

An Garda Síochána

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Re: Freedom of Information Request 000059-2016 Internal Review

Dear

I refer to the appeal which you made under the Freedom of Information Act 2014 (FOI Act) dated and received on the 13th April 2016. This letter only refers to your request for “*The 2013 Audit of Salary and Pension Overpayments*”.

Chief Superintendent, Peter Kirwan, Garda Headquarters, who is a more senior member of staff of this Organisation, has conducted an Internal Review of your Freedom of Information request. His decision on review is an entirely new and separate decision on your request and is explained as such below.

Your request is shown below:

- 1. The Garda internal audit of the Serious Crime Review Team following Allegations of Financial Irregularities from 2013 and the 2014 Joint Audit with GPSU of the Serious Crime Review Team.*
- 2. The audit of the Fixed Charge Processing Office - Non-discretionary Cancellations from January 2014 and the Report of the Fixed Charge Penalty System from September 2014.*
- 3. The Audit of DMR South Central from 2014 and the Joint Audit with GPSU of DMR South Division, also from 2014*
- 4. The Report to the Commissioner in relation to Financial Controls in 2014.*
- 5. The 2013 Audit of Salary and Pension Overpayments.*

In arriving at his decision, Chief Superintendent Kirwan had regard to the original request, the records which were located as part of that request and the appeal which you submitted in this regard. In reviewing the records in this particular case Chief Superintendent Kirwan gave particular consideration to the provisions of the FOI Act and also the legislative obligations placed upon An Garda Síochána under various Acts. In particular the definitions of functions and responsibility were considered as set out under section 7 of the Garda Síochána Act 2005 and the unique position the Garda Organisation holds within Irish Society, in providing policing and security services for the State with the objective of:

- (a) preserving peace and public order,
- (b) protecting life and property,
- (c) vindicating the human rights of each individual,
- (d) protecting the security of the State,
- (e) preventing crime,
- (f) bringing criminals to justice, including by detecting and investigating crime, and
- (g) regulating and controlling road traffic and improving road safety.

Part 1(n) of Schedule 1 of the FOI Act states that An Garda Síochána is listed as a partially included agency “*insofar as it relates to administrative records relating to human resources, or finance, or procurement matters*”. Therefore the only Garda records falling within the scope of the provisions of the FOI Act are administrative records relating to human resources, finance or procurement.

Having considered the nature and scope of the contents of “*The 2013 Audit of Salary and Pension Overpayments*”, Chief Superintendent Kirwan provides the following decision.

Out of Scope

In his considered opinion, auditing of the functions that are carried out in the process of applying the above mentioned objectives and primary function using numerous pieces of legislation does not fall within the definition of an administrative record. The audit of operational activities, application of legislation, seizure of property, investigations and oversight process is not in itself an administrative record for the purpose of human resources, finance or procurement as set out in Part 1(n) of Schedule 1 of the FOI Act. Therefore Chief Superintendent Kirwan has deemed sections of the your request with regards to the “*The 2013 Audit of Salary and Pension Overpayment*”, out of the scope of the FOI Act insofar as An Garda Síochána is concerned. As a result the relevant audit report is provided inclusive of redactions by Chief Superintendent Kirwan in keeping with Part 1(n) of Schedule 1 of the FOI Act insofar as An Garda Síochána is concerned.

Section 37 - Personal Information

The provision of certain records, that are not otherwise available to the general public, concerning an individual or a number of individuals who, in the opinion of Chief Superintendent Kirwan, would be identifiable if the records were released have been redacted and refused for release to safeguard the personal information of said individual(s). The Chief Superintendent has redacted the minimal amount of distinguishing features from the record to provide maximum possible access to the record sought.

Section 37 of the FOI Act is as follows;

Personal information

37.(1) Subject to this section, a head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual).

The decision has been made in accordance with section 37(1) and hence certain sections of the "*The 2013 Audit of Salary and Pension Overpayments*" will not be released.

Public Interest Test.

I have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- Maximum openness, transparency, accountability and value for money in the use of public funds.
- There is an interest in ensuring that An Garda Síochána is accountable to the public for the decisions that they make.
- The public interest in members of the public exercising their rights under the FOI Act.

In considering the public interest factors which favour withholding the records I have taken account of the following:

- Protecting the right to privacy of individuals.
- The right of privacy of third parties,
- Public interest in protecting the ability of public bodies to carry out investigations in accordance with legislative responsibilities.

Having balanced these factors, I considered that the public interest in preserving the protection of the privacy of the individual(s) involved outweighs the public interest which would be served were the records released to you.

The audit "*The 2013 Audit of Salary and Pension Overpayments*" is attached and the list of redactions is contained in the attached Schedule of Records.

You may appeal this decision by writing to the Information Commissioner at 18 Lower Leeson Street, Dublin 2. There is a fee of €50 (€15 for medical card holder) for such appeals, other than appeals against a decision to impose a fee.

If you wish to appeal, you must usually do so not later than 6 months from the date of this notification. Should you write to the Information Commissioner making an appeal, please refer to this letter.

Yours sincerely,

 SUPERINTENDENT
HELEN DEELY
FREEDOM OF INFORMATION OFFICER

6th May 2016

Audit Review

Salary & Pension Overpayments



August 2013

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Audit Review

INTRODUCTION

The Audit Committee has considered at a number of meetings the issue of overpayments of salary and pensions of both Garda Members and Civil Service staff. As at 31st December 2012 the balance outstanding from these overpayments was reported by Garda HRM to be €607,000. While the issues relating to these overpayments mainly relate to legacy issues, the Committee wanted assurance that the current controls in relation to the payment of Salaries and Pensions are adequate.

This is a report of an audit review of recently discovered cases of overpayments. The review focussed on the systems, processes and controls in place in the Human Resource Management (HRM) of An Garda Síochána and in the Financial Shared Services Centre (FSSC) in relation to the detection of overpayments of salaries and pensions. In summary, HRM are responsible for the decisions on salaries, pensions and lump sums and communicating those decisions to the FSSC. The FSSC are responsible for implementing the decisions.

The Garda Vote provides for the payment of Salaries of all personnel in An Garda Síochána and for the Pensions of sworn Garda members. The payment of Pensions for the Civil Service personnel is made from the vote of the Department of Finance.

Audit Methodology and Scope

The review focused on recently identified overpayments of salary and pensions. The FSSC provided a list of overpayments identified in the period 1 January 2012 and 31 March 2013.

Balances of €1,000 outstanding were excluded from the selection of the audit sample on the basis that such amounts are generally recoverable. In the case of Garda Pensions Overpayments this methodology was adjusted as there were a large number of overpayments of over €1,000.

GIAS examined a number of files in the FSSC which related to overpayment cases. The procedures for identifying and recovering overpayments were discussed with the relevant staff in the FSSC. In addition the taxation effect of these overpayments was discussed.

A list of queries in relation to these cases examined, were forwarded to Garda HRM and these were discussed at a meeting on 4th July 2013 with staff of the Overpayment Section in Garda HRM Navan.

The audit methodology is in accordance with the Standards for the Professional Practice of Internal Audit as set out by the Chartered Institute of Internal Auditors.

Sample Examined

The FSSC provided a list of overpayments that were identified in the period 1 January 2012 and 31 March 2013 and which related to:

- Overpayments of Salary to Civil Servants,
- Overpayments of Salary to sworn Garda members,
- Overpayments of Pension to retired Garda members.

This list of overpayments was analysed by GIAS who observed:

- **Civil Servants Salary Overpayments**
There were 93 occurrences with a total balance outstanding of €61,049. Off these 27 (29%) were discovered in the first quarter of 2013. Some 11 (12%) of these had balances of over €1,000.
- **Garda Salary Overpayments**
There were 89 occurrences with a total balance outstanding of €142,204. Off these 52 (58%) were discovered in the first quarter 2013. Some 26 (29%) of these had balances of over €1,000.
- **Garda Pension Overpayments**
There were 76 occurrences with a total balance outstanding of €90,553. Off these 32 (42%) were discovered in the first quarter 2013. Some 55 (72%) of these had balances of over €1,000. To facilitate a detailed review of the files, the audit sample was restricted to all payment with balances of greater than €2,000 (12 in total) and a random selection of 7 occurrences that were classified as high risk and with balances between €1,000 and €2,000.

Main Findings

Civil Servants Salary Overpayments

Off the eleven cases in the audit sample, seven were included on the list provided to the Audit Committee which listed balances as at 31 December 2012. The remaining four had dates of discovery of the overpayment in the first quarter 2013.

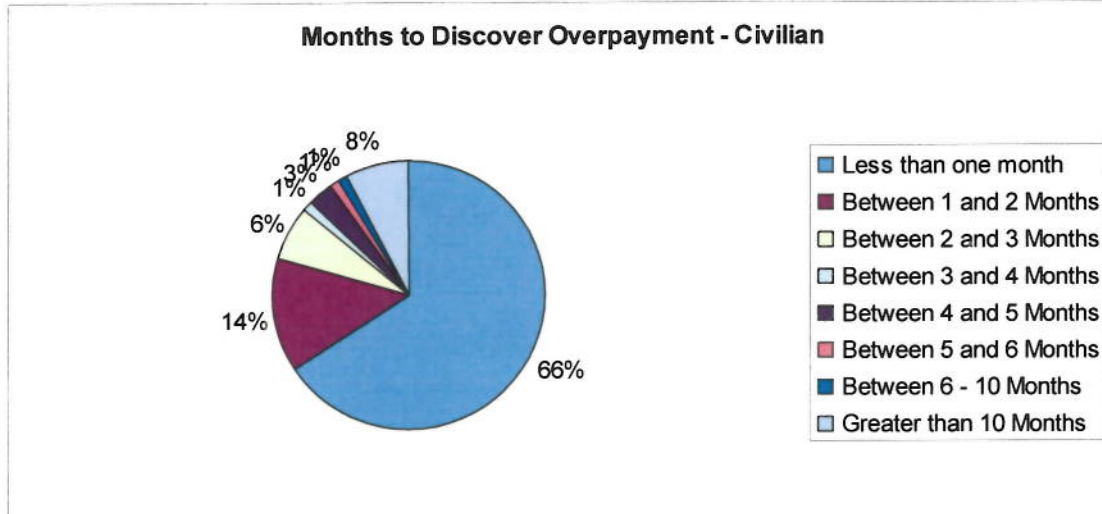
The difference between the incident date (i.e. when an overpayment first occurred) and the discovery date (when the overpayment was discovered)

were compared and the number of days intervening were calculated. The following was observed:

- One case where the intervening period was 318 days. This case related to a systems mistake in the treatment of social welfare deductions for Traffic Wardens. There are 6 related similar cases with total overpayments of €4,699.
- One case where the intervening period was 99 days. This related to late notification of suspension of increment.
- One case where the intervening period was 63 days. This related to late notification of sick absences. This was not highlighted by District Garda management and was not recorded on the Sick and Absence Management System (SAMS). The issue was discovered inadvertently by the Divisional EO and brought to the attention of Garda HRM.
- One incident of a temporary contract of employment ending but payment was made for two subsequent pay periods.

All other incidences in the audit sample were discovered within two months of occurrence.

This audit test was extended to the entire population of 93 incidences of overpayments occurring from 1 January 2012 to 31 March 2013. The following pattern was apparent.



Findings - Civil Servants Salary Overpayments

- 66% of all overpayments were discovered within one month.
- 80% of all overpayments were discovered within two months.
- Other than the case of the Traffic Warden where a wages systems error resulted in overpayments to seven staff all other overpayments were isolated incidences where local management

were slow or neglected to inform HRM of issues in relation to sickness absence or suspension of pay or increments or where HRM neglected to inform the FSSC on time.

- Garda HRM has a full list of all temporary contracts of employment with the completion dates. However HRM have informed GIAS that overpayments have occurred in the past where the contractor has left our employment early without completing the contract and HRM were not informed in time to stop payments.

Recent Improvements in Controls

As an improvement in the prevention of overpayments the following additional controls have been introduced:

- Since 2010 Superintendents are provided with a full list of staff under their area of responsibility including all Civil Service Staff.
- Superintendents are informed of the recorded sick absences on SAMS.
- All Civil Service Personnel Circulars are sent to Superintendents.
- Higher Executive Officers at Regional level have responsibility for dealing with Civil Service staffing issues
- An Employee Assistance Service is in place for all staff.
- Since February 2013 all *family friendly/work life balance* initiatives have been co-ordinated from Garda HRM; providing a *one stop shop service* and an overview of these initiatives.

Recommendations

Information and training seminars should be conducted by Garda HRM to local management typically at Superintendent or Chief Superintendent level informing them of the requirements in regard to Civil Service HR Procedures, the need to review performance of staff and to keep Garda HRM informed of all incidences that effect pay. These seminars/ information briefings could be conducted at events such as the Commissioners Conference or at Superintendents and Chief Superintendents Development Programmes. These should be supplemented by information on the Garda Portal.

Management Response:

The overpayments to a number of Traffic Wardens in 2012 were as a result of an IT issue in the FSSC which resulted in the Payroll Section not being in a position to deduct Traffic Wardens sick benefit on a weekly basis as required. This matter has been addressed by FSSC and repayment plans to recoup the

overpayments have been agreed with the staff involved and this issue should not arise in the future.

In relation to the case that was not highlighted by Garda District Management, HQ Directives 72/06 and 139/10 and Department of Finance Circulars 25/1978 and 9/2010 clearly set out the procedures for managing/recording sick leave. All of these Circulars and Directives are readily available on the Garda Portal. A further HQ Directive will issue shortly clarifying the proper procedures to be followed to claim sick benefit from the Department of Social Protection when availing of sick leave. A seminar day for all SAMS users will be held in September 2013 which will further clarify the relevant policies and procedures regarding correct recording of sick leave.

In the case where the intervening period was 99 days due to the suspension of an increment and an overpayment incurred, the following is the process for issuing increment forms (TGen3) to supervisors in respect of an employee who is due an increment::

- *The form is sent to the supervisor two months in advance of the increment due date.*
- *An accompanying letter is issued with the TGen3 giving a return date for the form one month in advance of the increment due date.*
- *There is a b/f system in place whereby reminders issue on a weekly basis if the increment form is not returned within the first month of issue.*

There is sufficient time allowed for a supervisor to complete an increment form on behalf of an employee and also discuss the ratings awarded. The onus is on supervisors to return this form in a timely manner.

Proper procedures were followed in HRM when advising the FSSC of the start and end dates of the contract for the Temporary Clerical Officer. Unfortunately due to an administrative error in the FSSC the Officer was paid for two extra pay periods. A repayment plan is currently in place whereby the ex-employee has agreed to forward €51.18 per week by way of cheque or postal order. The weekly payments are not currently up to date and this matter is being pursued by the Overpayments Management Unit.

The Director of HRM has previously been invited to provide a presentation at an earlier Superintendents and Chief Superintendents Development Programme, the presentation was designed to convey HR policies and procedures and in particular pay related procedures. Following your recommendation HRM has written to the Training Unit in the Garda College requesting that the HRM presentation is included in future Development Programmes.

The network of Regional Higher Executive Officers has certain HR responsibilities which include reporting to the HR Directorate on a number of

staffing issues. The Regional HEOs attend quarterly meetings with the HRD and at those meetings the need to act speedily in any pay affected activity is stressed. The HEO's are asked to ensure that this requirement filters down to all the Garda Stations in their area of responsibility.

The Assistant Commissioner HRM is currently considering a proposal to include a PowerPoint presentation on the agenda for the next Commissioner's Conference. The presentation, which will be similar to that presented at the Audit Committee meeting on 26th July 2013 will focus on overpayments and will stress the need for local Garda Management to ensure that any pay related instructions to both HRM and the FSSC are forwarded without delay in an effort to reduce overpayments. The next Commissioner's Conference is scheduled for 13th and 14th November 2013.

There is a specific section on the Garda Portal that relates to civilian employees (Under HR/HR Services). This section contains all Circulars issued by the Department of Public Expenditure & Reform pertaining to civilian employees. Any additional Circulars issued by DPERS are also posted on the Portal without delay.

Garda Salary Overpayments

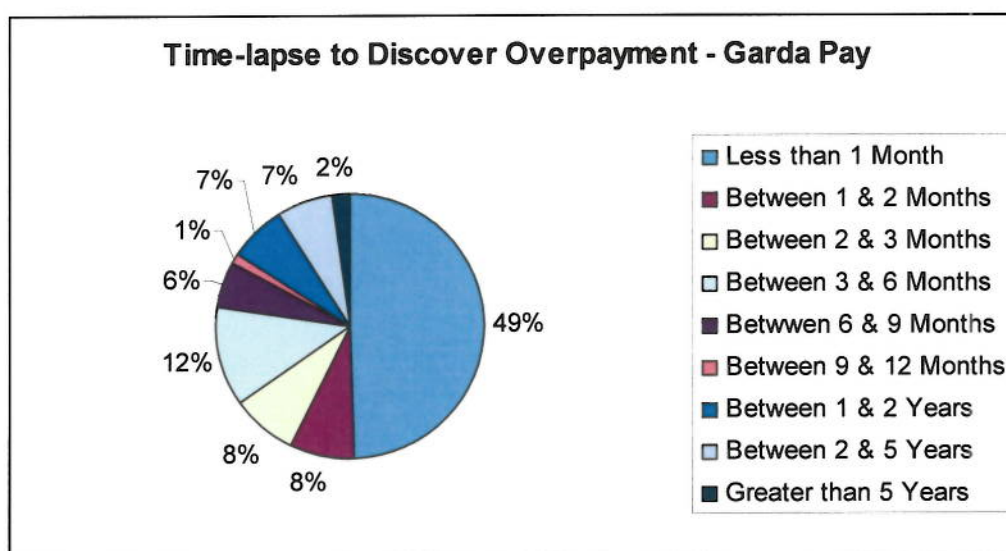
Of the 26 sampled, 14 were included on the list provided to the Audit Committee which listed balances as at 31 December 2012. The remaining 13 had dates of discovery of the overpayment in the first quarter 2013.

The intervening period between the incident and the discovery date were compared and the number of days calculated. Some long intervening periods were found as follows;

1. One case where the intervening period was 2,290 days, the overpayment amounted to €2,970: This member had taken two career breaks in [REDACTED] that were mistakenly assumed to be unpaid [REDACTED] increment date was adjusted on instruction from HRM in error. When it was readjusted the overpayment was discovered. There is one other known case of this happening.
2. One case where the intervening period was 1804 days outstanding, the overpayment amounted to €4,083: the member had taken a career break in [REDACTED] but late notification led to an over payment of 39 days. He [REDACTED] extended his Career Break and has now [REDACTED].
3. One case where the intervening period was 504 days. This occurred because of non receipt of the MC1 Form (a Department of Social Protection claim form) so that monies can be recouped from the Department of Social Protection.
4. One case where the intervening period was 450 days, the overpayment was €4,649: Late notification of going on pension related pay from 13 December 2011 to 13 February 2012.

5. 418 days overpaid arose as a result of claiming a 1/4 hour overtime above the agreed rate. Issue arose as the Sgt was signing his own A85. Spotted by Superintendent on retirement of the member.
6. 192 days overpayment arose as a result of a dispute as to whether an injury suffered occurred on duty. The Member should have been put on half pay for period 12 August 2012 to 7 November 2012 but wasn't. The member is still serving.
7. There are two incidence discovered since 1 January 2012 that go back 16 years.

This audit test was extended to the entire population of 89 incidences of overpayments occurring from 1 January 2012 to 31 March 2013. The following pattern was apparent.



Findings - Garda Salary Overpayments

- 49% of overpayments were discovered within one month.
- 57% of overpayments were discovered within two months.
- 16% of overpayments took more than one year to be discovered.
- In respect of 8 (31%) out of 26 overpayments tested the cause of the overpayment was due to the late or non return of MC1 or MB10 forms.
- In 10 cases (38%) out of 26 overpayments tested the cause of the overpayment was due to late notification of reduction of pay/removal from the payroll.
- In 2 out of the 26 overpayments tested the cause of the overpayment related to last notification of Career Breaks.
- In 2 out of the 89 cases discovered since 1 January 2012 the overpayment goes back over five years.

- In 17 out of the 89 cases (19%) discovered since 1 January 2012 the overpayment has now been repaid in full.
- The indications are that the increased scrutiny and improved controls have lead to the discovery of more cases of overpayments (e.g. 13 out of the 26 cases (50%) tested were discovered in the 1st Quarter 2013).

Recent Improvements in Controls

There have been improvements in controls which GIAS are confident prevent and detect overpayments:

- The co-ordination of *family friendly/ work life balance* policies by Garda HRM in Navan.
- The analysis of statistics from SAMS has lead to increased and quicker discovery of overpayments.
- The SAMS system should have the capacity to flag incidents where staff have gone on maternity leave but the MB10 form has not been received. In all such cases the individual and the Chief Superintendent is notified by HRM.
- In all cases of sick absence, reductions in pay are applied as set out in the procedures unless the absence is certified by the Chief Medical Officer as an injury incurred on duty. In the past some sickness absences were notified as resulting from injury on duty without reference to the Chief Medical Officer.

Management Response:

1 & 2 (page 8)

Up until 25th February, 2013, all applications for special leave, including Career Breaks, were processed in the Administration Office, Garda HQ. The only function of this Directorate was to notify the FSSC, update GRIPS and update the member's personnel file. This Directorate could only instruct the FSSC to remove a member from the payroll when it was informed of same.

Since the workload was transferred to HRM in Navan, the number of overpayments as a result of late notification due career breaks has reduced. However, if an application is delayed in the office of a Chief Superintendent and is only received by the Admin section very close to the date of commencement of the career break, or indeed in rare cases, after the career break has commenced, there is nothing that can be done by this Directorate to prevent an overpayment.

The network of Regional Higher Executive Officers has certain HR responsibilities which include reporting to the HR Directorate on a number of staffing issues. The Regional HEOs attend quarterly meetings with the HRD and at those meetings the need to act speedily in any pay affected activity is stressed. The HEO's are asked to ensure that this

requirement filters down to all the Garda Stations in their area of responsibility.

- 3 At all times, Sick Absence Management Section acts in a timely manner with regard to members pay. However, the responsibility of management of sickness absences has been devolved to local managers and Sick Absence Section relies on the information being accurately recorded. Sick Absence Section has a warning system in place assisting with the early detection of cases where pay may be affected. Again, this requires that sickness absence records are up to date and accurately recorded locally.*
- 4 An early warning system is in operation to assist the management of sick absences. However, this is dependent on the correct information being recorded at local level. This in turn allows Sick Absence Section to identify when a member is due to reach 28, 183 and 365 days absence as a result of sick absence and to make the appropriate payroll adjustments. Sick Absence Management Section works closely with local managers to ensure that all pay adjustments are effected as soon as practicable, however this requires that all records are updated and accurately maintained locally. Members are suspended on the payroll after 183 days of sick leave and a pay adjustment must be submitted to FSSC in order that the member may receive half rate of pay and/or pension rate of pay thereafter. Without details of the specific case referred to above at No. 4 we cannot comment further.*
- 5 The approval of Overtime for Garda Members is the responsibility of the District Officer and is not a matter for HRM.*
- 6 A revised system has been put in place to avoid overpayments where Injury on Duty is concerned. For all absences the provisions of Code (F)3.41 are put in place until such time as an injury on duty is determined. When Code 11.37 is issued by the Divisional Officer or the absence is classified as an Injury on Duty by the Chief Medical Officer as appropriate, the member will be restored to full rate of pay.*
- 7 Details of the two incidents referred to above at No: 7 are required in order for HRM to comment.*

SAMS is an electronic system developed to record sickness absence. This system does not have the capacity to flag incidences where staff are availing of maternity leave.

Underpayment of Salaries

In discussions with staff of Garda HRM, GIAS were informed that there is a potential issue of underpayment of salaries for certain Garda members. This has arisen as a result of the non application of legislation within An Garda Síochána since 2004. Since that date *unpaid maternity leave* should not have effected the dates on which increments should have been applied. While this provision was applied to Civil Service staff it was not applied to Garda members. The effect of this is still being examined to identify cases of underpayment of salaries.

Changes to Sick Leave Entitlement

The Haddington Road agreement has introduced changes in the entitlement for sick leave as follows;

1. Non-certified sick absence entitlement with pay has been reduced from 7 days per year to seven days over two years from 1 January 2013.
2. Certified sick leave will be reduced with effect from 1 January 2014 to three months on full pay, three months on half pay and eighteen months rehabilitation period on reduced pay.

While point one above only applies to Civil Service Staff, point two above applied to all staff. These provisions have the potential to increase the likelihood of overpayments if staff salaries are not reduced in line with these provisions.

Recommendation

HRM should remind managers that it is essential to ensure that staff on sick absence or maternity leave forward the MC1 and MB10 forms so that money can be recouped from the Department of Social Protection.

It is essential that the follow-up occurs with absent staff to ensure that MC1 and MB10 forms are forwarded to HRM so that money can be recouped from the Department of Social Protection. In one case audited a member of staff gave birth [REDACTED] without forwarding an MB10 form resulting in a loss to the Garda Vote of approximately €7,000 that should have been recouped from the Department of Social Protection. In this case no claim was paid directly to the member from the Department of Social Protection. In such cases the member and her Superintendent should be contacted to receive the MB10 form and a retrospective claim made to the Department of Social Protection.

Local management and HRM should be reminded that payroll adjustment orders must be promptly forwarded to the FSSC in good.

Local management and HRM should be reminded that payroll adjustment orders should be forwarded to the FSSC in good time so that the necessary reductions or suspensions of pay can be made.

The issue of potential underpayment of salaries in relation to unpaid maternity leave be brought to conclusion as soon as possible so that the full liability to the Garda Vote can be established and staff received the money due to them.

Garda HRM introduced an early warning system to inform staff and local management of pending salary reductions as a result of Sickness Absences.

It is recommended that Garda HRM instigate early warning systems to advise staff and local management when their salary will be reduced as a result of Sickness Absences. In relation to non-certified leave this would include a warning to staff that any further uncertified sickness will result in suspension of pay.

Management Response:

Changes to the Sick Leave Scheme for Public Servants are not as a result of the Haddington Road Agreement, but rather as a result of a Labour Relations Commission recommendation (LRC 20335 July 2012)

The responsibility of claiming maternity benefit is with the applicant. It has been confirmed that the Department of Social Protection will only allow a claim within 6 months of the birth of the child. It is not possible to submit a MB10 form and claim maternity benefit retrospectively for in excess of this period.

HQ Directive 13/2012 Revised Procedures for Processing Maternity Leave in An Garda Síochána, issued on 9th February, 2012. It was agreed that the function for dealing with maternity leave would be integrated across the organisation under the remit of Chief Superintendents/Principal Officers. The Administration Section in HRM in Navan is notified on a monthly basis when both Garda members and civilian staff avail of maternity leave and whether an MB10 form was submitted to the Department of Social Protection. Historically, the member's personnel file did not contain a copy of the application for maternity leave or copy of MB10 form, these were retained in the Divisional Offices. With effect from 1st January, 2012 the notification of maternity leave is now being placed on the members personnel file and this indicates the start and end date of the maternity leave. Paid maternity leave was also not previously recorded on GRIPS, however with effect from 1st January, 2012, the Administration Office, HRM, Navan has put in place a procedure whereby all notifications of maternity leave from Divisional Officers are now entered on GRIPS.

If the Administration Section is not informed that a Garda member is availing of maternity leave by the Chief Superintendent on a monthly basis, then there

is no way to capture whether or not the MB10, where applicable, is submitted to the Department of Social Protection

The late submission of MC1 forms is an issue that, in the first instance, must be dealt with by local management, the Sick Absence Section assists and advises local managers in this regard.

An early warning system is in operation to assist the management of sick absences. However, this is dependent on the correct information being recorded at local level. This in turn allows Sick Absence Section to identify when staff are due to reach 28, 183 and 365 days absence as a result of sick leave and to make the appropriate payroll adjustments.

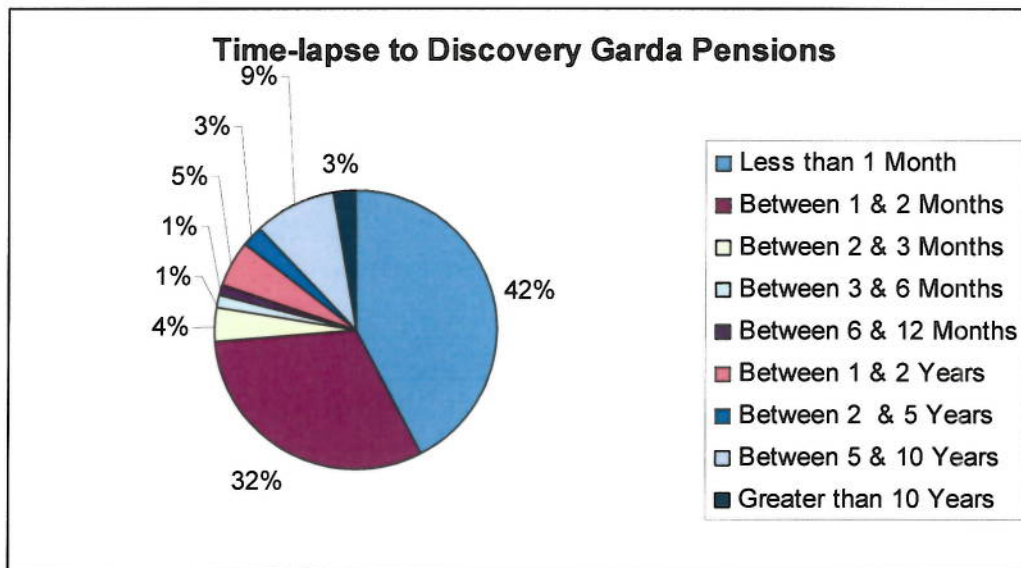
HQ Directives 72/06 and 139/10 and Department of Finance Circulars 25/1978 and 9/2010 clearly set out the procedures for managing/recording sick leave, All of these Circulars and Directives are readily available on the Garda Portal. A further HQ Directive will issue shortly clarifying the proper procedures to be followed to claim Sick Benefit from the Dept of Social Protection when availing of sick leave.

It has come to light that all applications for unpaid maternity leave since 18th October 2004 resulted in the applicant's increments being adjusted in error. Garda HRM has received legal advice and a project will shortly commence to examine all Garda members who availed of unpaid maternity leave and ensure their increment dates are put back to the correct date and payment of any arrears is made to those members affected.

Garda Pension Overpayments

Of these 76 occurrences of overpayment made or discovered between 1 January 2012 and 31 March 2013, 32 (42%) were discovered in the first quarter 2013.

A sample of 19 overpayments was selected for testing, of these 10 related to the first month paid after the death of former staff or their spouse. This arises because pensions are paid in advance. 2 related to a miscalculation of pension, 1 related to pension abatement that should have occurred when the member retired but took up a civilian posting. 4 related to overpayments of 2-3 months after death. 1 related to overpayments outstanding for two years and 1 related to overpayments for five years.



Findings - Garda Pension Overpayments

- 42% of overpayments were discovered within one month.
- 74% of overpayments were discovered within two months.
- Discussions are at an advanced stage with Staff Associations and Retired Members in relation to getting pensions paid in arrears rather than in advance as at the moment. Since a large proportion of overpayments are discovered within one month, this should significantly reduce the likelihood of overpayments being made.

Pensions to retired members, up to the rank of Chief Superintendent, and widows of retired members are paid monthly in advance. When a death occurs the pension has already been paid for the relevant month and the FSSC confirmed that it is the policy not to consider the amount paid from the date of death to the end of the month an overpayment. However, an overpayment occurs when the death is not notified in a timely manner (and this is the cause of the majority of pension overpayments) to either the FSSC or HRM and the payment of the pension is paid for the following month/months. Over 70% of instances of overpayments are due to the late notification of death. Recovery of overpayments in these instances is difficult; estates are being wound up, probate can be protracted and there is a sensitivity attached to the affair. The FSSC and HRM recognise that there would be a reduction in if pensions could be paid monthly in arrears.

The FSSC have a number of control mechanisms¹ to prevent the payment of pensions to deceased pensioners:

- Communication with the Garda Síochána Retired Members Association.
- Death event information from the Garda Central Control Unit Information Disseminator.

¹ Document given to GIAS by HEO

- Routine follow up of out of date pension cheques and on the return of EFT amounts due to closed bank accounts.
- Follow up on undelivered mail.
- Issue of Pension Declaration Forms to pensioners over 80 years of age and all foreign cases on a yearly basis with follow up of unreturned forms.
- Notification from the Garda credit unions.
- Use of the Death Event Publication System – a weekly matching process using the PPS numbers of deaths recorded in the General Registration Office against live pension cases.

In the event of an overpayment due to death a letter will issue to the next of kin seeking repayment. GIAS were advised that problems with recovering overpayments mainly occur when the surviving spouse dies and the windup of the estate has to be administered. Garda HRM have been advised by the Head of Legal Affairs that a 1925 Statutory Instrument restricts the recoupment of payments from the estates of deceased former Gardaí. This was communicated to the FSSC who have recently replied to Garda HRM requesting that some further consideration of this issues and possible amendment of the 1995 Order should be considered.

Recommendation

The combination of retirements due to service/age, early retirements and longer life expectancy, the number of garda pensioners will continue to increase. Consequently the numbers of deaths of pensioners will also increase, with implications for the incidence of overpayments. From discussions in HRM and the FSSC, GIAS is satisfied that management in these areas are aware of this and the consequent implications for increasing risk of incidents of overpayments. GIAS understand that:

- Discussions are at an advanced stage with Staff Associations and the Retired Members Association in relation to this. GIAS appreciate the difficulties as, in addition to securing the agreement of the representative bodies, Article 12(5) of SI No. 63/1925, the Garda Síochána Pensions Order, will have to be amended.
- HRM is in ongoing consultation with the FSSC in order to consider how it might be feasible to move payments from advance to payments in arrears.

Management Response:

The matter of moving the payment of Garda pensions from payment in advance to payment in arrears has been discussed with the FSSC on a number of occasions and [REDACTED] prepared an Information Note on the procedures involved. In his Note [REDACTED] points out that from the perspective of the FSSC the technical work required to move the payment of pensions from advance to arrears is not very difficult. However, such a move would impact on the payees since there would be a gap of two months between payments instead of the normal one month gap. In order to avoid

hardship one option forwarded by [REDACTED] was that a repayable advance be issued to the retired members, it would be a requirement that the advance would be repaid within the same financial year and therefore would not affect the budget.

The move from payment in advance to payment in arrears will require an amendment to Section 12(P.5) of the Pensions Order and Garda Division in the Department of Justice & Equality has indicated that such an amendment is a relatively straight forward process. A proposed amendment has been forwarded to the Assistant Commissioner HRM for his observations and consideration. The proposed amendment specifically addresses the matter of overpayments and states:

“Every grant which is a pension or allowance (other than a pension or allowance to an officer of higher rank than a Chief Superintendent or to the widow of such officer) shall be payable after the instalment, in arrears, except in the case of a refusal to quit public quarters or to give up equipment or to make any payment due to the State or to any Minister of the State. In the event of death no return shall be required of any payments which have been made in respect of the balance of the month in which the death occurred. Any overpayment of pension after the month in which the death occurs will require a return to the State”.

Recently Discovered Case

In discussions with the Garda HRM, GIAS were informed of one significant recently discovered case of overpayment of €169,958.24 (€118,889.19 net) which has not been notified in reports to GIAS or the Audit Committee to date. This relates to a retired sworn member of An Garda Síochána who

[REDACTED] in the Department of Justice & Equality. The Department had instructed the FSSC to abate this Garda pension; however, this was not done at the time.

When Garda HRM discovered that abatement was not being applied to this pension the advice of the Head of Legal Affairs was sought in relation to the interpretation of pension abatement and how it should be applied. The Head of Legal Affairs in turn referred the matter to the Office of the Attorney General. That office reverted stating that abatement should be applied in cases such, however the advices also stated that they considered what occurred was a ‘mistake of law’ and that any overpayment was not recoverable.

The employee was formally informed in writing of the position on 2nd November 2012 and in response he requested that HRM apply to the Minister for Public Expenditure & Reform for a waiver of abatement as provided for in

the relevant Statutory Instrument (236/1966). However, the Department of Public Expenditure & Reform replied stating that there was no reason to waive abatement in this case. The letter from the Department of Public Expenditure & Reform also requested An Garda Síochána to give consideration as to how the overpayment is to be recouped.

Consequently, the FSSC was instructed to abate this pension with effect from [REDACTED]. The FSSC confirmed that the gross amount of the overpayment is €169,958.24 (€118,889.19 net). HRM wrote to the employee on a number of occasions requesting that he give consideration as to how he wished to address the overpayment; however no response was received to these correspondences.

The Assistant Commissioner HRM is of the view that such a large amount of money cannot be written off unless every effort is made to recoup the amount and consequently he instructed that deductions commence from the employee's salary. The FSSC was instructed to commence deductions of €109 (gross) and the deductions are due to commence on the current payday i.e. 4th July 2013. (€109 being approximately 10% of the gross salary)

The current position is that this employee is currently in receipt of [REDACTED] in receipt of his Garda pension. However, please note that his Garda pension has been abated since 1st February 2013 thereby reducing it to €684 annually.

In response to the notification of this course of action the employee issued an e-mail to HRM on 1st July 2013 stating that he was not agreeing to the deductions from his salary and that he had referred the matter to his Solicitor.

Recommendation

GIAS recommend that this case be strenuously contested on the ground that the employee should have known that his garda pension was subject to abatement and had a duty to inform Garda HRM of the fact that it had not been abated well before the case was discovered. We agree with the actions taken by the Assistant Commissioner HRM.

Management Response:

When Garda HRM discovered that abatement was not being applied to this pension there were a number of discussions with the FSSC following which the advice of the Head of Legal Affairs was sought in relation to the interpretation of pension abatement and how it should be applied.

Since the e-mail dated 1st July 2013 from this employee to HRM which stated that he was not agreeing to the deductions of €109 from [REDACTED] a further e-mail was received on 10th July 2013 from [REDACTED]. This e-mail stated that the employee was in agreement to a deduction being made from his salary. However, in order to avoid hardship the Union representative suggested that a deduction of €20 per week was reasonable. This e-mail was forwarded to the Assistant Commissioner for his observations and a response is awaited. In the meantime the deductions of €109 per week continue to be made.

Repayment of Overpayments

Once overpayments are discovered the Overpayments Unit in Navan is informed and processes are put in place to recoup the money. The success of this is largely dependent on the degree of agreement or co-operation received from the employee or former employee. In relation to current employees agreement is usually forthcoming or if in a small number of cases no agreement is reached the Overpayment Unit instruct the FSSC to make deductions from payroll without the agreement of the individual. It should be noted that in cases of overpayments of Garda Salaries discovered since 1st January 2012, 19% have now been fully repaid. However in some cases it may take a considerable time for the overpayment to be fully recouped. It is often more difficult to recoup overpayments of salary and pension when the employee is retired. In such cases pension payments cannot be reduced to offset the overpayment without the express permission of the individual concerned. In some cases legal action may be required or threatened in order to get former employees to address their overpayment liability. In relation to the cases tested the percentage of cases with repayment plans in place where as follows;

% with Repayment Plans

Civil Service Salaries	50%
Garda Salaries	23%
Garda Pensions	21%

These are recently discovered cases and as the process evolves more of these cases will be subject to repayment plans.

The level of total overpayments is continually changing as new cases are discovered and as repayment are recouped this is constantly changing.

Recommendation

A register of overpayment balances/ Debtors ledger should be maintained by the Overpayments Unit with the assistance of the FSSC and the Garda Finance Directorate. The balance of this Debtors ledger at year end should be included as a separate item in note 2.7 (Other Debit Balances) of the

Appropriation Account and any significant write-off during the years should be highlighted as a separate item in note 6 (Miscellaneous items) to the Appropriation Account.

Management Response:

On a quarterly basis the FSSC submits to HRM three overpayments lists, Garda salary overpayments, Civilian salary overpayments and Garda pensions overpayments. On receipt of the lists the Overpayments Management Unit assess and analyses the details of the lists and categorises them as follows:

- *Total employees overpaid*
- *Employees overpaid with a repayment plan in place*
- *Employees overpaid with no repayment plan in place*
- *Employees overpaid with no repayment plan in place and currently on the payroll*
- *Employees overpaid with no repayment plan in place and temporarily off the payroll*
- *Employees overpaid who have left the organisation*

Following the analysis of the lists three booklets detailing the overpayments (including the outstanding balances) are prepared and forwarded to the Secretary of the Audit Committee and to the Director of Finance & Services for information. From this information the Executive Director of Finance & Services can include the balance of overpayments in the Appropriation Account.

HRM strives to ensure that a repayment plan is put in place to recoup any overpayments that are identified. In addition overpayments under €2,000 that are considered unrecoverable are requested to be written off by the FSSC under its delegated sanction. The overpayments in this category are generally as a result of death or are to persons who have left the organisation and have not responded to letters and reminders.

Effect of Taxation

The figures shown in the register of overpayments are gross overpayments before tax and deductions are made.

In cases where the overpayment is not recovered then the tax will also not be recoverable. In the event of write-off of such amounts the loss to the Exchequer relates to the net amount as tax has already been paid on these overpayments.

If the overpayment is discovered and repaid within the same tax/calendar year then there is no tax effect (see Scenario 1). If the repayment period straddles

two or more years and the member is still on the payroll then there may be a small tax effect (see Scenario 2). Where overpayments relates to the last three years a revised assessment can be made to Revenue and the overpaid tax reclaimed (see Scenario 3). Where the overpayment relates to several years in the past it may not be possible to recover the taxation PRSI and USC (see Scenario 4).

Scenario 1:

An overpayment of €500 is made to a member and it is agreed to repay this by deducting €100 over the next five months before the end of the year. In relation to the initial overpayment additional tax and deductions will have been made in relation to the overpayment. When the €100 deductions are made the tax will be reduced as a result of these repayments. The additional tax and deductions on the overpayment will be netted off against the reduced tax and deductions when the repayments are made. The full gross amount of €500 will be repaid to the Garda Vote.

Scenario 2:

An overpayment of €2,000 is made to a member and it is agreed to repay this by deductions of €20 a week for the next 100 weeks. The repayment period falls over the tax year boundary. Again the initial overpayment will attract additional tax and other deductions. During the period of repayment the tax will be reduced and this will net off against the original tax overpayment. However there may be small differences as tax rates and conditions may change in the next year. As tax rates are generally going upwards it is likely that slightly more than the €2,000 will be recovered to the Garda Vote. The differences are likely to be minuscule unless there are substantial changes to tax rates and conditions.

Scenario 3:

An overpayment of €1,000 is discovered in 2013 that originally occurred in 2011 to a now retired member. The retired member agrees to pay the net amount paid to him/her of €750. This is paid back to the Garda Vote in 2013. The ex-members P60 for the year 2011 should be amended and a new P35 for the year 2011 submitted to Revenue. Revenue will then repay the tax/PRSI/USC to the Garda Vote. Revenue will only allow for such reassessments up to a limit of three years.

Scenario 4:

An overpayment relating to the period 1995 – 2000 is discovered. The member is now retired. The net amount overpaid is recovered over a number of years. The overpayment relates to a period where a revised assessment is not allowable by Revenue. In this case either a special case might be made by Revenue or the taxation and PRSI/USC would not be recoverable and would be required to be written-off. While this would be a loss to the Garda Vote there is no loss to the State as this money has been paid to the Exchequer.

Conclusion

It is evident that controls in relation to reducing the likelihood of overpayment and recouping the overpayments when they occur have significantly improved in recent times. This has arisen with the deployment of experienced HRM professionals to the administration of the HRM function across the entire Garda Organisation. The centralisation of functions within the Navan facility and the use of the information on SAMS have also contributed to more effective monitoring and control. From interviews with managers in both HRM and the FSSC, GIAS formed the view that management in these areas is proactive in reducing the incidents of overpayments. GIAS are confident that there will be continued scrutiny in this area.

In the course of the Review Audit “Payroll Reconciliation and HRM Procedures, January 2013” the HR Directorate informed GIAS that it is intended to set up a dedicated HR unit to deal with all overpayments whatever the issue. This unit was established.

It is evident that this increased focus on this issue has had the effect of discovering more cases and therefore the total number of cases and balance outstanding has increased and is likely to increase further. This however is as a result of better controls and more awareness rather than as a result of lax controls.

A practice note has been developed by FSSC to deal with salary overpayments, which is equally relevant to superannuation. This note outlines the procedures to be followed in the event of an overpayment of salary to staff employed by An Garda Síochána. The procedures are designed to promote clarity of the responsibilities that apply to dealings between the FSSC and the HR Directorate when a salary overpayment occurs and to provide data to facilitate monitoring, analysis and improved controls. The Practice Note outlines the procedures to be followed commencing when an overpayment is discovered and following on to how it will be recouped. This Practice Note is under discussion between An Garda Síochána and the FSSC with a view to incorporating it into the service level agreement. GIAS recommends that this initiative be progressed.

The issue of underpayment of some staff in regard to delayed increments as a result of unpaid maternity leave should be quantified as a matter of urgency and the relevant staff paid what is due to them as soon as possible

A register of current overpayment balances/ Overpayments Debtors Ledger should be maintained by the Overpayments Unit in Garda HRM and the year end figure and any write-offs sanctioned should be highlighted in notes to the Appropriation Account.

Acknowledgement

Garda Internal Audit Section would like to express our gratitude to the staff of Garda Human Resource Management, and the Financial Shared Services Centre for their courtesy, co-operation and assistance during the course of this review.

Niall Kelly

Niall Kelly
Head of Internal Audit
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