



Garda
Ombudsman
INQUIRY INDEPENDENCE IMPARTIALITY

Investigation of Fixed Charge Notice Cancellations 2009 to 2014

Investigation undertaken by the Garda Síochána
Ombudsman Commission at the request of the
Minister for Justice and Equality

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The Garda Síochána Ombudsman Commission acknowledges the assistance of the following organisations;

- The Department of Justice and Equality
- The Department of Public Expenditure and Reform
- An Garda Síochána
- The Garda Inspectorate
- The Office of Comptroller and Auditor General
- The Data Protection Commissioner
- Office of General Procurement

2 Glossary of Abbreviations

AM Authorising member

C&AG Comptroller and Auditor General

CAD Computer Aided Dispatch

CCTS Criminal Case Tracking System

CPD Continuous Professional Development

CSSO Chief State Solicitor Office

DMR Dublin Metropolitan Region

DPER Department of Public Expenditure and Reform

DTTAS Department of Transport Tourism and Sport

FCN Fixed Charge Notice

FCPO Garda Fixed Charge Processing Office

FCPS Fixed Charge Processing System

GEARIN Dedicated Garda email address setup for GSOC to make information requests

GSOC Garda Síochána Ombudsman Commission

GISC Garda Information Services Centre

GNTB Garda National Traffic Bureau

GPSU Garda Professional Standards Unit

GSI Garda Síochána Inspectorate

NTAS Garda Notepad Tracking and Allocation System

NVDF National Vehicle and Driver File

OGP Office of General Procurement

OSCAM Office for Safety Camera Management

PAC Public Accounts Committee

PSU Professional Standards Unit

PULSE Police Using Leading Systems Effectively

RSA Road Safety Authority

3 Index of Relevant Investigations and Reports

Ref.	Title or Description	Author	Published	Source
A	Examination of Garda practice, policy and procedure in relation to the Fixed Charge Processing System	Garda Síochána Ombudsman Commission	Submitted to the Minister in May 2009	https://www.gardaombudsman.ie/publications/examination-reports/?download=file&file=650
B	Report following Correspondence Received from the Department of Justice and Equality on 19 October 2012 Concerning Allegations of Irregularities in the operation of the Fixed Charge Processing System (FCPS).	Assistant Commissioner John O'Mahoney, An Garda Síochána	March 2013	http://www.justice.ie/en/JELR/Report to Minister on FCP S.pdf/Files/Report to Minister on FCPS.pdf
C	Chapter 7 of Management of the Fixed Charge Notice System, Report on the Accounts of the Public Services 2012.	Comptroller & Auditor General	September 2013	http://audgen.gov.ie/documents/annualreports/2012/report/en/Chapter07_x.pdf
D	The Fixed Charge Processing System: A 21st Century Strategy.	Garda Síochána Inspectorate	February 2014	http://www.gsinsp.ie/en/GSI/NSP/Pages/published_reports
E	Audit of An Garda Síochána	Data Protection Commissioner	March 2014	http://www.garda.ie/Controller.aspx?Page=12719&Lang=1
F	Report on The Fixed Charge Processing System and related Road Safety Issues.	Oireachtas Public Accounts Committee	October 2014	http://www.oireachtas.ie/parliament/media/committees/pac/reports/Report-on-the-fixed-Charge-Processing-System-and-related-Road-Safety-Issues.pdf
G	Examination of the Procedures, Policy and Decision Making Processes in Relation to Cancellations on the Fixed Charge Processing System of Road Traffic Related Offences.	An Garda Síochána Professional Standards Unit (GPSU)	January 2015	http://www.garda.ie/Documents/User/GPSU%20Report%20on%20Fixed%20Charge%20Processing%20System%20For%20Publication%2026.1.2015.pdf

H	Annual Report of the Audit Committee of the Garda Síochána, 2014.	An Garda Síochána Audit Committee	March 2015	http://www.garda.ie/Documents/User/Audit%20Committee%20Annual%20Report%202014%20for%20publishing.pdf
I	Report of the Oversight Authority, 2015.	Garda Fixed Charge Processing System Cancellation Policy Oversight Authority (Department of Justice and Equality)	January 2016	http://www.justice.ie/en/JELR/First Annual Report of Garda Fixed Charge Processing System (FCPS) Cancellation Policy Oversight Authority.pdf/Files/First Annual Report of Garda Fixed Charge Processing System (FCPS) Cancellation Policy Oversight Authority.pdf
J	Report of the Oversight Authority, 2016.	Garda Fixed Charge Processing System Cancellation Policy Oversight Authority (Department of Justice and Equality)	April 2017	http://www.justice.ie/en/JELR/Second Report of the Independent Oversight Authority for the Garda Fixed Charge Processing System Cancellation Policy.pdf/Files/Second Report of the Independent Oversight Authority for the Garda Fixed Charge Processing System Cancellation Policy.pdf

4 Executive Summary

4.1 Receipt of Requests from Ministers for Justice and Equality

On 28 January 2014, the Garda Síochána Ombudsman Commission (hereafter GSOC) received a request from the then Minister for Justice and Equality, Mr Alan Shatter TD, to conduct an investigation in the public interest into claims *“of multiple incidents of wrongful cancellations by members of the Garda Síochána of fixed charge notices.”* In this correspondence, the time frame identified was 2009 to 2012.

On 12 September 2014, GSOC received a further request from the then Minister for Justice and Equality, Ms Frances Fitzgerald TD. This request arose from a disclosure under the Protected Disclosures Act 2014 and again referred to claims of *“wrongful cancellation by members of the Garda Síochána of fixed charge notices”*. The period identified in this correspondence was from June 2014 to September 2014. This was the period during which new policies and procedures implemented by the Garda Commissioner were in operation.

The allegations giving rise to both requests to GSOC related to the alleged wrongful cancellations, by members of the Garda Síochána, of Fixed Charge Penalty Notices (FCPNs or FCNs hereafter), during the two particular time periods. Both requests stemmed from allegations by Sergeant Maurice McCabe and former Garda Mr John Wilson.

4.2 Timeline

Due to the estimated scale of the inquiry, in October 2014, sanction was received from the Department for Public Expenditure and Reform to hire temporary investigators for the initial investigation and the procurement process was commenced with the Office of Government Procurement (OGP).

By February 2015, the first (analytical) phase of the initial investigation was completed. This included the following actions:-

- A full review of materials from previous related investigations.
- Contacts and meetings with organisations and individuals who GSOC considered as relevant to the inquiry.
- Considerable analytical work on a total dataset of 1.6 million notices issued.

This work provided an assessment of the scale and complexity of the inquiry that was required and a road-map for the next phase of the investigation. The assessment identified investigative resource needs which led to GSOC undertaking a procurement process to acquire investigative support.

In July 2015, the OGP published a tender for the investigative support required for the next phase on the eTenders website. No responses met the qualification criteria.

A second tender process, on an EU-wide scale, was undertaken. This second tender was published by the OGP in February 2016. All responses significantly exceeded the allocated budget of €1 million stated on eTenders.

Following tender evaluation and legal review, on 26 October 2016, the OGP advised GSOC that the contract could be awarded to the successful bidder, but further added that GSOC was under no legal obligation to enter into a contract.

4.3 Investigations by Other Agencies

There have been a number of significant investigations and examinations specifically about, or related to, the Fixed Charge Processing System (FCPS).

An important part of the initial work done by GSOC was to look into what matters had been previously examined in the course of previous investigations and what actions had resulted.

Links to each of these eleven reports, and the references to them which are used throughout this report, are found in Chapter 3.

Reviews of the most relevant of these pieces of work and the resulting actions are found in Chapter 7.

These investigations resulted in a number of significant findings, conclusions and recommendations.

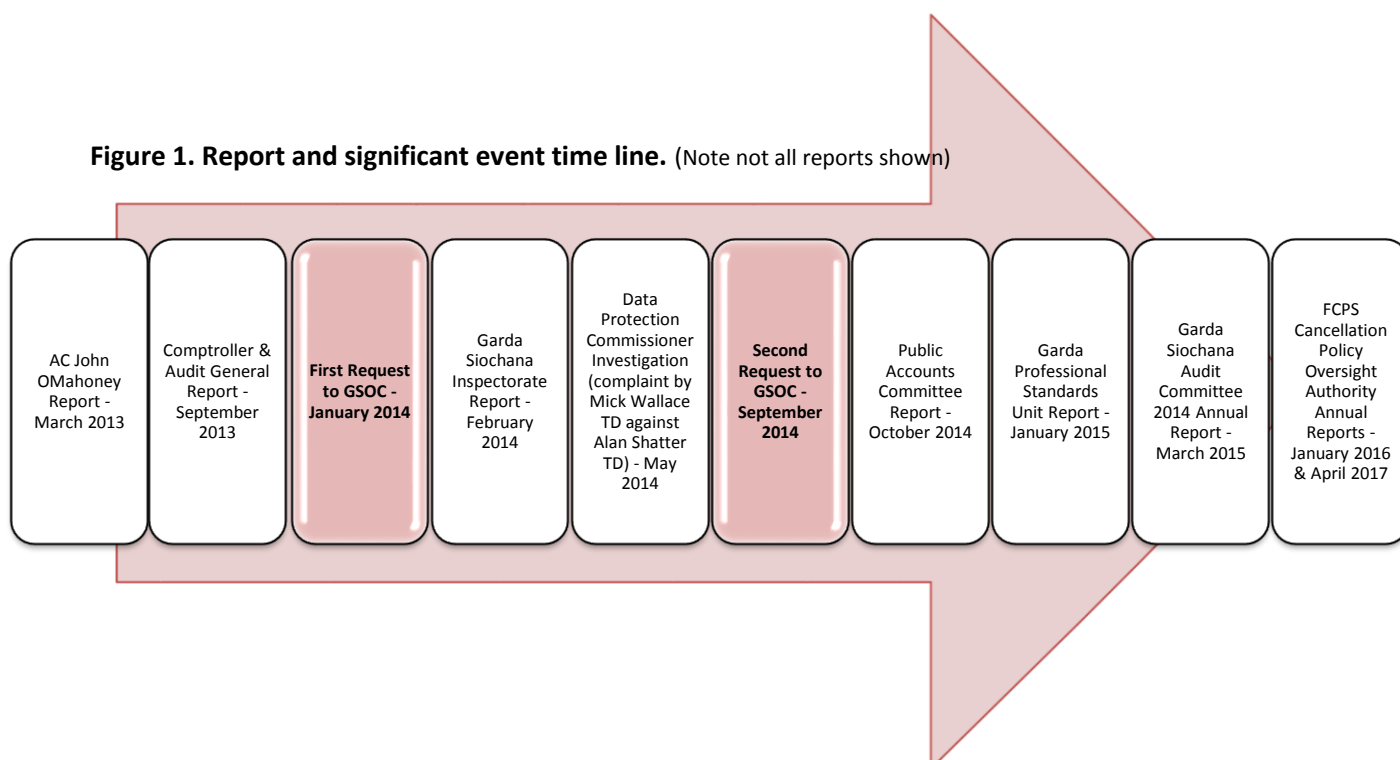
GSOC itself, Assistant Commissioner John O'Mahoney, the Comptroller & Auditor General and the Garda Síochána Inspectorate all identified systemic failures.

In fact, the common thread through all the reports was that the system in place at the time had numerous failings, in particular in the area of accountability, leaving it open to widespread abuse.

The Garda Professional Standards Unit (GPSU) report, published in 2015, stated that there had been "*significant improvements*" in the operation of the cancellation system. Nonetheless, it recommended that the Fixed Charge Processing Office be strengthened and that additional checks and oversight be put in place.

Figure 1 below provides an indication of the timeline for reports submitted by various agencies in relation to the FCPS and the context in which the Minister requested GSOC to examine the matter. Only the reports considered to be most relevant are included in the timeline.

Figure 1. Report and significant event time line. (Note not all reports shown)



4.4 Garda Síochána Actions

The report of Assistant Commissioner John O'Mahoney was presented to the Department of Justice and Equality on 28 March 2013. The report found no evidence of "*criminality, corruption, deception or falsification*" as alleged by Sergeant McCabe.

The actions of 117 Garda members were examined by Assistant Commissioner O'Mahoney with the following outcomes:

- Two members were found in breach of discipline, one after the DPP directed no prosecution. One of these Garda members was reprimanded and the other one had a temporary reduction in pay.
- 50 members breached garda policy on cancellations. Following investigation these members were issued with letters advising them to stay within the FCPS policy. **It is of concern to GSOC that 50 members of such senior rank as Inspector or Superintendent should need to be issued with letters advising them to abide by Garda policy.** A failure on the part of senior personnel to comply with practice and procedure laid down on behalf of the Garda Commissioner provides a poor example to more junior members of the Garda Síochána and could foreseeably lead to a general disregard to internal procedures across the board. From this perspective, GSOC wonders if a letter was the most appropriate form of action in these circumstances.
- No further action was taken against the remaining 65 members.

The report also identified "*certain departures from administrative procedures*" in the system and the subsequent actions were taken by Garda management:

- A Head Quarters directive was issued at the beginning of April 2013 reminding decision-makers in the process to ensure compliance with the system.
- By August 2013, a revised cancellation procedure had been introduced.
- This procedure was itself cancelled within a year and a further revised procedure was introduced as of June 2014, the Fixed Charge Processing System User Manual, Policy and Procedures (Fourth Edition).
- The most recent policy, introduced in June 2014, is a very detailed document, covering some of the particular areas of concern to GSOC, such as dealing with juveniles (detailed in Chapter 8). The procedures are centralised and set out requirements for the consideration of cancellation of a Fixed Charged Notice. There is limited reference to "discretion" in the new policy, which GSOC views as a positive shift towards greater accountability.
- A further examination by the GPSU was undertaken in 2014, reporting in January 2015.

The Ombudsman Commission believes that it is doubtful whether such an overhaul of the cancellation process for Fixed Charge Notices would have come about without the intervention of Sergeant McCabe.

4.5 Actions by the Minister for Justice and Equality

Following publication of the GPSU report in January 2015, the then Minister for Justice Ms Frances Fitzgerald TD (the Minister) announced that an independent oversight authority would be set up, to randomly inspect fixed charge notice cancellations.

Furthermore, she announced that all cases involving gardaí seeking to have points cancelled on the basis that they were performing official duties in their own vehicles would be referred to the Director of Public Prosecutions, who would independently determine whether an exemption should apply.

On 27 January 2015, a former President of the Circuit Court, Mr Justice Matthew Deery, was appointed as the Oversight Authority. Along with this appointment, a new enforcement unit was set up within the Garda Síochána to tackle the problem of FCNs being cancelled due to being returned having not been delivered through the postal system.

On 28 January 2016, the Minister published the first report of the Garda Fixed Charge Processing System Cancellation Policy Oversight Authority. Judge Deery concluded the report by expressing satisfaction that there has been substantial compliance with the revised FCPS policy. The judge's second report was published in April 2017 and again reported substantial compliance with the revised Garda policy and procedures relating to the operation of the FCPS.

Both reports noted continued difficulties surrounding the return of Fixed Charge Notices as undelivered by An Post, however Judge Deery referred to the recommendations made by the Garda Professional Standards Unit (GPSU) in this regard. A number of the GPSU recommendations have been considered by the Criminal Justice (FCPS) Working Group and it is intended that the proposed development of a 'master driver licence record' will assist by better linking databases and improving the address details for delivery of Fixed Charge Notices.

4.6 Findings and Conclusion

The Fixed Charge Penalty System as it operated during the period GSOC were requested to investigate (2009 to 2014) has already been subject to a high level of scrutiny, with considerable state resources employed to examine it. This has resulted in:

- Significant corrective actions being taken and changes being made to the Fixed Charge Penalty System, inserting rules and controls that did not exist previously.
- The implementation of an oversight authority, which has been operating successfully for two years.
- Disciplinary action against Garda members for departures from policy and procedure in place in earlier times. While GSOC may not agree with the level of action taken, discipline is a matter for the Garda Commissioner. Further, many Garda members responsible for cancellations in earlier times have since retired. However, it remains that there were wide-scale breaches of policy and procedure across the country.

The Ombudsman Commission has reviewed the desktop research and analytical work undertaken during the first phase of this investigation and has considered, in light of the above points, whether it is in the public interest for GSOC to continue its investigation, which has the potential to result in expenditure well in excess of €1 million.

The Ombudsman Commission believes that the considerable cost to the public of continuing our investigation into its second phase - of investigating specific cancellations instances with a view to identifying possible behaviour of a criminal nature or constituting a breach of discipline - would outweigh its benefit. The main reasons for this are the following:

- The lowest of the quotes received to undertake this work is well above the allocated €1m budget and GSOC estimates that there is a significant potential for overspend beyond this, as the nature of investigative work is that one line of inquiry can prompt another line of inquiry, which may not have been foreseeable.
- Even this level of expenditure would not permit an exhaustive investigation of the total cancellation dataset. Although a sizeable sample would be investigated, given that the period to be examined commenced in 2009, it is likely that poor recording keeping and the possibility of records no longer being available in respect of many of the cancellations, would hamper any such investigation.
- There is no guarantee that a criminal prosecution of, or disciplinary action against, any Garda member would be secured following the investigation.

We believe that a continued emphasis on maintaining the controls and oversight mechanisms which have been inserted into the FCPS would serve better to improve public confidence in the Fixed Charge Penalty System.

5 Background

5.1 How GSOC became involved

On 28 January 2014, GSOC received a request from the then Minister for Justice and Equality (the Minister) Mr Alan Shatter TD, pursuant to section 102(5) of the Garda Síochána Act 2005 (the Act), to conduct an investigation in the public interest.

The Minister outlined the request in the following terms:

“You will be aware of allegations made by Sergeant Maurice McCabe and former Garda John Wilson of multiple incidents of wrongful cancellation by members of the Garda Síochána of fixed charge notices.

As the allegations, the circumstances surrounding the making of them and the manner in which they were pursued, including issues relating to the preservation of the confidentiality of Garda records, appear to me to indicate that some members of the Garda Síochána may have committed an offence or behaved in a manner that would justify disciplinary proceedings, and as I consider it desirable in the public interest to do so, I am now, under the power given to me by section 102(5) of the Garda Síochána Act 2005, requesting the Garda Síochána Ombudsman Commission to investigate these matters.”

On 12 September 2014, Ms Francis Fitzgerald TD, the then Minister for Justice and Equality made a further request, pursuant to Section 102 (5) of the Act. The Minister outlined the request in the following terms:

“I am in receipt of correspondence from the Garda Commissioner concerning a disclosure to her under the Protected Disclosures Act 2014. This disclosure alleges ongoing wrongful cancellation by members of the Garda Síochána of fixed charge notices which disregard recommendations made by both the Comptroller and Auditor General and the Garda Síochána Inspectorate on the subject.

I am aware that my predecessor wrote to you on the 28 January last requesting, under section 102(5) of the Garda Síochána Act 2005 that you investigate the allegations by Sergeant Maurice McCabe and former Garda John Wilson of multiple incidents of wrongful cancellations of fixed charge notices.

As the allegations referred to in the Commissioner’s letter above appear to me to indicate that some members of the Garda Síochána may have committed an offence or behaved in a manner that would justify disciplinary proceedings, and as I consider it desirable in the public interest to do so, I am now, under the power given to me by section 102(5) of the Garda Síochána Act 2005, requesting the Garda Síochána Ombudsman Commission to investigate these matters.”

On 28 January 2014, the then Chairman of the GSOC, Mr Simon O’Brien, responded to the Minister’s request of the same date as follows:

“I have today received your letter in relation to allegations of multiple incidents of wrongful cancellations by members of the Garda Síochána of fixed charge notices. I also note your concerns in relation to the preservation and confidentiality of Garda records. The Commission will now launch a wide ranging independent investigation.”

On 3 February 2014, the Director of Investigations designated the matter for investigation under section 98 of the Act, that is, an investigation into possible criminal offences.

On receipt of the second request from the Minister in September 2014, this matter was also designated for investigation under section 98 and the Ombudsman Commission decided that this second investigation would form part of the investigation which had already been commenced following the first request.

The investigation strategy and methodology is outlined in Chapter 6.

5.2 Introduction to the Fixed Charge Processing System (FCPS)

The penalty points system, which included the issuing of Fixed Charge Notices (FCN's), was introduced under the provisions of the Road Traffic Act, 2002. The main legal basis for this system is contained in the Road Traffic Acts of 1961 to 2011 and various related regulations. In October 2011, the FCPS was further extended to include driving under the influence of alcohol and public order offences.

Any member of the Garda Síochána or a Traffic Warden has the authority to issue an FCN, in line with Road Traffic Acts of 1961 to 2011 and its various regulations. Any member of the Garda Síochána also has the authority to issue an FCN, in line with the Criminal Justice (Public Order) Act 1994, as amended by the Criminal Justice Act 2006 and the Intoxicating Liquor Act 2008.

A fixed charge offence may be detected under the FCPS in one of two ways - intercept or non-intercept:

- An intercept occurs when a garda or a traffic warden stops an offender at the time of the offence. It is at this point that "discretion" may be used by members of the Garda Síochána. On a daily basis, discretion may be applied across a range of circumstances, including whether to issue a FCN or not. A garda or a traffic warden may record this offence by using either a hand-held device or a FCN notepad.
- A non-intercept offence is captured either by a safety camera, or by a Garda Síochána speed camera van.

FCNs from the introduction of the penalty points system up until 2014, were issued in line with the FCPS Operational User Manual Policy and Procedures, Third Edition 2005.

The latter was replaced by the FCPS Operational User Manual Policy and Procedures, Fourth Edition 2014, alongside Garda HQ directives and bulletins.

The Garda National Traffic Bureau (GNTB) has overall responsibility for traffic enforcement policy in the Garda Síochána. As part of its remit, the GNTB has responsibility for the Fixed Charge Penalty Office (FCPO), Thurles and the Office for Safety Camera Management, (OSCAM), Dublin. The latter office is resourced by four civilian staff and supervised by a superintendent who holds additional traffic responsibilities. OSCAM is responsible for the management of the privatised safety camera contract, as well as the management and upkeep of eight Garda Síochána robot vans across six regional locations. The robot vans are mobile units, equipped with road offence detection equipment managed by the Garda Síochána.

The FCPO is the national processing office responsible for administering the FCPS. The office is managed by a Garda superintendent and supported by an inspector, an assistant principal officer (office manager), two higher executive officers and up to 58 administrative, clerical

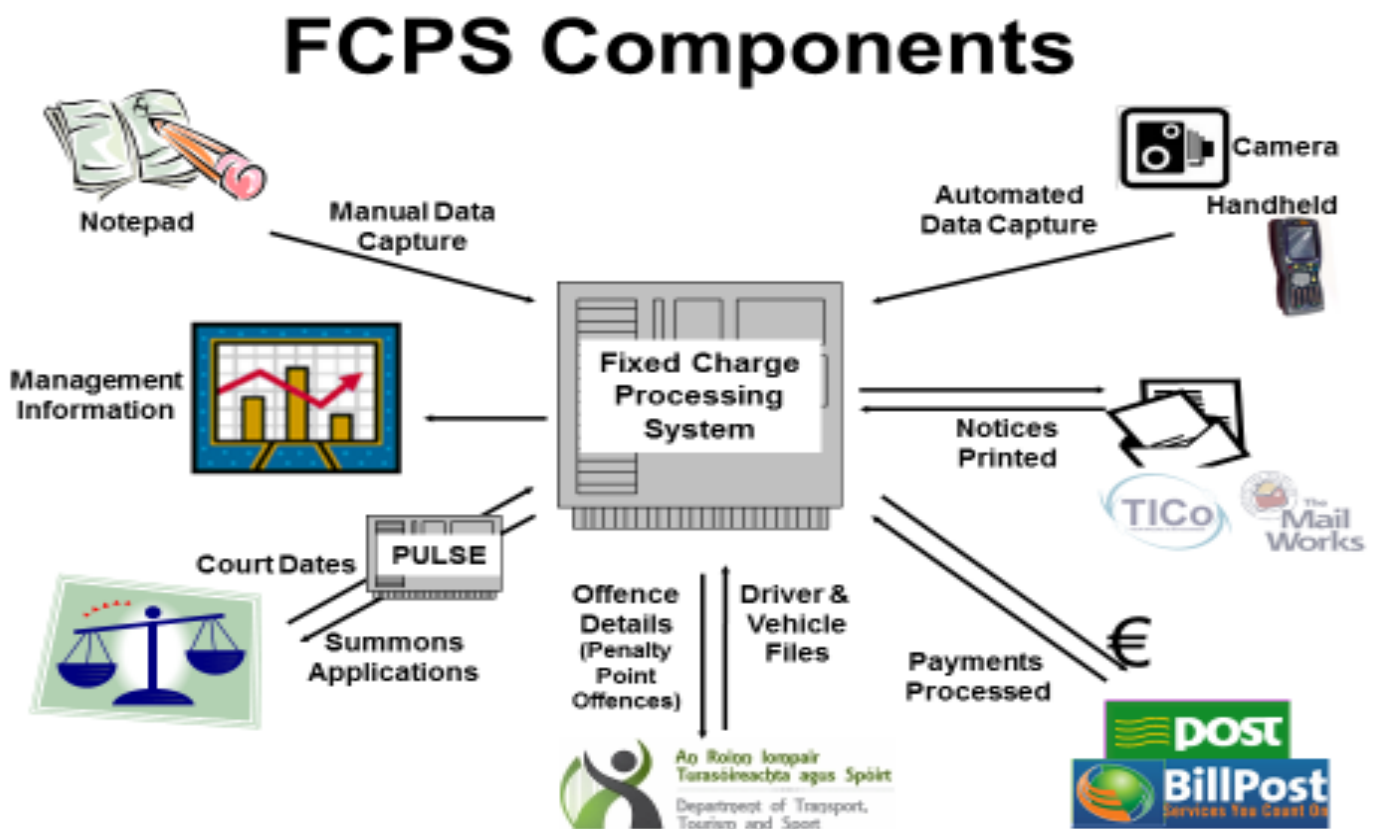
and support staff. The function of the FCPO is the recording and processing of the information obtained on breaches of fixed charge offences.

The following offences consistently represent the highest volume of road traffic offences processed by the FCPO:

- Excessive speed.
- No tax or insurance disc.
- No seat belt.
- Use of a mobile phone.
- Intoxication in a public place (contrary to section 4 of the Criminal Justice (Public Order) Act 1994, as amended by section 22 of the Intoxicating Liquor Act 2008).

The following figure was provided to GSOC by a Superintendent with the FCPO, to illustrate the components of the FCPS as existed at the time, and how it interacted with other systems such as PULSE, and external agencies, including An Post and the Department of Transport, Tourism and Sport.

Figure 2. FCPS Components



5.3 PULSE and FCPS

The PULSE system is a computerised networked data system operated and used by the Garda Síochána to support all its mainstream operational activities. The database for the system is sited at Garda Headquarters. The majority of garda stations have PULSE terminals.

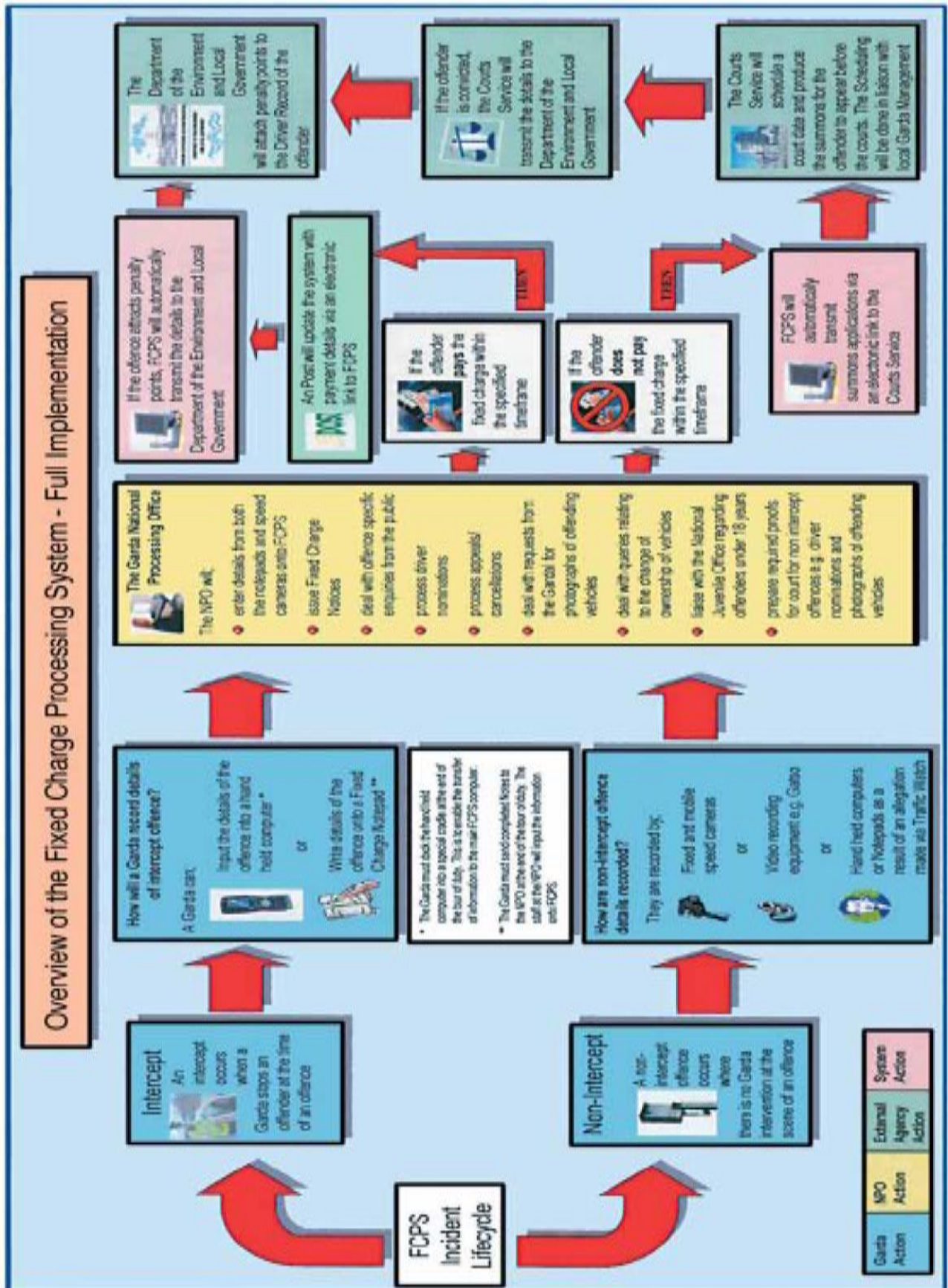
For data security purposes, all PULSE users have their own user account and password. Access to PULSE is exclusively via these security protocols and, once access is granted, each activity undertaken is logged by the system. Any changes to PULSE records made by a user will be logged in a series of “audit” tables that are held within the database. The detail captured as part of these “audit records”, includes a copy of the record prior to the alteration, the details of the user who made the change, the date and time of the change and, finally, what alterations were made. As a result, what has been changed, by whom, 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.

The FCPS is a computerised networked data system which manages all data relating to the issuing and processing of FCNs. 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 of the information contained therein, such access being the reserve of the staff and management of the FCPO.

The FCPS is a separate system to PULSE, but the systems are integrated for certain functionalities. One of those functionalities allows Authorised Members (AMs) to cancel a FCN on the FCPS through PULSE.

The FCPO retains an electronic correspondence register for all FCNs, recording correspondence related to the notice in a free text box. However, when a superintendent or inspector logged on to the FCPS through the PULSE system to cancel an FCN, they did not have access to the correspondence log associated with a notice.

Figure 3 details the FCPS cycle and provides an indication of the complexity involved.



Source: Fixed Charge Processing System User Manual, Policy and Procedures (third Edition)

5.4 Cancellation of Fixed Charge Notices

Following the introduction of Fixed Charge Notices, the Garda Síochána established Policies and Procedures for their termination or cancellation. These were set out in the Fixed Charge Processing System Full User Manual Policies & Procedures Third Edition 2005 (which applied during the period examined but has since been replaced).

In essence, the policy and procedure document provides authority and advice to District Officers¹, Inspectors acting on behalf of District Officers and the Inspector with responsibility for the administration of the Fixed Charge Processing Office, Thurles, to cancel FCN's within the parameters of the aforementioned Policy.

In the Fixed Charge Processing System User Manual Policy and Procedures (Third Edition 2005):

- Cancellation is defined as “the decision of a Cancelling Authority to discontinue proceedings and to withdraw the Notice for a Fixed Charge Offence after carrying out a review”.
- The Cancelling Authority is defined as the District Officer of the location where the offence occurred, or the District Officer/ Superintendent responsible for the detecting member, or the person in charge of the Fixed Charge Processing Office. The authority to cancel notices was extended to Inspectors only in circumstances where they acted for the District Officer/ Superintendent.

The cancellation policy outlines how a review should be conducted and details the exceptional circumstances whereby concessions are extended to particular individuals. The Cancelling Authority reviews and examines each individual application and must be satisfied, on the basis of the evidence presented, that the Fixed Charge Notice should be cancelled.

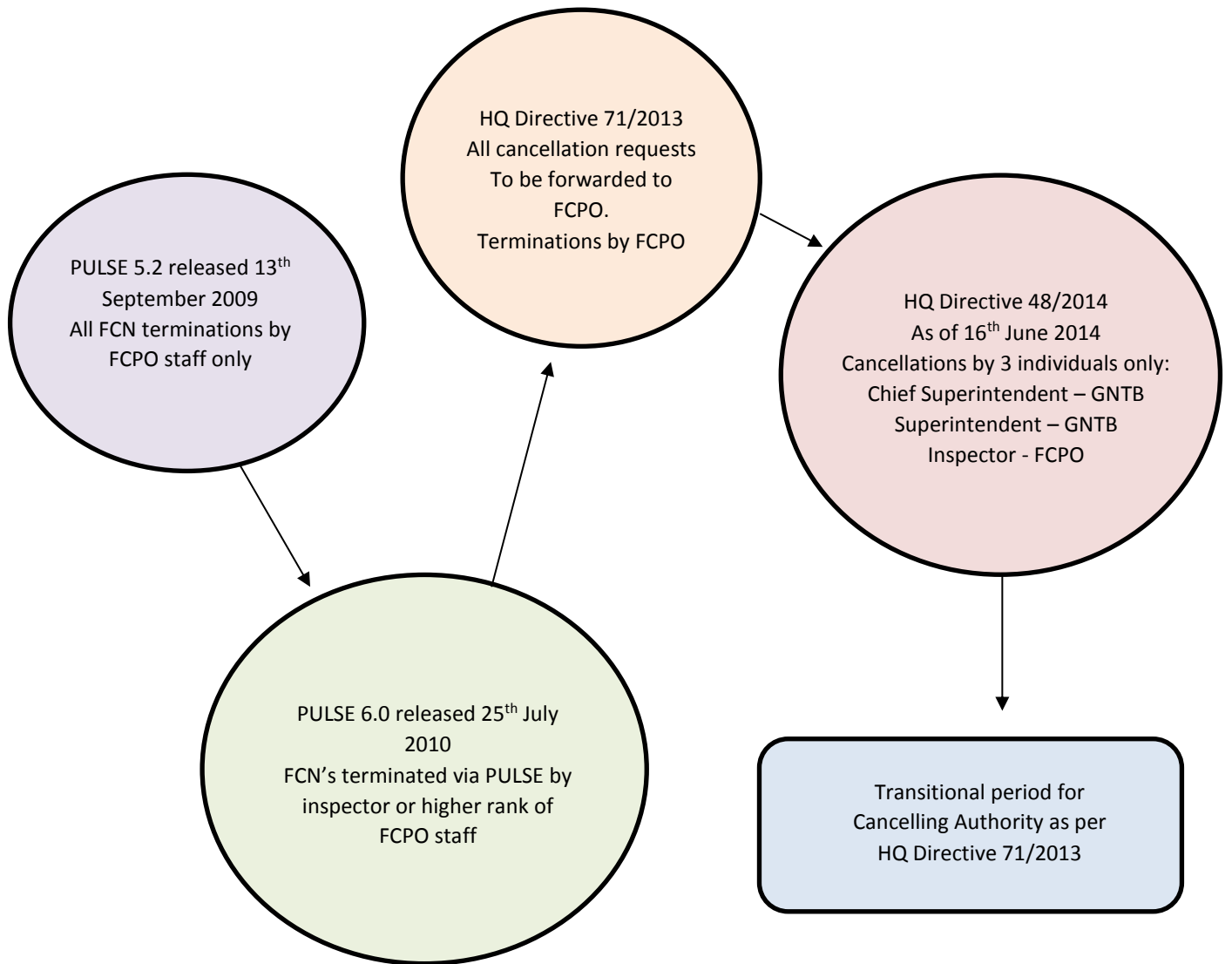
The Cancelling Authority is required to record on the Fixed Charge Processing System or PULSE all notices cancelled by them and retain a file, for auditing purposes, recording the specific reasons for the cancellation.

The following timeline illustrates when changes were made to the processes within the FCPS, and the alterations made to who had authority to cancel FCN's.

The most significant change occurred in 2014 when the Garda Commissioner directed that only three senior members of the Garda Síochána were authorised to cancel FCN's.

¹ Garda Superintendents assigned responsibility for Districts and referred to as District Officers

Figure 4- Timeline of changes to FCPS system policy and procedures



Source: Information provided by the GNTB office, 26 January 2015

6 The GSOC Investigation

6.1 Strategy

The **objective** of the investigation was to establish the full facts in relation to three areas, prioritised as follows:

- Criminal behaviour.
- Breaches of discipline.
- Systemic failures.

The three **principles** set out for the investigation were that it should be professional, proportionate and prompt.

It was agreed that there would be emphasis on the following **key activities**:

- Information exchange.
- Data interrogation.
- Witness co-operation.
- Analysis of information and data.
- Creation of finite data bases.

The following **risks and threats to the effectiveness and efficiency of the investigation** were considered:

- Resource needs - mindful that the Garda Síochána investigation required 28 staff, analysis was required to establish GSOC resourcing needs.
- Any technical issues encountered in acquiring the necessary data from the Garda systems, verifying and analysing this.
- The need to protect any member of the Garda Síochána who came forward as a witness.
- The need to establish a specified point of contact between the GSOC SIO and the Garda Síochána to ensure an efficient exchange of information.
- Potential for delays in responses to requests for information from the Garda Síochána.
- Potential lack of co-operation from witnesses who had FCNs cancelled and who may be reluctant to engage with GSOC.
- Potential for delays in responses from other government agencies, for example for funding and the procurement of investigative resources.

The following **actions and control measures** were implemented:

- A strategy was developed to safeguard anonymity of potential Garda witnesses insofar as possible.
- A Chief Superintendent was appointed as the specified point of contact with the GSOC Senior Investigation Officer (SIO).
- An alert system was agreed whereby if any of these factors directly impacted on the investigation, the Commission would be immediately updated.

A strategic decision was taken that the two requests made by the Ministers to GSOC - in January 2014 and in September 2014 respectively - would be considered jointly as part of the investigation to be under taken by GSOC. The rationale behind the decision was that the Garda members continuing to cancel FCNs referred to in the Garda Professional Standards

Unit report were also Garda members of interest identified by GSOC in the investigation referred by the Minister in the first request in January 2014.

6.2 Methodology

GSOC adopted the following approach to this investigation:

GSOC were aware of the significant resources deployed by Assistant Commissioner O'Mahoney, with a team of 28 staff dedicated to his investigation. However, in 2014, GSOC was dealing with a number of other serious incidents and resources were limited. As a result, a Senior Investigating Officer (SIO) with three investigators were initially assigned to the investigation.

It was decided that work would proceed on a phased basis, with the first phase involving a scoping exercise.

The principle components of this first phase were:

- Request PULSE data download from Garda Síochána for the relevant time period.
- Request installation of Garda PULSE system in GSOC offices to spot check /verify data provided.
- Analysis of complete data.
- Request for and review of Garda documentation. This included Assistant Commissioner O'Mahoney's report, the GPSU report, details of allegations and Garda policy and directives regarding the FCPS.
- Request for briefing on the FCPS from the Garda Síochána and review of the system. This briefing was provided by Chief Superintendent Michael O'Sullivan, Superintendent Con O'Donohue and Inspector Kieran O'Connor.
- Contact with the Auditor General's Office, Data Commissioner's Office and Garda Inspectorate regarding their previous work on the subject.
- Review of all previous, relevant work undertaken.
- Contact with Sergeant Maurice McCabe to obtain statement(s) and any documentary evidence.

As a result of these actions and on foot of the initial findings, a business case was developed and submitted to Government to secure resources for a second, more resource-intensive, phase of investigation. Thereafter there was engagement with the OGP to procure these resources.

The second phase was considered as being the period in which to conduct field work and gather further evidence, including:

- Putting in place a full investigation team following the procurement process, and briefing, equipping and resourcing this team.
- Conducting enquiries focused on the areas of significant public interest for road safety reasons, for example, notices cancelled involving high speed, no seat belts, no insurance or repeat offenders.
- Obtaining and reviewing the available documentation associated with each cancellation and conducting interviews with individuals where the FCN issued was cancelled.

6.3 Review of Investigations Conducted by Other Agencies

All previous relevant reports on the penalty points system were collated and reviewed. This was a logical place to start, because these reports reviewed the system existing in the period under review (2009 to 2014) and made important findings and recommendations in relation to it.

The pieces of work examined were the 11 reports outlined on pages 6 – 7. The findings of particular relevance in some of these reports are summarised below.

6.3.1 Comptroller & Auditor General (C&AG)

In July 2012, Sergeant Maurice McCabe contacted the Office of the Comptroller and Auditor General with concerns he had about the operation of the FCPS by the Garda Síochána. A dossier of information that had been extracted from the Garda Síochána database relating to around 4,000 cases was presented. This file appeared to contain information relating to cases where FCNs were issued by the Garda Síochána but were subsequently cancelled.

It appeared from the information presented that multiple fixed charge notices had been cancelled for some individuals, which would be a cause for concern. On three previous occasions, the Office of the Comptroller and Auditor General had examined and reported on the FCPS or its predecessor, the “fine-on-the-spot” system², and raised concerns regarding the cancellation of between 3% and 8% of notices issued, as well as there being inadequate information about the reason for said cancellation. The C&AG stated that, *“The rates of termination in many districts are too high to be considered reflective of ‘exceptional circumstances’. Absent and inadequate records, and the recorded facts of many cases, give rise to concerns that many cases have been terminated without due cause.”*³

The C&AG concluded that the FCPS cancellation policy was not being adhered to, particularly in relation to:

- “Discretionary grounds” being utilised to cancel notices
- Senior officers cancelling notices outside their remit or geographical area.

6.3.2 Report by Assistant Commissioner John O’Mahoney

Assistant Commissioner John O’Mahoney carried out an investigation based on information provided to him by, at that time, an anonymous source. This source was later identified as Sergeant Maurice McCabe. This report was provided to the then Garda Commissioner Martin Callinan in March 2013.

Assistant Commissioner O’Mahoney commented on 189 separate allegations that were submitted by Sergeant McCabe in relation to the FCN system. The allegations included *“criminality, corruption, deception and falsification committed by named and unnamed officers by virtue of their discretionary cancellations of Fixed Charge Notices”*.

Fifty of the 189 allegations related to criminal conduct, with the other allegations relating to the handling of fatal road traffic collisions, repeat applications for cancellations, cancellations for gardaí, family and friends of gardaí, public figures and nine particular individuals.

² Point 7.6, Chapter 7 of Management of the FCNS, Report on the Accounts of the Public Services, 2012.

³ Point 7.81, Chapter 7 of Management of the FCNS, Report on the Accounts of the Public Services, 2012.

This examination focused on the time period January 2009 to June 2012, which encompasses the timeframe as quoted in the original allegations. (GSOC, as noted previously, extended the time period to year end of 2012.)

In addition to the specific incidents highlighted by Sergeant McCabe, a further random selection of 1% of cancelled FCNs during this time period were considered by Assistant Commissioner O'Mahoney. The inclusion of this additional sample of cancelled FCNs was requested by the then Minister for Justice and Equality, Mr Alan Shatter TD.

The examination by Assistant Commissioner O'Mahoney identified in certain cases that there had been departures from procedures in the administration of the system. This resulted in advice being issued to some terminating officers about the importance of strict adherence to policy and procedures.

In a small number of instances, *"possible breaches of discipline were 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 were

- Creation and retention of audit material.
- Cases being cancelled outside the Garda district of the Authorising Member.

The O'Mahoney report also raised the issue of "discretion" in the cancellation of FCNs. Clearly the use of discretion by individual gardaí is an important part of their daily work. Not all breaches of the law merit a criminal prosecution. The circumstances of a breach, the person or persons involved, and the greater common good should be taken into consideration. GSOC accepts that the public, in general, would have no difficulty in accepting the use of discretion not to impose a penalty, for example, on a driver in a minor breach of the road traffic rules and regulations where they are genuinely involved in a medical emergency. However, the application of such discretion must be fair and equitable, as well as transparent. Enquiries as to the genuine nature of the "medical emergency" should be made and confirmed.

A clear auditable trail of the basis of the exercise of the discretion should be available. At the very least, the explanation for the cancellation on the basis of the use of discretion should be available. It was not, in all cases examined by Assistant Commissioner O'Mahoney. Reliance on the use of discretion is undermined without the evidence to support it.

The question of discretion also raises the issue of whose discretion? Clearly, where a penalty arises from the use of a static camera, the only person whose discretion might be applied will be the Authorising Member. However it is different where a garda or warden on the street is recording breaches of the law. The garda who meets the member of the public driving in excess of the relevant speed limit may have had an explanation for the breach put forward. That garda, using their discretion, may reject the explanation and record the offence. An Authorising Member, in the same case, may use their discretion at a later stage to cancel the FCN. This type of situation could lead to undermining a very important power entrusted to gardaí.

The need for transparency and accountability in the FCN process is not just to give comfort to the public that it is a system that works fairly, but it is also important for gardaí doing their job to know that their role as an enforcer of the road traffic legislation is not going to be undermined by one of their own colleagues.

GSOC views it as a positive evolution that the system introduced under HQ Directive 48/2014 and the accompanying Fixed Charge Processing System Policy and Procedures Manual (Fourth Edition) 2014 makes no reference to “discretion” in the body of the policy.

The only appearance of such a power appears at Appendix II which deals with “List of Cancellation Reasons on FCPS for use by Fixed Charge Processing Office”:

- Under “Discretionary – Family Bereavement,” the example of a person responding to the notification of imminent death of a family member is set out.
- Under “Discretionary- Medical Emergency”, reference is made to someone bringing a person to hospital due to a medical emergency or a doctor responding to a medical emergency.
- Under “Discretionary – Other”, the example is given of a person responding to a gas leak or a fallen power line.

Genuine applications under any of these headings appear to be appropriate uses of discretion, but the findings of previous examinations have shown that use should be overseen, to make sure there is no abuse.

GSOC carried out a significant amount of work in reviewing all the allegations and related documents set out in the O’Mahoney report and identified several issues:

- There was a recurring theme of there not being an auditable trail of relevant documents to ascertain whether or not a fixed penalty was cancelled in appropriate circumstances.
- There was a lack of defined parameters in policy and procedures on terminating FCNs.
- There were a number of allegations included in the O’Mahoney report which GSOC believes would have merited further investigation.
- There was insufficient examination of the authority of the people carrying out cancellations.
- Preferential cancellations for individuals of note was not examined in detail within the O’Mahoney report.

Assistant Commissioner O’Mahoney and his team went through in excess of 200 specific allegations put forward by Sergeant McCabe. Many of the outcomes reported were along the following lines: “In view of the fact that the above matters were cancelled within administrative policy and procedures there are no issues arising”. However, GSOC is concerned that such policy and procedures appeared to allow circumstances, such as the following:

- **The cautioning of a journalist who was travelling at 173 km/h in a 120 km/h zone**, and the cancellation of an FCN for the same person when they were detected driving at 152 km/h in a 120 km/h zone, on the grounds that they were distracted by news of a medical emergency relating to a relative.
- **The cancellation of an FCN incurred by the wife of a senior officer for holding a mobile phone while driving**, on the basis that she was not talking on a mobile phone, but was

“talking into a Dictaphone”.⁴ While the offence of driving while using a telephone may have been correctly challenged, the admitted act of driving while dictating would appear to be an admission of careless driving at least, which was not followed up.

On more than one occasion, explanations such as this in appeals raise more questions than they answer.

Public figures such as a State Solicitor, a District Judge, members of the media, a sporting person, senior gardaí, retired gardaí and family of gardaí all appear in the instances of cancellation of FCNs put forward by Sergeant McCabe. It is clear that they may be obvious personnel to make a point on the part of Sergeant McCabe, however the fact that these people appear to have had access to cancellation – with or without good reason – is of itself concerning. Assistant Commissioner O’Mahoney himself noted, on more than one occasion, that “...consideration should be given to elevating the decision to cancel notices to a more senior rank in the future when re-writing the guidelines surrounding the Fixed Charge Processing System, particularly in the context of Garda members, their families, former members of An Garda Síochána, public figures and celebrities”.⁵

Assistant Commissioner O’Mahoney concluded that the allegation of widespread cancellations for members of the Gardaí and/or their family and friends are incorrect. However, GSOC found that there was insufficient documentation and audit trail to make that assertion. In fact, there appears to be evidence to suggest that some members received the benefit of a having penalty notice cancelled without any check or audit to confirm the member was on official duty.

The following are provided as examples to show the benefit as described above;

- There are a number of garda members subject of the O’Mahoney investigation who had multiple FCNs cancelled. While these cancellations were within the administrative policy and procedure of the Garda Síochána, it is clear that these individuals knew from experience that an appeal could be made and were aware of the *“administrative policy and procedure”*. This knowledge would not be as widespread within the general public. GSOC believes applications by gardaí, their family members or friends should have been closely supervised, taking this into account.
- There were many instances of members of the Garda Síochána whose notices were cancelled because they said they were on duty, or acting in an unofficial capacity in their private vehicle, when they received a fixed penalty. This does not appear to have been verified by documentation. It was noted by the O’Mahoney team that *“While 8% of the cancellations examined in the specific allegations relate to members 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.”*⁶ At a later stage, however, it is stated that *“In general greater and more careful consideration needs to be given to applications to cancel FCNs where members of An Garda Síochána are involved. It is not enough for members cancelling tickets to rely solely on the fact that the appellant was ‘on duty at the time’ without considering all of*

⁴ Allegation 15 in the report.

⁵ Allegation 110A.

⁶ Allegation 34. Section 87 of the Road Traffic Act 2010 exempts emergency vehicles, but only *where such use does not endanger the safety of road users*.

*the circumstances.*⁷ A review of the instance of various gardaí who had FCNs cancelled shows that the times of the detection suggests that members were going on duty or coming from duty, but not officially on duty. A number of the cases also involve the use of private cars while “on duty”. This practice is not of itself wrong, but the acceptance that all such incidents involved gardaí on duty without evidence, again undermines the cancellation process.

Further issues identified in relation to officers carrying out cancellations:

- There was a lack of record keeping to back up reasons for cancellation. Many of those who appealed FCNs cited “medical emergency” as the ground for a cancellation, but it appears no documentation to confirm such “emergencies” was available. In one example, a former garda had three notices cancelled in a year. It does not appear from the O’Mahoney Report that any check was carried out to verify the reasons for appeal before the notices were cancelled. The recommendation at the end of the case review was *“While finding no fault with the individual decisions to cancel the notices in question, in general the issue of repeat cancellation requires careful consideration”*.⁸ It is not clear what “careful consideration” means in practice. In particular, it is not clear if this means checking the explanations being offered by people appealing FCNs.
- Terminating officers did not always consult with the member who detected the offence and issued the FCN.
- FCNs were not always cancelled in the districts in which they had been detected and so were outside the administrative policy and procedure.
- Explanations that gardaí detected speeding were trying to catch a speeding or dangerous driver appear to be common amongst allegations relating to Garda members. In the reviews conducted as part of the O’Mahoney investigation, it is not clear if any proof of such an explanation was sought or provided to the cancelling officer. The only comment was, as noted above, that *“It is not enough for members cancelling tickets to rely solely on the fact that the appellant was ‘on duty at the time’ without considering all of the circumstances.”*
- The O’Mahoney report states that for an officer to process an application for cancellation of an FCN for an offence detected outside his/her own district is outside the parameters of the Garda Síochána policy governing such matters. Assistant Commissioner O’Mahoney recommended that 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 cancellation of Fixed Charge Notices.”* This HQ Directive issued in April 2013 was replaced by a new Policy and Procedure in June 2014.

Further issues raised in the O’Mahoney Report included:

- Incidences of cancellations of FCNs on the grounds that GoSafe cameras had been incorrectly calibrated in terms of goods/commercial vehicles or in terms of locations entered on the GoSafe database, or where there has been a change of vehicle ownership.

⁷ Allegation 100.

⁸ Allegation 177.

- Cancellation of a FCN where the person who appealed (appellant) stated that they were unaware of the change in speed limits on a specific stretch of road.
- Incidences of cancellation of FCNs where the appellant is a Garda member and the rationale for cancellation is that the member, whilst off duty, was acting in the capacity of a garda. These incidences appear mostly to have been speeding related offences.
- Incidences where a member has been the recipient of a FCN and has made a petition on the matter citing the fact that they were delivering official correspondence.
- Incidences of cancellation where the terminating officer did so on behalf of persons known or related to him/her, following a petition on the matter or on behalf of other members.
- Many instances where cancellations have been made outside the area of responsibility of the terminating officer.
- In some cases cancellations made within administrative procedures and guidelines have included what could be considered inappropriate reasons for doing so. For example, the cancellation of a notice for travelling at 61 km/h in a 50 km/h zone on *“Compassionate grounds associated with animal welfare”*. The driver (who was a garda), was taking a sick animal to a vet for a vaccination.⁹ Cancellation of a notice for speeding on such grounds stretches the use of discretion to the extreme and could undermine public confidence in cancellation procedures.

The overarching difficulty that arises in reviewing the O’Mahoney report is the lack of available data. In the absence of any information on the methodology involved during the random selection of data, the assertion that the examination included *“a full audit of a randomly selected 1 % of FCNs cancelled during the same period”* cannot be evaluated or challenged.

Furthermore, Sergeant McCabe said in his statement to GSOC that he was never interviewed or contacted by the O’Mahoney investigation in relation to the allegations made. This is an unusual practice in the context of an investigation.

The O’Mahoney report concluded that, while many administrative and procedural issues were identified, as described above, the allegations put forward about *“criminal conduct by any of the senior officers in question cannot be substantiated to any degree”*.

6.3.3 The Garda Inspectorate report

The Garda Inspectorate published findings on the FCPS system, which were presented to the Minister for Justice and Equality in February 2014. The report was based upon *“an extensive review of the FCPS”*¹⁰, including the practice of cancellation of FCNs. It is the most comprehensive of the different investigations, as it not only reviewed the workings of the then existing system but also met with various stakeholders, inspected three operational divisions and reviewed similar systems in other jurisdictions.

Findings from the report noted that *“With few exceptions, the Inspectorate found no meaningful evidence of consistent quality management supervision of the cancellation process either at Garda Headquarters, Regional, Divisional, District or any level that would*

⁹ Allegation 12.

¹⁰ Page 11.

*have detected and rectified these problems*¹¹ (problems identified in the reports of the C & AG and Assistant Commissioner O'Mahoney).

Among its many recommendations in relation to cancellations were to ensure that Garda members are removed from the PULSE system, and their credentials are deactivated, on the date the person is no longer a member of the force.¹²

The Inspectorate went on to recommend *“a holistic approach to overhaul the entire FCPS. In correcting the serious deficiencies in the cancellation process, it will bring the entire system in line with international best practice standards of efficiency and effectiveness”*.¹³

It is difficult to identify what progress – if any - has been made by the various interested parties identified in the report on the recommendation for such an overhaul of the FCPS.

6.3.4 Public Accounts Committee

In October 2014, The Public Accounts Committee (PAC) published a paper entitled Fixed Charge Processing System and related Road Safety Issues, in relation to *“the inappropriate cancellation of fines and penalty points”* and systematic weaknesses found within the FCPS at the time.

Meetings were held with the Garda Commissioner and evidence was provided by Sergeant McCabe, prior to the completion of the report.

The actions of certain gardaí who cancelled fines, as highlighted by two Garda members, were of a particular cause of concern to the PAC.

The PAC also made reference to the C&AG report mentioned earlier. The Committee noted with concern that many of the systemic weaknesses had been known to the authorities, yet no action had been taken to rectify them. One of the issues to emerge in evidence given to the PAC was that, where a Garda issues a charge on the roadside, senior officers, having been petitioned, subsequently cancel the charge. The Committee found this to be a worrying aspect of the whole procedure.¹⁴

This concern arose out of the fact that superintendents and district heads, until 2013, had the capacity to cancel fines. At the time, this was in accordance with the Garda manual in place. The manual stated that cancellations were allowed where exceptional circumstances prevailed, and were to be in accordance with the relevant legislation or by way of the exercise of discretion.

The PAC report illustrated that approximately 5% of fixed charge notices were cancelled, of which about 2.2% were cancelled by Garda superintendents using discretion.¹⁵ The examination by the Committee and, in particular, the evidence put forward raised concerns for the PAC on a number of issues which were also mentioned in the O'Mahoney Report.

The PAC stated that *“the systems of checks and balances that are outlined in the Garda manual were not applied; that an audit process, that would have highlighted the fact that*

¹¹ Page 8.

¹² Recommendation 3.1.

¹³ Page 9.

¹⁴ Page 8.

¹⁵ Page 9.

the system was not working as intended, was not in place and that as a result, the reputation of the Garda Síochána was damaged".¹⁶

Under the heading *Culture Change*, the PAC maintained that *"it was clear that the extent to which charges were cancelled without proper recourse to policy, as outlined in the Garda manual, has left the force open to the charge that some gardaí were amenable to "squaring" charges and this has damaged the reputation of the force as a whole*".¹⁷ It was recommended that this issue needed to be addressed from within the Garda Síochána so that *"over time, the culture of stringent compliance with road traffic laws will evolve within the force*".¹⁸

Additionally, the PAC reported that the actions of Sergeant McCabe contributed to improvements in the oversight of the cancellation process. This was in direct contrast to comments made by the then Garda Commissioner and it appeared to the PAC that the desire *"to protect the organisation was placed ahead of ensuring that the complaints from the whistle-blower were followed up on*".¹⁹

The PAC concluded with a number of findings and recommendations.

6.3.5 Garda Professional Standards Unit Report

In August 2014, Acting Garda Commissioner Nóirín O'Sullivan requested that a report on the operation of the Fixed Charge Processing System (FCPS) be prepared, following HQ Directive 48/2014 and the FCPS Policy and Procedures Manual (Fourth Edition) 2014 that had been issued on 16 June 2014. This report was completed by the Garda Professional Standards Unit (GPSU) in December 2014.

The GPSU conducted an examination of FCPS cancellations between 1 September 2013 and the 31 August 2014, having regard to the new procedures introduced.

In particular, 667 decision-making files were selected and reviewed against three different policies applicable during that period. A total of 114 of these files were deemed to be worthy of further investigation. It was highlighted that *"investigation may well determine that there is no wrongdoing or failing on the part of anyone. It is also worthy of note that the examination has established that there are some procedural issues occurring as opposed to individual failings*".²⁰

The GPSU found that significant improvements to the system had been made since the introduction of the FCPS Policy and Procedures Manual (Fourth Edition) 2014, and it was noted by the GPSU that the FCPO have implemented procedural changes since this examination commenced and have shown a willingness to introduce further improvements to the system.

The GPSU made 20 recommendations in total about FCPS policy and procedure, some of which were able to be implemented at a local level. However other recommendations would involve legislative change and co-operation with other Government Departments.

¹⁶ Page 9.

¹⁷ Page 11.

¹⁸ Page 11.

¹⁹ Page 15.

²⁰ Page 10.

6.3.6 The Data Protection Commissioner report

On 21 March 2014, the Garda Síochána published the report of the data protection audit²¹ of the Garda Síochána carried out by the Data Protection Commissioner. The audit was carried out under the instruction of the Data Protection Commissioner on foot of concerns about some of the data handling practices within the Garda Síochána; these concerns arose in spite of the existence of a previously agreed Data Protection Code of Practice.

A central focus of the audit was the main IT system, PULSE, used by the Garda Síochána for recording data. In his 2012 Annual Report²², the then Data Protection Commissioner outlined that the initial phase of the audit had uncovered inappropriate access to PULSE by members of the Garda Síochána.

It was argued by representative bodies such as Transparency International Ireland²³ that at no time did the members identified as the Whistleblowers breach the Data Protection Act (DPA) as no personal data was shared in a public forum, and they stated that they were accessing PULSE in order to report concerns of malpractice. As previously highlighted in this report, there were discrepancies between the PULSE and FCPS system, and one did not necessarily reflect the other.

6.4 Examination of Evidence Provided by Sergeant Maurice McCabe

Sergeant Maurice McCabe attended the GSOC office in Dublin on five occasions in total. He consented to his interviews being recorded and was unaccompanied during these proceedings.

Sergeant McCabe stated that he was aware that his attendance at GSOC was providing him with the opportunity to provide details of incidents where he believed that wrongdoing had taken place in relation to the Garda Síochána FCPS.

At the time, Sergeant McCabe had been a member of the Garda Síochána for 29 years, with the majority of his service in County Cavan. He was transferred to Mullingar, County Westmeath in 2008.

Sergeant McCabe set out chronologically who he approached and furnished with documentation, with regard to allegations about the FCPS. The order of disclosure is important and Sergeant McCabe stated in interview that he obtained legal advice about who he was entitled to disclose information to and how to maintain the lawfulness of such disclosure.

The timeline of disclosures is set out below:

- Meeting with Assistant Commissioner Derek Byrne – October 2010
- Meeting with Confidential Recipient Mr Oliver Connolly – January 2012
- Second meeting with Confidential Recipient Mr Oliver Connolly – January 2012

²¹ Page 30, Audit of the Garda Síochána by the Data Protection Commissioner.

²² Page 17, Annual Report of the Data Protection Commissioner 2012

²³ TI Ireland calls for Government to 'set the record straight' on Garda whistleblowers, press release 25 March 2014

- Email to Confidential Recipient Mr Oliver Connolly – May 2012
- Meeting with Mr Ted McEnery, Secretary of PAC – July 2012
- Meeting with Ms Mary Henry C&AG – July 2012
- Contact with Office of An Taoiseach – July 2012
- Meeting with Mr Chris Smith Department of Transport – August 2012
- Contact with Mr Maurice Treacy – RSA – August 2012
- Meeting with Mr Noel Brett – RSA – October 2012
- Meeting with Ms Paula Nerney – Data Commissioner’s Office – November 2012
- Meeting with Mr Sean Guerin – Senior Counsel – 2014
- Protected Disclosure made to Garda Commissioner Nóirín O’Sullivan – August 2014

Sergeant McCabe supplied a number of exhibits to GSOC, including a large number of documents. This was effectively the dossier of information from the PULSE system and other papers which had previously been passed to other agencies, and which he believed illustrated the wrongful cancellations of FCNs²⁴. Sergeant McCabe went into specific detail relating to a number of cancellations where he believed wrongdoing had occurred, providing details, names of Garda members involved and the situation set out in each cancellation. Additionally, he mentioned what he classed as ‘habitual terminators’ and where commercial vehicles or Garda members or their friends or family members had FCNs cancelled.

Statements provided to GSOC by Sergeant McCabe were analysed and the allegations within were compared against the data provided to GSOC by the Garda Síochána, and verified by members of the investigation team via the PULSE system. Although the data sets provided some corroboration with regards to the cancellation of the FCNs examined, there was potentially further information that would have been available on the FCPS itself. (As mentioned previously, the FCPS was a completely separate entity to the PULSE system with only limited integration). At no time during the investigation was the FCPS accessible to GSOC or Sergeant Maurice McCabe. However, the analysis and review of the data considered allowed GSOC to be satisfied that the allegations put forward by Sergeant McCabe had considerable merit.

6.5 Timeline of Analytical Work

The next, and most significant, part of this investigation phase was the analytical activity, given the volume of data to be examined. This included the examination of **74,373 cancellations** - and the serious nature of the allegations made, that is, corruption, perversion of the course of public justice and destruction/ falsification of records. Because of resourcing issues, GSOC needed to take an e-smart approach which made the best use of technology in order to enhance efficiency of the investigative work.

²⁴ After taking receipt of the dossier and associated documentation compiled by Sergeant McCabe, GSOC was satisfied that it had access to all the relevant documentation relied upon by the two garda members, Sergeant McCabe and former Garda John Wilson, named in the referrals by the Minister in 2014. It was GSOC’s intention to interview former Garda Wilson, and anyone else who may have had evidence, if the GSOC investigation progressed into a second phase.

Key objectives of the analytical work were to address:

- The most effective way to interrogate the PULSE entries established as relating to the penalty point cancellations.
- How all the allegations could be thoroughly and fairly examined.
- The nationwide geographical spread of these allegations and the location of associated paperwork and witnesses.

This phase also involved contact being made with various parties holding information, such as the Garda Síochána, the Confidential Recipient, authors of the previous reports, the Department of Justice and other Government agencies.

Information requests were submitted to acquire all of the necessary guidance documents, manuals, Garda HQ directives, statutory instruments, etc.

In February 2014, GSOC requested from the Garda Síochána the cancellation data from the PULSE system. In March 2014, GSOC received a total of 76,287 records. (The decision was taken to seek cancellation data between 1 January 2009 and 31 December 2012. It was considered prudent to widen the time period beyond the time period of the allegations made, in order to have finite parameters for the data.)

GSOC requested the installation of the PULSE system at GSOC headquarters to facilitate verification of data. An announcement was made on 5 February 2014 by the then Minister for Justice and Equality, Mr Alan Shatter TD, in Dáil Éireann, that the “...*Ombudsman Commission will have direct access to the system (PULSE system)*”. The PULSE system and operational terminals to access the Garda PULSE system were installed in the GSOC offices and the live connection was initiated for GSOC authorised officers on 28 July 2014.

In May 2014, having established a clear understanding of the scale and extent of the investigation needed and resources required, GSOC submitted a business case for investigative resources to the Department of Justice. Proposing a team of eight full-time, dedicated investigators with two analysts and clerical support, the business case emphasised that due to the nature of GSOC’s general caseload and its already depleted staff numbers, it would not be feasible to reprioritise ongoing current work in order to redirect staff to the investigations requested by the Minister.

In July 2014, the Department of Public Expenditure and Reform gave sanction for a criminal analyst to be recruited to allow GSOC to further develop the scoping analysis and interrogation of the data, in order to establish the best estimate of resource needs. The analytical work focused on producing areas for prioritisation where offences considered as serious were cancelled.

Hence, the analytical work conducted was significant. The following table sets out the timeline of the investigation, including significant milestones relating to the analytical process.

Figure 5: Timeline of Investigation

28 January 2014	GSOC receives referral from then Minister for Justice and Equality, Alan Shatter, to investigate cancellations within a certain time period
28 January 2014	Correspondence from the Garda Commissioner in relation to the FCPS investigation to be undertaken by GSOC
29 January 2014	Correspondence from AGS relating to appointment of a Chief Superintendent as a point of contact for the FCPS investigation
3 February 2014	GSOC investigation commenced
7 February 2014	Initial meeting between GSOC and AGS
14 February 2014	Meeting held at GSOC offices with AGS in respect of referral made by the Minister for Justice and Equality
14 February 2014	Request for data made to AGS, relating to terminated Fixed Penalty Notices between 1 January 2009 and 31 December 2012
19 February 2014	Correspondence to AGS regarding access to PULSE system
24 February 2014	Meeting between GSOC & Auditor General's Office
10 March 2014	All terminated FCPN data received by GSOC (76,287 records in total)
13 March 2014	Security Report regarding installation of PULSE terminals at GSOC offices completed and received from AGS
26 March 2014	A "Gearain" ²⁵ request - email for FCPS System manuals and related HQ Directives and PULSE bulletins or documentation
27 March 2014	Request via email for additional data (due to discrepancies in the Garda member details) as well as copies of the report set out by AC O'Mahoney and associated appendices, and any details of Garda members where terminations were referred to Garda Internal Affairs by AC O'Mahoney
27 March 2014	Request for all documentation including records, reports, photographs and recordings relating to Fixed Penalty Charges for the time period 1 January 2009 to 31 December 2012
1 April 2014	Superintendent and staff of the FCPO visited GSOC offices to present details of the components of the FCPS system
2 - 3 April 2014	PULSE training for GSOC's investigation team

²⁵ "Gearain" is the name given to the process in which GSOC formally makes a request for information to the An Garda Síochána dedicated point of contact, such information as is required as part of a GSOC investigation. An Garda Síochána must provide the information as soon as practicable and the protocols between GSOC and An Garda Síochána stipulate such requests will be completed within 30 days.

4 April 2014	Receipt of FCPS System manuals and related HQ Directives and PULSE bulletins or documentation as requested in the information request on 26 March 2014
4 April 2014	Receipt of AC O' Mahoney's report into the FCPS system including audit files and petition records
4 April 2014	Request made for data that appeared to be missing or incomplete within the termination data set
8 April 2014	Correspondence confirming GSOC received information requested via the Gearin process on 26 March 2014
8 April 2014	Correspondence to AGS relating to outstanding information as requested 27 March 2014
15 April 2014	Receipt of 13 folders containing supporting documentation, receipt of this information confirmed to AGS via email
17 April 2014	Email receipt of documentation requested received from AGS relating to Garda Disciplinary or DPP outcomes regarding FCPS request which was made on 27 March 2014
1 May 2014	GSOC delivered business case to the Department of Justice and Equality with an estimate of the resources required to undertake investigative work, following completion of analytical work
13 May 2014	Request for Garda members and registration numbers (which were missing from data received on 4 April 2014) and offence codes in an electronic format
13 May 2014	Fixed Penalty Notice Offence Code data received from the AGS. (Discrepancy in first data set meant that further data was required to complete the data set)
16 May 2014	Meeting held at GSOC with AGS representatives to discuss clarification of fields and missing data within the data set
3 June 2014	Email containing documents relating to missing identification numbers and other missing data received from AGS
16 June 2014	New Fixed Penalty Policy and Procedure 4 th Edition published and the Garda Síochána decides that only three designated senior officers can now cancel terminations
24 June 2014	Correspondence from GSOC to AGS stating that the request for information made on 13 May 2014 has now been fulfilled

26 June 2014	Meeting at AGS HQ to determine clear indication of who terminated fixed penalty notices and gain better insight into the data. A request for further information was also made at this time
1 July 2014	Additional Fixed Penalty Notice Offence Codes received from AGS (discrepancy in the first data set meant that further data was required to complete the data set)
14 July 2014	Two PULSE terminals installed at GSOC HQ offices
16 July 2014	An extract of data from the FCPS database was collected from Garda HQ by a GSOC designated officer in relation to data requested on 26 June 2014
30 July 2014	Email requesting clarification of data received on 16 July 2014 due to discrepancies with earlier data provided in March 2014
19 August 2014	Further clarification requested with regards to missing data and acknowledgement of explanation of discrepancies in earlier data sets received
September 2014	Minister for Justice and Equality confirms allocation to GSOC of the €1 million requested for human resources to undertake the investigative phase of the first investigation
September 2014	Investigation team members receive limited access to PULSE
12 September 2014	GSOC receives referral from the then Minister for Justice and Equality Frances Fitzgerald relating to further allegations of impropriety in relation to the cancellation of Fixed Penalty notices (within a new time period)
September - October 2014	GSOC analytical staff change and handover
6 October 2014	Meeting at AGS HQ regarding PULSE access. Request that GSOC have access to all sections within the PULSE system
6 October 2014	Complete Fixed Penalty notice data set (including non-terminations) requested by GSOC
8 October 2014	Further clarification of data requested from AGS via email with regards to missing information within the data
October 2014	Sanction received from the Minister for Public Expenditure and Reform to hire temporary investigators for the initial investigation and procurement process begun with the Office of Government Procurement (OGP)

16 October 2014	Meeting between AGS and GSOC where a number of matters including PULSE and data were discussed
28 October 2014	Further clarification of data requested from AGS
October-November 2014	PULSE data testing (Sample data from the data received checked by investigation team on live PULSE system)
21 November 2014	Meeting with AGS. Meeting addressed clarification sought with regards to data as of 28 October 2014
5 December 2014	Further data received at GSOC offices in relation to request made in October
9 December 2014	Further clarification of data requested from AGS
11 December 2014	Email correspondence alerting GSOC analytical staff that data has to be re-supplied due to errors
16 December 2014	Correspondence from AGS that new data will be supplied as soon as possible due to the errors mentioned via correspondence on 11 December 2014
23 December 2014	Email requesting further data and timeline of all FCPS changes made
December 2014	Review and testing of data
January - February 2015	Analytical staff change and handover
7 January 2015	Email sent to AGS relating to further clarification of data set
23 January 2015	Email requesting further clarification of data sent to AGS as per email dated 7 January 2015
26 January 2015	Response received in relation to request for data clarification on 28 October 2014
26 January 2015	Response received from AGS regarding FCPS timeline and changes
3 February 2015	Meeting at AGS HQ, to address data discrepancies
3 February 2015	Further request for data clarification sent to AGS via email
4 February 2015	Email correspondence from AGS providing preliminary data as requested 3 February 2015
10 February 2015	Email correspondence from AGS providing further data as requested 3 February 2015
February 2015	Analytical phase of initial investigation completed, providing a road-map for the next phase of the investigation

20 February 2015	Email correspondence between GSOC and AGS in relation to GSOC receiving all FCPS notifications for the time period
21 February 2015	Further clarification sought in respect of data requests from GSOC to AGS as requested 3 February 2015
24 February 2015	Request for any documentation in relation to specific 'anomaly' data set
24 February 2015	Email correspondence providing completed data as requested 3 February 2015
25 February 2015	Receipt of information from AGS that no documentation exists in relation to 'anomaly' data set as requested 24 February 2015
25 February 2015	Clarification sought with relation to completed data set provided on 24 February 2015 which was originally requested 3 February 2015
3 March 2015	Statement prepared by Garda member in relation to work carried out regarding IT scripts used to provide GSOC with data
6 March 2015	Complete fixed penalty notice data set (inclusive of terminations) received from AGS, following request in October 2014
May - June 2015	Analytical staff change and handover
7 May 2015	Statement in relation to work carried out regarding IT scripts provided to GSOC
3 June 2015	Request made for information to AGS
15 June 2015	Request for data made to AGS
25 June 2015	Receipt of files received to complete requests made to AGS on 3 June 2015 and 15 June 2015 respectively
1 July 2015	Receipt of documentation received 26 June 2015 in relation to request made 3 June 2015 with mention of information still outstanding
1 July 2015	Receipt of information received in relation to request made to AGS on 15 June 2015
3 July 2015	OGP publishes tender for investigative support required for next phase, on eTenders website. No responses met the qualification criteria
8 July 2015	Further request for information made to AGS in respect of specific files
24 July 2015	Closing date for Tender for investigative support
26 July 2015	Correspondence detailing large volume of materials requested by GSOC as of 8 July 2015 and indicating time period when the request will be progressed
29 July 2015	Evaluation of Tenders for investigative support

5 August 2015	Post tender clarifications closing
6 August 2015	Evaluation of tenders
4 September 2015	Correspondence confirming information received by GSOC and request as of 8 July 2015 has been fulfilled
11 September 2015	Correspondence to AGS from GSOC providing update regarding status of the investigation
21 September 2015	Tender notification letters issued
1 October 2015	Correspondence acknowledging update provided by GSOC in relation to the status of the investigation
5 October 2015	Tender process standstill period ends
28 January 2016	OGP publishes second tender, on an EU-wide scale
8 March 2016	Closing date for 2 nd issue of tender
14 March 2016	Evaluation of tenders
16 March 2016	Evaluation of tenders
4 – 5 April 2016	Evaluation of tenders
13 April 2016	Post tender clarifications
July 2016	Tender completed and a highest-scoring tenderer to conduct the investigative phase is identified
6 October 2016	Tender notification letters issued
20 October 2016	Tender process standstill period ends (period of time to allow any objections from the unsuccessful tenderers). Contract could be awarded from this date

6.6 Data Requested

The analytical work was a key element designed to allow GSOC to further develop the scoping analysis and interrogation of the data in order to establish the scale of enquiries needed and in turn to provide the best estimate of resource needs.

The first information request made to the Garda Síochána was for data that provided details of all FCN cancellations which had taken place during the time period 1 January 2009 to 31 December 2012. This was provided to GSOC in an electronic format on 10 March 2014.

The data was requested to be taken directly from the Garda Síochána PULSE system. It was supplied to GSOC by the Garda Síochána and was not independently confirmed. (The investigation team had no access at that time to the source.) It was therefore treated as third party data.

The initial entire data set contained 76,287 rows of information and included amongst other criteria:

- The reason for issue of a FCN.
- The reason for the cancellation.
- The district in which it was issued.
- The Garda member who issued the FCN in the first instance.

The 76,287 rows of data related to the 74,373 FCN cancellations, authorised between 2009 and 2012.

6.7 Data Challenges

Certain information was missing or incomplete from this initial data set and further requests had to be made.

Missing or incomplete information

- The registered number of the Garda member who had last updated the record (referred to as the “Last Updater”) was the only information provided about the person who had cancelled each FCN and this was insufficient to allow GSOC to identify them. GSOC requested a second data set to identify members of the Garda Síochána who had authority to cancel FCNs. On 4 April 2014, the second data set requested was received. This list contained the names and ranks of 442 individuals, of the rank of inspector or above, the station where they were based and whether, at the time of the data being provided, they were in active service. These individuals are referred to as “Authorising Members” (AMs) for the remainder of this section.
- A list of fixed penalty notification offence codes was the next data set to be requested from the Garda Síochána, as this information was also missing from the first data set. A partial list was delivered in an electronic format on 13 May 2014. A second list with the missing codes was provided in July 2014, upon further request.
- On 6 October 2014, a further request was made to the Garda Síochána for data on all (uncancelled) FCNs issued during the time period 1 January 2009 to 31 December 2012. GSOC analysts wished to use this data to establish the context of the cancellations, in comparison to all FCNs issued. This data set was not provided. A subsequent request was made later in February 2015 and the data requested was delivered to GSOC in electronic format on 6 March 2015.

Even after all these requests there were still issues relating to missing or incomplete data in individual entries. For example:

- There were over 48, 000 records with missing details relating to the “Last Updater”.
- In respect of speeding offences, the actual speed travelled was missing in 40,384 records.

IT difficulties

Progress was also hampered at this stage because the large size of files being transferred to GSOC from the Garda Síochána impacted on the IT infrastructure within GSOC, resulting in

system failures. GSOC had to procure more specialised equipment, which could accommodate the data without impacting upon the servers and other infrastructures.

The above problems were dealt with in order to gain as complete a data set as possible and to conduct a thorough examination and analysis of FCN cancellations.

6.8 Data Verification

Access to the PULSE system was established at GSOC offices in July 2014, and this allowed for verification of the downloaded data. The investigation team was able to take a sample of data from the cancellation data set and determine whether or not these records were accurately reflected within the PULSE system. This established that the data was an accurate reflection of the information available on the system.

However, where inconsistencies arose or where certain cancellations were questioned in respect of the cancellation reason, or the geographic location, not all of the data was necessarily available to an individual accessing PULSE. Some of the information relating to FCNs is held only on the separate FCP system. (As explained in the section on Background, these two IT systems are only integrated with regard to limited functionalities.)

For all Fixed Penalty Notices between 1 January 2009 and 31 December 2012 (the 'finite' data set), the Garda Síochána also provided the scripts utilised to extract the data from their IT systems and an accompanying statement from Garda personnel involved in the download, on 25 February 2015.

6.9 Themes Identified by Analysis

Certain features which appeared frequently in the data set raised questions as to whether or not cancellations were being processed in line with the policy and procedure which governed the FCPS system during the specified time period. From these, GSOC identified "themes", which warranted further analysis. These were:

- a) Cancellation of FCNs received for more serious offences.
- b) Geographic trends in cancellation.
- c) Issues related to the member terminating the FCN including the timescale of the cancellation, potential preferential cancellations and the lack of rationale for cancellations.

6.9.1 a) Cancellation of FCNs received for serious offences

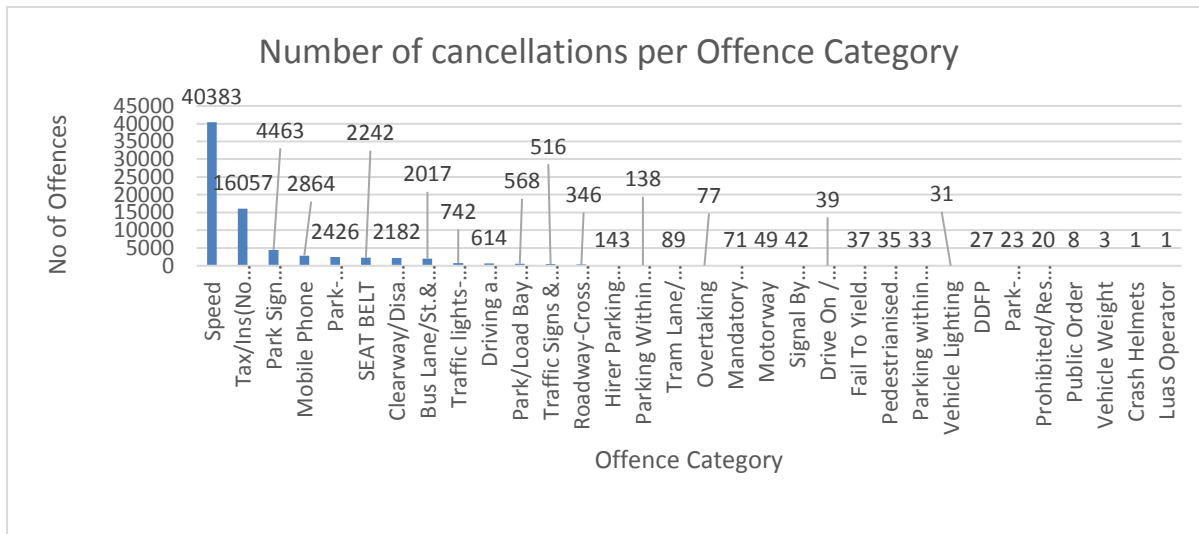
The term "serious offences" is used to refer to offences present in the data set in relation to which GSOC believe the public may be particularly concerned about FCNs being cancelled:

- Excessive speeding.
- No tax or insurance.
- Driving under the influence of alcohol.
- Not wearing a seatbelt.

Figure 6 shows that speeding offences were those most commonly cancelled during the time period examined, accounting for 53% of all cancellations (40,383), followed by no tax or no

insurance (16,057). These can only be considered indicative figures as the data provided did not always include full details of the personnel or vehicles involved.

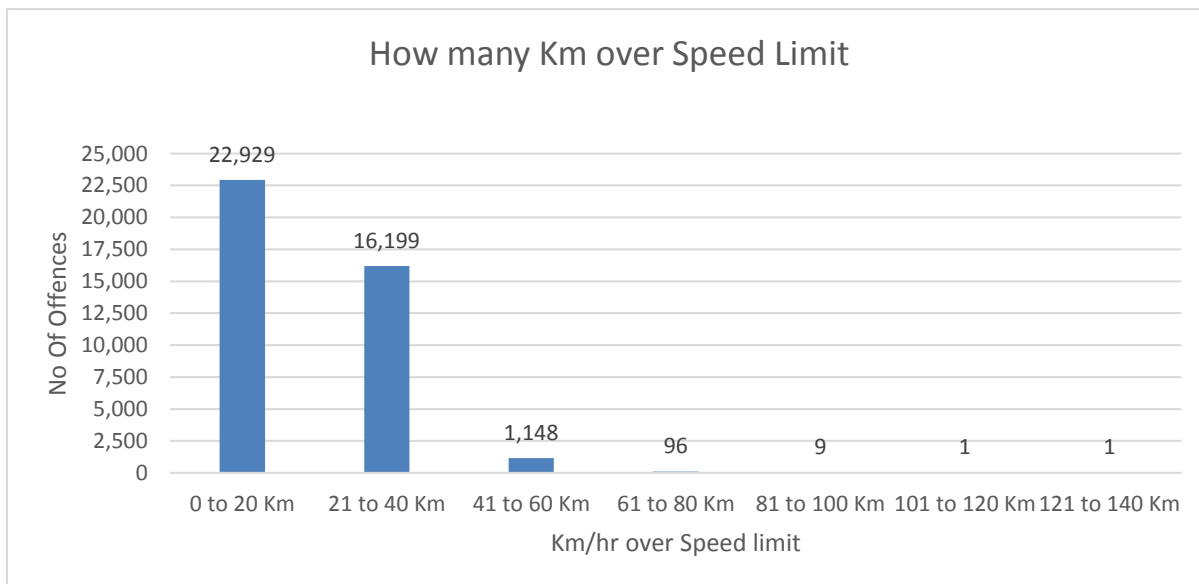
Figure 6 Number of cancellations per offence



Source: Created by GSOC based on data provided by the Garda Síochána

Figure 7 illustrates that cancellations for speeding offences were most prominent where drivers were traveling between 0km/hr and 20km/hr over the prescribed speed limit, and this accounted for 56% of all such terminations. This also shows 107 cancellations were for speeds between 61 -140km/hr over the speed limit.

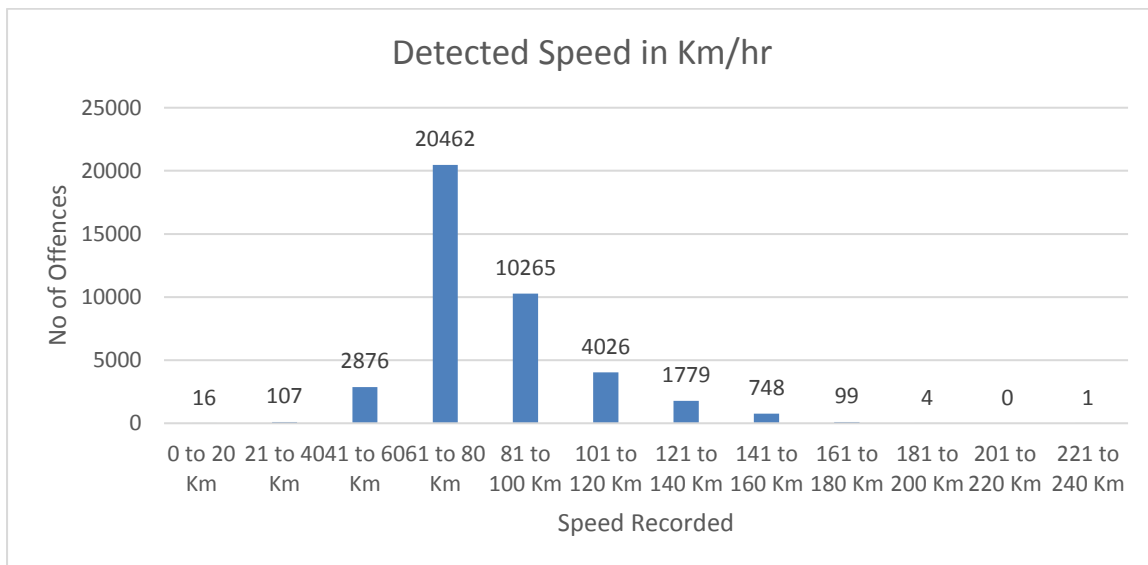
Figure 7 Number of cancellations and the amount over the speed limit



Source: Created by GSOC based on data provided by the Garda Síochána

Figure 8 illustrates the speed that a vehicle was travelling at the time of the detection. Vehicles travelling at between 61km/hr and 80km/hr in 50km/hr zones accounted for 51% of all cancellations. A further 23% of cancellations related to vehicles travelling at between 81km/hr and 100km/hr in zones where the speed limit was 60km/hr.

Figure 8. Speed at time of detection.



Source: Created by GSOC based on data provided by the Garda Síochána

It is of note that within the data set, there were 16 instances where the legal speed limit of the road was not given within the data. This links in to other areas of difficulty with data verification.

It can be seen that one cancellation relates to a vehicle which was traveling at between 221 km/hr and 240 km/hr at the time of the offence.

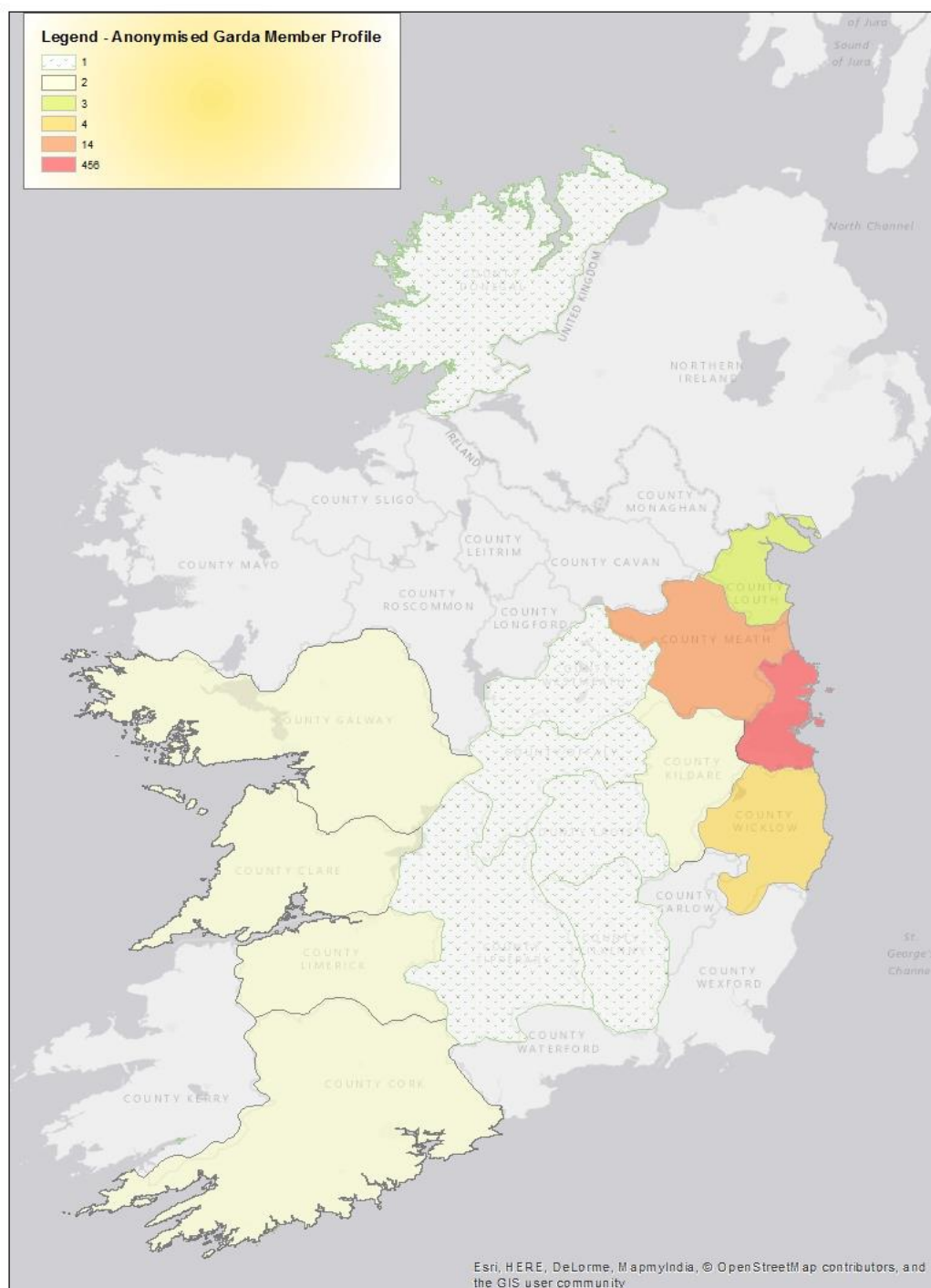
Given the significant public interest in road safety matters, GSOC believes that it is important to highlight the high instance of cancellation of penalty notices issued for these offences.

6.9.2 b) Geographic trends in cancellation

This examination shows that the rate of cancellation was relatively consistent across the country, (see table, figure 10), however it also reveals a practice of senior officers cancelling FCNs outside their own areas. (See figure 9)

Figure 9 illustrates the geographical location of all cancellations carried out by an Authorising Member profile, profile is anonymised. (See also section 6.10, Authorising Member profiles).

Figure 9: Geographical Analysis of Cancellations for one of the 440 Authorising Members profiled.



Source: Created by GSOC, based on data provided by the Garda Síochána.

The above map illustrates the geographical spread of FCNs cancelled by one Garda based in Dublin. It shows that this Authorised Member cancelled FCNs in 14 districts other than the one in which he was permitted to do so by the FCPS guidelines and policy. In Meath, for instance, the Member cancelled 14 notices and in a number of counties on the other side of the country – in Galway, Clare, Limerick and Cork for example – two were cancelled.

Figure 10 illustrates the percentage of cancellations that took place per county in the context of the total number of FCNs issued in each county, for the time period 2009 to 2012. A small number of records (125) which did not contain any information relating to the county of issue, were excluded from the analysis.

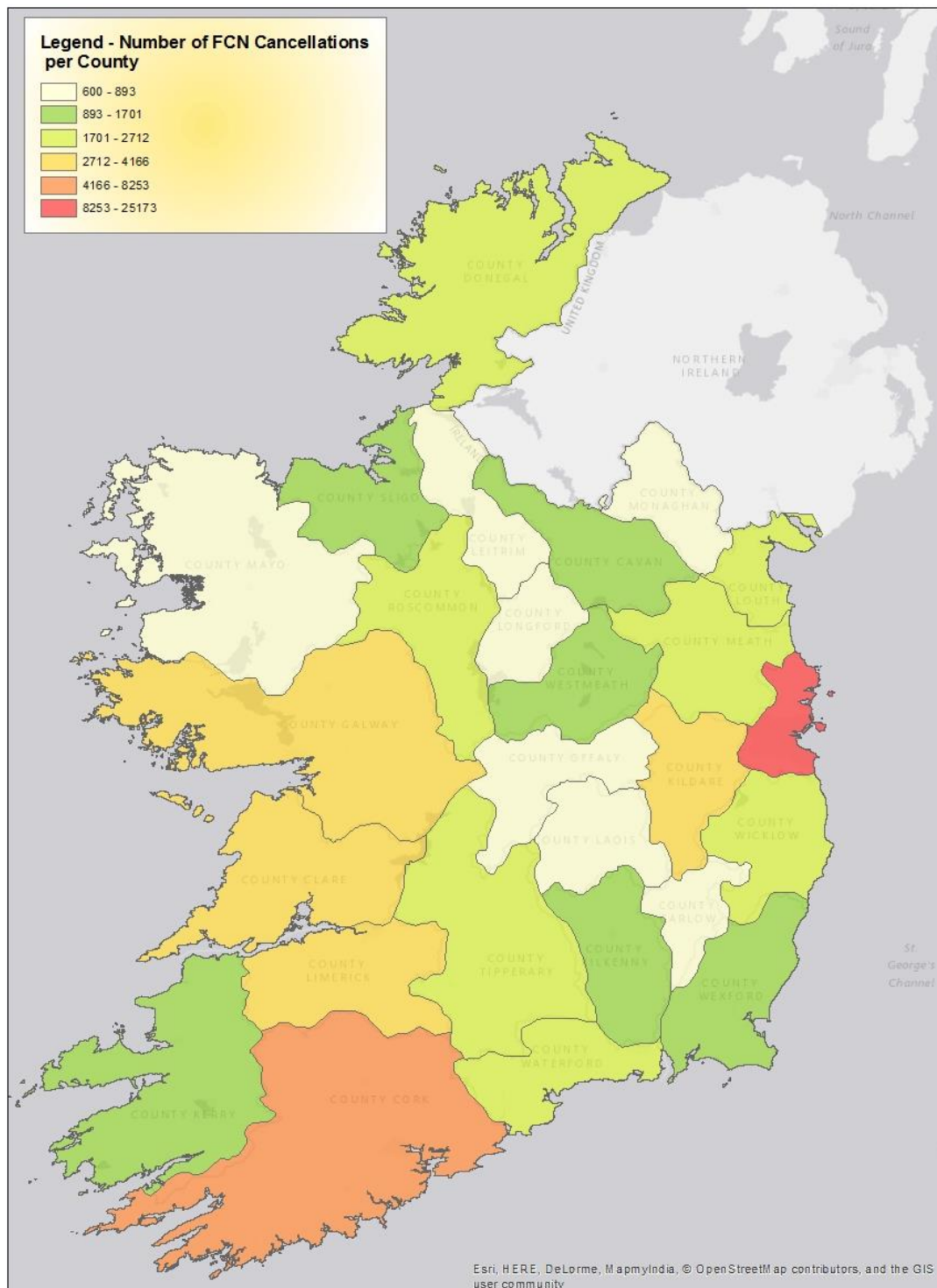
Figure 10: All FCNs Cancellations per County (2009 to 2012)

County	Number of Cancellations	% of All Cancellations	All Fixed Penalty Notices (FPN)	% Cancellations of All FPN
Dublin	25,173	33%	547,814	5%
Cork	8,253	11%	193,099	4%
Limerick	4,166	5%	82,873	5%
Clare	3,646	5%	57,199	6%
Galway	3,500	5%	69,847	5%
Kildare	3,113	4%	74,982	4%
Wicklow	2,712	4%	56,585	5%
Tipperary	2,330	3%	47,459	5%
Roscommon	2,098	3%	33,389	6%
Waterford	2,034	3%	43,204	5%
Meath	1,928	3%	43,334	4%
Donegal	1,903	2%	34,095	6%
Louth	1,805	2%	36,936	5%
Kilkenny	1,701	2%	51,752	3%
Wexford	1,550	2%	42,773	4%
Westmeath	1,523	2%	33,146	5%
Sligo	1,393	2%	31,266	4%
Kerry	1,272	2%	31,889	4%
Cavan	1,154	2%	21,455	5%
Mayo	893	1%	19,897	4%
Laois	839	1%	26,390	3%
Monaghan	755	1%	16,423	5%
Leitrim	688	1%	12,111	6%
Offaly	647	1%	18,402	4%
Longford	611	1%	13,096	5%
Carlow	600	1%	17,503	3%
Totals	76,287	100%	1,656,919	

Source: Created by GSOC, based on data provided by the Garda Síochána.

Figure 11 illustrates the geographical spread of cancellations between 2009 and 2012. As the map shows, the highest number of cancellations took place within County Dublin, followed by County Cork. County Carlow and County Longford had the lowest number of cancellations in this period.

Figure 11: All FCNs Cancellations per County (2009 to 2012)



Source: AGS data provided to GSOC in relation to Cancelled Fixed Penalty Notices – 1st January 2009 to 31st December 2012

6.9.3 c) Issues related to the member terminating the FCN including the timescale of the cancellation, potential preferential cancellations and the lack of rationale for cancellations.

It was discovered that there were occasions where notifications were cancelled using the credentials of retired Garda members.

One of the allegations put forward was that FCNs were being cancelled prior to the time that a notice would have arrived at the registered owner's address.

There were patterns identified in relation to the large number of cancellations where the reason given was simply "Cancelled" or "Discretionary". It is difficult to state with absolute certainty that such FCNs were cancelled improperly.

6.10 Authorising Member (AM) Profiles

After receiving the initial data set of cancellations, one of the first tasks undertaken was to produce a profile of cancellations in relation to each of the 442 Authorising Members. The production of these profiles allowed for further analysis of the key themes or patterns which emerged from the data set, at an individual level.

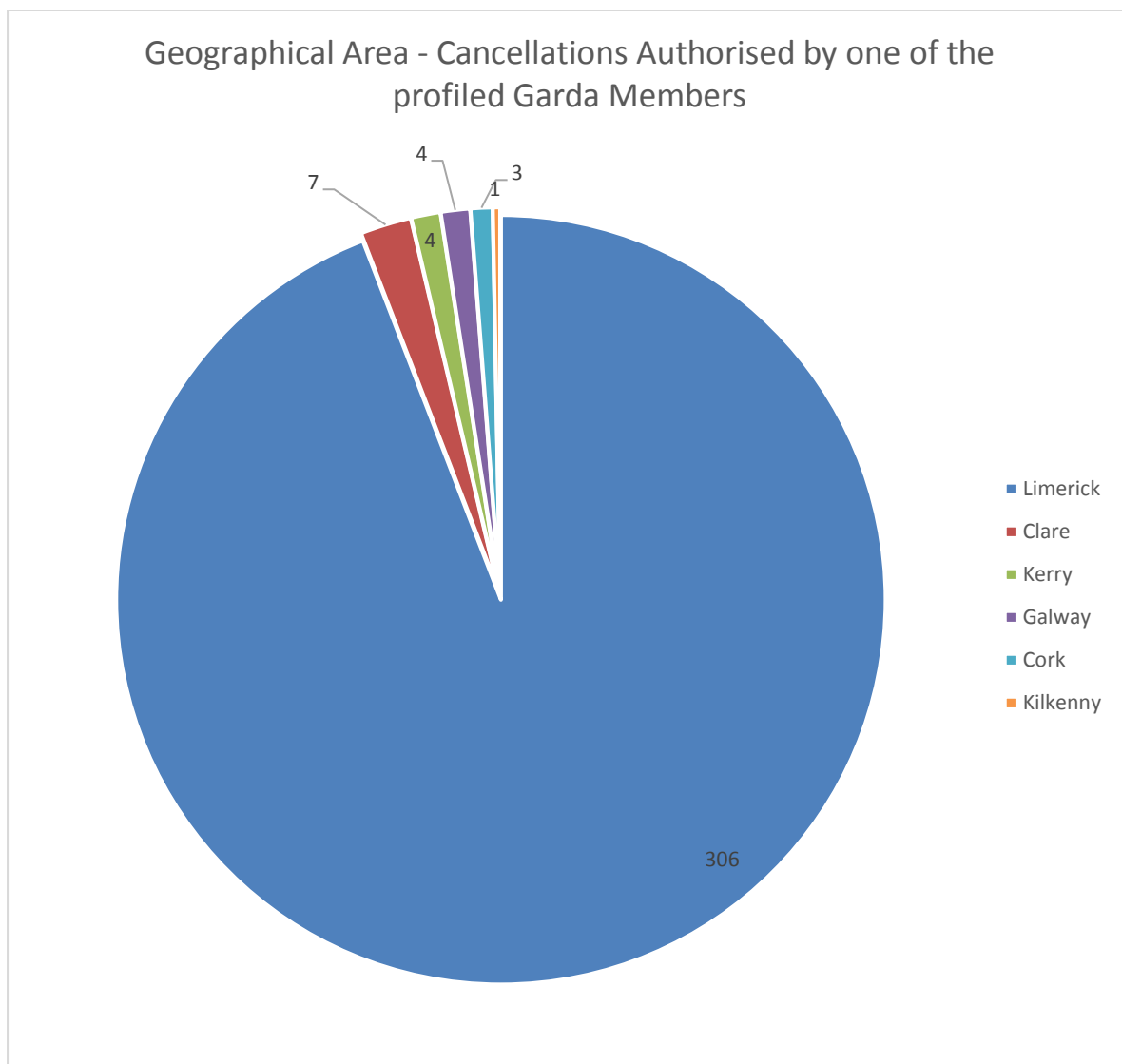
The profiles established that:

- **The number of cancellations per individual AM varied hugely, ranging from one to 46,161.** The garda member who cancelled 46,161 notices worked in the FCPS Office.
- **AMs were terminating FCNs outside their district in contravention of Garda Síochána policy.** One of the profiled garda members based in Dublin, for example, cancelled 744 FCNs across 17 Counties. This contravenes the FCPS policy and guidance set out by the Garda Síochána. Furthermore, Garda members deployed to national units such as GPSU, Immigration and the Garda National Drugs Unit (GNDU), whose remit would not include traffic offences, were terminating FCNs.
- **FCNs were being cancelled by certain AMs before the notification letter would have arrived at the recipient's address.** Examples of this include a garda member who cancelled 48 notices in a 3 month period and another profiled garda member who cancelled 29 in a 12 month period.
- **There was often no supporting documentation to provide the rationale behind a cancellation.** The data shows that 79 AMs authorised cancellations on "discretionary" grounds without further reason given. Without an auditable trail of the rationale behind these decisions, there is no way to evaluate whether or not these cancellations were appropriate and, most importantly, within FCPS guidelines. Illustrating even less accountability, the most frequently occurring reason for authorising a cancellation was simply "Cancelled", accounting for 72% of all cancellations. This does not provide a detailed enough account of the rationale behind the cancellation to determine whether or not these cancellations were made in accordance with FCPS policy.

Figures 12, 13 and 14 below show data for one Authorising Member, which illustrates the analysis that took place to identify issues relating to the key themes identified.

Figure 12 shows that the Authorising Member though based in Limerick District carried out cancellations outside their assigned District in five other District areas.

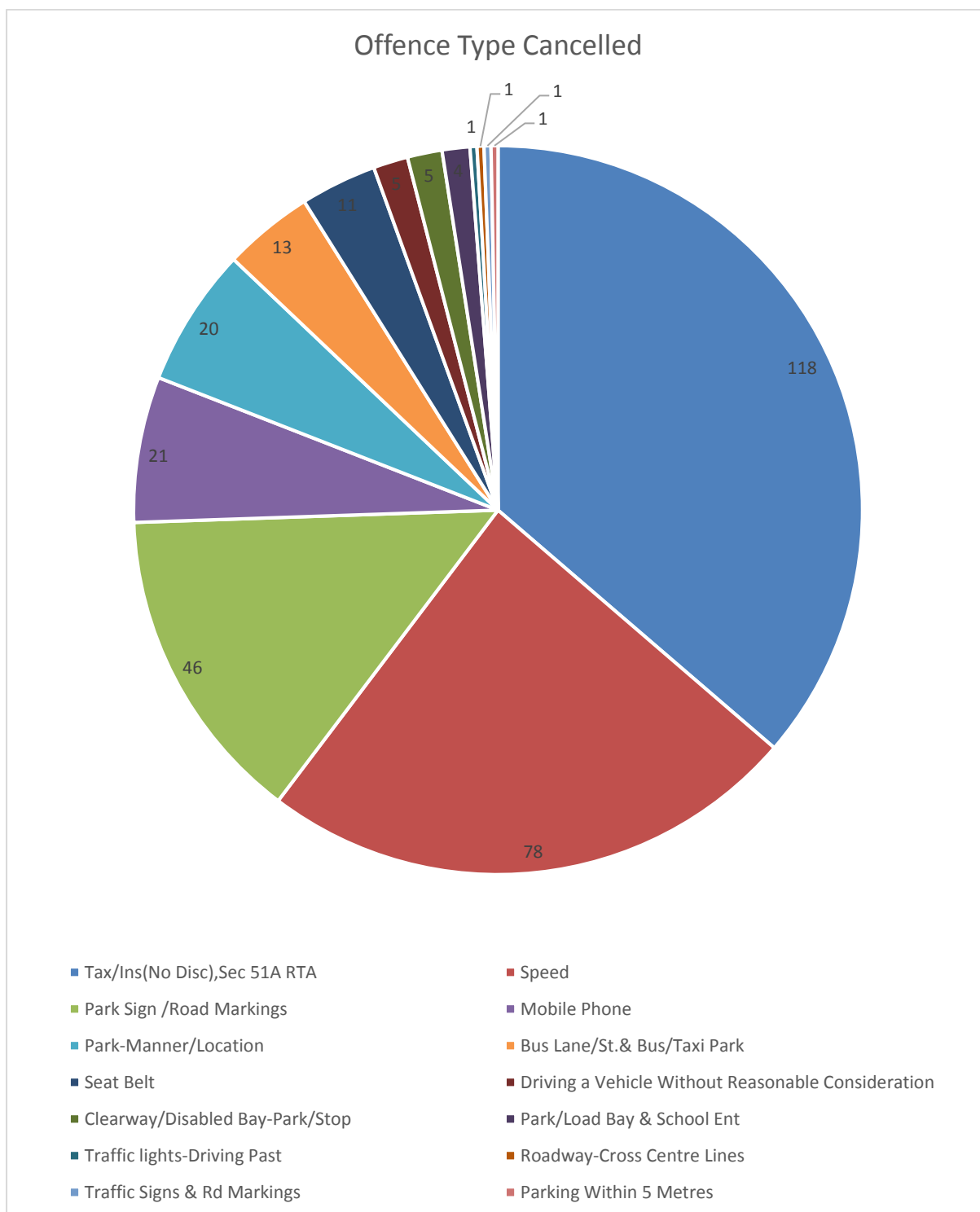
Figure 12 – Example of one of the Authorising Member Profiles Anonymised - Geographical Area



Source: Created by GSOC based on data provided by the Garda Síochána

Figure 13 shows that the main offence types cancelled by the Authorising Member were for tax and insurance offences, speeding offences and parking offences.

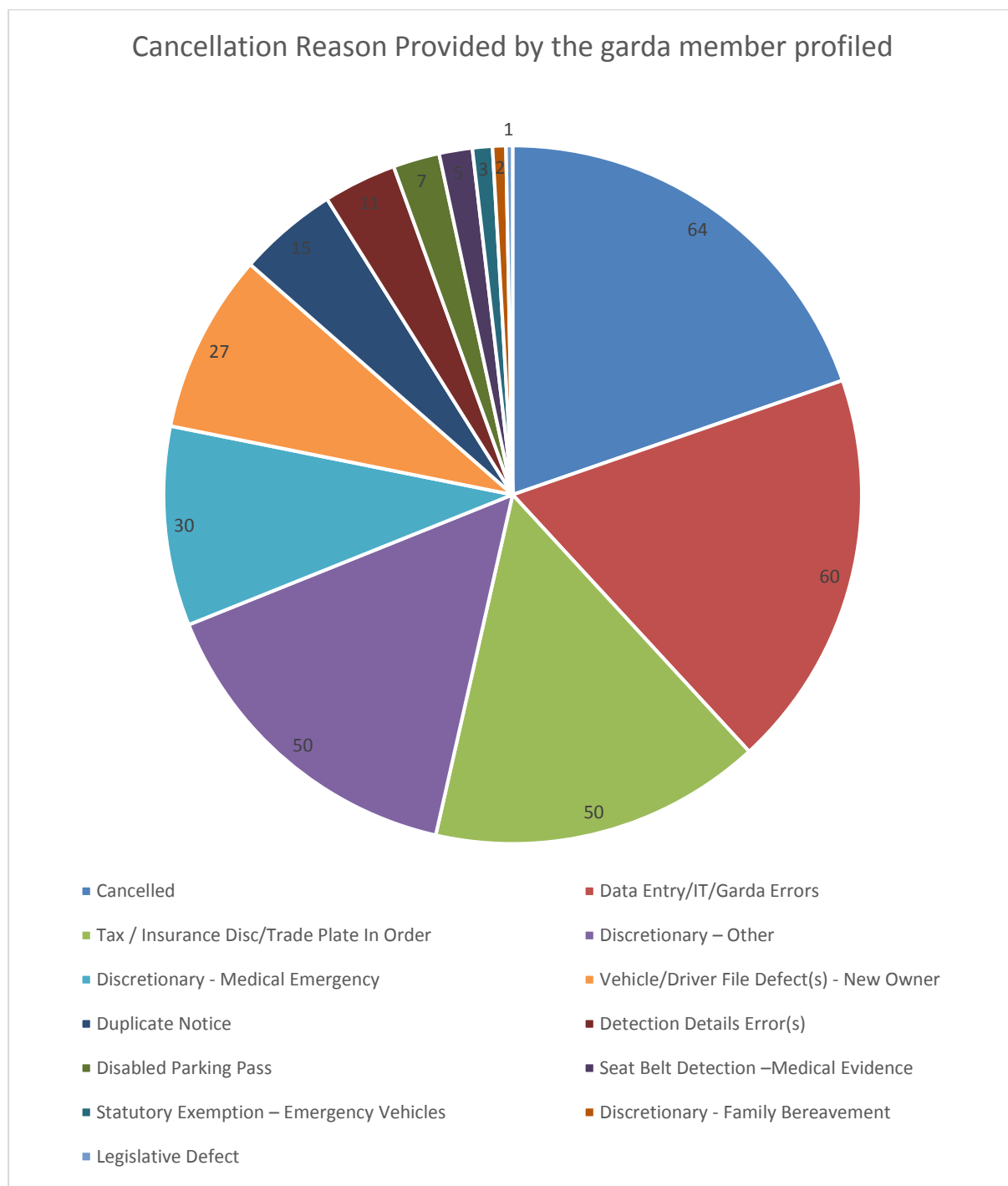
Figure 13 Example Anonymised Authorising Member Profile - Offence type



Source: Created by GSOC based on data provided by the Garda Síochána.

Figure 14 shows the reasons provided by the authorising member for the cancellations. Of the 325 cancellations, the main reasons were given as: cancelled (64), data or IT error (60), tax/insurance disc or trade plate established as in order (50), 'discretionary--other' (50), and 'discretionary-medical emergency' (50).

Figure 14 Anonymised Authorising Member Profile - Reason provided for cancellations



Source: Created by GSOC, based on data provided by the Garda Síochána.

When all of the above themes are taken into consideration, it can be concluded from reviewing the data that FCNs were cancelled outside of the policy and procedure governing the FCPS process.

6.11 Juvenile Cancellations

Detailed below is an overview of all fixed penalty cancellations that relate to juveniles.

FCNs cannot be generated by the FCPS for an offender who is less than eighteen years of age. The procedure is that the notice is cancelled and referred to the Garda National Juvenile Office, which in turn will accept or reject the juvenile for inclusion in the Garda Juvenile Diversion Programme.

Within the cancellation data set:

- There are 1,185 records which refer to the Juvenile Diversion Programme, accounting for 1.6% of all cancellations between 2009 and 2012.
- Many of the offences for which the notices were issued were in connection with serious road traffic offences.
- There were 20 vehicles within the juvenile diversion programme data set where multiple FCNs had been issued during the time period (multiple infringements on one occasion).
- There were three instances when a cancellation was carried out and 'Juvenile Diversion Programme' was the reason given for the cancellation, where the notice recipient was over the age of eighteen years. This would appear to contravene policy and procedure in relation to these type of cancellations.

6.12 Use of Discretion

"Discretion" is defined by the Oxford English Dictionary as "*the freedom to decide what should be done in a particular situation*".

Discretion is often exercised in the context of relevant statutory provisions, along with other relevant measures, such as policies, or guidelines on the use of the discretion.

For gardaí, this freedom is afforded in particular to officers when deciding if they want to pursue police procedure and the law, or simply to issue a warning or advice and not proceed to prosecution.

As with all freedoms, discretion brings responsibility. It is GSOC's view that the exercise of such a power, particularly in relation to decisions of such importance - like whether or not a person is to be prosecuted or penalised - must be reasonable, transparent and fair. An organisation must have good governance procedures in place for such practices.

In the case of the cancellation of FCNs during the period under review (2009 to 2014), the Garda system was governed by *The Fixed Charge Processing System, Full User Manual, Policies and Procedures, Third Edition 2005* which contained a clear statement that, "*Fixed Charge Notices will be cancelled only in exceptional circumstances.*"

It then set out (A) *Criteria – exemptions from regulations*, which state the relevant statutory provisions under the road traffic legislation which exempted certain persons from different requirements e.g. those exempted from wearing a seat belt and the drivers of emergency

vehicles, where the driving and use of the emergency vehicle does not endanger the safety of road users.

At (B) *Criteria – exceptional circumstances* special reference is made to doctors.

Indeed, the section commences: *Apart from the statutory exemptions laid down there are no legal provisions whereby concessions are extended to any particular individual.* However regard was to be had to the work of doctors, but again, in defined situations.

At (B) 2, other criteria were set out and included such matters as when a vehicle was stolen, or a vehicle belonged to a person entitled to claim diplomatic immunity. There was no general catch-all clause such as “humanitarian grounds” or even “medical emergencies.”

It should be noted that under the previous 2004 User Manual Policy and Procedure (which dealt with the transitional arrangements for Phase 1 of the Fixed Charge Processing System), there was a category under exempted criteria which stated: *(d) There may be exceptional circumstances (humanitarian) other than those listed here that may warrant cancellation. The notice may be cancelled at the discretion of the Cancelling Authority who will decide on the merits of each case as it is presented.* However, no such clause was carried forward into the 2005 Third Edition.

The 2005 Policy Manual came into effect in December 2005.

Following on from that date were a number of HQ Directives in 2006, 2009, 2011 and 2012.

Of significance was a PULSE update in April 2006 which provided access to the Fixed Charge Processing System via the PULSE screen. It was again noted that cancellations were to be carried out in strict compliance with the policy in the 2005 manual.

Thereafter, there were further changes to PULSE and in particular the introduction of Fixed Charge Processing System (Release 6.3.2) in March 2012. This PULSE update introduced a list of cancellation reasons that were applied to PULSE and the Fixed Charge Processing System. **GSOC found no HQ Directive that accompanied PULSE Release 6.3.2 and therefore no instruction issued to explain the rationale behind the cancellation reasons, or in what circumstance they should be used.²⁶**

Thus the expansion of the criteria for cancellation from 2012 (which included such fields as “*Discretionary – Family Bereavement*”, “*Discretionary – Medical Emergency*” and “*Discretionary – Other*”) arose outside the official Policy document. **This circumvention of the official policy considerations not only undermined the cancellation process, but showed poor governance practices.**

In the Garda Professional Standards Unit report in April 2013 on the process of cancellation of FCNs it was noted that

“The Fixed Charge Processing System User Manual (Policy and Procedures, Third Edition 2005) and HQ Directive 48/2006 instructed that a file be kept locally recording the reasons for cancellation and that these files will be retained for audit purposes. This instruction does not state how often or by whom these audits should be conducted and as such, there is no evidence of any audits being completed.”

²⁶ Garda Professional Standards Unit Report, page 4.

Again, poor governance practices are evidenced.

As part of the role of detecting and prosecuting offences, the Garda Síochána has a process called “informal caution” which is used to record an offence as detected. A Garda member can use this process at their discretion, to record where they have dealt with an incident, such as excessive speed, and where instead of issuing a FCN the garda member can informally caution a person. The use of such “informal cautions” is another use of discretion by individual gardaí, but was not part of the information provided to GSOC for analysis and inclusion in our report, as no FCN would issue in the first instance in such a case. GSOC is unaware of the scale of these informal cautions for road traffic offences.

In April 2009, GSOC reported on an examination that had been undertaken under section 106(2) of the Garda Síochána Act 2005, into Garda practice, policy and procedure in relation to the Fixed Charge Processing System (FCPS).

The background to the examination arose from the number of complaints received by GSOC in relation to the operation of the FCPS. The purpose of the examination was to identify the systemic issues or factors in the operation of the system that gave rise to complaints and, through doing so, assist in preventing complaints or reducing the incidence of complaints.

In relation to the matter of Garda discretion, the GSOC 2009 report states²⁷: *“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.”* This section was referenced by Assistant Commissioner John O’Mahoney in his report of March 2013²⁸.

The statement that Garda discretion has been curtailed was made in the context of comparison with other jurisdictions and with reference to the legal position. It was noted that - whereas in other jurisdictions there were alternatives to prosecution, such as speed awareness courses, or official warnings, and a degree of leniency in relation to enforced speed limits - there was no such discretion within the FCPS. Therefore the statement that the FCPS was a curtailment of Garda discretion and any significance or import attributed to this statement is relevant only at the point at which a notice is issued and not at the point of appeal.

Hence the finding that the use of discretion by a Superintendent to cancel a FCN without any consultation with the garda or traffic warden who issued the FCN, highlights the fact that the use of discretion with regard to FCN should be clearly defined in Garda policy.

The Garda Inspectorate recommended in 2014²⁹ that the Department of Justice and Equality should bring forward enabling legislation providing the Garda Síochána with authority to cancel Fixed Charge Notices on a discretionary basis, providing clear parameters on the use of that discretion. It would appear that there has been no decision made on this recommendation.

²⁷ Examination of Garda practice, policy and procedure in relation to the FCPS, 2009

²⁸ Report of Assistant Commissioner John O’Mahoney, pages 6-7

²⁹ Report of the Garda Síochána Inspectorate, pages 30-33

6.13 'Anomaly' Data

After the initial cancellation data set had been made available, members of the investigation team attended a meeting at Garda Headquarters in February 2015 to discuss the data supplied and the investigation in general. Representatives of the Garda Síochána stated that a definitive data set had effectively not been sent to GSOC due to the fact there appeared to be a number of 'anomalies' within the records:

- Firstly, instances where an Authorising Member Identifier (AM ID) which related to a Garda member no longer in active service had been used at the point of cancellation. It was established that these AM IDs related to superintendents who retired from the service between 2004 and 2008, prior to the time period being investigated - 2009 to 2012. The fact that cancellations could be carried out using the credentials of an individual who was no longer in active service illustrates, from GSOC's point of view, serious accountability issues with the system. Furthermore, in relation to this specific issue, the Garda Síochána confirmed to GSOC that there was no documentation available to provide clarification of the cancellations that had been processed using the credentials of a retired member of AGS.
- Within the further data set of 1,657,044 records received by GSOC in March 2015, which included all FCNs (cancelled and not cancelled), there were a number of fields where no information was available across the data.
- Additionally, the Garda Síochána advised that, when examining data provided in different time periods, there would be some differences between the two sets of data. This was explained as being due to technical processes which take place within the system from which the data is extracted, resulting in records being automatically updated between the different time periods.

6.14 All Fixed Penalty Notifications

The Garda Síochána provided GSOC with a finite data set of all fixed penalty notices that had been issued, whether they were cancelled or not, between 1 January 2009 and 31 December 2012. GSOC requested the data for all fixed penalty notices to assist the verification process of all data sets received by GSOC. See section 6.8 of the report.

Figure 15 that follows provides an insight into the nature of offences cancelled and where cancellations sit in the overall context of all fixed penalty notices issued. The offence types that account for over 1.2 million fixed penalty notices issued are for speeding, tax and insurance and mobile phone offences.

Figure 15 – All FCN Offences 2009 – 2012

Offence Type	Number of FCN Issued
Speed	826,625
Tax/Ins(No Disc),Sec 51A RTA	291,295
Mobile Phone	134,617
Park Sign /Road Markings	94,650
Seat Belt	66,750
Bus Lane/St.& Bus/Taxi Park	56,246
Park-Manner/Location	49,519
Traffic lights-Driving Past	28,267
Clearway/Disabled Bay-Park/Stop	24,903
Traffic Signs & Rd Markings	21,459
Driving a Vehicle Without Reasonable Consideration	20,026
Roadway-Cross Centre Lines	11,383
Park/Load Bay & School Ent	10,324
Overtaking	2,778
Hirer Parking Offences	2,668
Parking Within 5 Metres	2,582
Mandatory Signs, Reverse & Weight	2,067
Tram Lane/ Street & Cycle Track	1,633
DDFP	1,533
Motorway	1,476
Drive On / Across	1,260
Fail To Yield Right Of Way	1,028
Signal By Driver Garda Warden	907
Pedestrianised Area/St	895
Parking within 15 Metres	689
Vehicle Lighting	583
Prohibited/Restricted Pk	357
Park-Fire/Garda/Ambulance	320
Public Order	130
Vehicle Weight	51
Railway Level Crossing	14
Crash Helmets	7
Luas Operator	2
Totals	1,657,044

Source: AGS data provided to GSOC in relation to All Fixed Penalty Notices – 1st January 2009 to 31st December 2012

Figure 16 below provides the status of all FCNs which were issued during the time period 2009 to 2012. It shows that payment of the fine and communication of the details to the Road Safety Authority (DTTAS Shannon) within the Department of the Environment (DOE) for registration of the associated penalty points was the most frequent outcome, accounting for just over half of all fixed penalty notices issued.

Figure 16 – All FCN Incident Status – 2009 - 2012

Incident Status	Number of FCN Issued	% of Total FCN Issued	Explanation of outcome
Extracted to DOE	837,692	51%	Penalty points are paid with details communicated to the Road Safety Authority (DTTAS Shannon) This is a terminal status.
Sent To Courts	356,966	22%	Summons created for the offence and transmitted to the Courts Service via CJIP data transfer link. As before, this is a terminal status which will not change.
Paid - Non Penalty Points	328,491	20%	FCN paid upon receipt. There are no penalty points associated with the notice, there are no details to be supplied to the RSA (DTTAS). This is a terminal status.
Cancelled	76,294	5%	FCN was issued and subsequently cancelled.
Summons Application Saved	21,773	1%	Summons created for the offence not yet transmitted to the Courts Service via CJIP data transfer link. A summons for further, related offences may be in process, or payment for the FCN issued may be awaited. Status of these FCNs can change to 'Sent to Courts' once transmitted to the Courts Service via CJIP data transfer link.
Company Summons	21,003	1%	FCN is used and the registered owner is a company. These cannot be processed to summons in the same way that those marked as 'Sent to Court' are. Terminal status and value will not change.
Statute Barred	9,727	1%	Where an offence is believed to have taken place but the details have been uploaded or received too late to be processed and an FCN produced.

Manual Summons	5,095	<1%	Where an FCN has passed the point of payment, however still requires the prosecuting member to create the summons for the offence. This is typically due to the complexity of the offence wording and the variables associated with it. Once the summons is created, it will advance in terms of its status to 'Sent to Courts' or other. Not a terminal status, subject to change.
Paid - Penalty Points Offence	2	<1%	Where an FCN has been paid and there are penalty points associated with the offence. The details are then supplied to the RSA (DTTAS). This feed to DTTAS occurs once a week so after transfer, this status will change to 'Extracted to DOE'.
Closed	1	<1%	The Garda Síochána advised that this is not actively used in the FCPS and, on the one occasion that this arises, this appears to have occurred through a technical set up within the database. GSOC was advised that the initial intention with this status was to allow FCPS system to mark FCNs as "Closed" on receipt of the DOE acknowledging the "Paid Files File" entries. However, this was not implemented.
Totals	1,657,044	100%	

Source: AGS data provided to GSOC in relation to All Fixed Penalty Notices – 1st January 2009 to 31st December 2012

6.15 Summary of the Analytical Findings & Issues Highlighted

Key characteristics of the data were as follows:

- **74,373 FCNs were cancelled between 1 January 2009 and 31 December 2012.** One third of those took place within County Dublin and just over half had been issued for speeding.
- **67,572 people in 68,292 vehicles had FCNs cancelled.**
- **72% of all cancelled FCNs were simply recorded as "cancelled",** giving insufficient rationale for cancellation to allow GSOC to ascertain whether they were cancelled in line with proper procedure or not.

- **1,185 notices were cancelled under the provision of the Juvenile Diversion Programme, of which one third were for speeding.**
- **Credentials of retired Authorising Members were used to authorise cancellations.**

GSOC's investigation, like all the investigations that preceded this one, identified significant failures in auditing and controlling the level and nature of cancellations, to ensure that they were in line with policy and procedure.

Key issues highlighted by the data were as follows:

- **Too many members of the Garda Síochána were authorised to cancel FCNs** at one point or another during the period under examination by GSOC – 442 in total.
- **Cancellations were carried out by superintendents and inspectors for FCNs outside their geographical area, contrary to policy.** These cancellations were widespread.
- **There was a sizeable volume of cancellations with no reason and/or no supporting documentation.**
- **Cancellation of FCNs issued to garda members, notably for speeding offences, were undertaken without any checks** to establish that the garda member was on duty at the time and that exceeding the speed limit was necessary.
- **There were multiple cancellations for the same persons and the same vehicles,** with no apparent checks undertaken prior to a cancellation.
- **Superintendents used “discretion” to cancel FCNs without any consultation** with the Garda member or traffic warden who issued it.

The data considered in this investigation allows GSOC to be satisfied that the allegations made by Sergeant Maurice McCabe in relation to the operation of the FCPS were merited.

6.16 Procurement Process

As outlined previously, in July 2014, the Department of Public Expenditure and Reform (DPER) gave sanction for a criminal analyst to be recruited to allow GSOC to further develop the scoping analysis and interrogation of data in order to establish the best estimate of resource needs. Earlier in May 2014, GSOC submitted a business case to the Department of Justice and Equality seeking sanction for €1 million to contract hire one analyst and eight investigators to complete the investigation. GSOC had emphasised that due to the nature of GSOC's general caseload and its already depleted staffing resources it would not be feasible to reprioritise ongoing current work in order to redirect staff to the investigations referred by the Minister.

Following further submissions by GSOC on the 28 October 2014, sanction for the expenditure was granted by the DPER.

In September 2014, following a procurement process, the successful bidder was contracted to provide an analyst to commence work on compiling a database of fixed charges. The analytical work was completed in June 2015.

Following the sanction by DPER, in November 2014, GSOC contacted the Office of Government Procurement (OGP) seeking advice and assistance in running a tender process for the investigator services. Following a meeting in January 2015, GSOC provided a

specification of requirements and the OGP agreed to run the tender process on GSOC's behalf.

The process of drafting the Request for Tender (RFT) document took a number of months as it included correspondence between GSOC, the OGP and the Chief State Solicitors Office (CSSO). This was due to the significant issues relating to previous tender competitions and the Protection of Employees (Temporary Agency Work) Act 2012. The draft RFT was submitted to the CSSO for approval on 25 June 2015. The RFT was published on the eTenders website on 3 July 2015 with a closing date of 24 July 2015.

Three eligible tender submissions were received and evaluated on 29 July 2015. The evaluation committee comprised two representatives from the OGP and four representatives from GSOC. During evaluation, it became apparent that clarification would need to be sought from all those who submitted tenders on the specific qualifications and experience of the proposed investigators.

A clarification questionnaire was issued to tenderers on 30 July 2015 and the responses were evaluated on 6 August 2015. None of the tender submissions reached the qualifying mark for contract award. The OGP drafted regret letters for all tenderers and these were sent to the CSSO for approval on 14 August 2015. The letters were approved by the CSSO on 15 September 2015 and were issued to all tenderers on 21 September 2015. A standstill period of 14 days then applied during which any of the tenderers could appeal or query the decision. The standstill period expired on 5 October 2015 with no appeals received.

GSOC decided to reissue the tender for a second time with amendments to the essential attributes of investigators, as this was the area that all previous tenderers had failed on. It was also decided to request that the RFT be published on the Official Journal of the European Union, to allow maximum exposure to companies outside of Ireland. No UK or EU companies had expressed interest in the first tender published on the eTenders website.

On 22 October 2015, GSOC submitted a revised RFT to the OGP for review. This second tender was published by the OGP in February 2016. There followed the tender evaluations and legal reviews. On 26 October 2016, OGP advised GSOC that GSOC may award the contract to the successful bidder. However, GSOC is under no legal obligation to enter into a contract.

All of the responses submitted for the tender exceeded the budget for eight investigators stated on eTenders, some of them coming in at more than twice the stated budget.

7 Further Investigation – Opportunities, Challenges and Costs

This phase of the investigation into the Fixed Charge Penalty System has reached a natural conclusion and a decision now needs to be taken as to whether additional investigation by GSOC is necessary, still relevant or in the public interest.

To embark on a second investigative stage would require significant levels of resources and this would necessitate the awarding of a contract to an external provider. As highlighted earlier, this would involve significant financial costs.

The Ombudsman Commission has considered the merits of continuing into a second investigative stage, taking into account the passage of time since this matter was first referred to GSOC, the fact that new monitoring and cancellation systems are now in place, and the significant cost of embarking on such a new phase.

This initial examination by GSOC has established that the Fixed Charge Penalty System as it operated during the period of our investigation (2009 to 2014) has already been subject to a high level of scrutiny, with considerable state resources employed to examine it. This has resulted in:

- Significant corrective actions and changes made to the Fixed Charge Penalty System, introducing rules and controls that did not exist previously.
- The implementation of an oversight authority, which has been operating for two years.
- Disciplinary action taken against Garda members for departures from policy and procedure in place in earlier times. While GSOC may not agree with the level of the disciplinary action taken, disciplinary matters are a matter for the Garda Commissioner.
- The retirement of many Garda members responsible for cancellations in the period examined during this investigation.

To continue with a second and more comprehensive investigation phase will result in considerable cost to the State and there are a number of issues involved with this:

- The lowest of the quotes received by GSOC to undertake this work was well above the €1m budget allocated.
- There is a significant risk for overspend beyond the allocated budget, as the nature of this type of investigative work is that one inquiry may well lead an investigation team into an area that was not foreseen.
- Although a significant proportion of the cancelled notices would be investigated, the level of budget available would not allow for a complete investigation of all of the cancellations.

There are also a number of non-financial challenges that would impact on a more detailed investigation including:

- The investigation would be hampered by a lack of supporting documentation for large proportions of the cancellations.
- Due to the lapse of time, there is no possibility of recovering fines or otherwise sanctioning motorists who may have had FCNs cancelled improperly and therefore there is no financial benefit to the state.

- There is no guarantee that prosecution of, or disciplinary action against, any Garda member could be taken.

The Ombudsman Commission believes that further investigation of cases going back some eight years is now very unlikely to provide positive outcomes and GSOC considers that the cost of pursuing an additional investigation phase would not be the best use of public money.

8 Conclusion

The findings in this report and from the various reports by other agencies that have examined this system show without any doubt, that the failings within the FCPS system were exploited in previous times. These findings also confirm the information provided by Sergeant Maurice McCabe that improper cancellations were carried out. One of the most concerning elements of this whole examination is the confirmation that a significant number of senior gardaí throughout the country frequently breached the Garda policy for cancellations.

As the first phase of the GSOC investigation was mainly analytical in nature, some of the allegations put forward by Sergeant McCabe have not been fully explored. However, there are no guarantees that a further and more detailed investigation would find sufficient evidence of wrongdoing to take action against Garda members.

GSOC has encountered a number of investigative challenges in this phase of our work that would continue to hinder a further investigation. This includes the absence of available data or poor quality data recorded on PULSE or on the Fixed Charge Processing System. Another barrier to further investigation is the lack of supporting documentation that is available for many of the cancellations in the period 2009 to 2014. Additionally, it is unlikely that motorists who benefitted from the cancellation of notices would be overly keen to engage with an investigation.

As a result of the many and wide ranging reviews, investigations and inspections of the Fixed Charge Processing System, the procedures for dealing with fixed charged notice cancellations have dramatically changed in recent years. In particular, since the period under analysis in this investigation (2009-2014), the number of members within the Garda Síochána with authority to cancel notices has reduced to only three people. Furthermore, all cases involving a Garda member seeking to have fixed notices cancelled on the basis of performing official duties in their own vehicles, these are now referred to the Office of the DPP for independent determination.

A major development in monitoring saw the appointment of the former President of the Circuit Court, Mr Justice Matthew Deery, in January 2015 to the oversight authority for the Fixed Charge Processing System. Since that time, Mr Justice Deery has conducted two audits of the system and has reported substantial compliance with the revised policy.

There are now new monitoring processes in place along with new procedures for cancelling Fixed Charged Penalty Notices. It appears from the first two reports of the oversight authority that these changes are sufficiently robust to ensure that the new system cannot be circumvented in the same way as the previous one appears to have been. The safeguards now in place and the oversight processes now in operation should start to rebuild public confidence.

Due to the passage of time, there is very little likelihood of securing criminal or disciplinary proceedings against garda members, and in many cases, the Garda Síochána has already made disciplinary decisions that would negate any further action by GSOC.

The Ombudsman Commission has considered the likely benefit to public confidence in continuing into a second investigative phase against the cost of doing so and the likelihood of positive outcomes. In conclusion, the Ombudsman Commission considers that the

significant costs involved in procuring the necessary resources to continue this investigation are excessive and not in the public interest.

The Ombudsman Commission firmly believes that continued emphasis on maintaining and improving the controls and oversight mechanisms now in place, would better serve to improve public confidence in the Fixed Charge Penalty System.