected of involvement in paramilitary groups or organised crime groups were also said to be likely to remain silent under questioning. On occasion such silence might be the result of fear relating to the external consequences for the individual or their family if it became known that they co-operated with gardaí in any way.

Regardless of which of these categories applies to an individual, it is imperative that they receive legal advice from a solicitor of their choice as it may be the case that exercising their RTS is in their best interests, rather than answering questions, even where they have an exculpatory explanation.

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There were a number of considerations that solicitors took into account when forming legal advice as to whether the suspect should remain silent, answer questions, or make admissions. First, participants reported that in the context of investigations into certain offences, it was advisable that suspects should get their defence on record early, such as proffering their account of self-defence in an assault case or that consent was present in a sexual offence investigation. However, it was also noted that, particularly in investigations for historic crimes, silence may be advisable, rather than the proffering of an exculpatory account, since answering questions and confirming even innocuous facts may be used as corroboration of the allegations.

Participants also spoke about the important decision relating to how the suspect would get their account of events across at any future trial. "No comment" at garda interviews means that suspects may need to give their evidence at trial, and expose themselves to cross-examination, a generally undesirable position for an accused. In this regard, participants reported another option for a suspect at the investigation stage was submitting to the gardaí a statement, which they may or may not have prepared with their solicitor, outlining their account of the events at issue. It may be possible to avoid arrest through the proffering of a voluntary statement. Furthermore, whether given voluntarily or subsequent to an arrest, a prepared statement gives the suspect some control over their defence, as it could be admitted as evidence at trial, helping them avoid giving live testimony and surrendering to cross-examination.

> *"if there's any slight inconsistencies in how you tell your defence, then a lot is made of that as well…If you saw a car accident, you might tell the first person you met and then you tell your mum on the phone later, you might remember it slightly differently then, it's just human nature."*
>
> (DPP Participant 5)

What are the consequences of reliance on the right to silence?

Juries are not informed about a suspect's silence during garda interviews to minimise the risk that jurors could draw inferences of guilt from such silence. This was confirmed by participants across all groups although there was some speculation that jurors could learn of silence informally – especially where "partial" or "intermittent" silence might lead to only brief extracts of interviews being put to a jury.

The findings showed that there could be some positive consequences that flowed from a suspect remaining silent. First, by remaining silent, the suspect avoids the situation where they make a statement in evidence at trial which is inconsistent with the statements they made in the garda interview. As noted by participants, there are various legitimate reasons why there may be inconsistency in accounts, such as lapses in memory or poor communication skills, however, these inconsistencies are often emphasised in cross-examination at trial to undermine credibility.

> *"…the complainant's evidence could be days or weeks back and if they're [the jury] scratching their heads in there [during deliberations], the one thing they actually have in front of them is the accused's words in black and white and the opportunity of making an unsworn statement in the garda station and getting it in front of a jury without cross examination, it's a golden opportunity..."*
>
> (Judge participant 2)

Secondly, suspects who rely on their right to silence avoid making corroborating statements, as well as admissions or inculpatory statements that can be used as evidence against them in bail hearings or at trial.

This study also identified negative consequences associated with the decision to rely on the right to silence in the garda station, meaning that decisions surrounding whether to exercise the right to silence were complex, high-stake matters that could determine case strategy from an early point in proceedings. This again highlights the importance of the solicitor's role in the garda station.

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> *"Sometimes I can find […] that you have a client who believes that a 'no comment' that there is an inference of guilt there, 'sure why wouldn't I say it?'. Because you need to just protect your best interests here and sometimes giving a full account will actually corroborate evidence that they already have and paint a picture that they don't necessarily have. So I think sometimes you are battling with that, that you're trying to protect their best interests but they believe that 'that's what guilty people do', by going 'no comment'"*
>
> (Solicitor Participant 1, Focus Group B)

First, those who remained silent endured a greater number of interviews, were more likely to be detained for questioning for longer, were more likely to be exposed to oppressive garda interviewing tactics, and more likely to experience an inference interview.

Secondly, exercising one's right to silence put individuals at a relative disadvantage in terms of sentencing as compared with those who did not, in that they could not claim "cooperation" as a mitigating factor. Still, all participants were firm in their understanding that the purpose of this differential treatment is not to punish silence but to reward cooperation.

> *"the main issue is they, the vast majority of rape cases are consent cases. In the event of consent being a defence, that has to come from the accused, it either comes from them in the station or if it doesn't come from the station it must come from them in the trial. So if you do not advise a person who is contending that it was a consensual encounter to say that in the station, what you're doing is you're forcing them to give evidence at trial."*
>
> (Barrister participant 8)

Further, participants reported that availing of the right to silence could have repercussions for the defence case strategy that could place suspects at a disadvantage at trial. Without having offered an account in the garda station, accused persons will find it difficult to put their version of events across at trial. They may of course opt to give their own evidence by taking the stand, but they will be cross-examined by prosecuting counsel, which participants universally agreed was an extremely undesirable situation for an accused person to be in. Some concern was raised around the judge's charge to a jury wherein the value of unsworn pre-trial statements might be minimised, in comparison with live, sworn, cross-examined testimony. While there is a distinction between the two, certainly, the authors are of the view that juries should not be presented with an unduly negative characterisation of the evidential value of statements made by suspects in garda interviews. Indeed, pre-trial statements proffered in garda stations have the significant benefit of being a more contemporaneous account of the events in question when compared to evidence given at trial, which can take place years after the alleged offending. Oaths or affirmations are not administered in garda interviews with suspects, but the seriousness of matters at that point is clear and the potential negative consequences of dishonesty apparent. Moreover, while evidence given in court is tested by cross-examination, an account given in the garda station can be assessed and challenged by the interviewing gardaí and subsequent investigation of the claims made therein may provide the prosecution with evidence to contradict such account at trial.

> *"Really accused people shouldn't be giving evidence because there's always going to be a problem with their evidence, I mean the smallest thing that maybe in the cold light of day isn't of significance in the pressure of a trial with somebody cross examining you on behalf of the prosecution, things are always going to go wrong … nobody ever comes well out of giving evidence"*
>
> (Judge participant 1)

How do the adverse inference provisions work?

Given the significance of legislative incursion on the right to silence through provisions allowing for silence in the face of garda questioning in prescribed circumstances to be used as evidence at trial, this study sought to get a sense of the operation of such provisions both within garda stations, and at trial.

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In relation to the invocation of the inferences in garda stations, this happens late in a detention period, usually after a series of interviews during which the suspect has failed to answer garda questions. The traditional caution, which will have been administered at the time of arrest and prior to any earlier interviews, is withdrawn, and the operation of the inferences is explained in its place. The authors see a value in continuing the current practice under which inferences are not continually in play throughout all interviews, but only in specific, separate interviews late in the process. This makes sense in the context of the late disclosure model of interviewing currently in use by An Garda Síochána, and ensures more protection for the right to silence in initial interviews.

The explanation, or special caution, given by gardaí at the beginning of an inference interview was widely regarded, particularly by solicitor participants, as both an inaccurate explanation of inferences (demonstrating factual rather than legal inferences) and as being too long and complicated for suspects to understand. Participants reported gardaí reading out the entirety of the relevant legislative provision, which is not required and adds complexity.

Further, participants reported that sometimes the questions put to the suspect, silence in response to which will lead to an inference, were not sufficiently precise or grounded in evidence. This was confusing for suspects, but also meant that the questions were not admissible at trial and the inference could not be drawn. Participants noted that the same admissibility issues were less likely when specialist gardaí, such as the Special Detective Unit, were involved in the interview process but other gardaí displayed a lack of confidence when conducting interviews under the inference provisions. This highlights a need for improved training to ensure that suspects who are questioned pursuant to the inference provisions are having those provisions accurately explained to them, or the use of inferences should be restricted to adequately trained gardaí.

While most adverse inference provisions require that the questions be grounded on some evidence, such as CCTV footage of the suspect present at a particular place, certain inference provisions are more broadly set out and the wording of the legislation is unclear or open to interpretation. It would be preferable for all inference provisions to clearly require that an inference only be drawn from a failure to respond to evidence which was in existence and presented to the suspect at the time of questioning.

> *"Particularly in section 19A inferences where they say 'tell us anything you intend to rely on in your defence', if you've had no disclosure, you haven't seen the forensic report or the witnesses' statement, it's a bit absurd to be asked, tell us something you intend to rely on in your defence."*
>
> (Solicitor Participant 2, Focus Group B)

> *"I mean again it's a small proportion of cases where those inference provisions are used in that separate final interview and it's an even smaller proportion of those cases in which it provides a basis upon which a court could use it in a useful sense"*
>
> (DPP Participant 2)

Adverse inference provisions are not commonly featured as evidence in trials, with the Special Criminal Court being a clear exception to this. Participants reported their views that the inferences were often "surplusage" as the evidence grounding the inference question, such as evidence of an object found on the person or their presence at a certain location, was already admitted. This raises the question of whether such an incursion on the right to silence is proportionate and justified.

Conversely, despite being a weak form of evidence, participants reported that adverse inferences were very important to trials in the Special Criminal Court: the extraordinary, non-jury court. In particular, participants discussed the offence of "membership of an unlawful organisation" contrary to section 21 of the Offences Against the State Act 1939, whereby the belief of a Garda Chief Superintendent that the accused is a member of an unlawful organisation can be accepted as evidence by the court, often based on privileged

information which is unchallengeable by the defence; and such belief, combined with evidence that the accused failed to answer "any question material to the investigation of the offence" during garda interrogation, can lead to conviction and a possible sentence of up to 8 years imprisonment (see section 2 of the Offences Against the State (Amendment) Act 1998). A question is regarded as being "material" if the garda reasonably believed that the question related to the participation of the accused in the commission of the offence. This legislative threshold for allowing an inference from silence is significantly vaguer than other inference provisions, where there has to be evidence grounding the inference question, which "clearly call[s] for an explanation".

> *"usually in 'membership' cases there might be 7 interviews, 3 of them would be all 'no comment's, then the inferences are invoked in section 2 …they're very helpful in those cases, you wouldn't have convictions is the truth of it, otherwise"*
>
> (Judge Participant 1)

Layered on top of these general concerns around the heightened impact of inferences on the outcome of trials before the Special Criminal Court is an additional uneasiness around the use of inferences from silence based on fear. Persons with involvement in organised criminality at any level may legitimately be fearful that any engagement on their part with gardaí during custodial interrogation could expose them or their family members to the risk of serious harm. There may be no safe way for them to explain the reasons for their silence, and their silence may count, significantly in the Special Criminal Court, towards their conviction.

Conclusion and Recommendations

This Policy Brief has provided an overview of some of the many issues addressed within the main report on the EmpRiSe research in Ireland. Our research also provides interesting insights on the garda approach to interviewing suspects, and the methods adopted to encourage silent suspects to speak; on suspect vulnerabilities and the impact this has on legal advice; and on downstream consequences of pre-trial reliance on the right to silence other than the drawing of inferences, such as in relation to sentencing. For further information, please consult the Report, and/or contact Professor Yvonne Daly (yvonne.daly@dcu.ie).

Legislative recommendations

1. **Retain the position whereby no reference to a suspect's reliance on their right to silence is made at trial, except in the context of legislative inference provisions.**
2. **Retain the position that an inference cannot be drawn against an accused person for failing to give evidence at their own trial.**
3. **All legislative adverse inference provisions should clearly state the need for existing evidence to ground the request for a suspect's account or explanation.**
4. **Retain the "inference interview" as a separate interview towards the end of the detention period, which has a specific caution.**
5. **The statutory regulation of interviews should be modernised.**
6. **Section 52 of the Offences Against the State Act 1939 should be repealed.**
7. **The right to have a solicitor in attendance at the garda interview should be put on a legislative footing.**

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Recommendations for Policy and Practice

1. **Gardaí should provide sufficient pre-interview disclosure to allow suspects (and their legal advisors) to make an informed decision on any reliance or otherwise on the right to silence, where it would not interfere with the investigation.**

2. **Gardaí should be careful not to directly or indirectly induce suspects to waive their right to silence.**

3. **Judges should not be informed during bail applications that an accused was "uncooperative".**

4. **Inference interviews should only be carried out by gardaí who have received specific training on the inference provisions.**

5. **Both gardaí and judges should be alive to the fact that a failure or refusal to answer garda questions may be influenced by factors other than guilt, including a suspect's concern for their safety and that of their family members, particularly in the context of organised criminal groups. Inferences from silence in such circumstances ought not to be relied on as evidence at trial.**

6. **Gardaí should notify suspects and solicitors at the earliest opportunity of all of the potential charges which might be considered to allow for meaningful legal advice, particularly in the context of inference interviews.**

7. **Gardaí should increase the practice of arranged arrests and/or voluntary interviews, where possible.**

8. **The Garda Station Legal Advice Scheme should be extended to voluntary interviews and/or prior consultations.**

9. **Judges should be cautious and insist on inferences being properly administered in the garda station.**

10. **The judge's charge to the jury in relation to drawing an inference from pre-trial silence should be limited and not give undue emphasis to this relatively weak form of evidence.**

11. **Guidance for judges on the appropriate handling of jury directions relating to unsworn evidence should be developed.**

12. **The ODPP should collect data on how often the inference provisions are used in prosecutions.**

13. **A permanent joint working group of An Garda Síochána and legal practitioners should be established to engage on matters relating to the questioning of suspects in garda detention.**

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Training Recommendations

1. **The Law Society should consider requiring solicitors who advise detained suspects at garda stations to undertake an annual minimum level of continuing professional development (CPD) training specific to that role.**
2. **An Garda Síochána should provide more advanced and practical training to Level 1s and 2s, within the GSIM framework, on the right to silence generally and specifically on the invocation of adverse inference provisions.**
3. **Professional legal bodies should provide training on the right to silence and adverse inferences.**

Future Research

1. **A review of judgments of the Special Criminal Court to determine the significance of inferences in the Court's decisions.**
2. **A study of jurors in relation to their perception of right to silence, their understanding of inferences when explained by the judge, and the role that inferences play in their decision-making.**
3. **A qualitative study of suspects, and their experience of the use of garda tactics in interviews.**
4. **An Garda Síochána should collect data on the exercise of the right to silence, in combination with a variety of other factors.**

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