



Garda  
**Ombudsman**  
INQUIRY INDEPENDENCE IMPARTIALITY

## **THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION**

**Examination of Practice, Policy and Procedure under section 106 of the Garda Síochána Act 2005 in regard to the Fixed Charge Processing System as operated by the Garda Síochána**

*‘For the Fixed Charge Processing System to operate effectively in terms of road user support and compliance, it is essential that as many offenders as possible pay their fines rather than go to court; that there is flexibility to deal with late payment rather than going straight to court; and that there is some transparent, audited appeals system for motorists who are aggrieved about the circumstances of their detection’.*

**- Statement from the Road Safety Authority**

# **Garda Síochána Ombudsman Commission**

Examination of Practice, Policy and Procedure under section 106(2) of the Garda Síochána Act 2005 in regard to the Fixed Charge Processing System as operated by the Garda Síochána

---

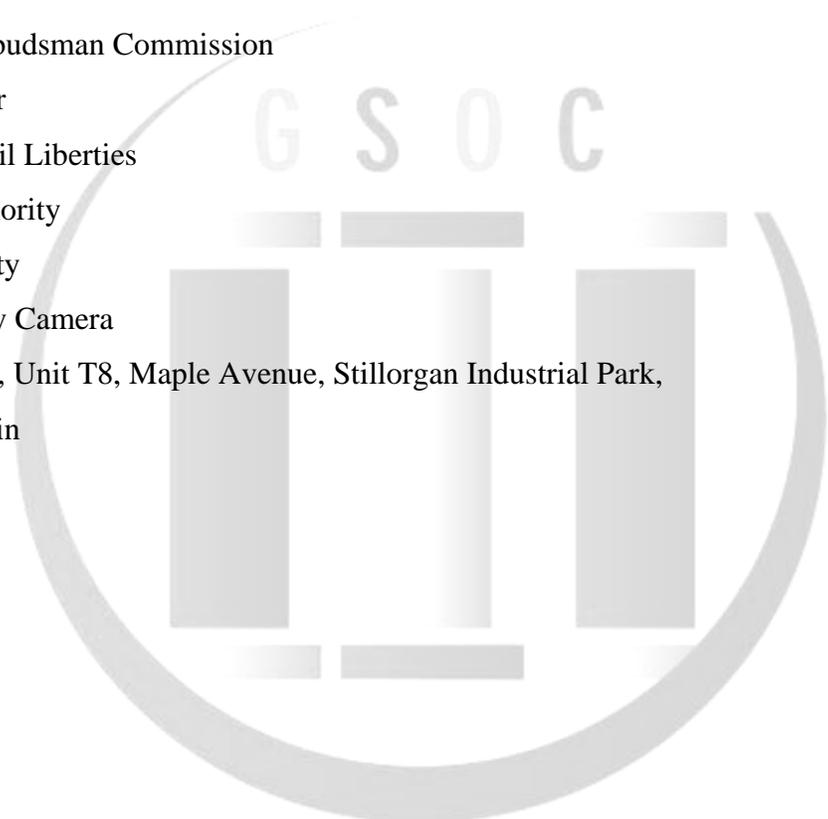
## **Contents**

Table of Contents .....	2
Acknowledgments .....	5
Executive Summary .....	6
Recommendations .....	10
Methodology .....	12
<b>Chapter 1: Fixed Charge Processing System Network .....</b>	<b>13</b>
1.1 General Overview .....	13
1.2 Statistical Information .....	13
1.3 Analysis .....	14
1.4 Operational Context .....	14
• Legal	
• Business Processes	
• Road Safety	
• Human Rights	
1.5 Conclusions .....	18
<b>Chapter 2: Practice and Procedure of the Fixed</b>	
<b>Charge Processing System .....</b>	<b>19</b>
2.1 Key Stakeholders in the FCPS .....	19
2.2 Commentary .....	22
2.3 Conclusions .....	24

<b>Chapter 3: International Practice and Benchmarking in Road Traffic Policing and Road Safety.....</b>	<b>25</b>
3.1 Policy .....	25
3.2 The application of police discretion in relation to road traffic enforcement	26
3.3 The processing of FCPS – type offences in the London Metropolitan Area	27
3.4 Conclusions .....	28
<b>Chapter 4: Fixed Charge Processing System – the Legal Context .....</b>	<b>30</b>
4.1 Fixed Charge Penalty Notices - the legal position .....	30
4.2 Format of the Fixed Charge Penalty Notice .....	31
4.3 Service/Affixing of the Fixed Charge Penalty Notice .....	32
4.4 Service of Summonses .....	32
4.5 Legal Basis for Contracting Out .....	33
<b>Chapter 5: General Observations arising out of the Examination .....</b>	<b>34</b>
<hr/>	
<b>Appendices .....</b>	<b>37</b>
Appendix 1: Terms of Reference	
Appendix 2: Practice and Procedure of the FCPS	
Appendix 3: European Convention on Human Rights Act 2003	
Appendix 4: Penalty Points and Fixed Charge Offences	
Appendix 5: Code of Practice (ACPO)	
Appendix 6: Fixed Charge Processing System – Volume 2007	
Appendix 7: Policy Extracts	
Appendix 8: Report on use of Safety Cameras – July 2005	
Appendix 9: Sources used in this examination	

## Glossary of Acronyms used in this report

<b>ACPO</b>	The Association of Chief Police Officers (ACPO), England, Wales and certain other forces
<b>CHIT</b>	Detachable paper slip from Hand Held Computer - This facility is not used by the Garda Síochána but is used by local Authorities
<b>DoT</b>	Department of Transport
<b>FCN</b>	Fixed Charge Notepad
<b>FCPN</b>	Fixed Charge Penalty Notice
<b>FCPO</b>	Fixed Charge Penalty Office
<b>FCPO(C)</b>	Fixed Charge Penalty Office, Capel Street, Dublin 1
<b>FCPO(T)</b>	Fixed Charge Penalty Office, Thurles, Co. Tipperary
<b>FCPS</b>	Fixed Charge Penalty System
<b>GATSO</b>	Mobile speed detection van currently operated by the GS
<b>GS</b>	Garda Síochána
<b>GSOC</b>	Garda Síochána Ombudsman Commission
<b>HHC</b>	Hand Held Computer
<b>ICCL</b>	Irish Council for Civil Liberties
<b>NRA</b>	National Roads Authority
<b>RSA</b>	Road Safety Authority
<b>SC</b>	Speed Camera/Safety Camera
<b>TICo</b>	TICo Group Limited, Unit T8, Maple Avenue, Stillorgan Industrial Park, Blackrock, Co. Dublin



## Acknowledgements

The Garda Síochána Ombudsman Commission wishes to acknowledge the assistance of members of the Garda Síochána and other services who provided information and perspectives in the course of this examination. These are listed below.

Assistant Commissioner Eddie Rock  
Chief Superintendent Aidan Reid  
Chief Superintendent Declan Coburn  
Chief Superintendent Pat McGee  
Inspector John McDonald  
Inspector Martin Smethers  
Judge Miriam Malone, President of the District Court  
Mr. Aeneas Leane, Senior Systems Analyst, Garda Síochána  
Mr. Alex Pigot, TICo Ltd.  
Mr. Diarmad McDiarmada, Director of Operations for the Circuit and District Courts  
Mr. Gerry Davis, An Post  
Mr. John Medley, Fixed Charge Penalty Office, Thurles  
Mr. Jon Plant, Senior Operations Manager, Traffic Criminal Justice OCU, London Metropolitan Police  
Mr. Michael Brosnan, Road Safety Authority  
Mr. Michael Flahive, Department of Justice, Equality and Law Reform  
Mr. Michael Kirrane, Department of Justice, Equality and Law Reform  
Mr. Noel Brett, Road Safety Authority  
Mr. Pat Byrne, Fixed Charge Penalty Office Support, Garda Síochána  
Mr. Tommy Quinn, Head IT Planning, Garda Síochána  
Ms. Gwen Boniface, Deputy Chief Inspector, Garda Síochána Inspectorate  
Ms. Maeve Hogan, Garda Síochána Inspectorate  
Ms. Margaret O' Neill, the Courts Service  
Sergeant Michael Miley  
Superintendent Con O' Donohue  
Superintendent Frank Clerkin

A number of individuals, from a variety of organisations, provided information and views on the basis that they should be for guidance only and that they should be un-attributable. The Garda Síochána Ombudsman Commission also acknowledges their assistance.

Mr. John O'Brien, who acted as consultant to the Garda Síochána Ombudsman Commission during this examination, would like to acknowledge the influence of the late Mr. Vivian Foley, formerly Lecturer in Automobile Engineering at Cork Institute of Technology and author of 'Is Your Car Safe?' Vision Publications; Cork 2002. ISBN 0953429717.

## Executive Summary

In October 2007, the Garda Síochána Ombudsman Commission (GSOC), with a view to undertaking an examination of practice, policy and procedure in the Fixed Charge Processing System (FCPS), conveyed its concerns over complaints about the system to the Minister for Justice, Equality and Law Reform. On the December 20<sup>th</sup> 2007, the Minister requested GSOC to carry out the examination.

The background to the examination was the experience of GSOC, in the immediate period following its commencement, that a body of complaint was being recorded in relation to the public's interface with the FCPS and the general negativity which was being expressed by complainants as a consequence of these experiences.

Many complaints to GSOC relate to the serving of summonses at addresses no longer in use. Others relate to the escalation of penalties, in spite of genuine efforts by clients to deal with the FCPS.

At the time of this writing (April 2009), in excess of 50 complaints, related directly or indirectly to the FCPS, had been received. Perhaps three times this number of queries had been received but were not processed as complaints.

The Commission recognises that when set against the overall volume of complaints it receives these numbers may not be considered to be statistically significant. Nonetheless, many complaints in this area may stem from systemic issues and as such may be preventable. The Commission is concerned to ensure that the volume of such complaints should not grow.

The Commission is also cognisant that many if not all of the complaints that have been received in regard to the FCPS appear to emanate from persons who, in other circumstances, would be unlikely to come into dispute with the gardaí.

The purpose of the examination was to identify through an examination of the systemic elements of the FCPS, the presence or absence of factors in the operation of the system that would give rise to ongoing complaints. It is hoped that GSOC's intervention in this way would ultimately provide foundational research which would assist in 'preventing complaints arising in relation to a practice, policy or procedure of the Garda Síochána or reducing the incidence of such complaints' (section 106(1)).

The examination has yielded a total of 18 Recommendations.

## The Fixed Charge Processing System

The Fixed Charge Processing System (FCPS) operations centre was established in Thurles, Co. Tipperary in 2006.

In that year, the Garda Síochána deployed the FCPS as a new computer-based system that would assist in the processing of fixed charge offences under the Road Traffic Acts.

The FCPS is funded through the annual vote for the Garda Síochána. Its line of report is through the Garda National Traffic Bureau at Garda Headquarters.

The FCPS computer system was developed through the Garda Síochána and other relevant agencies in conjunction with Fujitsu Ireland who had been contracted in 2002 following competitive tender. The challenge facing the development team was to reduce the number of road fatalities and serious injuries from road accidents. The aims for the system at introduction were to reduce excess speeding and to increase the wearing of seat belts through a highly functional recording and management process.

The FCPS had to integrate with the Garda Síochána's principal computer information system, PULSE. In conjunction with the introduction of the FCPS, some functions currently carried out by the force were to be outsourced, e.g. printing and payment collection. It also had to integrate with a number of other systems operated by various State agencies and service providers. These included:

- The Department of the Environment, Heritage and Local Government (for attaching penalty points);
- The Courts Services (for processing summonses);
- TICo Ltd (for printing notifications); and
- An Post (for payment handling).

## The Objectives/Benefits of the FCPS

In the planning stages, it was envisaged that only a limited number of the fixed charges, relating to specific motoring offences, were to be processed by this system, specifically these were to relate to drink-driving, speeding and seat belt offences. From April 3<sup>rd</sup> 2006, however, over 30 offences were added. These included specific motoring offences which attracted penalty points.

The benefits to be secured in this new system were described as:

- Achieving the goals set out in the Government Road Safety Strategy;
- To reduce road fatalities and accidents;
- Achieving the Garda Síochána goal of increasing its capacity to process fixed charge offences fines without deploying more resources;
- Increasing automation, thereby reducing Garda time spent on administration; and
- Increasing processing capacity to meet the anticipated increase in fixed charge penalties as a result of increased enforcement levels.

Although it is a relatively new system, the FCPS is demonstrating some organisational stress and is in need of modification if it is to meet current and emerging challenges.

The required reform must be planned, organised and led. The FCPS will not self-adjust systemically nor would it be reasonable to expect it to do so.

There would appear to be sufficient expertise and sense of purpose within the Garda Síochána to implement necessary changes.

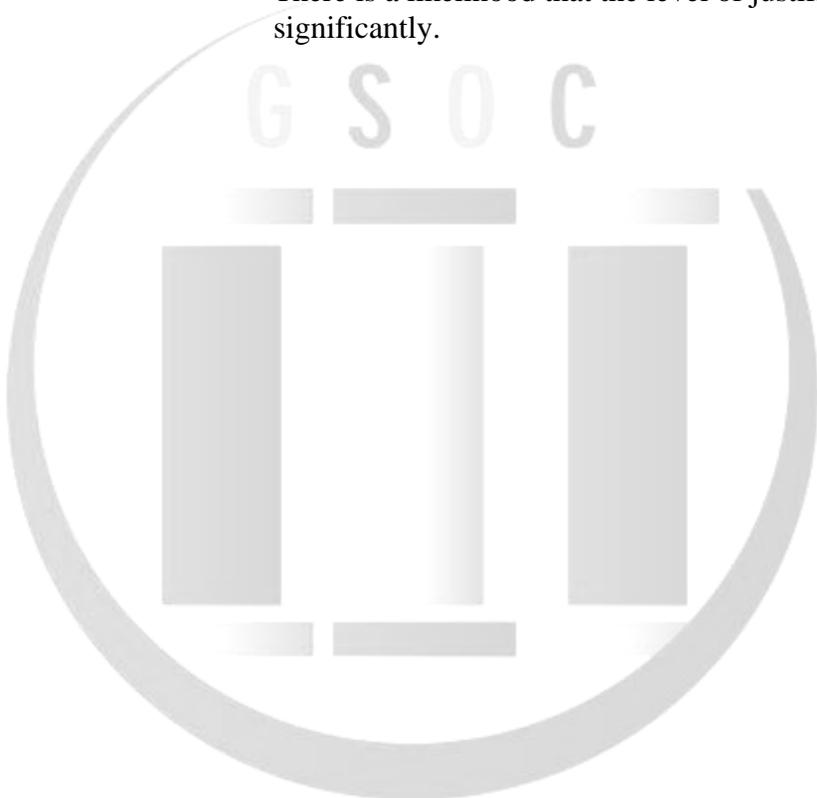
## Positive factors identified in this examination in regard to the FCPS

It is noteworthy that the current system reflects many strong attributes and provides positive signals for the future. The following points are important in this regard:

- The system is well supported in terms of electronic connectivity between the parties involved;
- The Garda Síochána is sensitive to the dangers that are inherent in any loss of public confidence in the law enforcement process;
- Staff based in Thurles are relatively recently deployed to the FCPS and seem ready and open to change; and
- All interest groups recognise the necessity to improve the ‘time lines’ associated with the operation of the system.

## Negative factors identified in this examination in regard to the FCPS

- The original focus of the FCPS was on offences that are considered to have a direct bearing on road deaths and injuries. However, this has been extended to cover a total of 59 generic categories which create 390 specific offences including 129 Penalty Point Offences. This means that the initial focus on offences relating to safety has been significantly diluted;
- The FCPS is under considerable pressure in terms of clients/customers relations;
- The volume of summonses now issuing has seriously overloaded the Courts system at District level;
- The summons system resulted in just 14% of summonses issued being resolved in court in 2007;
- Measurable leakage or loss from the processing system is now apparent at the FCPS. This will be further exacerbated when the product of privatised speed cameras is added to the workload;
- The worst offenders can easily circumvent the FCPS;
- There is a lack of transparency at the FCPS and it is less accessible to the public than comparable systems elsewhere; and
- There is a likelihood that the level of justifiable complaints will increase significantly.



## Recommendations

The following recommendations are being made in the context of this examination of the FCPS, which was initiated in order to reduce or eliminate complaints emanating from members of the public:

1. The legislation governing the FCPS should be amended to provide for payment for a continuous period up to 10 days before a Court hearing may be due. This type of system is currently in place in some local authority areas and was formerly operated by the Garda Síochána in respect of 'Fines on the Spot', typically for parking and road tax;
2. The legislation should be amended to provide for a complaints resolution period of 28 days during which the 'clock should be paused' and the Garda Síochána should make a determination on the complaint made;
3. Consideration should be given to a further series of legal reforms in regard to the FCPS-type offences. The aim of such reforms should be to convert the processes, insofar as possible, from a Criminal Law system to an Administrative System;
4. Garda Síochána policy, practices and procedures should be human rights - proofed in order to comply with international best practice;
5. The FCPS centre at Thurles should be enabled to deal comprehensively with complaints and queries. Initially this requires a major policy change from the current practice of limited response and it also requires that staff be given training (as well as the technology) to equip them for this changed emphasis;
6. The current client-handling process should be changed to allow for client-specific responses to complaints and queries;
7. The Fixed Charge Processing Office should be empowered, equipped, resourced, trained and mandated to accept ownership of complaints made to it;
8. In all Garda detections, the alleged offender should be provided with a written notice of the detection, set out in ordinary, non-legal language. The current practice is potentially damaging to good relations between the community and the Garda Síochána;

9. Informed discretion should be employed by gardaí when the issue of Fixed Charge Process Notices is being considered. Consideration should be given to practices in other jurisdictions which are described in this examination;
10. The current low rate of summons service is unacceptable. It is unreliable and inefficient. Many complaints and queries received by GSOC relate to the service of summonses at addresses that are no longer in use. The system should be reformed by changing the mode of service to some form of recorded delivery or other guaranteed system;
11. A study should be undertaken to determine the technical efficiency of combined driver and number plate recognition system as a means of identifying a vehicle user at the earliest possible opportunity and thus eliminating a number of process steps, where possible;
12. Targeting and prosecution of non-compliant and non-cooperative clients is essential if the system is to be seen as fair and equitable;
13. Policies of prioritisation in road traffic enforcement should be clearly expressed and these should be freely available;
14. The Garda Síochána should publish a clear code of practice setting out its policies in relation to its prosecution and detection strategy;
15. There should be an increased focus by the Garda Síochána on ‘intelligence led’ enforcement of road traffic legislation. Enforcement priorities should be guided by statistically-supported knowledge;
16. Consideration should be given to the execution of a research-based study to determine the levels of confidence, or otherwise, of the community in the FCPS process;
17. Either the inputting of offences into the FCPS should be reduced to cover only core road safety offences, or the FCPS should be resourced and reformed to meet the present and future demands. This would appear to be a key strategic issue; and
18. The FCPS should be enabled to issue summonses for entities such as companies on the grounds of fairness and proportionality.

## Methodology

The methodology for the examination was determined in accordance with the Terms of Reference.

The Director of Operations had the primary responsibility for the management and direction of the examination. In view of operational pressures, it was decided to engage Mr. John O'Brien of ESCAT to liaise with the Director of Operations and to undertake relevant research and interviews.

The legislation governing the FCPS, and under which it is operated, was identified and analysed. The two principal Acts are:

The Road Traffic Act 1961, section 103, as amended (Appendix A); and  
The Road Traffic Acts 1961 to 2005 (Fixed Charge Offences) Regulations 2006.

As a first step all agencies involved in the FCPS process were identified. Other partner agencies were invited to make contributions on a voluntary basis and they included the Courts Service, TICo Group Limited, An Post and the Road Safety Authority.

A selection of client correspondence with the FCPS Office, Thurles, was examined.

A number of international comparisons were made where systems similar to the FCPS operate. Systems in the United Kingdom and Australia were identified and contact was made with the relevant organisations with a view to benchmarking processes. A number of site-visits took place, courtesy of the Garda Síochána and other participants in the FCPS. Interviews and briefings took place with relevant personnel.



# Chapter One | Fixed Charge Processing System Network

## 1.1 General Overview

The FCPS network depends on high electronic transfer of data between key partners. This activity is conducted in a complex legal and electronic environment. Data is loaded onto a virtual 'conveyor belt' from a detection process that is operated primarily by gardaí and in a minority of cases by traffic wardens.

The process of fixed penalty offences is central to the government's strategy on road safety insofar as it provides for immediate sanction, with the resultant behavioural changes.

Theoretically it is a simple, sequential process with outcomes triggered by the actions of the client. In practice, however, it is a highly complex process, requiring high technical sophistication and the efficient interplay of relevant agencies. The system is dependent on the existence of a robust legal environment, strong 'back office' processes and the full participating efficiency of all its constituent parts. Finally, it requires a very high level of compliance by clients.

Should any of the constituent elements fail significantly then the overall equilibrium of the process can be distorted.

## 1.2 Statistical Information

2007 was the baseline year for this examination. A total of 459,037 notices were issued covering a total of 59 generic offences with 390 sub-category offences. Of these, 198,963 were issued for speeding with 86,434 inputted on hand held computers and a further 22,656 input via written notepads. In all of these detections there was direct face to face contact between a garda and a member of the public. The remaining 89,783 speeding offences were detected using 'Gatso' vans and there was no actual contact.

Similarly, 30,440 seat belt offences and 32,651 mobile phone offences were detected in face to face contact between gardaí and offenders. Additionally, a further 196,983 offences were detected over a range of general offences. It should be noted that as few as 41 of the 390 sub-categories relate directly to the key road safety impact offences.

71.3% of notices were paid and 91,138 items of correspondence were dealt with, excluding phone calls. 125,946 summonses were issued, 47,861 were not served and of all summonses issued a conviction was recorded in just 14% of cases.

Future plans call for a large increase in detection capacity through privatising speed detection and increasing the detection capacity of the gardaí. Detection could increase to between 1.5 million and 2 million notices per annum.

### 1.3 Analysis

It appears from public complaints and queries, and from the opinions offered by courts personnel, that the FCPS cannot cope satisfactorily with current volumes and therefore could not cope with this numerical increase from a process management perspective. It should be noted however that the IT platform could sustain the growth.

One option is that inputting should be reduced to deal solely with core road safety offences. Alternatively, the FCPS should be resourced and reformed to meet the present and future demands.

### 1.4 Operational Context

The operational context, within which the FCPS functions, has four separate but complementary elements, which are listed below.

**1. Legal:** as set out in S.I. 135/2006 Road Traffic Acts 1961 to 2005 (Fixed Charges Offences) Regulations 2006. These Regulations (operative from April 3<sup>rd</sup> 2006) declare which offences involving the driving or use of mechanically propelled vehicles are fixed charge offences for the purposes of section 103 of the Road Traffic Act 1961. The Regulations set out the amount of fixed charge for each offence and prescribe the form of notice and document to be used in the enforcement of these fixed charge offences. Where applicable, they also prescribe the penalty points applicable in relation to those offences.

**2. Business Processes:** in 2007 a total of 459,037 FCPS notices (almost 200,000 for speeding) were issued, comprising generic Penalty Point and Non-Penalty Point offences. The generic categories create 390 specific offences which include 129 Penalty Point Offences. These were captured by gardaí using Camera (non intercept), hand held or note pad (intercept) systems and were then inputted to the system for early payment or ultimate court intervention.

**3. Road Safety:** as a general rule, those offences attracting penalty points are those with a strong road safety element to them. The Government strategy on Road Safety is set out in the document 'Road Safety Strategy 2007 -2012'. The FCPS is central to the enforcement elements of this strategy.

**4. Human Rights:** The European Convention on Human Rights Act 2003 has been examined by the Garda Síochána and the Irish Council for Civil Liberties (ICCL) and the two organisations have agreed that the following principles will apply in relation to the formulation of operational plans:

- Legality;
- Necessity;
- Proportionality;
- Accountability; and
- Non-discrimination.

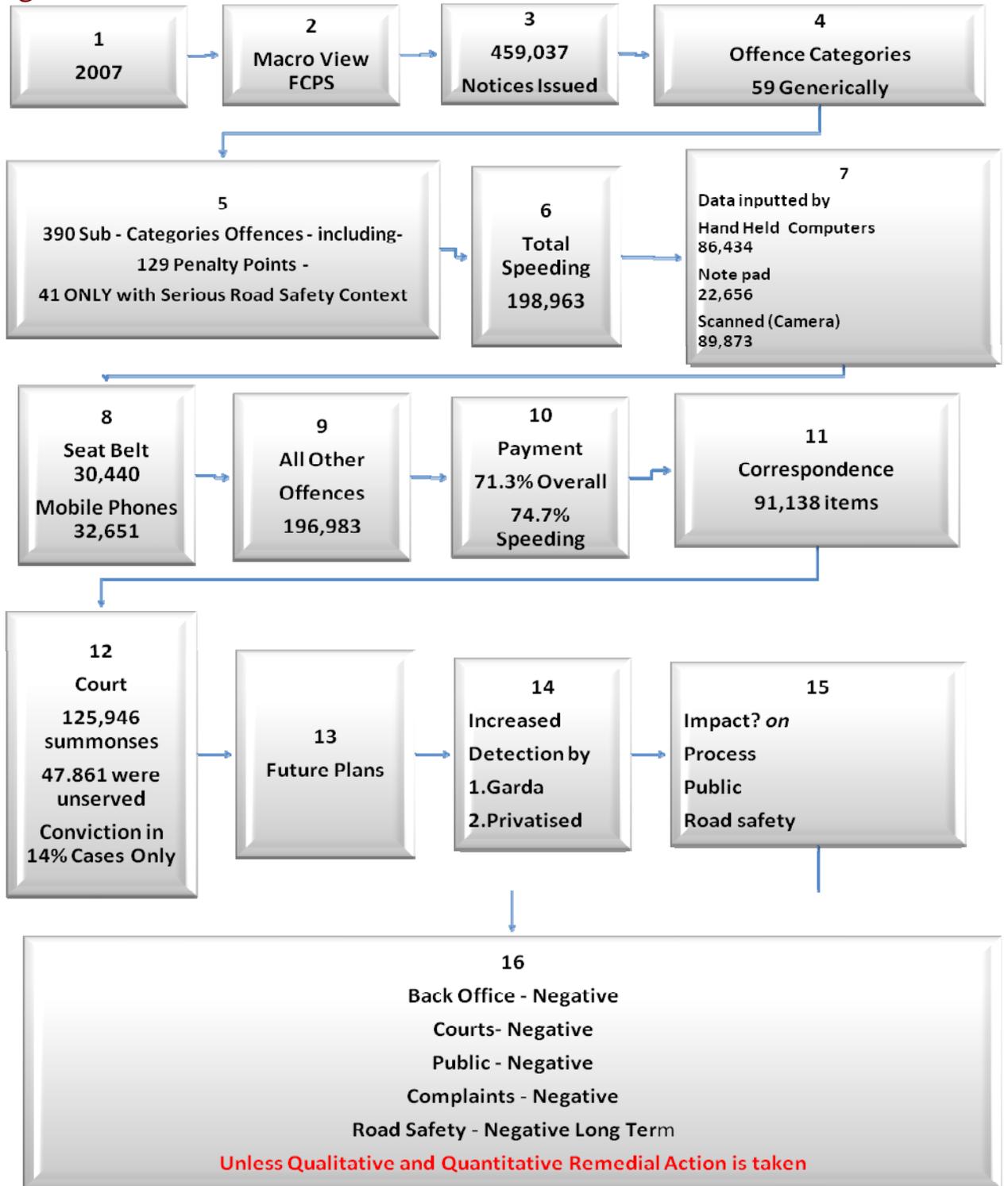
It should be clear that the FCPS encompasses a wide variety of offences (not just penalty points offences and not just speeding offences). In business terms, it is a data input and processing system, involving a possible 28 process steps in the FCPS centre. In addition, there are numerous contributory actions arising within the Garda Síochána and in the relevant business partners that impact on the ability of the system to function as prescribed by law.

Shortcomings in any stage of the process will impact on all other stages of the cycle. This is particularly relevant to the Courts Service which is experiencing scheduling and processing difficulties with the FCPS.

Self evidently all elements must harmonise to a high degree.



Figure 1: FCPS 2007 Caseload



**Footnote:** 2007 was the baseline year for this report. 454,312 notices were issued in 2008 and this is comparable to 2007. It is reasonable to assume that the same issues arise in respect of 2008, in the absence of a major reform of the system.

## 1.5 Conclusions

The examination of the system provided evidence from which it is possible to reach the following conclusions:

1. The Garda Síochána does not publish a clear set of policies or a code of practice in relation to its prosecution and detection strategy;
2. Garda policy, practices and procedures in relation to road traffic enforcement are not human rights-proofed;
3. The FCPS covers 59 Generic Offences with a total of 390 separate sub-category offences. These include 129 offences that carry penalty points. The penalty points offences include a core group of offences that are specifically oriented towards road safety - 32 relate to speed, 7 to seat belts, 1 to use of telephones and 1 relates to driving without reasonable consideration. Contrary to initial expectations, the FCPS system, as it now operates, is not specifically directed toward offences that have a bearing on road safety;
4. There is a very strong possibility that there will be an increase in the level of complaints to GSOC unless some fundamental changes are made in the FCPS. No doubt some of these will be opportunistic but many will be well founded. Ultimately this could result in a loss of confidence in the overall road safety strategy;
5. There is now an increased technical sophistication in the processes employed by the Garda Síochána in relation to motor traffic policing. This has led to, and is paralleled by a departure from, more traditional policing prevention and detection methods;
6. The FCPS is central to this change. It has facilitated high volume throughput. With planned outsourcing of speed-detection cameras, there is a potential additional detection of 1.1 million offences per annum. Given the likelihood that 80% of detected drivers will pay their fine initially, the prospective annual income could be as high as €70 million. The FCPS, as it currently operates, could not cope. Poor service would adversely affect public confidence;
7. The FCPS cannot cope with current volumes. Therefore, without reform, its processes will be effectively overwhelmed by these increases. This is not a problem of IT capacity. The existing IT platform could sustain the required growth;
8. This increased capability will radically increase pressure, both internal and external, on the FCPS;

9. A policy decision appears to have been taken initially not to use photographic evidence of driver identification, even where it may be readily available. Driver identification is generally possible when the image captured is of the front of the vehicle. These images are made available for court hearings only;
10. All of the main parties consulted in this examination are of the view that the current legal formulae that govern the handling of the FCPS-type offences are restrictive in nature and should be changed. Existing time-frames discourage clients from taking the early option to pay their fine. Legal time constraints are a major obstacle to administrative resolution. After 56 days the allegation becomes ‘summons active’ and is then a matter to be resolved in the District Court; and
11. The FCPS Centre (Thurles) does not employ modern call/contact centre systems. It operates a system of ‘auto text’ responses to clients. This is frequently considered to be inadequate by clients with specific queries. This process is facilitated by the automated nature of the new detection process. It provides the detecting members of the Garda Síochána with a ‘one stop shop’ and it insulates them from public reaction. However, the public are at a very significant disadvantage being now limited to ‘virtual’ contact with a remote office.



## Chapter Two | Practice and Procedure of the Fixed Charge Processing System

The Information Technology systems underpinning the Fixed Charge Processing System (FCPS) are robust and capacious. The operation of the FCPS represents very significant technical and inter-agency cooperation in some respects. As stated above, the FCPS has created a ‘one-stop shop’ for gardaí. But there appears to be an unintended side-effect; this is the creation of a perception that it is very difficult for the general public to communicate with the FCPS.

### 2.1 Key Stakeholders in the FCPS

#### Fixed Charge Processing Office

This is the central processing office for the FCPS. It is located at Parnell Street, Thurles, Co. Tipperary.

This office has been decentralised from the Fixed Charge Penalty Office (FCPO) which is located at 89/94 Capel Street, Dublin 1.

However, a significant part of the functionality of the Capel Street office did not transfer. This relates to the automatic electronic processing of data from cameras and other devices. The FCPO Thurles only inputs manual data capture. The FCPO Thurles will be staffed eventually by some 68 civil servants headed by an Assistant Principal Officer. It is close to that staffing level at present. A Garda Inspector is also attached to the centre.

#### Fixed Charge Penalty Office, 89/94 Capel Street, Dublin 1

This office retains the sole technical capacity to download electronic data capture from cameras and other devices.

#### Garda Síochána Information Technology Department

This Department, based at Garda Headquarters, provides a platform for electronic contact internally within the Garda Síochána and externally with the commercial partners and the Courts.

#### Department of Transport, Shannon, Co. Clare

This Department is responsible for maintaining the records of all registered vehicles and drivers in the State and this information populates the other partners in the overall system.

#### Road Safety Authority, Ballina, Co. Mayo

This organisation is central to the overall scheme of national road safety strategy. Its summarised views in relation to this examination are as follows:

With regard to the FCPS, the Road Safety Authority (RSA) wishes to see high levels of compliance and low levels of detection. In road safety terms, the likelihood of being caught is a major element in advancing culture-changes in respect of the main ‘killer behaviours’, e.g. impaired driving, inappropriate speed, non seat belt wearing etc.

Garda success should not be measured in terms of numbers of Fixed Charge Penalty Notice’s (FCPN) issued but rather in terms of numbers of interventions carried out, e.g. number of checkpoints, numbers of drivers checked and numbers of vehicles checked. The numbers of FCPN’s issued are a proxy indicator of enforcement activity and road user compliance. FCPN’s issued should not, in the view of the Authority, be the primary measure of a Garda success.

For the FCPS to operate effectively in terms of road user support and compliance, it is essential that as many offenders as possible pay their fines rather than go to court; that there is flexibility to deal with late payment rather than going straight to court; and that there is some transparent, audited appeals system for motorists who are aggrieved about the circumstances of their detection.

It would be useful to explore the possibility of making the notices more user-friendly and easier to understand and to make the payment options more open. If possible there should be a move towards payment at the roadside by credit card to facilitate motorists and to enhance compliance with the FCPS.

**TICo Group Limited, Unit T8 Maple Avenue, Stillorgan Industrial Park, Blackrock, Co. Dublin**

This company plays an essential role in the overall process. It is contracted to process client information relating to detections. It generates notifications of the imposition of Fixed Charge Penalty Notices to members of the public.

**The Courts Service, 15/24 Phoenix Street North, Dublin 7**

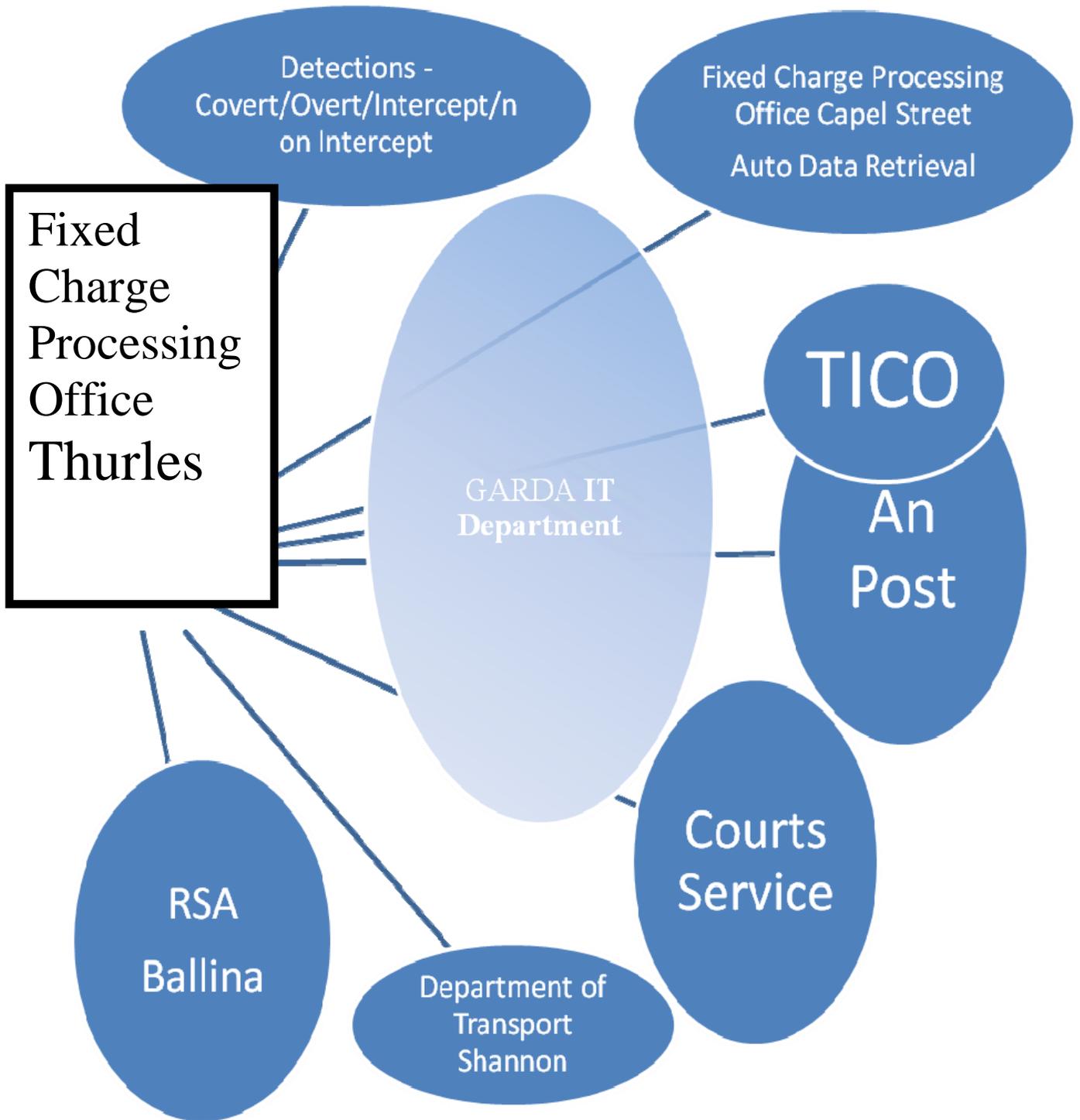
Eventually all unpaid FCPNs are returnable to the District Court, provided that offender details can be established and the relevant summons served. The current position of the Courts Service was set out for this Examination by the Director of Operations as follows:

When the FCPS system was being planned, one of the major aims was to have as many cases as possible dealt with administratively, thereby reducing the amount of court time spent on “minor” road traffic offences.

This is clearly not happening to the degree that was hoped for.

Thousands of “minor” road traffic cases are now ending up in the courts. At present, about 4,000 fixed charge summonses are received from the Garda Síochána each week for scheduling in the District Courts around the State. This can only increase as more offences are brought into the fixed charge net. If an extended privatised camera system is introduced, the Garda Síochána estimate that the level of summons applications will rise to 3,000 per day.

Figure 2: Fixed Charge Processing Office Thurles



## 2.2 Commentary

If the original objectives of the FCPS, as seen by the Courts Service, are to be attained, only the more serious road traffic cases should be coming to court.

Some mechanism is thus required to ensure that fixed penalties are paid and that court time is spent on those cases which merit judicial attention. Possible remedies might include the following:

- When the 56 day payment period has elapsed, the case might be handed over to a private debt collection agency to collect the outstanding fine;
- Allowing payment of the fine up to a certain period (e.g. 14 days) after summons is served;
- Collecting outstanding fines with car tax at next car tax renewal; and
- Increase penalty points incurred if fine remains unpaid.

The default position should be that a fine is automatically imposed unless the person decides that s/he wants a court hearing.

The current system is also inefficient in relation to collection of penalty point data. Defendants are asked to bring their driving licences to court so that the driving licence number can be recorded and the penalty points can be allocated to the appropriate driving record. If a defendant does not hand up the licence, it is most likely that the licence number will not be captured, making it more difficult for the licensing authority to allocate the penalty points to the correct driving record.

One solution would be to have driving licence numbers recorded by the licensing authorities when a car is being taxed. All points incurred by drivers of that car would be incurred by the registered owner unless s/he identifies the driver and his/her driving licence number. This would eliminate the problem being encountered in trying to capture the driving licence number.

There is an urgent need for reform of the current legislation which is failing to keep “fixed penalty” offences out of court. As these offences are considered suitable for fixed penalties without the intervention of the court, the logical position is that such cases should only be before a court if the alleged offender wishes to have the case adjudicated by a court.

The present system results in a great many cases having to be dealt with in court although there is no intention on the part of the defendant to fight the charge.

It should be a matter for the defendant to indicate that a court hearing is required. A change such as this would have the effect of considerably reducing the number of cases going to court while at the same time increasing the effectiveness of the system.

The President of the District Court is fully in agreement with the views expressed by the Courts Service and has expressed her concerns in the course of this examination in regard to four points, which are listed below.

1. **Mode of Service of Summonses;** it is the President's view that the only legally robust manner is by registered post.
2. **Service of the FCPS Notice;** is unreliable as it is served in the ordinary post and is unrecorded.
3. **FCPS Prosecutions;** do not, as a priority, belong in Court and should be disposed of otherwise.
4. **Insufficient Capacity;** to deal with current demands regarding penalty point offences. Any increase in volume would cause a further deterioration in the situation.

It was also noted that up to 40% of cases are adjourned where there is no appearance by the defendants as the court cannot be satisfied that the defendant was served with the said summons as it was not served by registered post.

## The Public

Almost 600,000 'transactions' involving members of the public, occur within the FCPS each year.

This is a high throughput in a State with a population of approximately 4.2 million. This high volume activity would appear to have triggered negative and unintended consequences.

It is clear that the complex web of relationships inherent in this cooperation have strong mutual dependencies. In order to function well a high degree of harmony must exist across the system.

The following comment from a review carried out by the Garda Síochána in 2002 into a Strategic Review of Traffic Policing is apposite:

*'While engaged in a sustained enforcement strategy, An Garda Síochána is constantly engaged in an adversarial manner with the public, presenting a very hard and cold image. In the long term interest of the Service this strategy needs to be balanced by a softer approach and it might now be an opportune time for An Garda Síochána to consider taking on a Road Safety education and promotion function in second and third level establishments as well as public at large. This function should be done in collaboration with the National Safety Council.'*

That was a valuable insight then and it is equally relevant today. The aim should be compliance rather than detection.

## 2.4 Conclusions

1. The FCPS processes are well supported by leading-edge technology at the point at which data is initially captured and processed. However, once we move beyond this initial point, the process comes under severe pressure. In 2007, a total of 459,037 FCPS notices were issued. The Courts cannot provide timely scheduling for the volume of offences which come forward for hearing as a result of these notifications.
2. Paradoxically, clients who ignore the process and are summoned to attend Court stand the greatest chance of escaping sanction completely. Only 14% of the 125,946 summonses issued in 2007 resulted in conviction in court and 47,861 summonses were not served at all.
3. The President of the District Court and the Courts Service agree that their system cannot cope with current requirements for summons hearings and believe that there is no possibility of being able to do so, having regard to greater priorities for court space and time. The summons process is inefficient and most cases never result in convictions. Many summonses go to addresses at which detected offenders no longer reside. Many summonses remain un-served.



## **Chapter Three | International Practice and Benchmarking in Road Traffic Policing and Road Safety**

Demographic differences make precise comparison difficult but despite this it is easy to identify the best-performing countries in terms of road safety strategy and to draw appropriate benchmarking conclusions.

Historically, the best-performing comparators are the United Kingdom and Australia (specifically the State of Victoria). The current examination has focused on a number of aspects of road traffic enforcement in the London Metropolitan Area and in Victoria, for purposes of comparison with the operation of the FCPS.

It is recognised that there are three inter-linked aspects to road safety. These are Education, Enforcement and Engineering. However, since this examination is primarily concerned with the FCPS and its propensity to generate complaints from the public, road safety strategy is not examined other than in the contextual sense. The Australian Road Safety Strategy estimates that there could be a 40% reduction in the fatality rate if road safety targets were met.

It estimates that the contribution of key measures to the attainment of this target should be as follows:

- Improve road user behaviour 9%;
- Improve vehicle occupant protection 10%;
- Use new technology to reduce human error 2%; and
- Improve the safety of roads 19%.

### **3.1 Policy**

Road Safety Policy in the United Kingdom and Australia is characterised by open dissemination of information that relates to enforcement and road safety strategies.

Enforcement policies are clear and are accessible to all. Enforcement sites and the means of enforcement are clearly stated as are the internal policies of law enforcement authorities.

The Association of Chief Police Officers (ACPO) publishes guidelines which set the professional standards to be applied to Enforcement and to Enforcement Officers in the United Kingdom. A good example is to be found in the ACPO guidelines and the relevant sections from the 'Code of Practice for Operational use of Enforcement Equipment' are attached in the Appendices.

The Ministry of Transport in the United Kingdom has published a 'Handbook of Rules and Guidance for the National Safety Camera Programme for England and Wales for 2005/06'. (<http://www.dft.gov.uk/pgr/roadsafety/speedmanagement/nscp/>) This system generates large volumes of FCPS-type notices annually. There are no such guidelines for the application of road traffic policing in Ireland.

### 3.2 The application of police discretion in relation to road traffic enforcement

An important element in road traffic policing is the extent to which officers with an enforcement role are allowed to apply discretion in dealing with offenders.

In Ireland, the current operation of the FCPS has significantly reduced the discretion that is available to gardaí in relation to the prosecution of offenders.

In Victoria and in the London Metropolitan Area, police officers have a high degree of discretion in dealing with detected offences. In certain circumstances, they may also have recourse to a range of imaginative alternatives to prosecution.

In the United Kingdom, in certain circumstances, a police officer may require a detected offender to undertake a 'Speed Awareness Course', (this function is contracted out to private companies) as an alternative to prosecution.

The National guidelines for Speed Awareness Courses ([http://www.acpo.police.uk/asp/policies/Data/national\\_speed\\_awareness\\_course\\_guidance\\_01x02x06.pdf](http://www.acpo.police.uk/asp/policies/Data/national_speed_awareness_course_guidance_01x02x06.pdf)) state that they may be offered only for offences in 30mph and 40mph limits. The guidelines provide that a course may be offered for a 5mph band above the ACPO minimum enforcement level which is 10% + 2mph over the limit.

Therefore, in a 30mph limit, ACPO recommends that officers enforce only at 35mph and above - so a course may be offered at speeds between 35mph and 39mph (incl.). Similarly, in a 40mph limit courses may be offered at speeds of 46mph to 50mph.

The rationale for the exercise of limited discretion in respect of speeding offences is that the enforcement sites are selected according to established historical data relating to Killed and Serious Injury collisions (KSIs) locations. These sites are marked by distinctive signing and high visibility of equipment and personnel.

UK police retain a legal and operational right to detect speed offences outside of designated KSI zones.

In the State of Victoria, police can let off some motorists with an 'official warning' in certain circumstances.

Each application for an official warning is judged on a case-by-case basis. A detected offender can apply for an official warning if s/he:

- Holds a current driver's licence (includes probationary licence holders);
- Has not been issued with a speeding, other traffic fine or official warning within the previous 2 years;
- Was caught doing less than 10kph over the speed limit (say, 68kph in a 60kph zone); and
- Does not deny that s/he committed the offence.

An 'official warning' will not be given for red light, mobile phone, seatbelt or generally any serious road safety offence, unless a proven emergency situation can be shown.

There are no such guidelines in Ireland. Formerly the Garda Síochána had operated thresholds for speed enforcement but no such policy was put forward in the course of this research.

### 3.3 The processing of FCPS – type offences in the London Metropolitan Area

The central office responsible for processing safety camera detections and other detections made by the Metropolitan Police is the Traffic Criminal Justice Office (TCJO). It handles some 500,000 penalty notices each year including some categories relating to public disorder.

The London Safety Camera Partnership comprises Metropolitan Police, City of London Police, Transport for London, Her Majesty's Courts Service and London Councils (a representative body for the 32 London Boroughs). Central government (Ministry of Transport) funds the partnership at a total cost of circa £11m per annum.

Most of the business is processed automatically. However, there will be many exceptions to this each day. The main exception to automatic processing is where a client writes in to the TCJO setting out what s/he may see as mitigating circumstances or perhaps with some complaint.

The majority of these contacts do not result in clients having their penalty tickets cancelled. It is noted that there are always a number of genuine problem cases where it would be oppressive or unreasonable for the Metropolitan Police to insist on enforcement or to expect the client to fight the case at court.

Responding to letters of mitigation and complaint is therefore an important facet of the TCJO's work. Many traffic fixed penalty notice cases involve ordinary members of the public whose only experience and contact with the Police may be through a traffic ticket. The first point of such contact is often TCJO staff and it is considered important that the public receives a service that is fair and efficient, firm but reasonable.

Another area where processing exceptions occur is where there is difficulty in tracking down a vehicle's owner or driver. In many instances, the licensing authorities do not have details of a current vehicle owner or keeper, so manual enquiries must be made by the TCJO before automatic enforcement can continue on the computer.

Following up problem cases of this kind is considered to be important. Under an enforcement regime that aims to be fair and equitable, people should not be able to avoid enforcement action by failing to register their vehicles.

The TCJO has an Intelligence Unit to deal with problem and persistent offenders. Details of the vehicles of many of these offenders are placed on the Metropolitan Police database so that the culprits can be found.

There is also a special enquiry section, set up by the London Safety Camera Partnership, which makes manual inquiries and home visits in order to track down offenders who try to evade safety camera enforcement.

Critically, the TCJO is both a deciding office in relation to complaints and an operational office in terms of directing and controlling enforcement.

The FCPS centre at Thurles does not have this kind of authority or brief and there is no laid-down policy of targeting repeat offenders.

The ease of access available to citizens in the London area reinforces public confidence in the inherent fairness and rationality of the detection systems employed.

### 3.4 Conclusions

Through the examination of these systems it was possible to reach the following conclusions:

- 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;
- Contact between the public and the Garda in regard to the FCPS business is slow and unsatisfactory primarily due to the strict adherence to an overly legalistic approach. The centralising of this business at the FCPS centre has created a disconnect in terms of good client relationships between the general public and the Garda Síochána;

- Failure to achieve early identification of vehicle drivers is a major cause for delay in the process;
- Combined driver and number plate recognition could greatly simplify driver identification in many instances and remove one of the main obstacles to the operation of a fully effective process; and
- The FCPS imposes timeline and procedural restrictions that are too onerous and too inflexible. There is no capacity to redress error or omission in good faith by the client, even when these are admitted.



## Chapter Four | FCPS – the Legal Context

### 4.1 Fixed Charge Processing System – the legal position

Two main pieces of legislation govern the Fixed Charge Processing System for driving related offences:

- Section 103 of the Road Traffic Act 1961, as amended (RTA 1961); and
- The Road Traffic Acts 1961 to 2005 (Fixed Charge Offences) Regulations 2006.

Section 103 of the Road Traffic Act 1961 provides the statutory basis for the FCPS and the Road Traffic Acts 1961 to 2005 (Fixed Charge Offences) Regulations 2006 details the offences which are declared to be fixed charge offences.

Section 103(2) of the RTA 1961 states:

*‘Where a member of the Garda Síochána has reasonable grounds for believing that a fixed charge penalty offence is being or has been committed by a person – if the member identifies the person, the member shall serve, or cause to be served, personally or by post, on the person a notice under this section, if the member does not identify the person and the offence involves the use of a mechanically propelled vehicle, the member shall serve, or cause to be served, personally or by post, on the registered owner of the vehicle a notice under this section’.*

Therefore, in accordance with this section, once the garda forms ‘reasonable grounds for believing that a fixed charge penalty offence is being or has been committed by a person’, then s/he has no discretion in relation to whether a FCPN should be served. The statute places a mandatory requirement on the garda member in this respect.

Once the FCPN is served by the Garda member, in accordance with the above, the offender has 28 days from the date of the notice to pay the fine and incur the penalty points.

In the case of a registered owner, who was not driving the vehicle at the time of the commission of the alleged offence, s/he can notify the gardaí of the name and address of the driver of the vehicle at the time of the offence within 28 days of the date of the notice served. If s/he does not, the registered owner is liable for the fine and incurs the penalty points.

In the event that the registered owner does not provide details of the name and address of the driver at the time of the offence and s/he fails to pay the fine, then s/he will have committed an offence under two separate provisions of the Act, which provide for different fine levels for the same offence. Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act 1851, which provides that proceedings in relation to summary only offences must be brought within 6 months, the Act provides that proceedings pertaining to such an offence can be brought at any time within 2 years.

It is an offence for the registered owner to give or send to a member of the Garda Síochána information which s/he knows to be false or misleading.

When the initial 28 days have elapsed, the registered owner or driver has a further 28 days in which to make a payment of a fixed charge which is 50% greater than the amount liable, had the fine been paid in the initial 28 days.

The payment of a fixed charge is legally prohibited after the expiration of the period of 56 days, which runs from the date of the notice.

The legislation prohibits the issuing of a prosecution prior to the expiration of 56 days from the date of the notice and also if payment of the fixed charge is made within the relevant time frames.

In the event of a prosecution for a fixed charge offence, the legislation provides that the court should presume, until the contrary is shown, that the relevant FCPN was served or affixed and that payment pursuant to the relevant FCPN, accompanied by the notice, duly completed where required, has not been made.

## 4.2 Format of the Fixed Charge Penalty Notice

The notice should include the following details:

- A statement that the person on whom it is served is alleged to have committed an offence, or if the identity of the person is unknown that an offence is alleged to have been committed;
- A statement that within the first 28 days of the date of the notice, a fixed charge as specified may be paid and when the initial 28 days have elapsed, the registered owner or driver has a further 28 days in which to make a payment of a fixed charge 50% greater than the amount liable had the fine been paid in the initial 28 days;
- A statement that a prosecution for the alleged offence will not be instituted during the periods specified in the notice, i.e. 56 days from the date of the notice, or in the event that the fixed charge payment is made accompanied, where necessary, by the duly completed notice; and
- Details as to the manner in which a fixed charge payment can be made.

In addition to the above mandatory requirements for the notice, the notice may also specify the person to whom, and the place where, the payment is to be made.

It is noteworthy that in cases where the garda member cannot identify the person committing the fixed charge offence then in accordance with section 103(8)(e), a duly completed notice must accompany the payment. However, there is a discretion in cases where the member has identified the alleged offender to require that person to submit the duly completed notice with the payment in accordance with section 103(6A)(b).

### 4.3 Service/Affixing of the Fixed Charge Penalty Notice

In accordance with section 103(2)(a) of the Road Traffic Act 1961, as amended, where the Garda member identifies the person whom s/he believes has committed a fixed charge penalty offence then s/he must either serve that person personally or by post, with the notice, or cause the notice to be served personally or by post.

In accordance with section 103(2)(b) of the Road Traffic Act 1961, as amended, where the garda member has not identified the person whom s/he believes has committed a fixed charge offence then s/he must either serve the notice personally or by post, or cause the notice to be served personally or by post on the registered owner of the vehicle.

Section 18 of the Interpretation Act 1937 provides:

*'Where an Act of the Oireachtas or an instrument made wholly or partly under any such Act authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other word is used, then, unless the contrary intention appears, the service of such document may be effected by properly addressing, prepaying (where requisite), and posting a letter containing such document, and in such case the service of such document shall, unless the contrary is proved, be deemed to have been effected at the time at which such letter would be delivered in the ordinary course of post'.*

Therefore, the legislation provides for the service of the FCPN by ordinary post.

According to section 103(3)(b) of the Road Traffic Act 1961, the notice may be affixed to a vehicle provided the offence concerned does not attract penalty points.

### 4.4 Service of Summonses

Rule 3 of the District Court Rules 1997 order 10 states:

*'(1) In proceedings by way of summons in which the prosecutor is the Director of Public Prosecutions or an officer or member of the Garda Síochána, a Minister of the Government or a Minister of State or an officer of either such Minister, or an officer of the Revenue Commissioners, a document shall be served by a member of the Garda Síochána, or by any other person or any other means authorised by statute or rules of Court'.*

*'(2) A member of the Garda Síochána shall not serve a document in proceedings in which such member is the person instituting the proceedings'.*

Rule 5 of the District Court Rules 1997 states:

*'Save where otherwise provided by statute or by Rules of Court , service of a document shall be effected upon a person in the State by delivering to that person a copy thereof or by leaving the copy for that person at his or her last or most usual place of abode, or at his or her office, shop, factory, home or place of business with that person's husband or wife, as the case may be or with a child or other relative (apparently residing with that person) of that person or of his wife or her husband as the case may be, or with any agent, clerk, servant or employee of that person, or with the person in charge of the house or premises wherein that person usually resides, provided that the person (other than the person upon whom service is to be effected) with whom the copy is left is not under the age of [16] years and is not the person instituting the proceedings'.*

It is questionable from the above whether dropping the summons into a letter box, either through the postal system or personally by a member of the Garda Síochána suffices, given the requirements for service provided for in rule 5 outlined above. The rule provides that delivery must be made 'to that person'.

As rule 5 of order 10 provides that service must be at 'his or her last or most usual place of abode', it is arguable that once a new address has been made known to Gardaí, then in order to comply with the service requirements, the summons must be served at that new address.

## 4.5 Legal Basis for Contracting Out

Section 14(1) of the Road Traffic Act 2002 provides:

*'The Minister may, by an agreement in writing entered into with any person, upon such terms and conditions as may be specified in the agreement, provide for the performance by that person, subject to such terms and conditions (if any) as may be so specified, of such functions as may be specified'.*

Section 14(7) of the Road Traffic Act 2002 provides:

*' In this section "function" includes a power and a duty and the references to a function are references to a function conferred on the Minister, a licensing authority, a local authority, a road authority or the Commissioner by, or by a statutory instrument ( within the meaning of the Interpretation Act, 1937), under the Acts or this Act other than a function of the Minister under this section, or a power to make, approve of or consult in relation to, the making of a statutory instrument (within the meaning aforesaid'.*

## Chapter Five | General Observations arising out of the Examination

In addition to the various conclusions made in the course of this report the following general observations are pertinent to the continuing functioning of the FCPS.

- A.** At this writing, plans to privatise speed detection under garda control are well advanced.
- B.** There will be a significant increase in the capacity of the Garda Síochána itself to detect speeding offences.
- C.** Recidivist offenders will continue to evade sanction through low summons serving rates or through undocumented road user profiles. Many evasions occur through individuals using non-domestic driving licences or motor vehicle documentation.
- D.** Without reform and a qualitative analysis by all stakeholders, the current FCPS will continue to function as a system that is electronically well supported but client unfriendly.
- E.** The FCPS does not have the technical capacity to generate summonses for companies or similar bodies.
- F.** The so called ‘Hot-Spot’ principle in road traffic policing, and the degree to which it is adhered to, will influence public attitudes towards detection policies. It is not the function of this examination to consider this matter in detail, other than to note that public acceptance of road safety enforcement measures will be shaped by the perceived rationality and fairness of the measures and processes employed.
- G.** The FCPO in Thurles deals with a significant number of complaints and queries. However, its personnel are obliged to deal with these within the constraints of the legal system rather than as part of an administrative process. Complaints fall into two broad categories;
  - Complaints about the technical complexities of the system; and
  - Complaints concerning the manner in which clients have been dealt with by members of the Garda Síochána.

- H.** Complaints to the FCPO do not appear to be systematically escalated to a fully-fledged complaints and appeals process. The handling of complaints is somewhat ad hoc. As stated above, it is constrained by legal considerations and it relies, to a large degree, on 'pro-forma' responses to complaints.
- I.** Traditional 'Fines on the Spot' notices are no longer issued for a range of minor offences and clients are often unaware that they have been detected until the FCPN is forwarded to them. This leads to considerable resentment which is exacerbated by rigid time limits and will, of course, be further exacerbated if a court summons issues. Garda Policy requires that an advice slip be provided but there is little evidence that this actually happens.
- J.** The most notoriously uncooperative or undocumented offenders can escape the sanctions of the law by simply ignoring the process completely. Increasing detection activity will add further data to this process cycle which will exacerbate the weaknesses already identified.
- K.** While it may be administratively convenient to include 390 offences in the FCPS it is clear that not all these offences merit inclusion on road safety grounds.
- L.** Over half of all detections are incurred for speeding offences. Anecdotally there is considerable public disquiet at what is seen as inconsistency in enforcement and inappropriate settings in regard to speed limits.
- M.** There is currently no statistical link between the Garda Síochána enforcement patterns and the incidence of collisions in high-danger zones. However, future plans for privatised detection set this as a key operational objective. Detection will also change to a largely covert operation.
- N.** There is no greater right than the right to life. Clearly, road safety strategy must have this as its foremost objective. Citizens' rights have to be interpreted in that light. The following principles should apply in 'Human Rights' - proofing the Garda Síochána practices in road traffic policing:
  - a. Legality** – The legal basis of the current FCPS is clear and secure. But this legal construct inhibits resolution of many issues, principally because of unrealistic time constraints;
  - b. Necessity** – There is a necessity for strong enforcement activity on the part of the State in relation to road safety issues;

- c. Proportionality** – It has not been possible to determine the current focus of Garda Síochána activity at detailed enforcement level. Arguably, any direct linkage between enforcement activity and the collision prone zones remain coincidental rather than planned. A large proportion of detection activity has no direct bearing on road safety and this balance needs examination;
- d. Accountability** – Overall accountability at the State level is clearly in place. However, the FCPS is very much a closed book in terms of the general population. The centralising of the contact at the FCPO in Thurles has greatly widened the communication gap between gardaí and citizens. There is a lack of transparency to the process adopted in relation to FCPN's issued to emergency services; and
- e. Non-discrimination** – There is no evidence to support any contention that enforcement is implemented on the basis of sex, race, colour, etc. It is more likely that there is a form of reverse discrimination, whereby the fully documented and compliant citizens are more amenable to the system than those who are undocumented or otherwise uncooperative.



## Appendix 1: Terms of Reference

The terms of reference for this examination were set down by Mr. Brian Lenihan, T.D., the Minister for Justice, Equality and Law Reform on December 20<sup>th</sup> 2007.

This followed a recommendation by the Commission, as provided for under section 106, subsection 2 of the Garda Síochána Act 2005.

The Minister wrote to the Commission as follows:

*'I therefore request you, under section 106, to examine Garda practice, policy and procedure in relation to the fixed charge processing system and to report to me on the results of this examination, including any recommendations you see fit to make. I will not set a specific period within which you should report to me, but I would ask you to report as soon as possible'.*

On January 23<sup>rd</sup> 2008, the Commission requested Mr. John O'Brien, principal of ESCAT, to undertake the necessary research for the completion of this examination.

Section 107 of the Garda Síochána Act states that:

*'(1) The Garda Commissioner shall supply the Ombudsman Commission with such information and documents as the Commission may require for the purpose of, or in connection with, an examination under section 106'.*

The Commission informed the Commissioner of the Garda Síochána that Mr. O'Brien was engaged in this research under its authority and requested that he be given co-operation and assistance as provided for under section 107 (above).

Mr. O'Brien provided the Commission with six draft reports between January 2008 and December 2008.

The Commission met and finalised this report at its offices at 150 Abbey Street Upper, Dublin 1 on April 7<sup>th</sup> 2009.

## Appendix 2: Practice and Procedure of the FCPS

	Intercept	Non- Intercept
Detection	An Intercept Occurs when a Garda/ Traffic Warden directly interacts with an offender at the time of the offence	No manual intervention by Garda
Recording		
	Hand held computer	Fixed Speed Camera
	Or Fixed Charge Notepad	Mobile Video Recording – e.g. Gatso
	Traffic Watch detection on Hand Held Computers or notepads as a result of complaint made by the public	
	The Garda National Processing Office FCPO (Thurles) and FCPO (Capel Street)	
Process Steps	<ol style="list-style-type: none"> <li>1. Enter details from both the notepads (Thurles) and speed cameras (Capel Street) onto FCPS</li> <li>2. Issue Fixed Charge Notices</li> <li>3. Deal with offence specific queries from the public</li> <li>4. Process Driver Nominations</li> <li>5. Process appeals/cancellations</li> <li>6. Deal with requests from the gardaí for photographs of offending vehicles</li> <li>7. Deal with queries re change of ownership</li> <li>8. Liaise with the National Juvenile Office regarding offenders under 18</li> <li>9. Prepare proofs for court – Driver nominations- photographs of vehicle.</li> </ol>	
	Paid	Not Paid
	10. An Post to Update system and electronically submit to FCPS	11. FCPS electronic summons Application to Courts
		12. Courts issue summons
	13. If penalty points FCPS will transmit to Department of Transport	14. If Convicted Courts will transmit penalty points details to Department of Transport
		15. If fine unpaid warrants to the Gardai for execution

## Appendix 3: European Convention on Human Rights Act 2003

The Garda Síochána is an ‘organ of the State’ for the purposes of the European Convention on Human Rights Act 2003 and this short guide outlines the key principles and the content of the State’s obligations under the European Convention on Human Rights insofar as they relate to the operational activities of the Gardaí.

It is clear that the Act must apply in respect of the Garda Síochána’s policing of road traffic, no less than in any other operational sphere.

The examination did not reveal any processes or policies currently in operation within the Garda Síochána to ensure that this objective is attained.

The principal requirements under the Act, in respect of actions by the Garda Síochána, are as follows:

### **Legality;**

Is there a clear basis in law for action by the Garda Síochána? All actions by organs of the State must have a clear basis in law.

### **Necessity;**

Is action by the Gardaí strictly necessary in order to resolve a particular problem or deal with a threat?

### **Proportionality;**

Can it be demonstrated that any action taken by Gardaí is proportionate to the threat or problem that they seek to prevent?

### **Accountability; and**

Can it be shown that Garda action is sufficiently open to scrutiny by the public and other authorities (such as the Garda Síochána Ombudsman Commission and the Garda Inspectorate) in order to ensure that the Gardaí are accountable in practice, as well as in theory?

### **Non-discrimination.**

What steps have been taken to ensure that Garda action will avoid discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status?

## Appendix 4: Penalty Points and Fixed Charge Offences

### Offences that carry penalty points

Offence 31	Penalty Points on Payment	Penalty Points on Conviction	Fixed Charge	
			Amount paid in 28 days	Amount paid in next 28 days
Speeding	2	4	€80	€120
Failure by Driver to comply with front seat belt requirements (for self and for passengers aged under 17 years)	2	4	€60	€90
Failure by Driver to comply with rear seat belt requirements for passengers aged under 17 years	2	4	€60	€90
Holding a mobile phone while driving a mechanically propelled vehicle	2	4	€60	€90
Dangerous overtaking	2	5	€80	€120
Failure to act in accordance with a Garda signal	1	3	€80	€120
Failure to stop a vehicle before stop sign/ stop line	2	4	€80	€120
Failure to yield right of way at a yield sign/ yield line	2	4	€80	€120
Crossing continuous white line	2	4	€80	€120
Entry by driver into hatched marked area of roadway, e.g. carriageway reduction lane	1	3	€80	€120
Failure to obey traffic lights	2	5	€80	€120
Failure to obey traffic rules at railway level crossing	2	5	€80	€120
Driving a vehicle on a motorway against the flow of traffic	2	4	€80	€120
Driving on the hard shoulder on a motorway	1	3	€80	€120
Driving a HGV, Bus or towing a trailer on the outside lane on a motorway except at any location where a speed limit of 80km/h or less applies on the motorway	1	3	€80	€120
Failure to drive on the left-hand side of the road	1	3	€60	€90
Failure to obey requirements at junctions, e.g. not being in the correct lane when turning onto another road	1	3	€60	€90
Failure to obey requirements regarding reversing of vehicles, e.g. reversing from minor road onto major road	1	3	€60	€90
Driving on a footpath except to access a premises or a place across the road	1	3	€60	€90
Driving on a cycle track	1	3	€60	€90
Failure to turn left when entering a roundabout	1	3	€60	€90
Driving on a median strip, e.g. boundary between two carriageways	1	3	€60	€90
Failure to stop for school warden sign	1	4	€80	€120
Failure to stop when so required by a member of the Garda Síochána	2	5	€80	€120
Failure to leave appropriate distance between you and the vehicle in front	2	4	€80	€120
Failure to yield	2	4	€80	€120
Driving without reasonable consideration	2	4	€80	€120
Failure to comply with mandatory traffic signs at junctions	1	3	€60	€90
Failure to comply with prohibitory traffic signs	1	3	€60	€90
Failure to comply with keep left/keep right signs	1	3	€60	€90
Failure to comply with traffic lane markings	1	3	€60	€90
Illegal entry onto a one-way street	1	3	€60	€90

## Mandatory Court Appearance

Offence 5	Penalty Points on Conviction	Fine
Driving a vehicle when unfit	3	Court Fine
Parking a vehicle in a dangerous position	5	Court Fine
Breach of duties at a crash	5	Court Fine
Driving without Insurance 5 Court Fine	5	Court Fine
Driver found to be driving carelessly	5	Court Fine

## List of fixed charge offences (28)

Offence	Local Authority Enforcement by Traffic Warden	Garda Enforcement	Amount paid in 28 days	Amount paid in next 28 days
Illegally parking a vehicle in a disabled person's parking bay	Yes	Yes	€80	€120
Failure by driver to have tax disc fixed and displayed on windscreen of vehicle	Yes	Yes	€60	€90
Failure by driver to have insurance disc fixed and displayed on windscreen of vehicle	No	Yes	€60	€90
Illegally parking in a taxi rank	Yes	Yes	€40	€60
Taxis illegally standing for hire at places other than taxi ranks	Yes	Yes	€40	€60
Illegally parking or using a vehicle in a Local Authority car park	Yes	No	€40	€60
Illegally parking a vehicle where a time restriction applies	Yes	Yes	€40	€60
Illegally parking a vehicle where a Local Authority 'pay parking' applies	Yes	No	€40	€60
Illegally parking a vehicle in a bus lane or bus-only street	Yes	Yes	€40	€60
Illegally stopping or parking a vehicle at school entrances	Yes	Yes	€40	€60
Illegally parking a vehicle other than a goods vehicle (30 mins. max.) in a loading bay during period of operation	Yes	Yes	€40	€60
Illegally parking a HGV or bus in an area where a weight restriction applies	Yes	Yes	€40	€60
Illegally parking a vehicle in a pedestrianised street during period of operation	Yes	Yes	€40	€60
Illegally parking a vehicle other than a bus at a bus stop	Yes	Yes	€40	€60
Illegally parking a bus outside the area allocated for buses at a bus stop or bus stand	Yes	Yes	€40	€60
Failure to remove a vehicle parked on a cycle track before the appointed commencement of operation	Yes	Yes	€40	€60
Parking a vehicle where it is prohibited e.g. double yellow lines; no parking sign; cycle track; within 5m of a road junction; where there's a continuous white line; taxi only stands; obstructing emergency service stations; obstructing a driveway; within 15m of pedestrian crossing or traffic lights	Yes	Yes	€40	€60
Stopping or parking a vehicle in a clearway during the period stated on the traffic sign	Yes	Yes	€40	€60
Illegally stopping or parking a vehicle on any part of a motorway	No	Yes	€40	€60
Failure to obey traffic direction given by Gardaí	No	Yes	€80	€120
Failure by passenger aged 17 or over to comply with the requirements regarding the use of seat belts in front and rear seats	No	Yes	€60	€90
Illegally entering a road with a HGV or bus where a weight restriction applies	No	Yes	€60	€90

Failure by driver to give appropriate signals by use of indicators or specified hand signals when intending to slow down, stop or change course	No	Yes	€60	€90
Entering a yellow box junction partly or wholly, unless the driver can clear the area	No	Yes	€60	€90
Driving a vehicle (other than a taxi in course of business or a pedal cyclist) in a bus lane during the period of operation	No	Yes	€60	€90
Making a U-turn on a dual carriageway where a 'No U-turn' traffic sign is on display	No	Yes	€60	€90
Driving a vehicle other than a light rail vehicle on a tram lane	No	Yes	€60	€90
Stopping or parking a vehicle other than a light rail vehicle on a tram lane	No	Yes	€60	€90



## Appendix 5: Code of Practice (ACPO)

Code of practice for operational use of enforcement equipment in the UK:  
published by: Association of Chief Police Officers (ACPO) (edited)

### Overview

Consideration has been given to the compatibility of this policy and related procedures with the Human Rights Act; with particular reference to the legal basis of its precepts; the legitimacy of its aims; the justification and proportionality of the actions intended by it; that it is the least intrusive and damaging option necessary to achieve the aims; and that it defines the need to document the relevant decision making processes and outcomes of action. In the application of this Code of Practice, the police service will not discriminate against any persons regardless of sex, race, colour, language, religion, political, or other opinion, national or social origin, association with national minority, property, birth or other status as defined under Article 14, European Convention on Human Rights (ECHR).

Practitioners should ensure that the recording of significant decision-making processes establishes that such interventions are proportionate in the particular circumstances of the case and are based upon reasonable and objective grounds that minimise the likelihood of inadvertently discriminatory practice.

Members of the public may make complaints about the application of this Code verbally or in writing via the police complaints procedure. If the matter of complaint concerns the collection and/or use of personal information, a complaint to the Information Commissioner may also be appropriate. If complaints or concerns arise about the Code of Practice itself, then these should be brought to the attention of the ACPO Road Policing Enforcement Technology Secretariat (contact details are available from the ACPO Internet Website).

### Key Rights and Legitimate Aims

Ultimately, the enforcement of relevant offences may be through the courts. It follows that formal prosecutions launched as a result of the application of this Code of Practice may interact with defendants' Article 6 (Fair Trial) rights. Adherence to the recommendations within this Code of Practice and to disclosure legislation should ensure that any engagement with this right is securely lawful.

Article 8 (Privacy) rights also have the potential to be engaged by the

application of this Code. For example, images of vehicles capable of being used to identify drivers may interact with the privacy rights of the prospective defendant and any other occupants of the vehicle.

In addition, the Police Service's positive obligations towards Article 8 rights impose a duty to take reasonable steps to ensure that the physical integrity of the public and colleagues is maintained. This emphasises the need to ensure that regular Health and Safety risk assessments are carried out and that appropriate training and equipment is provided to staff installing or using enforcement equipment.

Interactions with 'qualified' rights like Article 8 must have a basis in law, be proportionate and pursue a 'legitimate aim'. This Code of Practice recognises the need to take steps to ensure the health and safety of staff and the public as well as the pressing need to reduce road collisions and casualties. As a result the purposes of the Code securely pursue the following legitimate aims: the interests of public safety, the prevention of crime [and disorder] and the protection of the rights and freedoms of others.

In the event of equipment malfunction or other circumstances whereby the detection of an offence maybe unsound, officers are prohibited from making detections or pursuing prosecutions.

It should also be noted that legislation protects drivers of emergency vehicles from prosecution dependent upon the use to which the vehicle is being put at the time.



## Appendix 6: Fixed Charge Processing System – Volume 2007

1	Total FCPN's 2007		459037
2	Penalty Point		301860
3	Non Penalty Point		157177
4	Total Speeding	198963	
5	Captured by	Hand Held	86434
6		Notepad	22656
7		Scanned (Camera)	89873
8	Seat Belt		30440
9	Mobile Phones		32651
10	All Others		196983
Total			459037
Correspondence dealt with 91,138 items			

## 7: Policy Extracts

### Position of the Garda Síochána

This examination endeavoured to establish the written policy position of the Garda Síochána in relation to the FCPS. Some extracts from both national and Garda Síochána documents are provided at the conclusion of this chapter. The most comprehensive policy document was written in 2002. It does not have a more up-to-date equivalent.

There is no current written policy setting out principles or a plan of action to guide decisions and achieve rational outcomes in relation to the FCPS.

However, on the 9<sup>th</sup> of May 2008, a paper was provided to this examination by the Garda Síochána. It set out the following set of objectives in relation to the FCPS.

---

From a Garda perspective the FCPS project objectives included:

- Ensuring our policies, practices and procedures were consistent with legislative requirements;
- Increasing capacity to process fixed charge offences;
- Centralising the administration and processing of fixed charge offences in the Fixed Charge Processing Office;
- Outsourcing printing and payment collection;
- Enhancing the ability to provide effective management information.

These objectives have been achieved and support our strategic goal of "*reducing the incidence of fatal and serious injuries and improve road safety*" through:

- Increased Garda visibility and enforcement.
- Reduction of Garda time spent on administration.
- Reduction in Court appearances.
- Enhanced decision making.

### Comment

These objectives refer to a road safety agenda. But they do not address the wider application of the FCPS in terms of client-relationships or public confidence. They do not address the process-issues identified elsewhere in this examination. And they do not

appear to take account of the range of offences captured which have little or no relevance to road safety.

The Garda Síochána is a significant partner in the Government strategy for combating road deaths and injuries. Their other principal State partners are the Road Safety Authority, the National Roads Authority, the Department of Transport and Communications and the Department of Justice, Equality and Law Reform. Overall, some 30 bodies form a broad coalition of interests in this area.

The national strategy is set out in the *Road Safety Strategy (RSS) document 2007 -2012*.

The following is what that document sets out in regard to the system of penalty points.

*'It is generally regarded that the system of penalty points has contributed significantly to the reduction of deaths and injuries on our roads. However, it is essential that the effectiveness of individual components of the penalty points system be evaluated to determine the impact they have on driver behaviour. This will be undertaken over the life of the Strategy and recommendations will be made based on the evaluation process.'*

The Perceived Problem - Road Collision Statistics – Garda Web Site								
	2001	2002	2003	2004	2005	2006	2007	2008
Killed	411	376	335	374	396	368	338	279
Injured	10,222	9,206	8262	7867	9318	8575		
Total	10,633	9,582	8597	8241	9414	8943		

## **Garda Síochána Report 2006 – Edited Extracts**

This report contains the following observations.

Traffic enforcement activities have been enhanced, through the availability and use of new tools and technologies which radically reconfigure the capacity of the Garda organisation, through its individual members. The development of capabilities with regard to Automated Number Plate Recognition, Forensic Collision Investigation and the Fixed Charge Processing System are some of the more important initiatives which either have been developed or are at an advanced stage thereof. These initiatives coupled with legislative changes, particularly with regard to drink-driving, have collective implications which are far reaching in so far as the reduction in road fatalities is concerned.

New enforcement technologies have the capacity to assist in the change of traffic policing towards a greater emphasis on policing and management of risk. This implies a move

towards increased focus on an 'intelligence-led' approach, based on developing knowledge and intelligence about risk and applying interventions to reduce such risk. Based on analysis of collision trends and drink-driving incidents, targeted enforcement was carried out throughout the year with substantial resources deployed, particularly at weekends during the hours of 12am to 8am. On 3<sup>rd</sup> April, 2006, an additional 30 offences became Fixed Charge Penalty offences and in September, 2006, the use of hand-held mobile phones while driving became a penalty point offence. In excess of 6,000 fixed charge notices were issued for this offence up to the end of the year.

The two key factors in policy formulation is prioritised enforcement and traffic management. Enforcement is almost entirely a Garda function while traffic management is a shared responsibility between An Garda Síochána and other agencies.

The primary responsibility of the Garda National Traffic Bureau is the proactive formulation of policy to reduce deaths and road accidents.

The establishment of the Garda National Traffic Bureau has enhanced efficiency and effectiveness, not only to An Garda Síochána, but also to other agencies and to the community at large. Other benefits include:

- Improved statistical and management information;
- More rapid and better informed traffic policy;
- More efficient use of limited resources;
- Effective targeting of high risk areas, times, categories of driver, driving behaviours, etc.;
- Increased profile for traffic policy implementation in the Garda Síochána,
- Underline, for other agencies, the Bureau's commitment to improving traffic strategies; and
- Increased awareness among the general public.

## **Safer Driving**

The Garda Síochána is committed to reducing the level of accidents on our roads. 'Operation Lifesaver' is the national Garda enforcement campaign that principally focuses on speeding offences, the non-wearing of seatbelts and drink-driving.

## **Collision Prone Zones**

Road traffic enforcement is being transformed through the use of new tools and technologies which radically reconfigure the capacity of the Garda organisation through its individual members. The development of a capability with regard to Automated Number Plate Recognition, Forensic Collision Investigation and the Fixed Charge Processing System are some of the more important initiatives, which have either been developed or are at an advanced stage thereof. These initiatives coupled with legislative

changes, particularly with regard to drink driving, have collective implications which are far reaching in so far as the reduction in road fatalities is concerned. New enforcement technologies have the capacity to assist in the change of road policing towards a greater emphasis on policing and management of risk.

This implies a move towards a reduced focus on deviance and enforcing the law for its own sake and an increased focus on an ‘intelligence led’ approach based upon developing knowledge and intelligence about risk and applying interventions to reduce such risk.

Accordingly, an extensive analysis has been carried out by An Garda Síochána in conjunction with the National Roads Authority, Ordnance Survey Ireland and the Local Government Computer Services Board with regard to collision history on our road network over the last 10 years. Road sections measuring about 5-8 kilometres have been identified as having a particular propensity for collisions and are categorised on a descending basis having regard to such propensity from: (1) Red, (2) Amber, to (3) Green.

Such road sections will be referred to as ‘Collision Prone Zones’. Garda resources will be focused particularly on these roadways which are outlined on the list.



## Appendix 8: Report on use of Safety Cameras – July 2005

A multi-disciplinary group, chaired by the Department of Justice, Equality and Law Reform, reported in June 2005 on the way forward in relation to what then were being described as ‘Safety Cameras’.

The Courts Service was not formally represented on that group.

The group concluded as follows.

***The objective of a safety camera project is to reduce the number of speed related collisions by:***

- 1. Increasing compliance with speed limits across the entire road network;*
- 2. Reducing the speed of vehicles at locations that have a speed related collision history; and*
- 3. Acting as a deterrent to driving at excessive speeds.*

*The use of camera technology will result in increased volumes of detections of traffic offences, thereby achieving greater general deterrence (section 2.1).*

The Government Road Safety Strategy 2004-2006 (page 25 of Strategy) proposes that;

*‘An Garda Síochána will enter into arrangements for the engagement of a private sector concern for the purpose of the provision and operation of a nationwide programme for the detection of speeding offence’. (section 3.1)*

*‘For any safety camera project to be successful, the public must recognise that its purpose is to save lives and is not related to revenue collection’. (section 4)*

### **The report also stated the following:**

Initially the revenue from speeding fixed charges will outweigh the costs substantially. With a potential 1.1 million detections (10% of checks) and the likelihood that 80% of detected drivers will pay the charge of €80 initially, the prospective annual income could be as high as €70 million. The moneys collected from the fixed charges are accounted for as Extra Exchequer Receipts and are paid directly to the Paymaster General. There will also be revenue from court imposed fines. However, as the project begins to have an effect the revenues generated will fall off dramatically as driver compliance increases. Nevertheless, it is anticipated that even in later years the revenue generated would exceed the cost of operating this scheme.

## Appendix 9: Sources used in this Examination

Information was examined from a range of Garda sources including the Garda National Traffic Bureau (GNTB), Garda Information Technology Department, Fixed Charge Process Office (Thurles) and Fixed Penalty Charges Office (Capel St.).

The following documents were of particular relevance:

- Strategic Review of Traffic Policing undertaken by the Garda Síochána in 2002;
- Report on the Use of Speed Cameras;
- Road Safety Strategy (RSS) documents 2007 – 2012;
- Garda Corporate Strategy (2007-2009), Strategic Goal 3 - Traffic and Road Safety;
- Garda Síochána Policing Plan 2008; and
- Garda Síochána Inspectorate, Roads Policing Review and Recommendations, (November 2008).

A random selection of client correspondence with the Fixed Charge Process Office in Thurles was examined. Other partner agencies were invited to make contributions on a voluntary basis and they included the Courts Service, TICo Group Limited, An Post and the Road Safety Authority.

A study was undertaken of the legal framework as particularly set out in the Road Traffic Acts 1961/2004.

