



**REPORT ON COLLECTION AND ENFORCEMENT  
OF FINES AND FINANCIAL PENALTIES**

**February 2006**

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## Introduction

### 0:1 The Summary Justice Review Committee – Report to Ministers

The Report of the Summary Justice Review Committee chaired by Sheriff Principal John McInnes included a chapter on fines enforcement. Paragraph 32.32 of the report observes that:

**“the enforcement system as it is at present, while successful in collecting and accounting for payments which are made, fails to secure prompt payment of sums which those fined are unwilling to pay and does not cope well with those who genuinely cannot pay”**: and recommends a different approach to fines enforcement, which is:

- **consistent and flexible across Scotland;**
- **applies equally to compensation orders, court imposed fines, fiscal fines, fixed penalty notices and other financial sanctions for breaches of the criminal law;**
- **makes it easy to pay for those who are willing to pay;**
- **minimises or eliminates the involvement of courts and the police once the initial fine or other sanction has been imposed;**
- **ensures that all an offender’s outstanding fines which are in default are dealt with by a single enforcement process;**
- **eliminates direct imprisonment for fine default (in this respect the Committee supports the existing and proposed future uses of Supervised Attendance Orders (SAOs);**
- **provides clear and graduated sanctions for non-payment; and**
- **reduces or eliminates the cost to public funds of the enforcement process.**

### 0:2 Scottish Executive Next Steps paper – *Smarter Justice, Safer Communities – Summary Justice Reform - Next Steps.*

This paper was published on 22 March 2005. It outlined the way in which the Executive proposed to take forward the recommendations contained in Summary Justice Review Committee’s report -

- **Ministers believe that the courts and the public must have confidence in the fine as a sentence. The work underway is aimed at producing a package of measures that are firm but fair. These will maintain the credibility of the fine as a sentence, and make clear to those who play the system that they will be actively pursued if they do not pay.**
- **As unification proceeds (on a sheriffdom by sheriffdom basis) the administration of all fines imposed and collected by the summary criminal courts will become the responsibility of SCS. SCS will be responsible for the collection and enforcement of all court fines, fiscal fines and registered fines post unification.**
- **We will develop enhanced administrative arrangements to ensure fines are effectively enforced in liaison with key stakeholders – and bring forward legislation to achieve this where necessary in the lifetime of the current Parliament.**
- **An SCS led project team will investigate a number of other potential improvements to the current fine enforcement regime in liaison with key**

**stakeholders. Where these prove to be beneficial they will be rolled out nationally. Where necessary, legislation will be introduced in the lifetime of this Parliament making it possible for pilots of new approaches to take place, and national roll out to proceed where they prove to be successful.**

The paper also concluded that fines enforcement should remain within the overall control of the courts rather than a stand-alone agency, as recommended by the Summary Justice Review Committee.

### **0.3 Fines Working Group - Remit**

A Fines Working Group led by the SCS was formed in November 2004 with the following remit:

“To produce policy proposals in relation to fines and fines recovery

- to improve, where possible, collection rates, with the focus on maximising collection as opposed to routine enforcement;
- for more effective recovery processes for fines and penalties (including non-court imposed fines and penalties);
- to minimise police and court intervention; and

which will contribute to the effectiveness of the fine as a sentence.”

Membership of the working group included SCS operational managers and officials from the Justice Department.

This report sets out the working group’s interim recommendations and conclusions. These are informed by work which the working group commissioned into specific aspects of the existing fines enforcement system in Scotland (Part 2 of report), and by a preliminary evaluation of the recent changes to fines enforcement, which have taken place in England and Wales following the introduction of the Courts Act 2003 (Part 3 of report).

The recommendations focus on a range of fines collection and enforcement measures that the group believes could be effective and lead to improved performance. The group recommends that some of these measures be piloted to test their effectiveness, prior to national implementation. The recommendations are also subject to more detailed analysis of district court systems for collection and enforcement of financial penalties, and consultation with key stakeholders.

Where legislation is necessary, this will be introduced in the lifetime of this Parliament.

### **0.4 Membership of working group**

The working group members were:

**Chairperson:**

Eric McQueen, Scottish Court Service, Director, Area North

Stephen Bain, Scottish Court Service, Assistant Area Director, Area West

Peter Farry, Sheriff Clerk Depute, Edinburgh

Ann McCardle, Sheriff Clerk Depute, Kilmarnock

Ian Clark, Senior Researcher, Scottish Court Service

William McCulloch, Scottish Court Service, Court unification and Fines Project Team

Douglas Potter, Scottish Court Service, Court unification and Fines Project Team

Tom Fyffe, Scottish Executive Justice Department

Richard Wilkins, Scottish Executive Justice Department

## Executive Summary

### Issues identified

- The current payment rate of almost 80% in sheriff courts is good, although it could be improved upon. However payment is often only achieved after significant levels of intervention from the courts (1.3.1 and 2.2.2)
- Methods by which fines can be paid have not changed much in recent years in sheriff courts. Payment methods also vary considerably across district courts. Most payments are made at public counters and by post. Credit card payments cannot be made at any sheriff courts. Fines imposed at one sheriff court cannot be paid at another, unless judicial approval is obtained for a transfer of fine order. There is no way of paying a sheriff court fine at a district court, or a district court fine at a sheriff court. (1.1.1 – 1.1.2) Sheriff court fines cannot be paid at outlets such as the post office (3.4.2).
- The Scottish Court Service's new IT system, COPII, will be in use in all sheriff courts by the end of 2006. The system has a number of features which can be used to make the payment and collection of fines easier and more efficient (1.4.1).
- There is a correlation between an offender's employment status and the likelihood that they will pay their fine. In addition, people without any previous convictions seem to be much more likely to pay their fines than people with previous convictions (2.3.1).
- In England, despite its notably low response rate, the new improved means information form has been welcomed as a way of helping appropriate penalties to be set and appropriate enforcement methods to be used. (3.3.1).
- Some of the staff time currently spent dealing with enquiries about fines could be avoided if better information were provided at the time of imposition/or was made available to offenders about fines payment and enforcement processes. (2.2.2)
- Enforcement action involves warning letters and citations to fines enquiry courts. These methods are often employed several times for the same fine. Fines enquiry courts often have little effect – in Aberdeen, more than half of the sample of offenders summoned to a fines enquiry court failed to appear. There are limited sanctions, other than imprisonment; although the use of supervised attendance orders is increasing. (2.2.2)
- A substantial number of those fined - 9% in Edinburgh and 10% in Aberdeen, according to our data analysis in these courts - are imprisoned (2.2.2).
- The Department of Constitutional Affairs in 2004 carried out a number of pilots to test different enforcement methods. These include the automatic use of Attachment of Earnings Orders or Deductions from Benefits; the threat of credit blacklisting; vehicle clamping; and mandatory increases in fines if payment is not made promptly. The DCA's evaluation and a subsequent meeting with HMCS officials suggest that some of these new enforcement methods have the potential to improve the fines collection rate or simplify fines collection procedure. (3.3.1-3.3.3 and 3.4.1)

## **Recommendations**

- **A fines business redesign project team should be established to implement and evaluate the changes to the fine enforcement system (5.1);**
- **Fine enforcement should change from being court based to being a largely administrative process (5.2);**
- **Fines Advisors should be introduced in areas hosting pilot schemes. In at least one area the fines advisor, rather than the sheriff, should set the time to pay conditions for offenders (5.2.1);**
- **New methods of payment including credit cards supported by web based technology should be considered (5.2.2):**
- **The cost of introducing payment cards and the associated technology should be investigated to see if it is cost effective (5.2.2);**
- **The introduction of a centralised telephone payment method should be fully scoped (5.2.2);**
- **An improved means form should be introduced to provide better information about an accused's income and expenditure (5.2.3);**
- **Sentencers should have access to accurate and up to date information on any outstanding fines an offender may have (5.2.4);**
- **The court should make a collection order, when imposing a fine, which authorises the fines advisor to initiate specified enforcement actions (5.2.5);**
- **Improved information should be given to offenders about the amount of money they need to pay, possible methods of payment, and the sanctions that will be applied if they do not pay their fine (5.2.5);**
- **The possibility of using a credit reference agency and police and Department of Work and Pensions data bases to trace offenders should be investigated (3.5 and 5.2.6);**
- **Fines advisers should be empowered to transfer a fine or other financial penalty to another court in Scotland or England and Wales where this is necessary for enforcement purposes (5.2.7)**
- **Administrative sanctions to be pursued include the automatic use of Arrestment of Earnings and Deduction from Benefits orders (5.3.1);**
- **Pilot schemes for different enforcement methods, such as vehicle wheel clamping, should be introduced in sheriff courts and fully evaluated before national roll out of changes identified as successful (5.3.2);**
- **The option of civil diligence should be included in the range of enforcement actions to be included in the collection order, and to be administered by the fines advisor (5.3.3); and**
- **Imprisonment as an alternative sanction for non payment should only be considered after other sanctions have been tried and failed (5.3.4).**
- **A sheriff or lay justice should be empowered to deal with fines defaulters referred to the court by the fines adviser, whether the fine be a sheriff or district court fine, and to enable all of the offender's outstanding fines to be reviewed at the same time, including outstanding fines from other courts of summary jurisdiction in Scotland (5.3.5)**

## **Part 1 - Collection and Enforcement of Financial Penalties in Scotland**

### **1.1 Current position**

At present the sheriff and district courts operate under the management of the Scottish Court Service and local authorities respectively. As part of the Summary Justice Reform programme these courts and their separate areas of business will be unified and administered by the SCS. Work on this is progressing and currently the plan is to phase unification sheriffdom by sheriffdom across the country over a number of years. Subject to the passage of legislation, unification of the first sheriffdom will not take place until at least the 2007/08 financial year. Improvements to the collection and enforcement of financial penalties are not necessarily dependent on court unification and can be implemented separately from the process of unification.

There are 49 Sheriff Courts in Scotland and 65 District Courts. Unification provides an opportunity to harmonise working practices in these courts, taking on board good practices and innovations in collection and enforcement of financial penalties from both tiers of summary court.

Sheriff courts currently are responsible for collection and enforcement of court imposed fines and compensation (including those imposed by the High Court). In addition to court imposed fines. The district courts are responsible for collecting and enforcing a range of other financial penalties.

#### **1:1:1 Sheriff Courts**

The process for collecting and enforcing fines and compensation orders imposed in the sheriff courts is much the same across the country, although some local variations exist. The IT system (COP - Criminal Operations Project) used in sheriff courts enables court staff at a local level to regulate the collection and enforcement process. The COP database also provides management information against which performance can be measured. Annex A provides an indication of the overall performance in fines collection in sheriff courts in the period 1995 to date.

Methods of payment of fines and compensation orders imposed by sheriff courts have remained largely unchanged for many years; the most common methods being payment at sheriff court public counters and by post. A more recent change has been the facility to make payment by debit card, and this has enabled payment to be made by telephone. Currently it is not possible to make payments directly at any other outlet (e.g. post offices or other cash payment outlets) or by credit card.

Each sheriff court is self-contained in its management of the fines collection and enforcement process. Unless a fine is transferred to another court it is not possible for someone to pay a fine at any court other than the court of imposition. A transfer of fine order requires judicial approval, and can be made when an offender moves to another court jurisdiction. There is, however, no provision to enable fine transfers between the sheriff and district courts.

Following imposition of the fine the offender is advised in court when and how the fine should be paid (i.e. by instalments or within a fixed period of time). This is the only notification that an offender appearing in court will receive. Those pleading guilty by letter will be sent a letter with basic instructions on how and when to make payment.

Thereafter, if the fine is paid timeously, no further intervention is necessary. An electronically generated trawl of all outstanding fines accounts is carried out at regular time intervals in each court. The trawl provides updated information of fines accounts in default and indicates an appropriate course of enforcement action. The first enforcement action is to send the fine defaulter a warning letter. Thereafter, if default continues, the offender may be cited to appear at a fines enquiry court, where further time to pay may be allowed or the instalment rate may be varied. The alternative of a supervised attendance order or a period of imprisonment or detention may also be imposed.

The system relating to the collection of fines and for enforcement in the event of default is largely prescribed in legislation (Criminal Procedure (Scotland) Act 1995). The processes in pursuing fine defaulters involve a combination of administrative and court based follow up action. The weighting, however, is to the latter and a considerable amount of court and shrieval time is devoted to dealing with fine defaulters.

### 1:1:2 District Courts

The processes and sanctions available for enforcement of court imposed fines are similar to those in the sheriff court. District courts also require to recover a range of non-court imposed financial penalties, including fiscal fines, and fixed penalties, which can only be enforced by use of civil diligence.

Subject to any statutory requirements, local authorities manage their own collection and enforcement policies. The indications are that there are variations in payment arrangements and methods. In some areas payments may be made at any council offices, in others payment can only be made at a court. There also appear to be variations in enforcement practices, with some courts not issuing warning letters. Many, but not all, district courts accept payment by credit card, and some also have facilities for online payment. Further analysis of district court systems, including IT systems, and collection and recovery processes is required.

## **1:2 Costs of collection and enforcement of financial penalties**

Some preliminary work has been undertaken to assess the costs of recovery of fines and other financial penalties. Further work is required to provide more robust data.

### 1:2:1 Sheriff Courts

The working group, in an effort to determine the staff costs associated with fines collection and enforcement in the sheriff courts surveyed all sheriff courts. The results of this survey indicate that sheriff court staff costs for collection and enforcement work are around £1.2 million per year (see Annex B).

### 1:2:2 District Courts

Work is underway to build up a profile of staff employed by local authorities, including details of the number of staff engaged in the administration, collection and enforcement of financial penalties. This information is not yet available. However, discussions with district court clerks of court have indicated that this work may amount to 60-65% of administrative work. There are difficulties in breaking this down within some authorities due to the fact that some administrative staff perform a range of duties, with recovery of financial penalties taking up only a small percentage of their working time. On the basis of the limited information available it is estimated that the total staff costs might amount to just under £2.0 million (see Annex B).

### 1:2:3 Overall costs of recovering fines and financial penalties in Scotland.

Overall staff costs incurred by the SCS and local authorities are estimated, very approximately, at £3.2M. This estimate does not, however, take account of the time, particularly court time, spent in this process by Sheriffs, justices of the peace and district court legal assessors. It also does not include costs incurred by other agencies, notably the police in processing and executing warrants. Legal aid is available to those offenders cited to appear at fines enquiry courts, and these costs are not included either.

A preliminary estimate of the costs in the sheriff court of the fines enquiry court, the most frequently used enforcement action, puts the annual costs at around £4.3m. This covers SCS staff costs, judicial time, police time enforcing fines warrants, and legal aid. The breakdown of this estimate is –

SCS / Judicial	£0.8m
Police warrants	£3.0m
Legal Aid	<u>£0.5m</u>
Total	£4.3m

The savings in making the enforcement process more administrative are therefore, potentially substantial.

### **1:3 Fines collection and enforcement – financial profile**

#### 1:3:1 Sheriff Courts

Annex A provides details of fines imposed in the High Court and Sheriff Courts in Scotland from 1993-94 to 2003-4. Fines imposed for the most recent year amount to just over £15.2m<sup>1</sup>. While the monetary value of fines imposed over this period has increased, the number of accounts has reduced. This indicates less usage of the fine as a disposal; although there was an upturn in 2003-04.

If the percentage of fines which are eventually paid remains at around 80% as Annex A indicates, then approximately £3M of fines will be left unpaid each year. As can be seen from Annex A over £2m is discharged each year largely as a result of fines being discharged or written off as unenforceable – of these, around 12% are discharged by the fines defaulter serving an alternative sentence of imprisonment.

#### 1:3:2 District Courts.

The Scottish District Courts Statistical Bulletin 2003-4 reports that £9.05m was collected in payment for fixed penalties and fiscal fines and £5.02m was collected in payment for court imposed fines, registered fines and compensation orders, making a total collected of £14.07m.

The report also indicates that £6.8m was outstanding in respect of court fines, registered fines, fiscal fines and compensation orders at the year end for 2003-04 (this figure will reduce over time as fines and penalties are paid and/or discharged), and 3179 offenders were imprisoned for non-payment of fines and financial penalties.

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<sup>1</sup> The information about fines in Annex A is taken from the COP database and includes fines up to £5k. This amount was chosen to exclude company fines and confiscation orders, which are generally of a higher amount than £5k.

It is difficult to assess, on the basis of the published data, the effectiveness of the district court recovery systems, collection rates or imprisonment rates.

#### **1:4 Work in progress**

##### **1:4:1 I.T. Enhancements – COPII**

By the end of 2006 the Scottish Court Service will have rolled-out to all sheriff courts an upgrade to the COP IT system (COPII).

This enhanced system has a number of new features. These include providing information to sentencers about outstanding fines, and details of any defaults in payment. This should assist in deciding whether or not a fine is an appropriate disposal. Fines will be payable at any sheriff court without the need to transfer the fine to that court. If financial penalties have to be transferred for enforcement, then the system will permit that to be done electronically without the need to photocopy court papers.

COPII will also provide opportunities to make some services more efficient and cost effective. Postal and telephone payments could be processed from a single location and monies received on behalf of third parties (compensation for victims of crime) could be disbursed centrally using a cheque printing function to improve efficiency. In addition, all trawls of outstanding fines could be run from a central location. It will also be possible for fines to be paid online and at outlets other than courts (e.g. post offices and banks).

## **Part 2 Systems Analysis - Fines Collection and Enforcement System**

### **2:1 Introduction**

The working group commissioned analysis of the sheriff court fines collection and enforcement system. The focus of this work was aimed at identifying:

- waste (inefficiencies) and causes of waste in the system; and
- any trends in offender profile or crime type which might provide predictors of whether fines are likely to be paid or not.

Data was analysed from fines imposed at Aberdeen and Edinburgh Sheriff Courts in 2003-04.

### **2:2 Aberdeen and Edinburgh analysis**

#### **2:2:1 Methodology**

A sample (10%) of all court-imposed fines in Aberdeen and Edinburgh in the year 2003-04 was randomly selected. This provided 302 cases in Aberdeen and 444 in Edinburgh. Findings from the analysis are indicative due to the limited size of the sample.

SCS staff directly involved in the fines collection and enforcement process at both courts also maintained a record of the main categories of enquiries they received over two working weeks by personal contact with customers making or enquiring about fines payments at public counters, on the telephone and by post. A total of 1843 enquiries were logged. This part of the project was aimed at providing information to assess the extent of 'waste' in terms of staff time spent fielding questions which might be reduced by the provision of better information to fines payers about the fine collection and enforcement process.

#### **2:2:2 Examination of system**

The findings from the analysis of the systems in the 2 courts were broadly similar, and are consistent with the assessment of the fines enforcement system reported by the Summary Justice Review Committee.

The majority of fines defaulters receive some form of enforcement action, with a sizeable minority receiving repeat warning letters and repeat citations to Fines Enquiry Courts (FECs).

Overall 19% of offenders account for the majority of FEC activity.

Attendance at FECs is low with significant numbers failing to appear. For those who do appear the picture is one of repeat orders allowing further time to pay. Significant numbers of fines defaulters end up in prison.

The main findings are -

#### **Payment of Fines**

- 73% of offenders end up paying their fine (this figure is likely to increase over time due to some fine accounts still being open);
- only 25% pay their fines without any court intervention

### Enforcement actions – warning letters and citations to FECs

- up to 75% of offenders will receive a warning letter and/or citation to a FEC.
- Some offenders will receive repeat warning letters and citations, before the fine is paid or an alternative sanction is imposed.

### Outcomes at Fines Enquiry Courts

- Failure to appear (warrant issued): Aberdeen 51%: Edinburgh 37%
- Further Time To Pay Aberdeen 30%: Edinburgh 44%
- Overall 19% of offenders account for 73% of all FECs

### Imprisonment

- 10% of accused fined in Aberdeen, and 9% in Edinburgh end up in prison. These figures are slightly lower than the national average, which is just over 12% (see Annex A).

Despite this evidence of inefficiency, it is worth noting that 25% of fines offenders pay their fines without any administrative or court intervention.

### Analysis of Enquiries to court staff about fines

The analysis of enquiries made of court staff about fines indicates some waste in the system at the front end. Many of these enquiries could be avoided if better information was provided to fines offenders about payment and enforcement processes. This applies particularly to those who appear in person, as under the current system they do not generally receive any written confirmation about fines payment methods and court sanctions in the event of default.

### 2:3:1 The fine as a disposal

The analysis also provided some information about payment rates for crime/offence and offender types. This allowed some provisional conclusions to be drawn about the appropriateness of the fine as a disposal in different circumstances. Analysis, however, was only possible on the Aberdeen sample, and reliable employment records were not available in all cases. In addition, the employment information that was available related to the employment status of an offender at the time that the crime/offence was committed, rather than at the time that the offender was sentenced. Information about the means of offenders was not available.

Subject to these caveats, the main findings are that:

- 95% of offenders with no previous convictions pay their fines;
- 87% of offenders who are employed pay their fines,

Further analysis into certain crime/offence categories revealed fairly low payment rates in those charged with common law crimes such as Breach of the Peace and Assault. This was in contrast to higher payment rates for those fined for road traffic offences.

The tentative conclusions from this piece of work are that:

- offenders who are unemployed, or who have previous convictions, are less likely to pay their fines; and

- there could be a correlation between crime type and rates of payment. This could, however be affected by the different offending histories and/or employment status.

## **Part 3 The Courts Act 2003 – pilot schemes for fines enforcement in England and Wales.**

### **3:1 Introduction**

The Courts Act 2003 introduced a number of changes to the court system in England and Wales. These included a range of measures to improve the effectiveness of the fine as a penalty.

One of the main reasons for changing the system was that the collection rate for fines and penalties was very low - 50% nationally, and in some areas as low as 10-20%. The credibility of the fine as a sentence was being substantially undermined and the need for reform was evident.

The working group's examination of the changes introduced by the Courts Act 2003 included meetings with the Head of the Department of Constitutional Affairs Enforcement Programme, with court officials from Cumbria Magistrates Court, one of the pilot areas, and the Midlands Regional Director for Her Majesty's Court Service.

This part of the report comprises a summary of the changes initiated by the Courts Act 2003. The working group's assessment of their applicability to Scotland helps to inform the recommendations made in Part 5 of this report.

### **3:2 Summary of change in England and Wales- Courts Act 2003**

The enforcement programme set up by the Courts Act 2003 is based on three principles:

- Fine enforcement should be an administrative process, and should not take up the time of magistrates;
- There should be every opportunity for the offender to co-operate and to pay the fine promptly, but persistent offenders should not be able to play the system; and
- Help should be available for those who are genuinely struggling to pay.

Before these new measures were introduced nationally, it was decided to test them in a number of areas to determine whether they worked, to what extent they worked and how they might best be deployed. These areas were designated as pilot areas. The pilots started in February 2004 and were evaluated in September 2004.

The new measures consisted primarily of two distinct areas:

- Structural change; and
- New sanctions.

#### **3:2:1 Structural Change**

The structure of the new scheme is based on:

- Collecting good quality information at the beginning of the process. A new means information form was introduced, supported by the creation of a new offence of failing to supply means information.
- Legislation created a new methodology for payment called a collection order. In the pilots, a collection order had to be issued for any fine to be subject to the enforcement methods specified in the Courts Act 2003. Collection Orders

were also intended to ensure that certain enforcement steps could be applied automatically in relevant cases.

- Creation of the role of Fines Support Officer. Fines support officers were empowered to take on the administrative management of the collection and enforcement process on behalf of the courts.
- Automatic use of Arrestment of Earnings (AEO) and Deductions from Benefits (DB) orders.

### 3:2:2 New Sanctions

The Courts Act 2003 introduced the following new sanctions -

- Fines increase;
- Registration (credit blacklisting);
- Vehicle wheel clamping; and
- Fines payment work.

Fines discounts in the event of prompt payment were also legislated for, but have not been implemented. Each of the pilot areas was given some latitude on which sanctions to introduce. The basic principle was that the sanctions used should be appropriate to the payment profile in individual areas. Accordingly the material for evaluation varies from area to area. Although evaluation continues, some data is available and is briefly examined in the next paragraph.

### **3:3 Evaluation of change in England and Wales – Courts Act 2003**

There were five pilot areas – Cambridgeshire, Cheshire, Cumbria, Devon & Cornwall, and South Yorkshire - which contributed to the evaluation. Within these areas, some courts introduced the new measures and others, designated as control sites, did not. The pilots started in February 2004.

It should be noted that certain measures – the automatic use of AEOs and DBs and the introduction of the new means form – were rolled out across all Magistrates Courts commission areas in England and Wales in a national pilot commencing in April 2004.

#### 3:3:1 Evaluation of structural changes

For the purposes of this report the findings have been summarised in brief.

##### Standardised means form

Court Officials report being happy with the introduction of this form, recognising that good quality information is essential for effective enforcement. The response rate of 27% is still low, reflecting the fact that many offenders do not attend court in person and do not return the means form by post. The potential benefit of the creation of a new offence of failing to supply means information has not materialised, as, at the time of the evaluation, there had been no prosecutions for failure to comply.

##### Collection order legislation

The collection order has been welcomed as simple and easy to use and the statistics in the pilot areas show good financial returns. The DCA's evaluation of the pilots

recommended that the fines notice and the collection order should be combined in order to provide a simpler message to defendants.

### Fines Support Officer

The clear view in each of the pilot areas is that the new role has been extremely beneficial, bringing a fresh focus to the collection and enforcement of fines. In most areas this has resulted in a significant transfer of business out of fines courts. The main benefit associated with the fines support officer (initially referred to as Fines Officers) in the pilot areas is a more focussed and proactive approach to fines enforcement, backed by legislation. See paragraph 3.4.1 for details of the key responsibilities of the fines support officer.

### Automatic use of AEOs and DBs

The automatic use of AEOs has led to an increase in their use. This has been successful, particularly in the pilot areas, against offenders in employment. The limitations in DBs – primarily the low level of the deduction payment rate – are acknowledged. The deduction rate has been increased to £5 per week since the evaluation was carried out.

### 3:3:2 Evaluation of new sanctions

#### Fines increase

Automatic use of the fines increase sanction appears to have created difficulties, including:

- administrative complexity;
- negative impact on the payment rate; and
- delays to the enforcement process.

More significantly, it appears that this sanction has had little impact on wilful non-payers.

#### Registration

The *threat* of credit blacklisting is thought to be more effective than the actual use of the sanction. It has not been possible to maintain an accurate record of the number of offenders responding to the final warning letter sent before registration. For that reason, it is difficult to reach a conclusion at this time on the overall effectiveness of this sanction.

The information that is available indicates that where the threat of blacklisting is ignored the effectiveness of following through with the registration process is limited. In one area where it has been widely used, only 8% of people on whom the sanction had been used paid their fine within the period (28 days) within which their details could be removed from the register. It is thought likely that people who are not responsive to the threat of credit blacklisting are people who are either difficult to contact or make little use of conventional sources of credit.

### Vehicle Clamping

At the time of the evaluation, clamping had only been used in a relatively small number of cases and consequently for the purpose of this report the working group are unable to make any realistic evaluation of this sanction.

### Fines Payment Work

Before using this sanction, the offender must meet a number of personal criteria. They must be in the category of genuinely having difficulty in paying the fine, be willing to undertake unpaid work, and there must be suitable and appropriate unpaid work for the offender to undertake. At the time of the evaluation this sanction had only recently been implemented and evaluation has not been possible.

### 3:3:3 Interim Conclusions – Recommendations

Overall the pilot areas appear to be very positive about the new enforcement scheme, and accept that there are potential benefits from most of the new sanctions, if properly targeted. The evaluation of the changes has not yet reached the stage where a clear assessment can be made on the overall impact on payment rates, although in some areas the payment rate has gone up from 50% to 80% (80% being the average enforcement level in Scotland at present). Performance in the pilot areas has generally been better than in the non-pilot areas.

In addition to improved payment rates, evidence has been found of:

- Savings in court time through the transfer of business from Fines Courts to Fines Support Officers; and
- Improvements in the quality of means information, enabling improvements in subsequent enforcement.

The following further benefits were anticipated, but, at the time of the evaluation, had not yet been proven:

- Streamlined administration of the collection and enforcement process – the requirements of evaluating the pilots created additional administrative burdens that masked processing improvements.
- Reduction in enforcement costs in the later stages of the process – through a fresh focus on collection at an earlier stage from the Fines Support Officers; and
- Improved capability to deal with those who can't pay. The difficulty in demonstrating improvements in this area is attributed largely to the delay in implementing fines payment work.

Returning to the three principles outlined at paragraph 3.2 above, the conclusion is that:

- The principle of administrative management of the enforcement process has worked very successfully, with fines support officers taking over a range of functions from the court.
- The new scheme and sanctions offer a more structured and rigorous approach to enforcement than was previously the case.
- There have been considerable benefits from the fines support officers building relationships with defaulters to encourage and facilitate payment.

### **3:4 Operational perspective – pilot area - Cumbria**

Cumbria is primarily a rural area, and so the problems it faces in collecting and enforcing fines differ to an extent from those encountered in major cities. Nevertheless, court officials were able to comment on the general applicability and effectiveness of the processes and sanctions used in the fines enforcement pilots. The description of the Cumbria pilot below draws heavily upon the accounts of the officials that working group members met with in Cumbria.

Like all pilot areas, Cumbria was given some autonomy over the sanctions to be used in the pilot.

#### **3:4:1 The Cumbria pilot – change process**

##### **Fines support officer**

Cumbria invested heavily in introducing and developing the role of the fines support officer in two of their busiest courts - Kendal and Barrow in Furness. Existing members of court administration staff took on the re-designed role. Although reliable statistical evaluation was not available because the changes were at an early stage of development, managers and staff felt very positive about the introduction of this new role. They highlighted the following factors as contributing to its success.

- **Planning**

The planning involved in establishing the new roles included selection of suitably experienced members of staff, identification of generic and specific training needs for the role, briefing all staff and stakeholders and securing the support of legal professionals and magistrates.

- **Visibility**

The fines support officers were encouraged to be proactive, visible and accessible in the new role to customers and stakeholders. In addition, their offices were situated in the public areas of the court buildings.

- **Process**

Fines support officers were given the authority to enforce fines through actions, which would previously have required a court decision. Their ability to intervene from the time when the fine was first imposed was an important element of this process. The fines support officer often met the offender immediately after the imposition of the fine. This meeting provided an opportunity to ensure the availability of means information - a key element in any future imposition of sanctions.

- **Credibility - Time To Pay**

Staff felt strongly that the change made to the way in which timescales for payment were set was the most important factor in giving credibility to the new role. Similar to the practice in Scotland, it had previously been the case that in Cumbria a magistrate imposing a fine would set the timescales for payment – normally after considering proposals made by the accused or his/her legal solicitor. As part of the Kendal pilot, the job of setting time to pay was allocated instead to the fines support officer. To support this change, it was agreed that all fines imposed should be payable within 14 days unless a variation could be negotiated with the fines support officer.

The practice thereafter was for the offender to have a first interview with the fines support officer before leaving the court building. Setting an appropriate time to pay was an important part of this interview. The empowerment to conduct these negotiations with the offender afforded a good level of credibility to the role of the fines support officer from the outset. The initial interview was also the starting point for the development of future relationships between the recipient of the fine and the fines officer.

- **Relationship Building**

Although no formal arrangements were put in place in Cumbria for fines support officers to be proactive, beyond managing future correspondence with customers, the informal practice that was encouraged was for a relationship to develop where people would telephone the fines support officer regularly to discuss any aspect about fine payment. Early indications were that it was this relationship that was likely to prove to be the key aspect of the developing process.

- **Structure**

A new structure is being established whereby fines support officers in individual courts will work under a fines officer in each petty sessional area. The fines officer with responsibility for a wider area has both a management and strategic role.

### Sanctions

Cumbria introduced new information notices to be provided to offenders highlighting that sanctions would be used rigorously in the event of default.

- **AOEs and DBs**

The automatic use of AEOs and DBs was the first sanction available to the fines support officer. The threat of this action seems to have been effective, since many defaulters have paid when threatened with an AEO or DB. No major difficulties were experienced in enforcing AEOs and DBs when necessary, although it was noted that it is not possible to deduct money from incapacity benefit.

- **Fine Payment Work**

The conversion of a financial penalty to 'fine payment work' was a sanction available to the fines support officer but had not yet been used. This was primarily because of the extensive range of criteria that have to be satisfied before considering this as an appropriate alternative disposal. At the time of the visit no offenders had satisfied the criteria.

- **Fines Increases**

Cumbria is different from the two other pilot areas, which used fines increase (Cambridgeshire and Cheshire) because it took considerable steps to trace people before applying the increase. This made a major difference to the number of times the sanction was used – Cumbria used a fines increase 35 times during the six months of the pilot, whereas Cheshire and Cambridgeshire used it 1082 and 2421 times respectively. Cumbria, therefore, did not have the difficulties with fines increase noted in paragraph 3.3.2. However, court officials felt that it was not a significant element in improving fine enforcement.

- **Clamping and Credit Blacklisting**

At the time of the visit, vehicle clamping and registration were about to be rolled out. Accordingly no evaluation has been possible in that area.

### 3:4:2 Fines payment - the allpay.net card/on-line

One of the main methods used to pay fines in Cumbria is the Allpay payment card. This method of allowing people to pay fines was first introduced in Cumbria in 2001 (it is not dependent on any legislation) and 58% of all fines imposed are now collected via this method. The allpay.net card is also used in other areas in England and Wales.

The allpay.net card operates like many other payment cards currently in operation and is accepted through the following outlets within the UK:

- 19,000 rural and city Post Offices;
- 7000 Pay Point outlets – including local stores and garages; and
- Any allpay.net automated terminal.

Systems can also be set up to enable payments to be made:

- By telephone direct to allpay.net or direct to the client; and
- At any internet enabled PC.

The payment systems offered by Allpay can also be obtained from other providers.

More detailed research will require to be carried out into the costs and operational implications of these schemes. It does, however, offer possible benefits as part of any package designed to improve the collection of fines. In Cumbria, the option of paying fines by payment card has reduced the need for cash payment offices in courts, enabling resources to be diverted to more proactive enforcement activity.

### **3.5 Tracing offenders**

Magistrates' Courts in England and Wales have been provided with access to a database to help them track down hard-to-find offenders who have defaulted on court financial penalties. The Department for Constitutional Affairs has signed a one-year contract with a credit reference agency to provide access to its electronic data. Court officials can also access police and the Department of Work and Pensions data bases. These facilities enable courts to check the latest whereabouts of offenders who are wilfully defaulting and have changed address without notifying the courts.

## **Part 4 – Strategic Analysis – Examination of key issues**

### **4:1 Introduction**

This part of the report is a strategic analysis of the key issues identified in redesigning the fines collection/enforcement system. It draws on relevant information in the first three parts of this report, and has four sections:

- Where we are now?
- Where do we want to be?
- How will we get there?
- How will we know when we are there?

The focus here is essentially on court-imposed fines. As indicated earlier in the report a more detailed analysis of district court systems for collection and enforcement of financial penalties is also required, and will be provided in due course.

### **4:2 Where are we now?**

The current position remains as it was when examined by the Summary Justice Review Committee. The Committee's report provided an evaluation the current strengths and weaknesses of the fines enforcement system (see paragraph 0.1 above). Work carried out by the working group supports this evaluation.

The primary strength of the existing system is the overall collection rate. This is around 80% for all court-imposed fines in the sheriff courts. Figures are not available for district courts. A significant weakness identified in Part 2 of the report is the largely unproductive use of enforcement actions, primarily warning letters and citation of offenders to Fines Enquiry Courts (FECs). These actions are routinely taken with little or no direct intervention or interaction with offenders, other than when offenders attend a FEC.

This weakness in itself provides a compelling driver for change. In addition, payment methods are variable and in most locations cash handling at public counters or by post is still the favoured method of payment. IT limitations contribute to system inefficiency, since offenders can only pay fines at or to the specific court or local authority where the offence was committed.

The fact that fines offenders may have different fines accounts at different courts represents another limitation of the existing IT systems, as information about an offender's fines payment history is not readily available to sentencers.

A further limitation, and part of the reason why routine enforcement methods of warning letters and FEC citations are used, is the limited availability of alternative sanctions and minimal use of sanctions such as Deductions from Benefits. A more significant limitation is the lack of empowerment of court staff and the need for a change of culture to encourage proactive interventions at an early stage in the enforcement process.

### **4:3 Where do we want to be?**

We want to be in a situation where the courts and the public in general have confidence in the fine as a suitable disposal. We want to ensure that the system of collection of fines and penalties are part of a system that is efficient and which gives support to those who have genuine difficulty in paying whilst pursuing those who will not pay. This will involve expanding the methods for paying fines and the methods for enforcing sanctions where there is a default in payment.

In achieving these outcomes a key element will be the creation of a Fines Advisor with a clear accountability for fines recovery and enforcement. The fines advisor will proactively support those who want to pay or are struggling to pay, backed with statutory powers to implement a range of enforcement actions for those that won't pay. The aim is to build a relationship between the fines advisor and the offender where this is needed to facilitate recovery and enforcement. Essentially offenders who want to pay their fines will be supported by a range of measures, while those who do not will face swift enforcement sanctions which can be implemented by the Fines Advisor, before returning to court to face the possible ultimate sanction of imprisonment. The working group has made recommendations, outlined in more detail in Part 5 of this report, on the following:

- **Getting the rate of payment right at imposition**  
At the time of imposing a fine there are two feasible alternatives. Firstly the Sheriff could have access to improved means information on the offender enabling the fine level and payment terms to be set at a realistic level. Or secondly, the Sheriff could impose a fine, payable within a fixed period; say 14 days, directing those with difficulty to the Fines Advisor. The Fines Advisor will seek means information from the offender and will have power to amend the payment terms appropriately.
- **Increasing payment methods**  
In recognising the current limited payment routes, we will explore options for wider payment outlets, electronic swipe card for payment at banks, building societies, local authority, voluntary deduction from benefit and arrestment of wages.
- **Extending the range of enforcement actions**  
The information currently provided to offenders is limited and at present is only backed up by warning letters. We suggest that courts should issue a fines statement to offenders on a monthly basis (on a similar basis to access / visa bills) highlighting the fine outstanding, payments made, arrears and next payment date, along with a range of information on new payment options, contact details for their fines advisor and new enforcement sanctions that will take effect if defaulters continue non payment.
- **Allowing court orders to be enforced administratively**  
The role of the fines advisor will require to be defined. With these powers the fines advisor will be able to amend payment terms, provide access to debt / financial counselling, and automatically implement sanctions such as arrestment of wages, deduction from benefits or credit blacklisting. Where these fail the Fines Advisor can return the offender to court where imprisonment could be imposed.
- **Providing help and support to those who are genuinely struggling to pay**

A key part of the Fines Advisor role will be building a relationship with those offenders who need help and / or are struggling to pay. Access to counselling services and payment term restructuring can be considered. The Fines Advisor can also make a recommendation to the court on alternative penalties other than imprisonment.

#### 4:4 How will we get there?

In order to secure the desired changes, account must be taken of the time required for legislative change, IT enhancements and engagement with criminal justice partners. As indicated in the Smarter Justice Safer Communities paper<sup>2</sup>, these changes will be developed in liaison with key stakeholders, and piloted prior to national roll-out.

The evaluation of the pilots will help to determine whether and how any changes to the fines enforcement process should be implemented throughout the SCS. Another key aspect of the evaluation will be the need to assess what changes can and should be made to the district court business. Initially this is likely to be considered as part of the arrangements for unification. However there may also be an opportunity to assess how changes could be made before unification.

The Sentencing Commission is presently looking into the continuing suitability of the fine as a disposal, and may provide evidence, which will give a better understanding of the different reasons for non-payment. The Commission's conclusions might provide guidelines on factors, which sentencers should take into account, such as the employment status of an offender or the category of crime/offence. This in turn could lead to further improvements in the percentage collection rate, or a further range of alternatives for any failure to pay. There is however a danger that enforcing the alternative disposals would be as difficult as enforcing fines.

#### 4:5 How will we know when we are there?

A major part of the change plan will be the compilation of a benefits strategy and accompanying action plan. The working group have identified the following:

- Increased collection rates of fines and financial penalties;
- More effective use of court resources, including staff time;
- Reduction in use of judicial time in fines enforcement;
- Reduction in time taken by criminal justice partners, including police time enforcing warrants; and
- Reduction in number of fines defaulters being sent to prison;

as areas which could be measured to test the effectiveness and efficiency of the changes introduced.

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<sup>2</sup> Available at <http://www.scotland.gov.uk/Publications/2005/03/20888/55016>

## **Part 5 – Conclusions and Recommendations**

### **5:1 Introduction**

The working group's remit was to produce **policy proposals** in relation to recovery of fines and other financial penalties -

- to improve, where possible, collection rates, with the focus on maximising collection as opposed to routine enforcement;
- for more effective recovery processes for fines and penalties (including non-court imposed fines and penalties);
- to minimise police and court intervention; and
- which will contribute to the effectiveness of the fine as a sentence.

In this part of the report we present our interim conclusions and recommendations. Many of these require legislation - some do not.

The proposals are interim for 2 reasons. First there is a need for more detailed analysis of the systems and processes involved in the recovery and destination of non-court imposed financial penalties. This should extend to consideration of the applicability of the changes proposed here to these penalties. Second, there is a need to consult and involve key stakeholders in consideration of these proposals.

The changes, which the working group have proposed, will require a significant amount of business redesign. This will be a major project, which will require a business redesign project team and funding for the project. We **recommend** that a project team be established to take this work forward, including the running of pilot schemes as proposed.

Project costs are estimated to be in the region of £500k, with recurring costs of around £800k. The project costs will mainly be for IT development, but will also include consultancy and project team costs. The cost of recruiting and training fines advisors has been estimated at £100k and there will be the recurring employment costs of around £600k per annum.

The potential savings, however, could be substantial (see paragraph 1.2.3 above).

### **5:2 Overview of Proposed Changes**

The working group's proposals represent both a shift from judicial to administrative action and a change in culture - from routine enforcement to proactive intervention. The key to this change is the Fines Advisor supported by fines support staff in court offices. The fines advisor will also operate within the existing SCS management structure, with clear lines of responsibility and accountability for performance.

Legislative change is required to empower the fines advisor to vary payment rates, and initiate enforcement actions such as an earnings arrestment and a deduction from benefits order. We see this as significantly reducing the need for FECs and judicial interventions. Less FECs also means less warrants and a reduction in police time.

Making it easier to pay, by the introduction of additional payment methods, we believe will lead to efficiencies in use of resources and improved collection rates.

Imprisonment as an alternative should be retained, but only as a last resort for those who wilfully refuse to pay, and should only be considered after other options have been tried and failed. Support from the fines advisor will be provided for those who have genuine difficulties in paying.

The working group's recommendations also include proposals for new sanctions, based on those piloted in England and Wales. As reported in Part 3 of this paper, some of these have not yet been fully evaluated. The recommendation in this respect is that enabling legislation should make provision for a wide range of alternative sanctions, but that careful piloting and evaluation of the effectiveness of these sanctions should be obtained before any national roll-out.

### 5:2.1 Fines Advisors

The current system of warning letters, FECs and warrants is one which is resource intensive without being overly effective, and is one which repeat offenders who are not inclined to pay fines are well used to manipulating. The working group therefore **recommends** that pilot schemes, using fines support officers be piloted in our courts. These schemes should be based on similar lines to those introduced following the pilot schemes in England and Wales. This will enable the system of fines enforcement to change from being heavily dependent on court involvement to being a primarily administrative process.

The success of this change in England and Wales is such that the working group believes that this approach is the right one to adopt. The group favours **fines advisor** as a job title as a significant part of the new role will be to develop a dialogue with, and to give support and advice to, fine defaulters.

The working group believe the creation of the role of a fines advisor, with clear accountability for fines recovery and enforcement, is the key element in improving fines collection and recovery. The fines advisor will proactively support those who want to pay or are struggling to pay, backed with statutory powers to implement a range of enforcement actions for those that won't pay. The aim is to build a relationship between the fines advisor and the offender where this is needed to facilitate recovery and enforcement. Access to counselling services and payment term restructuring can be considered. The fines advisor could also make a recommendation to the Court on non-custodial alternatives, including a supervised attendance order or on a 'fine on time', if introduced, as proposed in the Smarter Justice Safer Communities paper.

For those who **won't pay**, swift enforcement sanctions will be initiated by the fines advisor, before referring the offender back to court for consideration. Imprisonment will remain as the ultimate sanction. Where an offender is referred back to court, subsequent proceedings, including the imposition of an alternative sentence of imprisonment or a supervised attendance order, should be dealt with either by a sheriff or by a lay justice. It should not be necessary to convene separate courts for this purpose.

The working group also **recommends** that provision be made in legislation for a review mechanism where the offender wishes to contest any decision of the fines advisor.

The issue of when the fines advisor should first intervene – at the point of imposition of the fine or when default first occurs - is one that should be tested by the pilot schemes. The issues to be weighed up are:

- the benefits of establishing a relationship at the outset and obtaining information on the offender's employment and means;
- whether payment timescales should be set by the court or by the fines advisor following an interview with the offender and an assessment of his/her means; and
- wasted effort for the 20+% that pay their fines without any intervention.

### 5:2.2 Payment methods

The working group believe that increasing the ways that fines can be paid should lead to an increased overall collection rate and to a reduction in the number of offenders falling into arrears, with a consequential reduction the overall time in takes for some defaulters to pay their fines, and in the amount of enforcement activity.

- Payment cards

The COPII enhancements referred to earlier in this report could support the introduction of the web based technology which is required in order to adopt a payment card system like the Allpay card (see 3:4:2). The working group **recommends** that this payment method be taken forward, subject to analysis of costs and operational benefits. Subject to the following, this proposal does not require legislation.

For this system to be successful it is necessary to create fine accounts, which are capable of managing multiple fines where the offender has more than one fine outstanding at any time.

- Credit card and on-line payments

The working group have noted that many district courts accept payment by credit card, and some also have facilities for on-line payments. We **recommend** that SCS introduce similar arrangements for payment of sheriff court fines.

- Centralised telephone payments

One benefit of introducing new payment methods, and working towards a change in payment culture, should be the opportunity to encourage a greater use of payment by telephone. This would make it possible to create a centralised telephone payment centre including automated payments. The working group considered whether such a change should be achieved incrementally, sheriffdom by sheriffdom, but concluded that it would be better to have a national payment centre with one national contact number available. Accordingly, the working group **recommends** that the development of such a centre should be fully explored.

### 5:2.3 Information about offenders' means

The working group were not convinced that introducing a statutory requirement that an offender provide details of his/her means is workable. The indications from England and Wales are that this measure has not been particularly successful, and that there have been no prosecutions for failure to comply.

In Scotland, the Procurator Fiscal issues a form in cited cases seeking information about an accused's income and expenditure. The working group believe that this form could be improved to provide information relevant to possible future fines enforcement, for example to include employment details. While the working group do not favour a statutory provision or sanction, we **recommend** the introduction of an

improved means form as part of an administrative process managed by the fines advisor.

#### 5:2.4 Provision of information to sentencers

The COPII enhancements will provide sentencers with accurate up to date information on any outstanding fines an offender may have, together with account history of payment. The working group **recommends** that this information be provided to sentencers when a fine is being considered as a disposal.

#### 5:2.5 Collection order and information provided to fines offenders

The working group **recommends** that the court when imposing a fine makes a collection order which will permit the fines advisor to initiate specified enforcement actions along similar lines to those available to fines support officers in England and Wales. The working group **recommends** that a copy of the collection order be sent to all offenders following the imposition of a fine. This should be combined with any other information sent to the defender following the imposition of a fine.

The group, having reviewed the information currently provided to offenders who are fined about payment arrangements and sanctions, **recommends** that notification of the imposition of a fine should be sent to all offenders whether they appear in court or not. The working group also believe that the information currently sent to fines offenders could be improved, and should include details of payment methods, what to do if they fall in to arrears and the sanctions which may be applied in the event of non payment.

The group also **recommends** that periodic fines statements be sent to offenders (on a similar basis to access / visa bills) highlighting the balance outstanding, payments made, arrears and next payment date, along with a range of information on payment options, contact details for their fines advisor and enforcement sanctions that will take effect in the event of non payment.

The collection order will require legislative change. In the interim the group **recommends** that the information supplied to offenders who are fined should be improved and that written confirmation of the fine and how and when payment is to be made should be sent to all including those who attend court personally.

#### 5.2.6 Tracing offenders

The working group **recommends** that arrangements should be put in place, similar to those in England and Wales, to access the databases of the Department of Work and Pensions, the Police and possibly the Inland Revenue to trace fines defaulters who have moved and have not advised the court of their new address.

#### 5.2.7 Transfer of Fines for Enforcement

Where an offender has moved address to another court district either in Scotland or England and Wales, and it is appropriate to transfer the case to that court, the transfer order should be made by the fines adviser. It should not be necessary for the case to be referred to a sheriff or lay justice for what is essentially an administrative process. The working group recommends that legislation should be amended for the purpose.

## **5:3 Sanctions**

### **5:3:1 Automatic use of Arrestment of Earnings and Deductions from Benefit**

These are the standard sanctions pursued by fines support officers in England and Wales against fines defaulters. Arrestment of earnings, and civil diligence generally, are rarely used to enforce payment of court imposed fines in Scotland.

The working group, based on the experience south of the border, believes that an earnings arrestment would be a useful sanction in the case of fines offenders who are employed. Provision should also be made to enable this sanction to be used where the offender consents. The working group, therefore, **recommends** that the collection order should empower the fines advisor to initiate an earnings arrestment without resort to the court or the need to employ a sheriff officer or messenger-at-arms. This will require a change to the Debtors (Scotland) Act 1987.

In England and Wales deductions from benefits are used against offenders who either refuse to pay their fines or choose to have it deducted from their benefits. Deductions from Benefit Orders have not been used extensively in Scotland, partly because of the small amounts capable of being deducted. The working group, however, note that the maximum amount of money that can be automatically deducted from fine defaulters' benefits was increased in November 2004 from £2.80 to £5. This appears to have led to DBOs being more widely used in England and Wales.

The working group believes that this sanction should be used more in Scotland, and should certainly be considered before an alternative sentence of imprisonment. We, therefore, **recommend** that the collection order should empower the fines advisor to enforce payment by issue of a DBO without resort to the court.

### **5:3:2 Other Sanctions**

The other sanctions which have been piloted in England and Wales are commented on in Part 3 of this paper. These are:

- Fines increase.
- Registration (credit blacklisting).
- Vehicle wheel clamping.
- Fines Payment Work.

The evaluation of these sanctions in England has been limited. The working group concludes, however, that there may be benefits in testing registration, vehicle wheel clamping and fines payment work in Scotland. We, therefore, **recommend** that provision be made for these three sanctions in the legislation, leaving open the option of piloting them. The other new sanction, fines increase, has not proved successful and indeed appears to have had a negative impact on payment (see paragraphs 3.3.2 and 3.4.1). For these reasons the working group makes no recommendation.

### **5.3.3. Use of civil diligence**

Civil diligence in Scotland is rarely used, except in the case of corporate offenders, to recover fines. The working group, however, believe that there are circumstances where recovery by civil diligence against an individual might be an effective

enforcement option; for example where an offender is in employment or where they are not in employment but have financial assets.

Where an offender refuses to do pay but it is clear that they have the means to do so then civil diligence should be employed before the defaulter is brought back to court. Defaulters who have the means to pay the fine should not be in a position to defy the court when recovery by civil diligence provides an opportunity to the court to recover the penalty by that means.

The group, therefore, **recommends** that the option of civil diligence be included in the range of enforcement actions to be included in the collection order, and be administered by the fines advisor.

#### 5:3.4 Further restrictions on the use of Imprisonment

Analysis of data on sheriff court fines in Aberdeen and Edinburgh indicated that a substantial proportion of those fined end up in prison - 9-10%. The national average is around 12% (see Annex A). The information reported in the Scottish District Courts Statistical Bulletin 2003-4 also indicates that imprisonment is used frequently for non-payers.

The early intervention by fines advisors and the availability of other sanctions are measures which we believe should lead to a reduction in the number of fines defaulters being sent to prison. In addition, the working group **recommends** that imprisonment as an alternative sanction for non-payment should only be considered after other sanctions have been tried and failed, and where the offender is considered to be a wilful non-payer. We, therefore, **recommend** that provision be made for this in the enabling legislation.

#### 5.3.5 Referral to Court by Fines Adviser

Where the fines adviser refers an offender back to court, whether it be a sheriff or district court fine the subsequent proceedings should be dealt with either by a sheriff or a lay justice, subject to any limits of sentencing<sup>3</sup>. It should not be necessary to convene separate courts to deal with sheriff and district court fines. The court should also, where the offender has a number of outstanding fines, be able to deal with these at the same time, including outstanding fines from other courts of summary jurisdiction in Scotland. The COP11 database will enable court clerks to access and identify all of the offender's outstanding fines, and to provide this information to the court.

We **recommend** that legislation be made to facilitate this change.

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<sup>3</sup> The Sheriff and District Court powers to impose an alternative period of imprisonment in default of payment are the same up to £2500 (sections 7 and 219 of the Criminal Procedure (Scotland) act 1995).

## Annex A

### Data Analysis of Fines in Sheriff Courts

Table 1

<u>Financial Year</u>	<u>Number of Accounts</u>	<u>Accounts Imposed</u> (£)	<u>Amount Paid</u> (£)	<u>Amount Discharged</u> (£)	<u>Amount Outstanding</u> (£)	<u>Percentage Paid</u> (%)	<u>Percentage Discharged</u> (%)	<u>Percentage Outstanding</u> (%)	<u>Percentage Closed</u> (%)
1993/1994	57,602	12,008,045.41	9,584,708.44	2,411,335.68	12,001.29	79.82	20.08	0.10	<b>99.98</b>
1994/1995	57,639	13,058,522.19	10,304,460.60	2,744,673.20	9,338.39	78.91	21.02	0.07	<b>99.97</b>
1995/1996	56,145	13,485,154.20	10,760,373.16	2,734,406.40	20,374.64	79.57	20.28	0.15	<b>99.93</b>
1996/1997	54,632	13,949,397.64	11,163,068.11	2,758,544.05	27,785.48	80.03	19.78	0.20	<b>99.85</b>
1997/1998	51,768	14,086,613.64	11,282,886.87	2,718,532.54	85,194.23	80.10	19.30	0.60	<b>99.45</b>
1998/1999	48,947	13,353,504.07	10,547,605.77	2,615,361.54	190,536.76	78.99	19.59	1.43	<b>98.45</b>
1999/2000	43,946	12,352,334.13	9,738,935.50	2,340,623.87	272,774.76	78.84	18.95	2.21	<b>97.69</b>
2000/2001	41,537	11,972,026.44	9,482,333.96	2,068,982.82	420,709.66	79.20	17.28	3.51	<b>96.12</b>
2001/2002	43,711	12,846,733.80	10,080,896.74	2,050,773.32	715,063.74	78.47	15.96	5.57	<b>93.51</b>
2002/2003	47,628	14,354,856.68	10,866,635.32	1,988,335.50	1,499,885.86	75.70	13.85	10.45	<b>87.87</b>
2003/2004	50,024	15,243,230.25	9,526,471.66	1,177,537.21	4,539,221.38	62.50	7.72	29.78	<b>62.01</b>

Note: 1.

For the purposes of this analysis of fines, the sample was restricted to fines not exceeding £5,000 in order to exclude, as far as possible, fines imposed on companies or corporate bodies, and confiscation orders, which are on the same database.

Note 2:

Payment rates for 2002-03 and 2003-04 are likely to increase as at the time of data sampling a substantial number of accounts were still being paid.

Table 2

### Data Analysis of fines discharged (not exceeding £5k)

Financial Year	Number of Accounts	Discharged by Imprisonment	% discharged by Imprisonment
1993/1994	57,602	8075	14
1994/1995	57,639	8416	15
1995/1996	56,145	7905	14
1996/1997	54,632	7375	13
1997/1998	51,768	6670	13
1998/1999	48,947	6139	13
1999/2000	43,946	5340	12
2000/2001	41,537	5048	12
2001/2002	43,711	5038	12
2002/2003	47,628	4505	9
2003/2004	50,024	2259	5
<b>AVERAGE</b>	<b>50,325</b>	<b>6,070</b>	<b>12</b>

Note:

The figures for 2002-03 and 2003-04 are likely to increase as at the time of data sampling a substantial number of accounts were live.

## **Annex B**

### **1. Sheriff Court staff costs**

The estimate of SCS staff costs for fines collection and enforcement of £1.23 million came from a staff survey which identified a total of 52 full time equivalent staff working in the area of fines collection and enforcement. Using average employment costs this produced an annual estimate of costs of £1.23 million.

The breakdown was

- 25.1 full time equivalents in Area West;
- 18.5 in Area East; and
- 8.4 in Area North.

### **2. District Court staff costs**

District court staff costs were calculated using data on staff numbers in a recent COSLA/SEJD Working group report – 182 Full-time Equivalents – and applying an estimated average salary of £18,000 per member of staff (£3,276,00) An estimate of 60% (percentage time spent by administrative staff on fines work) was then applied producing an approximate figure of £1,965,600 for the costs incurred by local authorities in Scotland for the administration, collection and enforcement of fines and financial penalties.

Note: the 60% estimate was provided by District Court legal assessors. It is accepted that this is a very 'rough and ready' estimate, and that more detailed work is required to provide more robust information about costs.