

An Garda Síochána

Oifig Chúntóir Pearsanta
an Choimisinéara,
An Garda Síochána,
Páirc an Fhionnuisce,
Baile Átha Cliath 8.



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CONFIDENTIAL

Mr. Brian Purcell,
Secretary General,
Department of Justice and Equality
94, St. Stephen's Green
Dublin 2

Re: Correspondence received from the Department of Justice & Equality on the 19th October 2012 concerning Allegations of Irregularities in the Operation of the Fixed Charge Processing System (FCPS)

Dear Secretary General,

With reference to subject matter I am now in receipt of a comprehensive report from Assistant Commissioner John O'Mahoney (attached) into his examination of allegations made by an anonymous author concerning certain aspects of the administration of the Fixed Charge Processing System by certain members of An Garda Síochána. The allegations are inclusive of grave assertions citing criminality, corruption, deception and falsification committed by named and unnamed officers by virtue of their discretionary terminations of Fixed Charge Notices.

As you will be aware the anonymous author submitted two separate documents listing alleged irregularities in the termination of Fixed Charge Notices. When examined, the number of separate allegations totaled **189**. The examinations of all allegations are reported upon individually within Assistant Commissioner O'Mahoney's report. His report is also inclusive of the results of his examination of general allegations made by the anonymous author together with his findings, action taken and his recommendations for the continued professional administration of the Fixed Charge Processing System.

Ráiteas Misin / Mission Statement:

Ag obair le Pobail chun iad a chosaint agus chun freastal orthu / Working with Communities to Protect and Serve

Assistant Commissioner O'Mahoney has taken as a timeframe for his examination the period from 1st of January 2009 to the 30th of June 2012 which approximates generally with the timeframe of four years quoted by the anonymous author in his / her allegations. For the purpose of comparative analysis, in standards and performance, Assistant Commissioner O'Mahoney has also undertaken a review of a random audit of an additional **1%** of Fixed Charge Notices terminated in the same period but not subject of allegation.

In general terms Assistant Commissioner O'Mahoney's examination has found that **4.55%** of over **1.46 million** Fixed Charge Notices issued in the relevant period were terminated. When examined further, taking into account technical issues and system errors, the terminations conducted by authorised officers exercising discretionary powers amounted to **2.57%** of the total issued.

On the basis of material examined by Assistant Commissioner O'Mahoney no evidence had been adduced to suggest any act of criminality, corruption, deception or falsification as alleged by the anonymous author.

The examination did, however, identify certain departures from administrative procedures in the administration of the system requiring advices to be issued to some terminating officers surrounding the necessity for strict adherence to policy and procedures. In a small number of instances (**3**) possible breaches of discipline have been identified and files have been forwarded to the Assistant Commissioner, Internal Affairs, the designated authority under the Disciplinary Regulations, for further investigation. The two predominant areas of administrative and procedural failings identified by the examination centre on the creation and retention of audit material and cases where authorised officers terminating FCN's for offences detected outside their Garda Districts.

Assistant Commissioner O'Mahoney's report is inclusive of recommendations which I intend to implement. As an interim measure I have issued a Headquarters Directive to the organisation re-emphasising current policy and reminding members of their obligations to strictly adhere to guidelines regarding cancellations. The Directive has also informed the membership of the service of the proposed implementation of a more consolidated policy in this area

As you are aware I have directed the Professional Standards Unit of An Garda Síochána to undertake a review of the administration of the Fixed Charge Processing System. This Unit have had sight of Assistant Commissioner O'Mahoney's report and are well advanced in formulating a report on the matter. On receipt of same I will report further to you in that regard. This Professional Standards review will likely herald the drafting of a new policy document in full consultation with the office of the Director of Public Prosecutions.

The identities of a number of members of An Garda Síochána have been anonymised in order to protect any further proceedings and such issues are dealt with in Assistant Commissioner O'Mahoney's report at **Chapter 9**. In that context it might be prudent to seek the advices of the Attorney General's office as to how much, if any, of the extant material is disclosable to the public in advance of the conclusion of the disciplinary proceedings involving Superintendent "A", Inspector "B" and Inspector "C" referenced at **Chapters 9.3, 9.10 and 9.11 respectively**.

I fully support the recommendations of Assistant Commissioner O'Mahoney that an annual random audit of the system be carried out by an Assistant Commissioner who will report his/her findings to the Commissioner for onward transmission to the Minister for Justice & Equality.

I should mention also that the Comptroller and Auditor General's office contacted the Commissioner's Office in late February 2013 indicating they intended to carry out an audit of the Fixed Charge Processing System and that work is underway.

Yours sincerely,

**MARTIN CALLINAN
COMMISSIONER OF
AN GARDA SÍOCHÁNA**

28th March 2013

EXECUTIVE SUMMARY

Subject

Examination of correspondence (submitted by an anonymous author) received from the Department of Justice & Equality on the 19th October 2012 concerning allegations of irregularities in the operation of the Fixed Charge Processing System (FCPS).

Allegations

The anonymous author submitted two documents containing allegations which, when examined, proved to have a large number of allegations which were similar in content or were duplicated. When the similarities in the allegations and duplications are taken into account, the total number of allegations amounts to **189**.

Some allegations refer to the termination of hundreds/thousands of FCN's by particular officers while the great majority of allegations cite individual officers and individual beneficiaries.

The anonymous author alleges that there is serious corruption, destruction and erasing of records, perverting the course of justice, falsification and deception in the administration of the Fixed Charge Penalty System by members of An Garda Síochána.

Examination

On foot of the allegations made by the anonymous author the Commissioner of An Garda Síochána directed a full examination into all matters raised and appointed Assistant Commissioner John O'Mahoney to conduct the examination.

The anonymous author centres his allegations on *the last four years*. The examination of these allegations was conducted to cover the period from 1/1/2009 to 30/6/2012. In addition to the allegations made *this examination* also undertook a full audit of a randomly selected **1%** of FCN's terminated during the same period. This was undertaken to ensure there was some comparative analysis data available when considering the allegations.

Issue / Termination of Fixed Charge Notices / Figures – Percentages

Whereas the examination conducted encompassed the management and governance of the Fixed Charge Processing System the predominant focus centred on termination policy, practice and incidents. Under this heading *this examination* has found;

- **1,460,726 Fixed Charge Notices** were issued for period under review.
- **95.45% (1,394,319)** of FCN's issued in the review period were processed through the system without recourse to termination.
- **4.55% (66,407)** of FCN's issued in the review period were terminated.

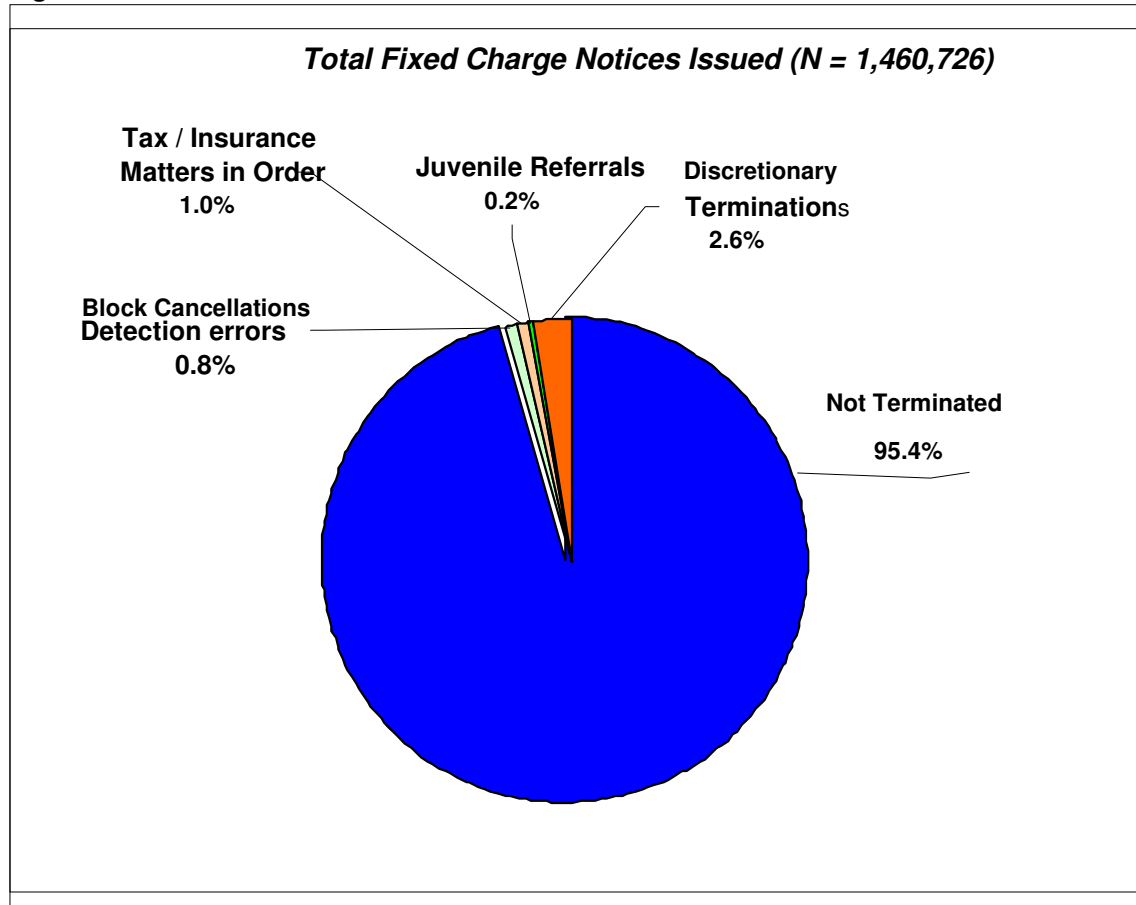
Of the FCN's issued;

- **0.806%** approximately (**11,783**) of FCN's issued in the review period were terminated resulting from "*system / detection errors*" identified by the Fixed Charge Processing Office. In general, by their nature, these terminations were invariably subject of automatic programmed *bulk terminations* by that office.
- **1%** (**14,686**) of FCN's issued in the review period for non-display of Tax/Insurance discs were terminated when Tax / Insurance matters were found to be in order or in instances when vehicles had changed ownership.
- **0.175%** (**2,554**) of FCN's issued in the review period referred to juvenile offenders which were automatically referred to the Juvenile Diversion Programme for consideration.

Taking all the above figures into account the net effect translates into a figure of **2.57%** out of the **1.46 million** FCN's issued in the review period were terminated by authorised Garda officers employing "*Discretionary Powers*". This equates to a termination of **37,384** terminations in the three and a half year period. This averages out at **10,701** terminations of this nature per year nationally.

Therefore, the core issues which were the subject matter of allegations, and reviewed by *this examination*, amount to a relatively small figure when measured against the totality of FCN's issued. The above figures are represented hereunder in chart format with the percentages quoted to one decimal point.

Figure 1.



Synopsis of Garda Powers

In the context of FCN terminations, members of the Garda Síochána have an inherent common law power of discretion, by virtue of their office, from time immemorial. In this respect, sections 7 and 8 of the Garda Síochána Act 2005, in relation to the statutory functions of An Garda Síochána, provides that such functions "*do not affect any powers, immunities, privileges or duties that members ... have ... at common law*". Section 25 of the 2005 Act specifically provides that the Minister's power in relation to the issue of directives "*may not be exercised to limit the independence of a member ... in performing functions relating to the investigation of a specific offence or the prosecution of an offence ...*".

Members of An Garda Síochána have been provided with the authority to institute and prosecute offences on behalf of the Director of Public Prosecutions under section 8 of the Garda Síochána Act 2005. Directions in this respect are contained in the DPP's General Directions numbered 1, 2 and 3 effective since 1st of February 2007

The Attorney General advises that it is clear that when a fixed charge notice is issued it is not mandatory that the payment must be made or a prosecution must follow.

The Garda Síochána Ombudsman Commission, in a conclusion to their "***Examination of Practice, Policy and Procedure under section 106(2) of the Garda Síochána Act 2005 in regard to the Fixed Charge Processing System as operated by the Garda Síochána***" (April 2009) stated "***Garda discretion to caution offenders has been curtailed within the FCPS. Police in other jurisdictions have more discretion and may have recourse, in certain circumstances, to alternatives to prosecution. The strategic goal of the FCPS should be the achievement of increased driver compliance - but not necessarily increased detections***"

In general terms, it is a well established fact that the use of discretionary powers has served An Garda Síochána well since the foundation of the State. This discretion is exercised by members of An Garda Síochána at every level in the exercise of their daily duties and responsibilities. It is an intrinsic feature of good policing, the application of which continues to assist in maintaining the positive relationship the organisation has developed with the general citizenry over its history.

Synopsis of Policy

Following the introduction of Fixed Charges, An Garda Síochána established Policy and Procedures for the termination / cancellation of Fixed Charge Notices which are set out in the ***Fixed Charge Processing System Full User Manual Policies & Procedures Third Edition 2005***. In essence, the policy and procedure document provides authority and advice to District Officers, Inspectors acting on behalf of District Officers and the Inspector with responsibility for the administration of the ***Fixed Charge Processing Office, Thurles (formerly Capel St. Dublin)***, to cancel FCN's within the parameters of the aforementioned Policy.

The Guidelines for Prosecutors issued by the Director of Public Prosecutions (Revised – November 2010) outline the many matters which must be considered prior to the commencement of a prosecution.

The equilibrium that must exist between any policy framework and discretion is a challenging one which is best exemplified in recent case law on the matter. *Ronan McCarron v Superintendent Peadar Kearney et al, Supreme Court, 11 May 2010.*

Examination Outcomes

A total of **2198** individual FCN terminations have been identified as coming within the ambit of the **189** allegations made by the anonymous author.

On the basis of material examined *this examination* has found no evidence to suggest any act of criminality, corruption, deception or falsification as alleged by the anonymous author.

However, *this examination* has referred terminations conducted by **3** officers for investigation by Assistant Commissioner, Internal Affairs, as it has been established that some terminations undertaken by these officers may not have been conducted strictly within administrative policy and procedure thereby giving rise to possible breaches of discipline. *This examination* reviewed all **661** terminations conducted by these officers.

In order to avoid prejudice in the disciplinary process, the above terminations (**661**) were excluded from the process resulting in the figure of **1537** terminations as the reference point for the statistical analysis regarding terminations subject of allegations.

Garda officers authorised to terminate FCN's and falling within the ambit of the allegations numbered **113**.

1339 (87%) of the **1537** terminations were found to be within the correct administrative procedures while **198 (13%)** were found not to have been strictly within administrative procedures.

38 (2.5%) of the **1537** terminations were terminated automatically by the Fixed Charge Processing System as the offender was a juvenile.

241 (15.7%) FCN's were terminated under *Data Entry Systems Error*

Terminations relating to Garda members amounted to **123 (8%)** of the **1537**.

7 (0.5%) of the **1537** examined had an identifiable family connection to a member An Garda Síochána.

Of the terminations conducted outside the Garda administrative policy on terminations, *this examination* has found that the two predominant areas that were not strictly within procedural guidelines centred on;

- The creation and retention of audit material.
- Authorised officers terminating FCN's for offences detected outside their Garda Districts.

Random Audit of Additional 1% of FCN's Terminated.

The purpose of this audit was to provide some data independent of the allegations in sufficient quantity that would provide a benchmark for standards and performance in respect of the FCPS.

A total of **672** terminated FCN's were randomly selected for this exercise from the figure of **66,407** FCN's terminated during the review period.

Garda officers authorised to terminate FCN's and falling within the ambit of the **1%** sample numbered **134**.

600 (89%) were found to be within the correct administrative procedures while **72 (11%)** were found not to have been strictly within administrative procedures.

Similarly, the two predominant areas that were not strictly within procedural guidelines centred on;

- The creation and retention of audit material.
- Authorised officers terminating FCN's for offences detected outside their Garda Districts.

The examination of the random audit of the additional **1%** of FCN's terminated has not uncovered any evidence to suggest any act of criminality or corruption.

When considering the undertaking of a comparative analysis in this case between the sets of data, i.e. Matters Subject of Allegation *vis a vis* the Random 1% Sample, one has to appreciate, and the reader has to be mindful, that any meaningful comparison can only come about when one is comparing like with like. However, congruence does occur in the two areas concerning procedural guidelines highlighted above.

Conclusions

This examination was undertaken on foot of very serious and multitudinous allegations laid by an anonymous author. The gravity of the allegations is highlighted by his / her assertions of criminality by officers who terminated FCN's. It is apparent that these allegations are based on information available mainly through the Garda I.T. systems.

However, when a thorough examination of each and every issue is undertaken, with recourse to all sources of relevant information, including full access to restricted PULSE and the Fixed Charge Processing System, the examination of audit files and the interview of relevant personnel, a clearer picture emerges. Had the anonymous author access to more complete information he/she may have found perfectly reasonable and legitimate rationale for the termination of the greater majority of FCN's he/she so forcefully alleges are corrupt and perverting of the course of justice.

On the basis of material examined and the documentation available and the enquiries conducted by *this examination* it can be clearly shown that allegations surrounding criminal conduct by any of the senior officers in question cannot be substantiated to any degree.

As a result of *this examination* certain technical procedural breaches and inconsistencies and, in some isolated cases, possible individual failings have been identified. Allied to the fact that a number of FCN's issued were, for one reason or another, not prosecutable, the situation as depicted by the anonymous author is a significant remove from the actuality of the administration of the Fixed Charge Processing System as it operates.

This examination has identified possible departures from administrative procedural guidelines which may amount to breaches of discipline in respect of terminations conducted by **3** of the **113** terminating officers who came within the scope of the allegations and have been referred for further investigation to the Assistant Commissioner, Internal Affairs, who is the designated authority for investigation within An Garda Síochána Disciplinary Regulations.

Prior to *this examination* a separate allegation was laid against another officer in respect of the termination of a number of Fixed Charge Notices. This matter is currently under separate investigation. As the separate investigation is ongoing I am not in a position, at this time, to comment on these matters or make any recommendation.

This examination has identified a number of instances where terminations have been conducted outside administrative policy or procedural guidelines. A HQ Directive should follow to ensure greater care in the use and exercise of discretion by authorised officers in line with the Commissioner's policy governing the termination of Fixed Charge Notices.

Where administrative deficiencies are identified as a result of *this examination* a number of recommendations have been made with a view to ensuring that robust corrective measures are taken to future proof the system and to strengthen and preserve its integrity.



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GLOSSARY OF TERMS / ACRONYMS

THIS EXAMINATION

Investigation of allegations undertaken on the direction of Commissioner Martin Callinan.

FCPS

*Fixed Charge Processing System.
An Garda Síochána Computerised Recording System*

FCPO

Fixed Charge Processing Office.

FCN

Fixed Charge Notice. (Issued to offending motorists)

PULSE

*(Police Using Leading Systems Effectively)
An Garda Síochána Computerised Recording System*

TERMINATIONS

Official Terminology for cancelling FCN's.

CANCELLATION

The decision of a cancellation authority to discontinue proceedings and to withdraw the FCN after carrying out a review.

OSCP

The Outsourced Safety Camera Project.

OSCAM

The Office responsible for Managing the Outsourced Safety Camera Project.

NTAS

Notepad Tracking and Allocation System

DISTRICT OFFICER

The Superintendent in charge of a Garda District.

ACTING DISTRICT OFFICER

Inspector acting in the role of District Officer and on his behalf.

AUTHORISED OFFICER

Superintendent, or Inspector acting on his behalf, authorised by policy and procedure to terminate FCN's.

HQ DIRECTIVES

A HQ Directive is a document issued, on behalf of the Garda Commissioner to the Garda organisation, providing direction and advice on matters relating to policy, practice and procedure. HQ Directives are numbered consecutively by year and are accessible to all members on the Garda IT Portal.

INTERCEPT

An intercept FCN is issued where the offending motorist is detected and stopped by a Garda on duty.

NON-INTERCEPT

A non-intercept FCN is issued as a result of an offence detected by either Garda or the Go Safe Consortium speed detection cameras

“H” and “N” FIXED CHARGE NOTICES

Notices whose serial numbers begin with the letter “H” and “N” result from intercept detections

“S” FIXED CHARGE NOTICES

Notices whose serial numbers begin with the letter “S” result from non-intercept / safety camera detections

DMR

Dublin Metropolitan Garda Region

An Garda Síochána

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Coire & Slándáil,
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*Luaigh an uimhir thagartha seo a
leanas, le do thoil /
Please quote the following Ref. No.*
CS 1.87/12
CMR_18-81368/12



Assistant Commissioner,
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Phoenix Park,
Dublin 8.

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Dáta/Date: 28th March 2013

CONFIDENTIAL

**Commissioner,
An Garda Síochána,
Garda Headquarters,
Phoenix Park,
Dublin 8.**

Re: Correspondence received from the Department of Justice & Equality on the 19th of October 2012 concerning Allegations of Irregularities in the operation of the Fixed Charge Processing System (FCPS).

1. INTRODUCTION

In respect of the above subject matter I wish to report as follows;

On the 31st October 2012, you appointed me to conduct an examination of correspondence that you had received from the Department of Justice & Equality which referenced allegations the Department had received from an anonymous author. The correspondence detailed irregularities in the operation of the Fixed Charge Processing System which governs certain specified offences committed under the Road Traffic Acts currently in force and managed by An Garda Síochána.

The correspondence received from the Department of Justice & Equality contained two comprehensive documents listing allegations made by the anonymous author. Both documents make serious allegations of corruption on the part of Garda Officers in their operation and administration of the Fixed Charge Processing System.

Following from my preliminary report to you of 28th November 2012 please find herein the results of my full examination of the issues raised.

2. THE FIXED CHARGE PROCESSING SYSTEM

2.1 Overview

The Fixed Charge Processing System, which replaced the old *'Fine-On-The-Spot'* system, was introduced by virtue of *section 11 Road Traffic Act 2002* which substituted *section 103 Road Traffic Act 1961*. The legislation provides that where a person is believed to have committed a Fixed Charge offence, the person may be served with a Fixed Charge Notice and if the Fixed Charge is paid in accordance with the provisions of the legislation, proceedings will not be instituted.

The printing and payment of Fixed Charge Notices was outsourced in 2006 as provided by section 17 of the Road Traffic Act 2006 and since the 1st June 2011 has been substituted by section 81 of the Road Traffic Act 2010. This section also governs the contracting of the Go Safe Consortium to perform speed detections on behalf of the Garda Síochána. Section 29 of the Road Traffic Act 2010 introduced Fixed Charges for Drink Driving Offences in November 2011.

Prosecution follows non-payment of the Fixed Charge. In this respect, section 103(8)(e) of the Road Traffic Act 1961 provides that a prosecution in respect of an alleged Fixed Charge offence will not be instituted during the periods specified in the notice or, if a payment so specified accompanied by the notice, duly completed, is made during the appropriate period so specified in relation to the payment, at all. In effect, a motorist issued with an FCN is being put on notice that he/she may be prosecuted. However, the motorist may avoid prosecution by electing to pay a Fixed Charge.

Therefore the FCPS provides a motorist with an alternative to prosecution. Inherent in that alternative is a presumption that the evidence available is sufficient to sustain a prosecution. A Fixed Charge is not a fine. Fines can only be imposed following conviction. It is entirely a matter for the recipient of a notice to decide whether or not to pay the Fixed Charge.

From the date of issue of the notice there is a 28 day period in which to pay the fixed charge amount. If the initial 28 day period elapses and the fixed charge amount is not paid, there is a second 28 day period where the fixed charge amount increases by 50%, e.g. if the initial fixed charge amount is €80, the increased fixed charge amount (when the 28 day period has elapsed) will be €120. If payment is not made within the 56 day period, court proceedings will be initiated by way of an automated summons application system. Legislation does not provide for payment of a fixed charge after 56 days.

The first Fixed Charge offence, which related to exceeding speed limits, was introduced in October 2002 and since then the number of Fixed Charge offences have gradually increased. The latest Fixed Charge offences were introduced on the 3rd August 2012. In total there are now **89** categories of Fixed Charge offences, **48** of which incur Penalty Points. (*See Appendix "A"*)

In order to meet the administrative requirements to effectively and efficiently manage the operation of the *FCPS* from a Garda perspective, An Garda Síochána developed

an IT System (Fixed Charge Processing System) and established a national Fixed Charge Processing Office. **The Fixed Charge Processing Office** is located at Thurles, Co. Tipperary (Formerly Capel St. Dublin). Since 30th October 2007 the office is under the supervision of a Garda Inspector and a civil servant of Assistant Principal status (equivalent to a Garda Superintendent) assisted by a staff of approximately 60 civil servants at any given time. The Inspector employed at the FCPO is the only member of An Garda Síochána employed there. The person ultimately responsible for the FCPO is the Chief Superintendent, Garda National Traffic Bureau based at Garda Headquarters, Dublin.

While in the normal course prosecution follows non-payment of a Fixed Charge, a review of the issuing of any Fixed Charge Notice may result in termination / cancellation, and no proceedings being instituted. Termination / cancellation occurs when it is believed the evidence would not sustain a prosecution and / or prosecution would not be appropriate, fair or proportionate or in the public interest. Decisions on termination / cancellation are governed by Garda Policy and Procedures which complement the discretion vested in an authorised officer to so terminate / cancel, and are framed around legislative exemptions and in the Guidelines for Prosecutors as published by the Director of Public Prosecutions. (*See Appendices “B” and “C”*).

2.2 Termination of Fixed Charge Notices – Policy

While the issuing of a Fixed Charge Notice (**FCN**) does not constitute commencement of legal proceedings the issuing of a notice, in effect, leads to a prosecution if the Fixed Charge is not paid.

The only other mechanism for the prevention of a prosecution when a Fixed Charge Notice is not paid is to have the FCN terminated.

Consequently, following the introduction of Fixed Charges, An Garda Síochána established Policy and Procedures for the termination / cancellation of Fixed Charge Notices which are set out in the **Fixed Charge Processing System Full User Manual Policies & Procedures Third Edition 2005**. In essence, the policy and procedure document provides authority and advice to District Officers, Inspectors acting on behalf of District Officers and the Inspector with responsibility for the administration of the **Fixed Charge Processing Office** to cancel **FCN’s** within the parameters of the aforementioned Policy.

Any person issued with an FCN has an entitlement to petition the relevant authorised officer for a termination / cancellation. This entitlement is present whether the offence was detected by intercept or non-intercept.

When deciding as to whether to terminate the FCN the authorised officer has recourse in his decision making to the legal exemptions which include such issues as medical certification on the wearing of seat belts and exceeding the speed limits in certain situations (*e.g. emergency vehicles – Section 87 RTA 2010 refers effective from the 28th October 2011 and section 27 of the RTA 2004 prior to that date*). Such legislative exemptions are reflected in Garda policy in the organisational directives to staff known as HQ Directives. The cancellation policy also seeks to reflect the Director of

Public Prosecutions guidelines for prosecutors as well as the *Garda Declaration of Professional Values & Ethical Standards*, both of which govern factors that adhere to the principles of fairness and proportionality, and which set out that in pursuing their public duties members of An Garda Síochána are required to adhere to the principles of legality and apply the law in a manner that is *fair, equitable and appropriate to the particular circumstances of individual cases*.

The *Guidelines for Prosecutors issued by the Director of Public Prosecutions (Revised – October 2007 at paragraphs 4.9 and 4.13 and Revised - November 2010 at paragraphs 4.11 and 4.15)* state “*that a prosecution should not be brought where the likelihood of a conviction is effectively non-existent*”, and that in assessing the evidence the prosecutor should “*also have regard to any defences which are plainly open to, or have been indicated by, the accused*”. The DPP has further advised, in relation to the prosecution of driving offences, that particular acts, such as exceeding a speed limit or crossing a continuous white line, can warrant any one of a variety of responses ranging from no prosecutorial action through to a caution or a charge under the relevant legislation / regulation.

In the application of the policy on cancellation, where a discrepancy / problem / possible defence is identified which emanates from the detection of the offence or the administration of the system that cannot be rectified, the advantage is always afforded to the driver/owner and the Fixed Charge Notice is cancelled. This is reflected in the well established jurisprudence in the Irish legal system where the benefit of any doubt lies with an accused person.

Members of An Garda Síochána have been provided with the authority to institute and prosecute offences on behalf of the Director of Public Prosecutions under section 8 of the Garda Síochána Act 2005. Directions in this respect are contained in the DPP’s General Direction No.3 effective from 8th November 2011. (*See Appendix “C”*). The Guidelines for Prosecutors issued by the Director of Public Prosecutions (Revised – October 2007 and November 2010) outline the many matters which must be considered in each case. (*See Appendix “C”*)

2.3 Terminating Authority

The Fixed Charge Processing System, Full User Manual, Policies & Procedures Third Edition 2005 defines the *Cancelling Authority* as;

- *The District Officer or Acting District Officer* of the location where the offence occurred.
- *The District Officer or Acting District Officer* responsible for the detecting member.
- The *Inspector* in charge of the *Fixed Charge Processing Office*.

In essence this defines specifically the areas where any of the above mentioned cancellation authorities can exercise that authority to terminate FCN’s. In simple terms the District Officer or the Inspector acting on his behalf can only terminate for

offences for detections in the district to which he / she is assigned and for which he / she has responsibility. Some officers have a responsibility for a policing role as opposed to a geographical area. For example, Traffic Superintendents and Traffic Inspectors may have operational responsibility for a significant number of personnel engaged in road traffic enforcement over many Garda districts. The termination policy permits such officers to terminate in cases where such detecting personnel are under their operational responsibility. Therefore, in a case where a traffic unit member detects an offence within the district of a particular Superintendent it would be possible for the detection to be terminated by either the Superintendent in whose district the offence occurred or by the officer responsible for the detecting member.

The *Inspector* in charge of the *Fixed Charge Processing Office* has a national remit and his termination authority can be exercised throughout the State.

3. DISCRETIONARY POWERS – AN GARDA SÍOCHÁNA

The prudent application of the law is facilitated by An Garda Síochána's discretionary powers associated with the nature of the public office members of the organisation hold. The use of discretion by members of An Garda Síochána is best seen as the application of practical, prudent and balanced judgement, which sees the law applied in a manner that is fair, equitable and appropriate to the particular circumstances of individual cases. The principles of equality and non-discrimination always apply. In approaching the application of the law An Garda Síochána and its membership must be cognisant of these requirements and must be guided by their purpose and intent.

Members of An Garda Síochána must always act in accordance with their oath of office, the professional and ethical standards expected, and in accordance with the law, and use their office and discretionary powers and influence in the interest of the common good. Article 4 of *The Garda Declaration of Professional Values & Ethical Standards* outlines that in pursuing their public duties Gardaí are required to adhere to the principles of legality and apply the law in a manner that is fair, equitable and appropriate to the particular circumstances of individual cases.

Whereby the Garda Síochána Act 2005 imposes certain police duties and functions on the Garda Service as a whole or as a collective body it does not confer any specific police powers. Rather, police powers are conferred by individual statutes directly on each member of the force, thereby supplementing the already existing police powers and duties inherent in an individual as a member of An Garda Síochána.

An Garda Síochána encourages individual members of the service to exercise discretion whether to effect an arrest in any case where the circumstances have brought a power of arrest into play. Ultimately, however, it is a matter for the individual member to decide whether to exercise his or her power of arrest in circumstances which have brought such power into play. He or she must decide whether to exercise his or her discretion to arrest in such a case.

Members of An Garda Síochána have an inherent power of discretion by virtue of their office from time immemorial. In this respect, section 7 and 8 of the Garda Síochána Act 2005, in relation to the statutory functions of An Garda Síochána, provides that such functions "*do not affect any powers, immunities, privileges or duties that members ... have ... at common law*". Section 25 of the 2005 Act specifically provides that the Minister's power in relation to the issue of directives "*may not be exercised to limit the independence of a member ... in performing functions relating to the investigation of a specific offence or the prosecution of an offence ...*".

Members of An Garda Síochána continue to be the holder of an office which is vested with a range of powers, privileges and duties which are conferred on him or her by Common Law and by statute, including the power of discretion.

Having regard to the above a member of An Garda Síochána may, depending on the circumstances, use his/her discretion to caution/warn a person about their behaviour. A Garda is entitled to consider what powers they have at their disposal in any given

situation and to act accordingly. The circumstances of each individual case may be looked at and a decision may be taken that it is not in the public interest to prosecute.

Notwithstanding the fact that the Commissioner can issue directions to individual Gardaí on how they should exercise their law enforcement powers the Commissioner cannot compel them to exercise those powers in any particular way. The Garda Commissioner has therefore a balancing act to consider when setting standards. That is to say, any instruction must be carefully crafted to ensure that it does not fetter the discretion that is vested in each member of An Garda Síochána. These are matters which must be considered in relation to how members exercised their discretion in relation to the cancellation of FCPS notices.

The Attorney General has provided advice in relation to the discretionary power under section 103 of the Road Traffic Act 1961 as to whether or not to issue a fixed charge notice for a road traffic offence and the cancellation of same. In this respect, section 103(2) of the 1961 Act provides that where a member of An Garda Síochána has reasonable grounds for believing that a fixed charge offence has been or is being committed then if he identifies the person *"the member shall serve, or cause to be served, personally or by post, on the person a notice under this section."* There then follows a carefully choreographed sequence of events that is to occur, which is again expressed in mandatory terms. The form of the notice is to be in terms that if a certain penalty is paid within a certain time period then a prosecution will not be instituted. The legislation does not say that a prosecution must be instituted. Indeed it is noted that subsection 8(b) refers to a notice containing a term in respect of *"a person liable to be prosecuted"*. Section 103(18) sets out the time periods in which a prosecution *"may be brought"*. ***The Attorney General advises that it is clear that when a fixed charge notice is issued it is not mandatory that the payment must be made or a prosecution must follow.***

The Garda Síochána Ombudsman Commission, in a conclusion to their ***"Examination of Practice, Policy and Procedure under section 106(2) of the Garda Síochána Act 2005 in regard to the Fixed Charge Processing System as operated by the Garda Síochána"*** (April 2009) stated ***"Garda discretion to caution offenders has been curtailed within the FCPS. Police in other jurisdictions have more discretion and may have recourse, in certain circumstances, to alternatives to prosecution. The strategic goal of the FCPS should be the achievement of increased driver compliance - but not necessarily increased detections"***.

In general terms, it is a well established fact that the use of discretionary powers has served An Garda Síochána well since the foundation of the State. This discretion is exercised by members of An Garda Síochána at every level in the exercise of their daily duties and responsibilities. It is an intrinsic feature of good policing, the application of which continues to assist in maintaining the positive relationship the organisation has developed with the general citizenry over its history.

The positives associated with the application of discretion by An Garda Síochána outweigh the negatives. Recognising that a counter argument can always be made when articulating the benefit in effecting a discretionary power I believe the numerous examples reported upon herein demonstrate the advantages of considering and acceding to applications for terminations. It is proffered these advantages serve to

obviate the necessity for citizens to engage with the court system with its associated costs, in time and money, of solicitor's fees, taking up court time and engaging Garda resources. It is essentially a question of reasonableness, balance and proportionality.

In human terms discretion has proved to be hugely beneficial where offending motorists have submitted genuine reasons for their transgressions in this area. Terminations on discretionary grounds are deemed appropriate where the applicant has shown extenuating circumstances contributing to their lapses. In deeming such terminations appropriate authorised officers need to demonstrate fairness and an ability to recognise that normally law abiding members of the general public, from all walks of life, can and do, transgress, due to personal issues playing on their minds.

Insofar as the termination of Fixed Charge Notices is concerned a total of **18** categories are provided for within policy and procedures providing for non-discretionary termination. Contrastingly, the application of discretion is provided for within policy and procedures in **3** areas only, namely, "**Family Bereavement**", "**Medical Emergency**" and "**Other**". The first two categories are specific and self explanatory and govern a number of situations where motorists may offend, inadvertently, because of the personal situations of this nature in which they find themselves. The third category of "**Other**" provides for situations, as the term suggests, other than those encompassed by the first two. These circumstances can be wide and varied but can, nonetheless, contribute to the inadvertent commission of offences. While the first two categories are definitive the third provides for a more fluid interpretation albeit one where those authorised to conduct terminations need, nevertheless, to apply prudent criteria and reasoning in their deliberations. It should be remembered that discretionary deliberations also allow for decisions to refuse petitions to terminate just as much as it provides for acquiescence.

Indeed, the analogy to a situation at the side of the road can be drawn, where a Garda detects offences and intercepts the offending motorist he/she, there and then using his/her discretion, decides whether or not to issue an FCN. This motorist still has recourse to having the issues of the intercept considered by way of petition. The same consideration, though not afforded at the roadside, in the case of recipients of FCN's where the detections are non-intercepts and result from offences detected using safety cameras, can only be addressed through a system of appeal and petition to the appropriate authority. This analogy supports the benefits of the continued use of discretion in the application of the FCPS.

The principle of discretion, however, remains unvarying in either instance as motorists in both instances can apply to the relevant officer to have their matter considered.

When contemplating whether the public interest requires a prosecution, or in the instant case the issue / non-issue of an FCN, factors such as the person's youthful age, elderly disposition or whether the individual is suffering from significant mental or physical ill health or disability are all considerations. However, while considering various mitigating issues other factors such as the seriousness of the charge and the likelihood of the offence being repeated must also be countenanced.

Deciding officers also have to consider where a discrepancy, mistake or problem is identified which emanates from the detection of the offence or the administration of the system that cannot be rectified, the advantage is invariably afforded to the driver/owner and the Fixed Charge Notice is cancelled.

The equilibrium that must exist between any policy framework and discretion is a challenging one which is best exemplified in recent case law on the matter.

In the case *Ronan McCarron v Superintendent Peadar Kearney; Joseph Magee v Inspector Pat Murray and Superintendent Denis Roche; Neil McVeigh v Minister for Justice, Equality and Law Reform Supreme Court, 11 May 2010*, the Court stated, *“In my view there is nothing in law which forbids the Minister upon whom the discretionary power...is conferred to guide the implementation of that discretion by means of a policy or set of rules. However, care must be taken to ensure that the application of this policy or rules does not disable the Minister from exercising her discretion in individual cases. In other words, the use of a policy or set of fixed rules does not fetter the discretion which is conferred by the Act. Neither, in my view, must the application of those rules produce a result which is fundamentally at variance with the evidence placed before the Minister by an applicant”*.

The Court also stated *“Clearly, it will be difficult to draw the line between permissible guidelines and impermissible rigid and inflexible policies”*.

4. PROCEDURES APPLIED FOR TERMINATIONS

4.1 PULSE System

The **PULSE** system is a computerised network I.T.C. system operated and used by An Garda Síochána to support all its mainstream operational activities. The data base for the system is sited at Garda HQ. The general membership has access to the system at almost every Garda District in the State.

For data security purposes all **PULSE** users have their own **User Account** and password. All access to **PULSE** is exclusively via these security protocols and once access is granted each activity undertaken is logged by the system. Users are advised of this fact on logging on to the system.

Any changes to **PULSE** records made by a user will be logged in a series of “**audit**” tables that are held within the database. The details, captured as part of these “**audit records**”, includes a copy of the record prior to the alteration along with the details of the user who made the change and the date and time of the change, and finally, what alterations were made. As a result, what changed, by whom changed, when it changed and what it changed to, can be definitively identified.

The **PULSE** system **does not allow** records to be “**deleted**”, “**erased**” or “**destroyed**” by users once they have been saved to the database. Even where a **PULSE** record is marked “**Invalid**”, as sometimes has to happen, the record remains on **PULSE** and is visible to all users along with the reason it was marked “**Invalid**”. As part of this process of invalidation a reason must be provided.

While **PULSE** records can, of necessity, be updated as required for operational reasons **they cannot be “destroyed” or “erased”** and in all cases the detail of any previous version of a **PULSE** record is available.

Each member of An Garda Síochána is issued with a sequential employment number when attested to the service. This number remains a unique identifier for that member for his/her entire service and is used for signature and data access.

4.2 Fixed Charge Processing System

The Fixed Charge Processing System, which replaced the old ‘**Fine-On-The-Spot**’ system, was introduced by virtue of *section 11 Road Traffic Act 2002* which substituted *section 103 Road Traffic Act 1961*. The legislation provides that where a person is reasonably believed to have committed a Fixed Charge offence, the person shall be served with a Fixed Charge Notice and if the Fixed Charge is paid in accordance with the provisions of the legislation, proceedings will not be instituted.

The **FCPS** is a computerised networked data system which manages all data relating to the issue and processing of FCN’s. The system is accessible on a limited basis, through the **PULSE** system, to authorised personnel. This limited access does not allow for access to all the information contained therein, such access only being the reserve of the staff and management of the FCPO. The **FCPS** is a separate system to

PULSE but both systems are integrated to some degree for certain functionalities. One of those functionalities is where designated or Authorised Officers can terminate an FCN on the FCPS through **PULSE**.

The **FCPO** retains an electronic correspondence register for all fixed charges. This permits the recording of correspondence pertaining to the notice. A synopsis of information is recorded in a free text box concerning incoming and outgoing correspondence.

4.3 Procedure

When a decision is taken to terminate an FCN the Superintendent or Inspector must log on to the FCPS through the **PULSE** system and proceed to the Termination Screen. Within this screen they have to firstly select the 'tick box' marked 'Termination' and then select the appropriate cancellation reason from a drop down menu. They must then enter their registered number in the 'Garda' box, and confirm by selecting a 'tick box' that they are authorised to cancel the Fixed Charge Notice. **The termination record is then saved and once saved cannot be rescinded. The saved record is inclusive of detail as outlined at 4.2 (above).**

Within the **FCPO** at Thurles the same procedures apply. However, **all terminations are conducted under the registered number of the Inspector in Charge of the FCPO** by a select group of civilian members, authorised by local arrangement and under the Inspector's authority, to ensure the efficiency and effectiveness of the processes at that office.

H.Q Directive 133/09 referred to a transitional cancellation procedure which was in place between the 13th September, 2009 and the 25th July, 2010. During this transitional period it was not possible to cancel a Fixed Charge Notice on local (Garda Station) **PULSE** computers due to systems updating. All decisions to cancel FCN's during this period, though taken locally at district level by the resident officers, had to be communicated to the Garda Inspector at the Fixed Charge Processing Office in Thurles who had the sole responsibility for cancelling the FCN's on the Fixed Charge Processing System.

4.4 Categories for Termination

The cancellation options are provided in a drop down menu on **PULSE** and the **FCPS**. Initially the options were limited to Systems Error, Juvenile Diversion Programme, Cancelled, Vehicle Stolen, Vehicle/Driver File Defect(s), New Owner, Scanning Incorrect Registration Number, Adult Caution and Diplomatic Corps.

On the 1st of April 2012, **PULSE Release 6.3.2 (Appendix "E")** updated the reasons for cancellation by including 16 additional options (replacing the 'cancelled' and 'system error' categories) to obtain a more detailed picture of the termination categories as listed below. *(This examination has divided the categories into Non - Discretionary and Discretionary, discretionary being the authority exercised by members of An Garda Síochána). Non-discretionary categories are those which must*

be terminated while the discretionary category allows for an Officer to consider each case on its merits and then decide accordingly.

Non Discretionary Termination Categories

Juvenile Diversion Programme (where D.O.B. is established)

Vehicle Stolen

Vehicle/Driver File Defect(s) – New Owner

Diplomatic Corps

Scanning – Incorrect Registration Number

Data Entry/IT/Garda Errors

Detection Details Error(s)

Disabled Parking Pass

Duplicate Notice

Incorrect Nomination

Legislative Defect

Seat Belt Detection – Medical Evidence

Speed Limit Incorrect

Statutory Exemption – Emergency Vehicles

Tax/Insurance Disc/ Trade Plate In order

Undelivered

Image Unusable

Payment Processing Issue

The facility for termination in respect of the last four mentioned categories listed above is only available, through the FCPS, to staff at the Fixed Charge Processing Office in Thurles.

Discretionary Termination Categories

Discretionary – Family Bereavement

Discretionary – Medical Emergency

Discretionary – Other

Under the heading “**Discretionary – Other**” the terminating member can consider a variety of reasons petitioned in making his decision. These may include factors where the recipient feels that the issue of the FCN is excessive and not proportionate. In such cases the recipient may admit that they have breached the law but because of the particular circumstances of their case they believe that they should not be subject to any formal sanction and may seek mitigation of their case through termination or cancellation of the FCN.

4.5 Process of Termination through Petition

The existence of policy which deals specifically with the cancellation of FCN’s is an acknowledgement by Garda management from the inception of the FCN system that persons would seek to have their cases reviewed, mitigated or terminated. **Parts 1 and**

2 of the *FCPS User Manual (Appendix “B” of this report)* carries Garda Policy in relation to cancellation requests. Therefore where an Officer undertakes a cancellation decision he should do so with the processes as outlined in this chapter in mind. The underlying principles of the cancellation policy are as follows;

A person may call in person or telephone a station to apply to have a notice cancelled. The member checks the status of the offence on the FCPS to ensure that it has not already proceeded to summons stage. If it has, the member should inform the applicant that they would have to pursue the matter in court.

If the offence has not proceeded to ‘Summons Active’ stage, the member should inform the applicant that they must submit their cancellation request in writing, with any supporting documentation, to the District Officer in whose district the offence occurred.

The member should inform the applicant that the request for cancellation does not alter the obligations or payment periods as set out on the Fixed Charge Notice.

On receipt of a cancellation request, the District Officer/Superintendent should ensure that an acknowledgement letter is sent to the applicant. This letter will inform the applicant that the request for cancellation does not alter the obligations or payment periods set out on the Fixed Charge Notice.

The District Officer should examine each individual case to establish if, on the basis of the circumstances and evidence provided, the Fixed Charge Notice merits a termination.

If the cancellation is not warranted, the District Officer ensures a rejection letter is sent to the applicant.

If the cancellation is warranted, the District Officer logs onto the *PULSE* system and selects the offence to be terminated via the FCPS Search screen. The District Officer ensures a *Confirmation of Termination* letter is sent to the applicant.

All documentation relating to a cancellation is stored by the District Officer for audit purposes.

The necessity for audit files is to ensure that there is a retrospective, transparent and accountable record of all terminations, thus maintaining the integrity of this discretionary process.

4.6 Block Terminations

Block terminations relate to FCN’s issued where system errors and detection errors are present in bulk. They encompass errors such as incorrect offence code quoted, incorrect location quoted, legislation issues and issues concerning captured camera images. All such terminations are conducted *en bloc* and can only be terminated at the FCPO, Thurles, under the authority of the Inspector attached thereto.

For example, if a motorist was detected for exceeding a speed limit in a special speed limit area and petitions the detection on the basis that the actual speed limit was not reflected in either the road signage, or in local regulations or bye-laws, this petition, and the knowledge it brings to the administration of the FCPO, can set a process in train to give the benefit of cancellation to all erroneous detections within that particular speed limit area. Thus, block terminations are effected.

5. ALLEGATIONS MADE BY ANONYMOUS AUTHOR

5.1 Documents submitted by Anonymous Author

The correspondence received from the Department of Justice & Equality contained two comprehensive documents listing allegations made by the anonymous author. Both documents make serious allegations of corruption on the part of Garda Officers in their operation and administration of the Fixed Charge Processing System. The general thrust of the allegations concern the manner in which Garda Officers responded to petitions for termination / cancellation from recipients of Fixed Charge Notices. The allegations claim Garda Officers have acted corruptly, have destroyed or removed records from the Garda *PULSE* system and have been responsible for a loss of revenue to the State as a result of irregular terminations / cancellations.

The anonymous author submitted two separate lists of allegations to the Department of Justice & Equality (*See Appendix "F" and Appendix "G"*). On examination it was found that a large number of the allegations are duplicated. *Appendix "F"* contains **210** allegations and *Appendix "G"* contains **192** allegations. On examination of both documents it was found that all allegations set out in *Appendix "G"* are contained in *Appendix "F"* with the exception of **2**, namely, *Allegations 6 (B) and 115 (B)*.

In addition, within *Appendix "F"* **23** allegations are repeated or duplicated.

With the **2** allegations added from *Appendix "G"*, and with the **23** duplicated allegations deducted, the total number of allegations now stands at **189**.

The findings of *this examination*, in relation to each individual allegation, are outlined in sequential order at *Appendix "H"*

5.2 Content of Allegations

Within the **189** allegations the majority are of a specific nature in that persons / members of An Garda Síochána are named as having benefited from or are responsible for the irregular termination of individual FCN's.

The remaining allegations are general in nature citing wrongdoing in the termination of FCN's by un-named members and/or un-named beneficiaries of terminations. A number of general allegations are broad based and allude to the termination of hundreds / thousands of FCN's.

Within the allegations there are ;

17 Allegations citing *Corruption* on the part of Garda members.

15 Allegations citing the *Destruction and/or Erasing* of FCN's by Garda members.

7 Allegations citing *Perversion of the Course of Justice* by Garda members.

10 Allegations citing *Falsification* by members of An Garda Síochána

1 allegation citing *Deception* on the part a Garda member.

5.3 Concentration of Allegations

The anonymous author has focused particular attention on **9** Garda Officers alleging that they were responsible for multiple irregular terminations. Similar allegations are made citing irregularities at the DMR Traffic Department, Dublin Castle whereas the majority of the aforementioned **189** allegations refer to specific terminations by specific officers. For instance one of the officers singled out for special attention by the anonymous author is the subject of **14** separate allegations.

The anonymous author also associates a number of *Fatal Traffic Collisions (9)* with the termination of FCN's. Terminations in respect of *Members on Duty / Garda Family Members / Public Figures* also come in for criticism by the anonymous author.

This examination undertook a comprehensive review of each of the allegations where the anonymous author has focused his attention on the select number of targets of his particular focus.

Summaries of the findings of *this examination* of these allegations by the anonymous author are included herein at **Chapter 9**. These matters are inclusive of allegations connected with;

Fatal Traffic Collisions.

Six Superintendents.

Three Inspectors.

Traffic Department DMR, Dublin Castle.

Repeat Applications for Terminations.

Family members / Friends of Gardaí.

Allegations of Corruption, Deception, Falsification, Destruction of FCN's.

Public Figures.

6. THIS EXAMINATION

6.1 Examination of Allegations

All allegations made by the anonymous author have been examined and are subject of individual reports herein. For ease of reference the individual reports are sequenced in accordance with their chronological number as they appear at **Appendix “H”**. Allegations **6 (B)** and **115 (B)** are added to complete a full picture of all allegations made and examined.

6.2 Methodology

The anonymous author quotes a general time frame of *the last four years* as encompassing the allegations made. As a consequence *this examination* has taken the period from 1st January 2009 to 30th June 2012 for review against the allegations made. In examining all allegations made by the anonymous author *this examination* has found that, with the exception of a small number, all allegations fall within this time frame. Exceptions occur, for example, where the anonymous author alleged a particular number of terminations but where *this examination* discovered other associated terminations not cited by the anonymous author and which came outside the time remit as stated. All terminations associated with the allegations, irrespective of their timeframe, were examined.

Each allegation has been examined and reported upon individually and is inclusive of;

Analysis of PULSE systems and FCPS records.

Analysis of Policy and Procedure, Legislation and H.Q. Directives

Accessing files on terminations retained at District Offices.

Interview of Superintendents / Inspectors authorised to carry out terminations.

Corroboration, in certain cases, of reasons petitioned for terminations.

Comment on processes employed to terminate FCN's.

Recommendations where applicable.

6.3 Resources

A considerable amount of Garda resources, both in terms of time and manpower, have been expended on *this examination*. The examination was conducted from an incident room at the Garda National Traffic Bureau at Garda H.Q., Phoenix Park. The team assembled to conduct the examination included 5 Chief Superintendents, 6 Superintendents, together with their respective staff, and an incident room staff of 7. In total **28** Garda staff were engaged in *this examination* with assistance also rendered by Garda I.T. staff and the Garda Síochána Analysis Service.

6.4 Random Audit of Additional 1% of FCN's Terminated

(See also Chapter 8.3)

In addition to the allegations made, *this examination* has also undertaken an examination of a further **1%** of FCN's terminated during the period under review using the following methodology to reflect the random selection of **1%**. The purpose of this audit was to provide independent data in sufficient quantity that would provide a benchmark for standards and performance in respect of the FCPS in terms of any comparative analysis that would be required.

The source data for this exercise was obtained for the period 1/1/2009 to 30/6/2012, the same time remit employed in the examination of the allegations made by the anonymous author.

A total of **672** terminations were randomly selected from source data representing **1%** of all terminations (**66,407**) undertaken during the review period. *{See Chapter 8 (3)}*

Superintendents and Inspectors stationed at Divisional Headquarters stations from the period 1/1/2009 to 30/6/2012 were selected for the process. Two Divisional Headquarters were excluded as they are already subject of a separate detailed examination (*See Chapter 9*). This process identified **134** Superintendents and Inspectors who terminated FCN's which fell within the criteria applied in calculating the 1% sample.

To obtain the random selection in date order from these terminations, a ratio of **1:16** was employed. In selecting every sixteenth termination a figure of **672** terminations was arrived at approximating to **1%** of the total terminations for the relevant period

The examination of this **1%** representative selection is detailed separately at *Chapter 8.3* herein.

7. STATISTICAL INFORMATION – FCPS – 1/1/2009 TO 30/6/2012

7.1 Time Frame

This examination has taken the period from 1st January 2009 to 31st June 2012 for review against the allegations made. Statistical information was obtained for this period to capture the total number of Fixed Charge Notices;

- Issued during the period
- Terminated during the period.
- Categories for Terminations.
- Percentage of Terminations per category.

7.2 Percentages

1,460,726 Fixed Charge Notices in total were issued.

66,407 Fixed Charge Notices in total were terminated.

In total **4.55%** of all notices that issued were terminated.

Approximately **33,820 (51%)** of all terminations relate to speed detections.

An additional **14,686 (22.12%)** of notices were terminated for the non-display of tax and insurance discs. These related to cases where the recipient queried the issue of the Fixed Charge Notice on the basis that the tax disc and insurance disc were in fact in order, or that a change of ownership of the vehicle had occurred.

The Fixed Charge Processing Office maintains a manual record which indicates that of the total **66,407** terminations carried out during the period of review **11,783 (17.74%)** are terminations conducted unilaterally by that office as part of its automatically programmed bulk termination system.

Between the 13th September, 2009 and the 25th July 2010, a transitional termination procedure was in place to facilitate computer systems re-programming. During this transitional period it was not possible to cancel Fixed Charge Notices on local (Garda Station) PULSE computers. All decisions, therefore, to cancel FCN's had to be communicated to the Garda Inspector at the Fixed Charge Processing Office in Thurles who had the sole responsibility for cancelling the FCN's on the Fixed Charge Processing System. Consequently, **44,237 (66.62%)** of all terminations for the period under review were terminated under this Inspector's registered number. In other words this Inspector was, during this period of computer system re-programming, in effect, actioning the decisions made by other officers on a national basis. Its axiomatic therefore that he would have, for this period, a proportionately larger number of terminations conducted under his registered number. The above mentioned figure of **44,237** is inclusive of the **11,783** terminations conducted unilaterally by that office (*See Table No.2, below*)

Prior to **PULSE release 6.3.2** on the 28th March 2012 the various termination options were limited in number and range and as a consequence it is not now possible to extract quality data from the system. Some of these limited reasons in the drop down

menu on the system, such as ‘cancelled’ and ‘system error’, could relate to a myriad of factors and cover a range of possibilities which make it now impossible to extrapolate accurate information.

Of the **4.55%** terminations, this investigation can state that when the figure is adjusted to account for terminations as detailed at tables 2 & 3, below, there is a reduction in the total percentage of Fixed Charge Notices terminated to **3.74%**. This can be further adjusted downward to **2.74%** to take account of the **22.12%** of terminations for non display of tax and insurance discs for the reasons outlined supra.

Furthermore the termination rate can be revised downwards even further to take into account the automatic terminations due to the fact that the offenders are juveniles. In such cases the FCN’s are terminated with the offence being referred to the Juvenile Diversion Programme for determination which is legislatively mandated by virtue of *Section 18 of the Childrens Act 2001*. The total number of Youth Referrals for the period under review is **2,554**. This accounts for **0.175%** of all notices issued and approximately **3.8%** of all FCPS terminations.

When applied to the overall percentages the actuality is that operational officers who were authorised under the system to terminate FCN’s are responsible for a termination rate of **2.57% of all FCN’s issued (1.46 million approx)** for the period under review.

7.3 Statistical Information

Statistical information has been obtained for the years 2009, 2010, 2011 and the first 6 months of 2012 to capture the total number of Fixed Charge Notices terminated during this period (Table 1). In total **4.55%** of all notices that issued were terminated. Approximately **33,820 (51%)** of all terminations relate to speed detections, and this is dealt with further on in this report. An additional **14,686 (22%)** of notices were terminated for the non-display of tax and insurance discs, where the owner /driver queried the issue of the Fixed Charge Notice on the basis that the tax disc and insurance disc were in fact in order, or that a change of ownership of the vehicle had occurred.

Table 1 Termination Statistics Fixed Charge Processing System

| | 2009 – 2012* | 2009 – 2012* | 2009 – 2012* | 2009 – 2012* |
|-----------------------------------|---------------------|---------------------------|------------------------------|--------------------------------------|
| | Total Issued | Total Terminations | Percentage of Total** | Percentage of Terminations*** |
| Speeding | 713,070 | 33,820 | 4.74 | 50.93 |
| Mobile Phones | 118,977 | 2,431 | 2.04 | 3.66 |
| Seat Belt | 60,336 | 1,763 | 2.92 | 2.66 |
| Red Light | 25,767 | 706 | 2.74 | 1.06 |
| Tax | 238,409 | 12,103 | 5.08 | 18.23 |
| Insurance | 22,490 | 2,583 | 11.49 | 3.89 |
| (Section 51A RTA 1961 as amended) | 17,647 | 545 | 3.09 | .82 |
| Other FCPS | 264,028 | 12,456 | 4.72 | 18.76 |
| Total | 1,460,726 | 66,407 | 4.55 | 100 |

(* - Statistics for January – June 2012)

(** - Terminations as a percentage of total 'Fixed Charge Notices' issued)

(*** - Terminations as a percentage of total 'Terminations')

In Table 2 termination statistics are provided for terminations administered in the Fixed Charge Processing Office relating solely to detection errors. The total for block terminations is included in the total termination figures. The higher amount in 2011 coincides with the introduction of the outsourcing of the operation of safety cameras (*GoSafe Consortium*), where, amongst other reasons, notice recipients queried the location of the detection as mentioned in the notice based on the townland referred to.

Table 2 - Detection Errors Terminations Fixed Charge Processing Office

| Year | Block Terminations | Detection Errors | Total |
|-------------------|---------------------------|-------------------------|---------------|
| 2009 | 1,263 | 1,212 | 2,475 |
| 2010 | 1,234 | 1,007 | 2,241 |
| 2011 | 2,113 | 3,162 | 5,275 |
| 1/1/12 to 30/6/12 | 573 | 1,219 | 1,792 |
| Total | 5,183 | 6,600 | 11,783 |

Out of the termination figures recorded (Table 2) those relating to block terminations were terminated for the reasons outlined below in Table 3, which relate to speeding offences only (*See also Chapter 4 (6) Re; Block terminations*)

Table 3 - Block Terminations Fixed Charge Processing Office - Termination Reasons

| Termination Reason | Explanation |
|---------------------------|--|
| Incorrect Code | Incorrect Offence Code Selected |
| Incorrect Location | Incorrect Town Land Used |
| Person In Image | Pedestrian Identifiable From Image |
| Legislation Issue | Incorrect Regulation(s) No Legislation No Bye-laws |
| Image Issue | Photographic Image - Registration Details Unclear |
| Systems Error | Technical Problem With Camera |

8. FINDINGS OF THIS EXAMINATION

8.1 General

The findings of *this examination* are detailed hereunder. All matters subject of allegations by the anonymous author have been reviewed. In examining the issues *this examination* found it necessary, in the interest of completeness, to include relevant matters not cited by the anonymous author but identified by *this examination*.

The findings are presented in two parts to cover “***Matters Subject of Allegation***” and the results of a review of a further “***Random Audit of Additional 1% of FCN’s Terminated***” during the period under review. The detailed findings of the examination of the **189** separate allegations laid by the anonymous author appear in sequential order at **Appendix “H”**.

8.2 Matters Subject of Allegation

Outline

When duplications were considered a total of **189** separate allegations were identified.

Within the **189** allegations the majority are of a specific nature in that persons / members of An Garda Síochána are named as having benefited from or are responsible for the irregular termination of individual FCN’s.

The remaining allegations are general in nature citing wrongdoing in the termination of FCN’s by un-named members and/or un-named beneficiaries of terminations. A number of general allegations are broad based and allude to the termination of hundreds / thousands of FCN’s.

A total of **2198** related Fixed Charge Notices were identified as coming within the scope of the analysis.

This examination has referred terminations conducted by **3** officers for investigation by the Assistant Commissioner, Internal Affairs, as it has established that some terminations undertaken by these officers may not have been conducted strictly within administrative policy and procedure thereby giving rise to possible breaches of discipline. *This examination* reviewed all **661** terminations conducted by these officers.

In order to avoid prejudice in the disciplinary process, the above terminations (**661**) were excluded from the process resulting in the figure of **1537** terminations as the reference point for the statistical analysis regarding terminations subject of allegations.

Terminating Member Details

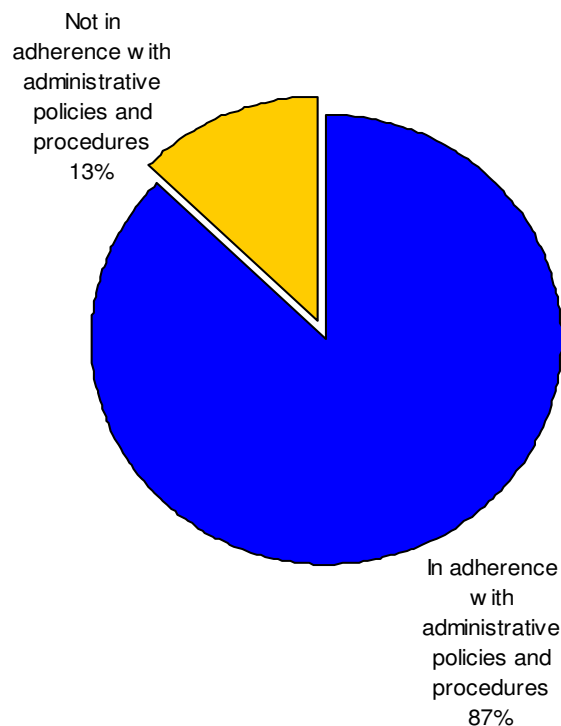
Terminations were completed by **113** individual members of Inspector and Superintendent rank. **3** members were promoted during the time period in question and are counted twice.

Fixed Charge Notice Termination Policy

The policy and procedures on the termination / cancellation of Fixed Charge Notices are set out in the Fixed Charge Processing System Full User Manual Policies & Procedures Third Edition 2005. In essence the policy and procedures provides authority to District Officers / Inspector Acting District Officer and the Inspector Fixed Charge Processing Office to cancel Fixed Charge Notices.

Of the 1537 terminations examined, 1339 (87%) were within existing policy while the remaining 198 (13%) terminations were not in strict adherence with administrative policy as illustrated in figure 2.

Figure 2: Specific Allegations - Terminations within / outside policy (N=1537)



Of the **198 (13%)** terminations not in adherence with administrative practice and policy,

- **138** terminations were made by members terminating Fixed Charge Notices outside their Districts or area of responsibility.
- **60** terminations where no audit file was available but each termination can be accounted for.

Reasons for Termination

Each fixed charge termination was examined and the relevant audit trail identified. The termination was examined manually and the reason for termination categorised as shown in Table 3 below. It was not possible to use the FCPS to categorise each termination as prior to PULSE release 6.3.2 on the 28th March 2012 the various cancellation options did not permit the extraction of sufficient detailed statistical information from the system. The top five reasons for terminations were found to be;

- Medical emergencies (**19.6%**),
- Data entry errors (**15.7%**),
- Undelivered Fixed Charge Notices (**9%**),
- Other discretionary reasons (**8.4%**) and
- Compassionate reasons (**7.2%**).

Together these categories account for **59.9%** of all terminations.

Table 4: Reasons for termination - Allegations

| Reasons | Total | % |
|---|--------------|-------------|
| Medical | 301 | 19.6% |
| Data entry error | 241 | 15.7% |
| Undelivered | 138 | 9.0% |
| Discretionary - other | 129 | 8.4% |
| Compassionate | 110 | 7.2% |
| Parking Permit, Log Book, Insurance, NCT, Tax or Trade Plates | 110 | 7.2% |
| Humanitarian | 94 | 6.1% |
| Garda On Duty | 76 | 4.9% |
| Duplicate notice | 74 | 4.8% |
| Juvenile Diversion Programme | 38 | 2.5% |
| Detection Details Error | 33 | 2.1% |
| Vehicle file defect | 27 | 1.8% |
| Signage Issues | 22 | 1.4% |
| Multiple Notices | 19 | 1.2% |
| Emergency | 17 | 1.1% |
| Garda Off Duty Acting in Course of Their Duty | 17 | 1.1% |
| Nomination Issues | 16 | 1.0% |
| Parking Issues | 12 | 0.8% |
| Alarm Activation | 11 | 0.7% |
| Family Bereavement | 9 | 0.6% |
| Seat Belt Exemption | 7 | 0.5% |
| False plates | 6 | 0.4% |
| Prison Van | 5 | 0.3% |
| Sent to court | 5 | 0.3% |
| Non Garda Related issue | 5 | 0.3% |
| Ambulance | 4 | 0.3% |
| Image Unsuitable | 3 | 0.2% |
| Caution | 2 | 0.1% |
| Legislative | 2 | 0.1% |
| Payment Processing issue | 2 | 0.1% |
| Driver Deceased | 1 | 0.1% |
| Diplomat | 1 | 0.1% |
| Total | 1,537 | 100% |

Terminations relating to members of An Garda Síochána on duty and off duty

123 (8%) of the **1,537** terminations linked to the specific allegations made involve a member of An Garda Síochána either on duty or off duty.

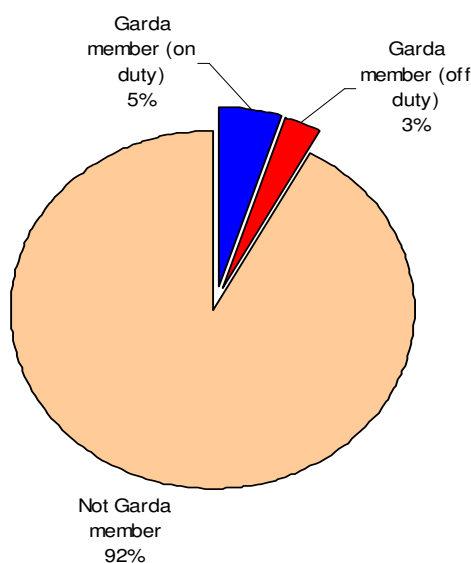
- **120 (97.6%)** were for speeding offences.
- **1** was for a parking offence.
- **1** was for a mobile phone offence.
- **1** was for a bus lane offence.

76 (62%) of these **123** incidents relate to a member on duty, while **47 (38%)** involved a member off duty.

Of the **47** terminations in respect of members off duty:

- **17** incidents involved a member off-duty but acting in their sworn capacity as a member of An Garda Síochána
- **17** incidents involved a medical emergency for a family member
- **11** terminations were made for off duty Gardaí for non work related issues inclusive of compassionate grounds and discretionary reasons.
- **2** incidents involved a member responding to an alarm activation

Figure 3: Specific Allegations - examined by Garda/non Garda member (N=1537)



Family Connections

In the absence of specific information it is difficult to categorically identify whether the petitioner is in any way connected to either the terminating officer or a member of An Garda Síochána.

1,530 of the **1,537** terminations examined (**99.5%**) had no identifiable family connection between the terminating member of An Garda Síochána and the fixed charge nominee.

However, from an examination of the documentation *this examination* established that 7 of the 1,537 terminations examined (0.5%) had an identifiable family connection to a member of An Garda Síochána.

5 of the 7 terminations in question were terminated in adherence with administrative practices and policy. Whilst the remaining 2 were not in strict adherence, they do not amount to a breach of discipline.

- 1 termination was made on *compassionate* grounds.
- 1 termination was made on *discretionary other* grounds.

Juvenile Offenders

36 of the 1537 terminations were terminated automatically by the system as the offender was a juvenile.

Summary

- 1,537 Fixed Charge Notice terminations were subject of this analysis.
- The majority of terminations (87%) were done so in adherence with administrative procedure and policy.
- The top five reasons for terminations were found to be medical emergencies (19.6%), data entry errors (15.7%), undelivered Fixed Charge Notices (9%), other discretionary reasons (8.4%) and compassionate reasons (7.2%). Together these categories account for 59.9% of all terminations.
- 7 of the 1,537 terminations examined (0.5%) had an identifiable family connection.
- While 8% of the terminations examined relate to a member of An Garda Síochána, nearly two thirds of these (62%) were for speeding offences where the member was on official duty and had a statutory exemption under Section 87 of the Road Traffic Act 2010, and previously Section 27 Road Traffic 2004.
- 138 terminations were made by members terminating Fixed Charge Notices outside their District. 60 terminations were identified where an audit file was unavailable but each termination can be accounted for.

8.3 Random Audit of Additional 1% of FCN's Terminated.

Outline

A total of **672** selected terminated Fixed Charge Notices were randomly selected for audit representing approximately **1%** of terminated notices in the period under examination – 1st January 2009 to 30th June 2012.

The break down of offence group for the Fixed Charge Notices selected is shown below in table 5. Approximately (**42.7%**) of the Fixed Charge Notices examined were for speeding offences.

Table 5: Fixed charge notices by offence group – Random Audit

| Offence Group | Fixed charge notices | % |
|--|-----------------------------|-------------|
| Speed | 287 | 42.7% |
| Tax/Ins(No Disc),Sec 51A RTA | 118 | 17.6% |
| Park Sign /Road Markings | 67 | 10.0% |
| Bus Lane/St.& Bus/Taxi Park | 54 | 8.0% |
| Mobile Phone | 35 | 5.2% |
| Park-Manner/Location | 30 | 4.5% |
| SEAT BELT | 19 | 2.8% |
| Park/Load Bay & School Entrance | 13 | 1.9% |
| Clearway/Disabled Bay-Park/Stop | 12 | 1.8% |
| Traffic lights-Driving Past | 11 | 1.6% |
| Driving a Vehicle Without Reasonable Consideration | 5 | 0.7% |
| Traffic Signs & Rd Markings | 3 | 0.4% |
| Tram Lane/ Street & Cycle Track | 3 | 0.4% |
| Drink Driving Fixed Penalty | 2 | 0.3% |
| Fail To Yield Right Of Way | 2 | 0.3% |
| Hirer Parking Offences | 2 | 0.3% |
| Mandatory Signs, Reverse & Weight | 2 | 0.3% |
| Parking Within 5 Metres | 2 | 0.3% |
| Roadway-Cross Centre Lines | 2 | 0.3% |
| Drive On / Across | 1 | 0.1% |
| Overtaking | 1 | 0.1% |
| Pedestrian Area/St | 1 | 0.1% |
| Grand Total | 672 | 100% |

Terminating Member Details

Terminations were completed by **134** individual members of Inspector and Superintendent rank. **7** members were promoted during the time period in question and are counted twice.

81 (58%) members of Inspector rank were responsible for **387** of the **672** terminations

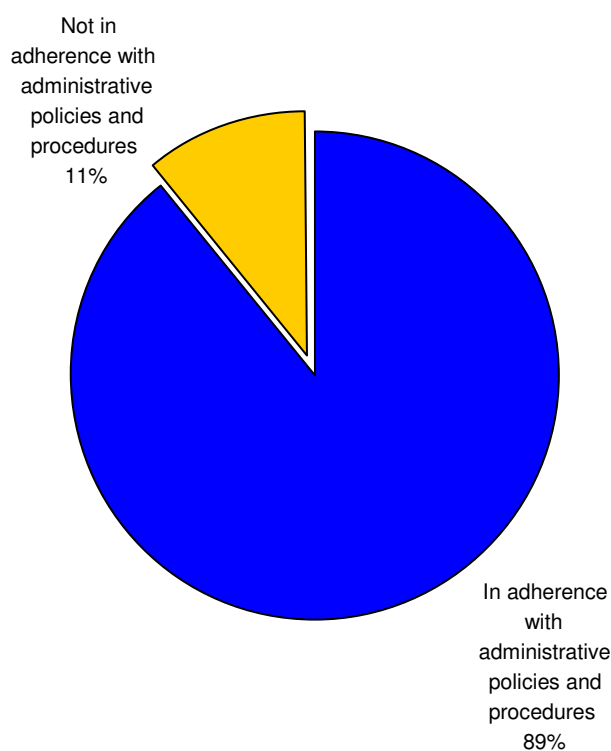
60 (42%) members of Superintendent rank were responsible for **285** of the **672** terminations

Fixed Charge Notice Termination Policy

The policy and procedures on the termination / cancellation of Fixed Charge Notices are set out in the Fixed Charge Processing System Full User Manual Policies & Procedures Third Edition 2005. In essence the policy and procedures provides authority to District Officers / Inspector Acting District Officer and the Inspector Fixed Charge Processing Office to cancel Fixed Charge Notices.

Of the **672** terminations examined, **600 (89%)** were in adherence with administrative policies and procedures while the remaining **72 (11%)** terminations were not in adherence as illustrated in figure 4.

Figure 4: Random 1% Sample - Terminations in Adherence / not in adherence to policy (N = 672)



Of the **72 (11%)** terminations not in adherence with administrative practice and policy,

- **72** terminations were made by members terminating Fixed Charge Notices outside their District.

Reasons for Termination

Each fixed charge termination was examined and the relevant audit trail identified. The termination was examined manually and the reason for termination categorised as shown in *Table 3* below. It was not possible to use the FCPS to categorise each termination as prior to *PULSE release 6.3.2* on the 28th March 2012 the various cancellation options did not permit the extraction of sufficient detailed statistical information from the system.

The top five reasons for terminations were found to be;

Medical emergencies (**25%**).

Data entry errors (**14%**)

Issues relating to permits, log books, insurance, NCT, tax or trade plates (**11%**).

Undelivered (**8%**).

Members of An Garda Síochána on duty (**6%**).

Together these categories account for nearly two thirds (**64%**) of all terminations.

Table 6: Reasons for termination – Random Audit

| Reasons | Total | % |
|---|--------------|-------------|
| Medical | 167 | 24.9% |
| Data Entry Error | 92 | 13.7% |
| Parking Permit, Log Book, Insurance, NCT, Tax or Trade Plates | 76 | 11.3% |
| Undelivered | 54 | 8.0% |
| Garda On Duty | 41 | 6.1% |
| Humanitarian | 35 | 5.2% |
| Discretionary - Other | 33 | 4.9% |
| Parking issue | 33 | 4.9% |
| Multiple Notices | 25 | 3.7% |
| Signage issue | 17 | 2.5% |
| Detection details error | 13 | 1.9% |
| Compassionate | 11 | 1.6% |
| Vehicle File Defect | 11 | 1.6% |
| Alarm activation | 9 | 1.3% |
| Disabled Parking Pass | 9 | 1.3% |
| Emergency | 7 | 1.0% |
| Nomination issue | 7 | 1.0% |
| Payment Processing Issue | 5 | 0.7% |
| Family Bereavement | 4 | 0.6% |
| Seatbelt Detection Medical Evidence | 4 | 0.6% |
| Caution | 2 | 0.3% |
| Driver deceased | 2 | 0.3% |
| Duplicate Notice | 2 | 0.3% |
| False plates | 2 | 0.3% |
| Fire Brigade | 2 | 0.3% |
| Garda Off Duty Acting in Course of Their Duty | 2 | 0.3% |
| Image Unsuitable | 2 | 0.3% |
| Juvenile Diversion Programme | 2 | 0.3% |
| Diplomatic | 1 | 0.1% |
| FCN Received after expiration of First 28 day period | 1 | 0.1% |
| Prison Escort Van | 1 | 0.1% |
| Total | 672 | 100% |

Family Connections

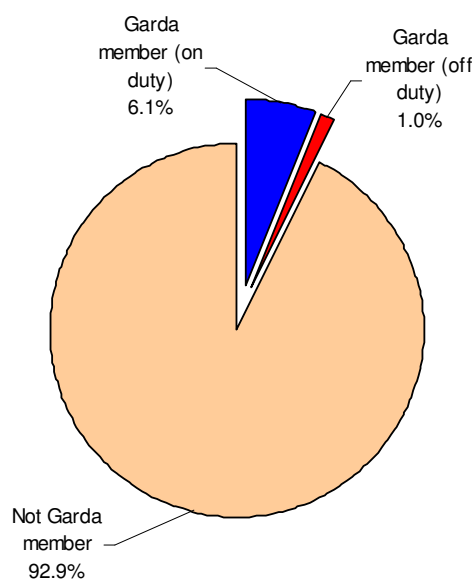
In the absence of specific information it is extremely difficult to categorically identify whether the petitioner is in any way connected to either the terminating Officer or a member of An Garda Síochána. None of the terminations examined, on the face of it, had an identifiable family connection to a member of An Garda Síochána.

Terminations relating to a member of An Garda Síochána

48 of the **672** terminations (**7.1%**) relate to a member of An Garda Síochána either on duty or off duty. Nearly all of these Fixed Charge Notices (**46** of the **48**) were for speeding offences, while the remaining **2** were for parking offences.

41 of these **48** (**85.4%**) incidents relate to a member on duty, while **7** involved a member off duty.

Figure 5: Random 1% Sample examined by Garda/non Garda member (N = 672)



Of the **7** members off duty:

- **2** incidents involved a medical emergency for a family member.
- **2** incidents involved a member off-duty acting in the course of their duty in following a suspicious vehicle.
- **1** incident involved a Fixed Charge Notice received after expiration of first 28 day time period.
- **1** incident involved a member responding to an alarm activation.
- **1** incident was terminated for discretionary reasons.

14 of the **48** (**29%**) terminated Fixed Charge Notices in relation to a member of An Garda Síochána were not in adherence with administrative policy and procedures.

Summary

- **672** randomly selected Fixed Charge Notice terminations were examined in respect of **134** individual terminating members.
- The majority of terminations (**89%**) were done so within existing policy guidelines.
- The top five reasons for terminations were found to be medical emergencies (**25%**), data entry errors (**14%**), issues relating to permits, log books, insurance, NCT, tax or trade plates (**11%**), notices undelivered (**8%**) and members of An Garda Síochána on duty (**6%**). Together these categories account for nearly two thirds (**64%**) of all terminations.
- While **7.1%** of the terminations examined relate to a member of An Garda Síochána, nearly all of these (**85.4%**) were for speeding offences where the member was on official duty and had a statutory exemption under Section 87 of the Road Traffic Act 2010 and previously Section 27 Road Traffic Act 2004.
- **72** terminations were made by members terminating Fixed Charge Notices outside their District. Following a thorough examination surrounding each case it has been assessed that these terminations, though not strictly within the guidelines, are not considered to amount to breaches of discipline.

8.4 Analysis Comparison of the Random 1% Sample against Allegations

When considering the undertaking of a comparative analysis in this case between the sets of data set out supra i.e. Matters Subject of Allegation *vis a vis* the Random 1% Sample one has to appreciate, and the reader has to be mindful, that any meaningful comparison can only come about when one is comparing like with like. However, congruence does occur in both sets of data with regard to the following;

- *The non-creation and / or retention of audit material*
- *Officers conducting terminations outside their Districts.*

9. ALLEGATIONS FOCUSED ON PARTICULAR OFFICERS / GROUPS / ISSUES - FINDINGS

9.1 Background

At **Chapter 5.3** of this report *this examination* has made reference to the focus placed by the anonymous author on particular officers and terminations for particular groups of terminations.

This examination undertook a comprehensive review of each of the allegations where the anonymous author has focused his attention on the select number of targets of his particular focus.

While *this examination* has not uncovered any evidence of corruption or of endemic irregularities in the application of the Fixed Charge System by An Garda Síochána, allegations have been made which, taken at face value, could give rise for some concern insofar as the organisation is concerned. These matters include allegations inferring favouritism, patronage and collegiality in terminations carried out by District Officers, or Inspectors acting on their behalf.

Also, *this examination* has found that, in the main, District officers, and Inspectors acting on their behalf, have terminated FCN's in singular or individual cases. In a small number of cases, however, Superintendents, or Inspectors acting on their behalf, have been responsible for large numbers of terminations which the anonymous author has cited as irregular. **This includes terminations for offences detected outside their Districts. This examination has also identified a number of situations where petition files are not available for inspection.**

The findings of *this examination* relative to these matters are detailed hereunder.

9.2 Fatal Traffic Collisions

A serious allegation of concern to *this examination* is the association the anonymous author makes in connecting a number of allegations fatal traffic collisions and FCN's terminated in respect of motorists involved. The allegations infer that these terminations militated against altering errant driving behaviour and were in some way a contributing factor in fatal collisions.

Some of the allegations are general in nature in that they claim that "*motorists killed in Fatal Road Traffic Collisions who were previously caught speeding and had their speeding terminated by corrupt Garda Officers*" and "*.....had their speeding quashed by senior Gardaí*". The remaining allegations are specific in nature and relate to particular terminations associated with fatal collisions. A further allegation associates a termination with a traffic collision resulting in serious injury. Each allegation is comprehensively examined in the sequence of the examination of allegations at **Appendix "H"**.

In one instance the anonymous author alleges ***“A.N. Other (age provided) was killed in a traffic accident on (date supplied) She had a speeding ticket quashed by a Garda Inspector one month earlier. She may have learnt her lesson and slowed down if she was possibly facing 4 penalty points for a second offence.”***

The actual circumstances as established by *this examination* are that the FCN in question was terminated subsequent to, and as a direct consequence of, this motorist’s death.

The inference made by the anonymous author that the termination of the FCN was somehow a contributing factor in the fatal incident is speculative and based on supposition and is clearly without substantiation.

In another instance the anonymous author alleges ***“Motorist involved in hit and run on (date supplied), killing a pedestrian. The driver previously had a 135km/100km speeding offence terminated by a Garda inspector”***.

In this case the offending motorist was issued with a duplicate FCN for the same offending behaviour. The duplicate FCN was terminated while the original FCN issued resulted in the motorist being prosecuted through the courts where a monetary fine was imposed and 4 penalty points were added to his licence.

The same motorist was the offender in a subsequent hit and run collision involving two pedestrians, fatally injuring one of them. He was successfully prosecuted, in the Circuit Criminal Court on a charge of *‘Dangerous driving causing death’* and received a seven year custodial sentence.

The inference made by the anonymous author that the termination of this FCN was somehow a contributing factor in the subsequent hit and run incident is again speculative and based on partial information. The offending motorist was prosecuted for the speeding offence asserted by the anonymous author to have been cancelled. The allegation has absolutely no basis in fact and cannot be substantiated.

This examination has established similarities with another allegation - ***“A.N Other lost control of his vehicle on (date supplied) and killed his female passenger. He previously had 120km/h speeding ticket terminated”***.

In this instance a duplicate FCN was issued as a result of an error on the original FCN. The issuing of the duplicate FCN resulted in the motorist being prosecuted through the District Court. Following a full hearing the case was struck out by the presiding judge.

As the offending motorist was actually prosecuted through the courts for the speeding offence the anonymous author has again arrived at conclusions based on partial information and conjecture. This allegation cannot, obviously, be substantiated.

Another allegation is similar in nature - ***“A.N. Other killed on the (date supplied) driving his car. 6 months earlier he had a case of Driving without Reasonable Consideration quashed by a Garda Inspector”***.

In this instance the allegation concerns a male motorist detected '*Driving without reasonable consideration*'. The detecting Garda issued a second FCN in error for the same offence. The motorist petitioned the duplicate notice and this was terminated in accordance with policy and procedures. Of significance, he elected to pay the FCN still standing.

Subsequently, the same motorist was involved in a two vehicle collision. Both he and the other driver were fatally injured. The Garda investigation found no fault with the motorist subject of this allegation.

The anonymous author again employs supposition and conjecture in this case. The FCN issued in relation to the incident of (date provided) was paid by the recipient. The allegation has no basis.

In another allegation where duplication of FCN's is relevant the anonymous author states - "***A.N. Other involved in fatal accident on the (date provided) where he killed another driver. He was later arrested for killing the motorist. 2 months earlier he had a case terminated by a Garda Inspector for driving up a one way street the wrong way.***"

In this case a data entry error by the detecting Garda resulted in the cancellation of an FCN issued to this motorist. The integrity of this cancellation is exemplified by the issuing of a second FCN by the detecting Garda for the same offence and with the correct details. The issuing of the new Notice was contrary to the Attorney General's advices on such matters, such advice adhering to the principal of "*double jeopardy*", and therefore the second FCN was also terminated.

Subsequently, the offending motorist was an occupant in a stolen car which crashed. The other two occupants of the stolen car died at the scene. A subsequent Garda investigation concluded that the driver of the stolen vehicle died at the scene. The DPP directed no prosecution against the survivor of the crash, cited as the motorist in this allegation.

These two incidents cannot be linked as inferred by the anonymous author. The fatalities were in the car in which the previously offending motorist was a passenger. Once again the anonymous author has jumped from supposition to fact presumably without being in possession of the requisite information.

In another allegation the anonymous author contends "***A.N. Other involved in a head on collision on the (date supplied), killing motorist, 3 months earlier she had a speed detection of 155kph/100kph zone terminated by Garda superintendent. Family of deceased never informed***".

In this case a motorist was detected driving above the speed limit by an off duty Sergeant driving his private car and employing the speedometer of his car to record the offender's speed. The motorist appealed the issue of the FCN to the local Superintendent on the basis that it was unfairly issued.

The FCN was terminated on the basis of a legal technicality and not on the grounds cited in the motorist's letter of petition. The legal technicality concerned the non-

calibration of the speedometer on the Sergeant's private car therefore the offending speed could not be corroborated.

Subsequently a vehicle driven by the same motorist was involved in a fatal collision with another vehicle. The passenger in the other vehicle was fatally injured. The motorist is currently before the Circuit Court on a charge of "*Dangerous driving causing death*".

The facts stated by the anonymous author are correct on their face however, the termination of the FCN cannot be seen as a contributing factor in the fatal collision. The termination was conducted for legal reasons.

It is purely conjecture to suggest that the termination of the FCN contributed to the fatal collision.

Another allegation contends that "*A.N. Other on the (date supplied) and killed pedestrian. 6 weeks later he had a 109/80 zone speeding detection quashed by a Garda Inspector.*"

In this case a motorist was involved in a fatal collision. While he was driving he collided with a pedestrian who subsequently died. The DPP directed no prosecution against the driver.

Some weeks later the same motorist was issued with an FCN for a speeding offence. This FCN was terminated, together with a number of other notices relating to other offenders, on the basis that the location of the detection was found to have an incorrect speed limit attached to it and therefore the alleged offences were, in fact, not prosecutable. This termination comes under the aegis of ***Block Terminations*** at the FCPO (*See Chapter 4.6*).

Once again the supposition and presumption of the anonymous author fails to establish any systemic or personal failure in this instance. Indeed, the driving behaviour resulting in the fatal incidents could not have been influenced by the termination of an FCN issued subsequently.

The anonymous author in another case alleges "*A.N. Other was the driver of a vehicle on the (date supplied) that knocked down and killed a pedestrian. 6 months later on the (date supplied) he had a speeding detection quashed by a Garda Inspector stating "child sick in rear of car on the way to local doctor"*".

In this case a motorist was involved in a fatal collision where a pedestrian was the fatality. A Garda investigation file forwarded to the DPP resulted in a direction of no prosecution against the driver.

Some six months later the same motorist received an FCN for a speeding offence. The authorised District Officer terminated this FCN on the basis of a letter of petition submitted which cited a medical emergency.

Again, the driving behaviour resulting in the fatal collision could not have been influenced by the termination of an FCN issued subsequently.

The anonymous author also alleges - *A.N. Other killed in a traffic collision on the (date supplied). 10 months previous he had speed detection terminated by a Garda Inspector. 82/50 zone*".

In this case a vehicle registered to a motorist was subject of a speed detection at a particular location. The owner appealed the issue of the notice on the grounds that he was never at the location in question. On reviewing the image captured by the safety camera, the FCPO validated the petition and terminated the FCN.

This man subsequently died in an incident where he was the driver of a vehicle which collided with another vehicle. The DPP subsequently directed no prosecution against the driver of the other vehicle.

No association can be made between these two incidents as alleged by the anonymous author. The FCN was properly terminated due to a system error.

In another allegation the anonymous author contends "*A.N. Other knocked down and seriously injured a female on the (date supplied). Three months later on the (date supplied) he had a speeding ticket terminated by a Garda Inspector.*"

This matter concerns an incident where a motorist collided with a pedestrian who suffered relatively minor injuries. The DPP directed no prosecution in the matter.

Again, the driving behaviour resulting in the collision with the pedestrian could not have been influenced by the termination of an FCN issued subsequently.

The anonymous author has again made an association in this instance based on presumption.

In summary, there is, essentially, no substance to the allegations explored above. The anonymous author has based his claims on partial information, and by relying on such fractional information he appears to assert them as cold hard accurate facts. *This examination* has established that when held up to scrutiny these allegations are groundless. They are based on presumption, conjecture, supposition, speculation and innuendo. In making the associations aforementioned and attempting to correlate fatal collisions with terminations the only criteria and proofs apparently employed is the commonality of names, collisions and terminations. When the cases cited are fully examined the anonymous author's assertions fall far short of the actual facts in each and every case.

9.3 Superintendent "A"

The anonymous author cites this Superintendent in a number of allegations.

In the period 16/8/2007 to 16/10/2012 this Superintendent has conducted a total of **189** terminations of FCN's. (Within the time frame of *this examination*, 1/1/2009 to 31/6/2012, the figure stands at **167**). Analysis and investigation of these figures (in tandem with the allegations made) by *this examination* has revealed; This Superintendent terminated **189** FCN's in a five year period.

Over the five year period in question this equates to a figure of approximately **36** terminations annually.

Full petition files in respect of **37** of this Superintendent's **189** terminations have been sourced by *this examination*. All have been examined and found to have been terminated within policy and procedures. From the paperwork available to *this examination* there is no evidence to suggest criminality or corruption in respect of this Superintendent's actions surrounding these **37** terminations.

Petition files in relation to **152** terminations have not been sourced.

This Superintendent has provided explanations to *this examination* in respect of **58** terminations where no files have been sourced.

In addition this Superintendent is recorded as having terminated FCN's in **44** instances where the detections were made outside his district.

12 petitions for termination were refused by this Superintendent. Audit files are available for all **12**.

94 terminations carried out by this Superintendent remain unexplained in any fashion.

Policy and procedures do not appear to have been adhered to in relation to the **152** terminations conducted by this Superintendent where no petition files were sourced.

It does appear on the basis of material available to me, that this Superintendent may be in breach of An Garda Síochána (Discipline) Regulations 2007 in respect of the discharge of his responsibilities and obligations surrounding his administration of the Fixed Charge Processing System where these terminations (**152**) are concerned. Accordingly, I have forwarded the results of my findings to Assistant Commissioner, Internal Affairs, who has appointed a senior officer to investigate these matters under An Garda Síochána (Discipline) Regulations 2007.

9.4 Superintendent "B"

The anonymous author cites this Superintendent in number of allegations.

In the period under review this Superintendent terminated a total of **119** Fixed Charge Notices.

Full petition files are available in respect of **all** terminations conducted by this Officer.

It should be noted that a separate allegation has been laid against this Superintendent. This separate allegation, which appears to refer to the same issues subject of *this examination*, is currently the subject of an independent ongoing investigation within An Garda Síochána. While I have conducted a full examination into these terminations I am precluded, at this time, in order to facilitate due process, from commenting on this matter any further.

9.5 Superintendent “C”

The anonymous author cites this Superintendent in one allegation concerning “*hundreds*” of terminations “*cancelled on compassionate grounds after successful appeal to Superintendent*”

During the period under review the Superintendent in question, together with three Inspectors who acted as District Officer on occasion, terminated a total of **194** FCN’s.

Petition files are available in respect of all **194** terminations and on examination all were found to be within policy and procedures. **78** cases were recorded as having been terminated for *Compassionate / Sympathetic reasons*.

Audit files are available in respect of **42** petitions for termination which were refused by this Superintendent.

The actual numbers terminated by these four member falls far short of the number of “*hundreds*” as asserted in the content of the allegation by the anonymous author. Indeed, the Superintendent who was in charge of this district for the entire period under review terminated **118** FCN’s, **40** of which are recorded as having been terminated for *compassionate / sympathetic reasons*.

This examination has not found any evidence to support this allegation. All terminations examined were conducted within policy and procedures.

9.6 Superintendent “D”

The anonymous author cites this Superintendent in a number of allegations.

The allegations include terminations for Garda members and family members of Gardaí. Each of these matters was examined in detail and the reports relating to each one appear in the sequence of reports on the individual allegations appended hereto at *Appendix “H”*

The allegations refer to **12** terminations in total. One termination was found to have been conducted for an offence outside this Superintendent’s district. All other terminations conducted by this Superintendent have been found to be in accordance with administrative policy and procedure.

9.7 Superintendent “E”

The anonymous author cites this Superintendent in one allegation.

This Superintendent is the subject of a single allegation alleging that he quashed **40-70** tickets and falsified records to hide the wrong doing. The anonymous author further alleged in relation to this Superintendent that numerous records were destroyed under his watch.

This examination has established that this Superintendent terminated **104** FCN's during the period under review. **57** terminations were conducted under discretionary powers with the remaining **47** terminations falling within non-discretionary categories.

This Superintendent terminated **102** of these terminations within administrative policy and procedures.

The remaining **2** terminations were conducted by this Superintendent for offences detected outside his district. Both FCN's related to offences detected in districts adjoining that of this Superintendent. In both instances, however, he consulted with the authorised officer for the districts where the offences were detected. Both FCN's were terminated for compassionate reasons.

This examination found no evidence to support the allegation of *hiding wrong doing* and *destroying* records. In addition *this examination* carried out an examination of all this Superintendent's termination records with similar findings.

9.8 Superintendent "F"

The anonymous author cites this Superintendent in one allegation.

The allegation contains scant information. However, *this examination* has established that the person allocated this Garda registered number is a Superintendent.

In the period under review this Superintendent terminated a total of **190** FCN's.

Audit files are available for all **190** terminations.

This Superintendent conducted **20** terminations for offences detected outside his area of responsibility but retained audit files in relation to all. In **7** cases this Superintendent consulted with the officer in whose area the offence was detected prior to termination. In one other instance the offence was in respect of a hijacked taxi detected in the course of the hijacking incident.

Following a thorough examination surrounding each case it has been assessed that these terminations, though not strictly within the guidelines, are not considered to amount to breaches of discipline.

9.9 Inspector "A"

The anonymous author cites this Inspector in a number of allegations.

The allegations cite this Inspector as having been responsible for numerous irregular terminations. The allegations include multiple terminations for the same person, tens of thousands of detections terminated and destroyed, terminations for offenders involved in fatal collisions and conducting terminations outside his district.

This Inspector has been identified as the Inspector attached to the FCPO. As already referenced he is tasked with management of the FCPO, which has a national remit to deal with all issues relating to the FCPS. He reports to the Chief Superintendent, GNTB, who in turn comes within the operational responsibility of Assistant Commissioner, Traffic.

In the period under review **11,783** terminations (**17.74%**) were carried out under his registered number at the FCPO relating to system errors and detection errors. These terminations were in respect of errors including;

Incorrect Code (Incorrect Offence Code Selected)
Incorrect Location (Incorrect Town Land Quoted on FCN)
Person in Image (Pedestrian Identifiable From Captured Camera Image)
Legislation Issue (Incorrect Regulation(s))
No Legislation
No Bye-laws
Image Issue (Photographic Image - Registration Details Unclear)
Systems Error (Technical Problem with Camera)

Within the FCPO all terminations are conducted under the registered number of the Inspector in Charge of the FCPO.

H.Q Directive 133/2009 (See Appendix "J") referred to a transitional cancellation procedure which was in place between the 13th September, 2009 and the 25th July, 2010. During this transitional period it was not possible to cancel a Fixed Charge Notices on local (Garda Station) ***PULSE*** computers. All decisions to cancel FCN's had to be communicated to the Garda Inspector at the Fixed Charge Processing Office who had the sole responsibility for cancelling the FCN on the Fixed Charge Processing System. Consequently, **44,237 (66.62%)**, inclusive of the aforementioned **11,783** in respect of system and detection errors, of all terminations for the period under review were terminated under this Inspector's registered number. In other words this Inspector was, during this period of computer system re-programming, in effect, actioning the decisions made by other officers on a national basis. Its axiomatic therefore that he would have, for this period, a proportionately larger number of terminations conducted under his registered number.

In the examination of the allegations relating to this Inspector *this examination* has found that he terminated all relevant FCN's in accordance with policy and procedure. His actions have been recorded officially in the requisite manner and all such records are available for inspection. A full record of the findings regarding these allegations is set out in sequential order within the findings on the individual allegations at ***Appendix "H"***.

Any suggestion of impropriety in this area on the part of this Inspector is totally unfounded and carries no basis in fact. This Inspector has discharged his duties in an exemplary manner. His responsibilities at the FCPO have been conducted in a professional fashion and all terminations carried out under his imprimatur have been so terminated in accordance with policy, procedures and responsibilities vested in him by virtue of his appointment as the member in charge of the FCPO.

9.10 Inspector “B”

The anonymous author cites this Inspector in a number of allegations.

This Inspector is a long serving member in a Garda Division where he regularly performs duty as an Acting District Officer. He has terminated FCN’s throughout the Division.

This Inspector has terminated **694** FCN’s on a Divisional basis during the review period.

This Inspector has terminated **462** FCN’s in his home District during the period under review.

This examination undertook enquiries and audits relating to this Inspector in respect of a number of allegations made against him by the author. Furthermore, a small number of these allegations against this Inspector were general where it was asserted that he had terminated 100s of tickets which constituted perverting the course of justice and falsification of records. It was also asserted that he had terminated tickets for numerous Gardaí caught off duty breaking the law by falsely saying that they were on duty.

The examination looked into each specific allegation and conducted a review of this Inspector’s terminations in his home District. **(462)**.

Full petition files in respect of **133** of these terminations have been sourced by *this examination*. All have been examined and appear to have been terminated within policy and procedures.

189 terminations conducted by this Inspector are recorded on the FCPS as “*System Errors*”. There are **20** files available for terminations under this category.

In addition, petition files in relation to **140** terminations conducted by this Inspector are not available.

This Inspector is recorded as having terminated FCN’s in **2** instances where the terminations reason is given as “Garda on Duty” but the beneficiary of the termination is not a member of An Garda Síochána. He states these were errors on his part.

Policy and procedures do not appear to have been adhered to in relation to the **140** terminations conducted by this Inspector where no petition files are available. Indeed there may well be an absence of **329** audit files in this case when one considers the terminations with regard to system errors. It should be noted that *this examination* has established, on perusal of the relevant correspondence registers, that audit files may have existed at one time in relation to a number of these terminations.

From the paperwork available to *this examination* there is no evidence to suggest criminality or corruption in respect of this Inspector’s actions surrounding these issues.

It does appear, however, on the basis of material available to me, that this Inspector may be in breach of An Garda Síochána (Discipline) Regulations 2007 in respect of the discharge of his responsibilities and obligations surrounding his administration of the Fixed Charge Processing System where these terminations (**329**) are concerned. Accordingly, I have forwarded the results of my findings to Assistant Commissioner, Internal Affairs, who has appointed a senior officer to investigate these matters under An Garda Síochána (Discipline) Regulations 2007.

In conducting *this examination*, it has been established that this Inspector terminated a total of **694** terminations during the period of review. I recommend that a full audit of all terminations conducted by this Inspector be conducted.

9.11 Inspector “C”

This Inspector has been found to be connected to a number of the allegations made by the anonymous author. *This examination* has established that the allegations concern the termination of **10** FCN’s by this Inspector.

Petition files in respect of **9** of these terminations have been sourced by *this examination*. On the basis of material available to me my examination has not uncovered any evidence to suggest criminality or corruption in respect of this Inspector’s actions surrounding these 9 terminations.

However, it appears on the basis of material available to me, this Inspector may be in breach of An Garda Síochána (Discipline) Regulations 2007 in respect of the discharge of his responsibilities and obligations surrounding his administration of the Fixed Charge Processing System where these terminations are concerned. Accordingly, I have forwarded the results of my findings for further investigation to Assistant Commissioner, Internal Affairs, who is the designated authority under the Disciplinary Regulations.

9.12 The Traffic Department DMR, Dublin Castle

The anonymous author makes an allegation at number **68** that “*Garda Officers stationed in the Traffic Department in Dublin have terminated numerous tickets for excessive speeds, phones, careless driving, breaking red light etc etc for their work colleagues, friends and relations*”.

This examination has carried out a review of FCN’s terminated at the Traffic Department, Dublin Castle, for the relevant period. The review is inclusive of all terminations conducted by all authorised officers who are, or were, attached to this department between 1/1/2009 and 30/6/2012.

In this period **215,684** FCN’s were issued by members attached to the Traffic Department, Dublin Castle.

A total of **637 (0.29%)** FCN's were terminated in this period by **10** authorised officers attached to the Traffic Department, Dublin Castle.

21 FCN's were terminated in respect of members of An Garda Síochána. **19** of the **21** were terminated in respect of members on official duty and within statutory provision exemptions. Audit files have been retained in respect of all **19**.

In **2** of the **21** cases, off-duty members were beneficiaries of terminations. Audit files have been retained for both. These members submitted petition requests on non-Garda duty associated grounds and were successful in their petitions.

This examination has found that audit files cannot be located in respect of **58** cases. The relevant terminating officers have been interviewed in relation to these **58** terminations and have indicated that files did exist and that each termination was based on the merits of petitions. The authorising officers responsible for these terminations have either retired or have been transferred and it has been confirmed that an internal practice existed whereby files were not retained on the transfer / retirement of members attached to that Department. This practice has since ceased.

From the examination of these **637** terminations there is no evidence found to support the allegation that Garda Officers in the Traffic Department, Dublin Castle, have terminated numerous FCN's for colleagues, friends and relations.

9.13 Repeat Applications for Terminations

In a number of allegations the anonymous author has cited persons as being the beneficiaries of multiple terminations during the period under review. *This examination* has found this to be the case in a limited number of instances, for varying reasons. Repeat petitions for terminations have been identified as coming from members of the general public as well as members of An Garda Síochána.

In one instance the allegation concerned a motorist who was detected **8** times by safety cameras in a ten month period. All eight detections referred to exceeding the speed limit relative to the weight of the alleged offending vehicle. The vehicle in question did not, in fact, exceed the weight limit specified therefore was not exceeding the speed limit applicable to its actual weight. As a result all eight FCN's were terminated on the grounds of "*Systems / Error – Detection Error*".

Another allegation concerns a motorist who was the beneficiary of **5** terminations during the period under review. All five terminations, while not falling within policy and procedure, generated audit files and were terminated on the basis of the petition letters submitted. It would appear that the three terminating officers were each unaware of the petitioners previous applications.

In another case a motorist had **6** FCN's issued to him between 2005 and 2012 for not wearing a seat belt. All **6** FCN's were terminated as the offending motorist was medically certified under Article 8 of the Road Traffic (Construction, Equipment and Use of Vehicles) (Amendment) Regulations, 1991. Under this article the requirement

to wear a safety belt does not apply to the holder of a certificate issued by a registered medical practitioner.

Another allegation concerns a motorist benefiting from **4** terminations in a six month period. These FCN's were terminated as, at the time of each of the **4** detections, this motorist was engaged in the vital work of transporting emergency blood supplies to hospital operating theatres.

On a general point, the reader's attention is drawn to the recommendation at **Chapter 10.5** herein, whereby it is recommended that future petition considerations should be inclusive of checks conducted for previous applications for terminations by petitioners.

9.14 Family Members / Friends of Gardaí

Where the anonymous author has made a number of allegations under this heading *this examination* has attempted to identify, where possible, any such connections. In the absence of specific information it is difficult to categorically identify whether the petitioner is in any way connected to either the terminating officer or a member of An Garda Síochána.

An allegation of this nature was made in relation to the Traffic Department at Dublin Castle *See Chapter 9.12*, above. An audit conducted at the Traffic Department by *this examination* under a Chief Superintendent did not find any evidence to substantiate the allegations. The random audit of **1%** of terminated FCN's undertaken by *this examination* also resulted in a similar conclusion. In relation to all the allegations made by the anonymous author **7 (0.5%)** of the **1537** FCN's examined were identified as having family connections.

This examination has, nonetheless, identified two terminations conducted by an officer for persons of the same name where inference of familial connections could be drawn. From the information available, however, this has been found not to be the case.

The overall findings of *this examination* would suggest that these allegations of widespread terminating for family and friends are incorrect.

9.15 Allegations of Corruption, Deception, Falsification, Destruction of FCN's

This examination has examined numerous specific allegations made by the anonymous author under the above headings. In all cases examined there was no evidence adduced to substantiate any of these allegations. While **PULSE** records can be updated as required for operational reasons such records cannot be '**destroyed**' or '**erased**'. In all cases, when updated, the detail of any previous version of a **PULSE** record is retained and is available for examination.

Any changes to **PULSE** records made by a user will be logged in a series of "**audit**" tables that are held within the database. The details captured as part of these "**audit records**" includes a copy of the record prior to the alteration along with the details of user who made the change and the date and time of the change, and finally, what

alterations were made. As a result, what changed, by whom it was changed, when it changed and what it changed to, can be definitively identified.

The *PULSE* system **does not allow** records to be “*deleted*”, “*erased*” or “*destroyed*” by users once they have been saved to the database. Even where a *PULSE* record is marked “*Invalid*”, as sometimes has to happen, the record remains on *PULSE* and is visible to all users along with the reason it was marked “*Invalid*”. As part of this process of invalidation a reason must be provided.

While *PULSE* records can, of necessity, be updated as required for operational reasons **they cannot be “*destroyed*” or “*erased*”** and in all cases the detail of any previous version of a *PULSE* record is available.

These allegations would appear to be predicated on information drawn solely from the section of the Garda *PULSE* System to which the anonymous author has access.

The inaccuracy inherent in these allegations is best demonstrated by the examination of cases referring to juvenile offenders.

9.16 Juvenile Offenders

In the context of allegations of *Corruption, Deception, Falsification, Destruction of FCN’s*, Cases referring to juvenile offenders are an appropriate example to illustrate the issue outlined at **9.15** above.

In accessing *PULSE* the anonymous author would find, for instance, such cases marked ‘*terminated*’ on initial examination. No other information is available. Advanced access to the system would reveal that all such cases are systematically diverted to the Juvenile Diversion Programme for determination as to whether a caution is appropriate or not. This is automatically undertaken in compliance with the statutory provisions of the Children’s Act 2001. The advanced *PULSE /FCPS* records include a full audit trail of each case of this nature. It is not possible to corrupt or destroy these records or any other record on *PULSE* or the *FCPS*.

This examination has identified **36** such FCN’s, which were subject of such allegations, which were so diverted to the Juvenile Diversion Programme. These juvenile motorists, in all cases, were found to be suitable for diversions and received cautions under the above Act.

9.17 Public Figures

The anonymous author has focussed on a number of what can be categorised as public figures in his individual allegations. These include allegations citing;

- Two sports personalities. In these cases written petitions were received by authorised officers. In one case in respect of two FCN’s and one FCN in the other case. All three terminations were found to be conducted within policy and procedure.

- A print journalist. This journalist had two FCN's terminated over a ten month period in 2011. Both FCN's were terminated on foot of petitions received. *This examination* has found that both terminations were conducted within policy and procedures.
- A sports journalist. This termination was conducted on foot of a petition letter and was terminated on compassionate grounds. The termination was found to have been outside policy and procedure. The terminating officer is now retired.
- A District Court Judge. This Judge had 3 FCN's terminated in 2010 (2) and 2012 (1). All 3 terminations came about as a result of verbal petitions to authorised officers. On the basis of verbal petitions all three FCN's were terminated. Whereas audit material was created in each case, as required by the guidelines, and the terminations were conducted by the appropriate authorised officers acting within their areas of responsibility, proper procedure would have dictated the creation and retention of a more complete audit file in these cases.
- Retired Garda Assistant Commissioner who is a member of a State Board. Petition letters were received in relation to 3 FCN's issued to this person over a two year period. All 3 terminations were found to have been conducted within policy and procedure.

With regard to the same retired Garda Assistant Commissioner the anonymous author alleges that a named member of the same State Board had an FCN terminated by the said retired Assistant Commissioner's son. *This examination* has found that a brother of the retired Assistant Commissioner terminated an FCN for a person with the same christian and surname as a member of that State Board.

This examination has also found that the beneficiary of this termination is not a member of a State Board and the termination was found to have been conducted within policy and procedure.

10. SUMMARY / RECOMMENDATIONS

SUMMARY

In examining the allegations made by the anonymous author it is worthwhile at the outset to take oversight of the operation and administration of the Fixed Charge Processing System in its totality and how such a global view of the system reflects on the matters under review.

The total number of FCN's issued nationally in the relevant period amounted to in excess of **1.46** million. Of these, **66,407 (4.55%)** were, for varying reasons, terminated. Therefore, in excess of **1.39** million (**95.45%**) of FCN's issued in this period were processed through the system in the requisite and regulatory manner without any difficulty or hindrance. The termination rate of **4.55%** is further reduced to **2.57%** when system errors and automatic non-discretionary categories are excluded from the core area of *this examination*. Therefore the scope of *this examination* was focussed on this **2.57%** of all FCN's issued during the period under review. It is submitted that in any theatre of operations these figures would represent an accomplished success and a considerable vindication of administrative and operational systems and structures in place for its implementation.

Like all operations of such magnitude, nonetheless, administrative problems do occur. The FCPS is no different. While in no way attempting to denigrate the allegations made or minimise the seriousness of the areas of concern identified, the actuality of the administration and operation of the Fixed Charge Processing System, in its entirety, by An Garda Síochána presents quite a contrast to the picture painted by the anonymous author and the perception resulting from acceptance of the allegations at face value.

While speculation and suspicion may be abroad as a result of the allegations made *this examination* has not exposed any evidence of corruption, criminality or deliberate wrongdoing concerning the matters examined. The perception that there is a pervasive problem in the areas examined, when the allegations made by the anonymous author are taken as a matter of established fact, is not sustained. Whether looked upon through a subjective or objective lens the matters of concern cited by the anonymous author and identified by *this examination* amount to departures from policy and procedure as opposed to criminality, corruption, deception or falsification as alleged by the anonymous author.

RECOMMENDATIONS

To maintain the integrity of the Fixed Charge Processing System its efficient implementation and administration is paramount. Insofar as the issues identified as a result of *this examination* are concerned, it is essential that a number of robust corrective measures are taken, to the point of re-writing the guidelines surrounding the Fixed Charge Processing System, to strengthen and preserve this integrity. These measures should be implemented by way of Headquarters Directive and a re-emphasis on, or re-writing of, existing Policy, Procedures and Guidelines re-emphasising matters hereunder.

10.1 Recording and Retention of Termination Petitions and Associated Documentation

One of the main issues of concern identified by *this examination* surrounds cases where some terminations were conducted in good faith but no written record or file is retained by the officer responsible for the termination. Policy, procedures and guidelines are unequivocal in this area and, simply put, state that a file, including a letter of petition, must be retained by the terminating officer. This requirement must be re-emphasised by way of HQ Directive and in any potential re-writing of policy, procedures and guidelines surrounding the Fixed Charge Processing System.

10.2 Terminations of FCN's only by an Authorised Officer

Another of the main issues of concern identified by *this examination* surrounds terminations conducted by officers for detections made outside their area of responsibility. Again, policy, procedures and guidelines allow for no ambiguity in this area. Terminations can only be conducted by an officer for detections made in his district or for detections made by a Garda for whom he has responsibility. No circumstances are provided for in policy, procedures or guidelines for officers to terminate FCN's otherwise detected. Directions should issue to all authorised officers emphasising the importance to adhere to this regulation in that it does not allow for any departure from the stated policy, procedures and guidelines.

10.3 Detailed Scrutiny of Terminations for "Gardaí on Duty"

Terminations for detections relating to *Garda on Duty* (as rostered) speak for themselves and are catered for within existing policy and procedures and statutory provisions. In probing these allegations, however, *this examination* has found a number of terminations were conducted under the category *Garda on Duty* where the offending motorist was a member of An Garda Síochána who was not on duty but was engaged in activity associated with their sworn obligations in pursuance of the objectives of the service. These activities result from Gardaí using their initiative, although not officially on duty, when they encounter or observe suspicious or criminal activity and feel duty bound to honour their sworn responsibilities and commitment as Gardaí to serve the public. Such actions have proven to be of invaluable assistance to the community and public generally throughout the history of the service.

While not suggesting that that this type of initiative, as described above, should be fettered in any way, careful balanced scrutiny should be applied to petitions for terminations of this nature. Consideration should also be given to elevating the decision to cancel such notices to a more senior rank in the future when re-writing the guidelines surrounding the Fixed Charge Processing System. It is suggested that the more senior level of Chief Superintendent would be an appropriate decision making level in this context.

10.4 Terminations for Retired Gardai / Garda Family Members / Public Figures

The termination of FCN's by authorised officers for persons in the above categories can lead to a perception of partiality and inequity in the application of the FCPS. In order to remove the possibility of such perceptions arising, consideration should be given, in certain cases where a conflict of interest may arise, to elevate the decision making authority as is recommended in the case of terminations for "*Members on Duty*" as detailed above at **Chapter 10(3)**. Directions should issue to the service reminding them that failure to adhere to the highest ethical standards can leave both themselves and the organisation open to reputational risk.

10.5 Checks to Identify Recidivist Petitioners for Termination / Similar Petition Letters

In some instances identified by *this examination* offending motorists have had a number of terminations conducted by different officers. In any re-writing of guidelines authorised officers should be directed to carry out stringent checks to identify if the applicant for a termination has made previous applications. Such checks should include scrutiny of previous petitions to identify similarities. In considering such petitions, officers should temper their deliberations to include consideration of these matters so as to prevent the prospect of repeat offenders having FCN's terminated for reasons that may not be within the compass of accepted criteria.

10.6 Safety of Passwords / Secure Access to Fixed Charge Processing System

In the area of security of I.T. access data, such as user names and passwords, it is important to ensure that the decisions undertaken on the PULSE / FCPS under the identity and authority of appropriate and classified officers are not open to any question. It is important that best practices and principles of I.T. security are adhered to. In particular each member who has access to important personal and security related data should ensure that no unauthorised access is allowed to the system by reason of carelessness or negligence in the security and management of access codes and passwords.

10.7 Audit Process

A PULSE Management Information System (M.I.S) report is run every month and is available in the public folders within email outlook accounts of each respective District for the information of senior officers in that District. The MIS folders permit senior officers to view cancellations for FCN's detected within their Districts, irrespective of who terminated the notice.

It is recommended that each Divisional and District Officer should be reminded to access these M.I.S. reports on the PULSE / FCPS system on a monthly basis to monitor activity in this area.

It is also strongly recommended that Divisional Officers conduct FCPS audits on a bi-annual basis in all District Headquarters in their respective Divisions.

10.8 Re- Emphasis on Decision Making

Having examined the decision making in relation to the cases subject of *this examination* I am satisfied that in the vast majority of cases there was an appropriate exercise of the discretion to terminate and I have no reason to believe that those decisions examined were arrived at other than on a *bona fides* basis.

When exercising discretion to make a decision I am minded of the McCarron Judgement (cited at **Chapter 3** herein) where the Supreme Court stated that “*Clearly, it will be difficult to draw the line between permissible guidelines and impermissible rigid and inflexible policies*”.

It is vital for the future these procedures and policies which are in place are strengthened to ensure a robust system of transparency and accountability in the area of application, consideration, decision, possible submissions and a final decision. The recording and maintaining of the decision and the rationale for same is a vital pre-requisite.

The evidence based decision making as referred to in policy should be re-emphasised. For example, a person petitioning on the grounds of medical emergency could be required to provide some independent corroboration of their assertions.

10.9 Oversight / Governance / Compliance

This examination has considered the subject of oversight and has noted that there is already in existence several layers of supervisory management. While recognising the difficulties of such oversight being prescriptive or descriptive in terms of discretionary powers it is the view of *this examination* that the system requires robust scrutiny. To that end the work presently underway and, as I understand nearing completion, by the Professional Standards Unit of An Garda Síochána, together with my recommendations will, in my view, meet these requirements.

10.10 Annual Random Audits

It is recommended that an Assistant Commissioner be appointed to conduct annual random audits of terminations and that his/her findings be subject of an annual report to the Commissioner and any irregularities should be subject of a report from the Commissioner to the Minister. The extension of the process of oversight to the FCPS can only enhance processes, systems and standards.

JOHN O’MAHONEY
ASSISTANT COMMISSIONER