



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Fine Default: Responses to Consultation

2 February 2012

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Seán Lynch
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness
Mr Peter Weir

Witnesses:

Mr Tom Haire	Department of Justice
Mr Gareth Johnston	Department of Justice
Mr Andrew Laverty	Department of Justice

The Chairperson: I welcome to the meeting Gareth Johnston, the deputy director of the criminal justice policy and legislation division in the Department of Justice (DOJ), Tom Haire, the head of the criminal law branch, and Andrew Laverty from the criminal law branch. I will hand over to the officials, and members will have an opportunity to ask questions later.

Mr Gareth Johnston (Department of Justice): I apologise for being late; we thought that colleagues who were with you earlier would have taken a little bit more of your time, and we were aiming for 2.30 pm. If you want to take that as further evidence of delay in the justice system, you can. *[Laughter.]*

Mr Weir: Only if we can keep it to 15 minutes.

Mr Johnston: Several months ago, we came to the Committee to talk about proposals for better fine enforcement, which we wanted to put out to consultation. We are here today to report on the results of that consultation. We will also come back to a number of issues that the Committee raised previously, particularly around the profile of people who receive fines, the use of some form of community service instead of a fine and the deduction of fines from benefits, about which the Committee had concerns.

First, let me run over the big picture of the proposals. The ultimate aim is to reduce the number of people who go to prison for fine default, which is not a satisfactory use of custody. We also believe that we can make significant improvements in the collection of fines at earlier stages of the criminal justice process. Those were the overall aims, of which respondents to the consultation were very supportive.

At the heart of our proposals is an intelligent enforcement system. Key to that will be the creation of fines officers with a series of statutory powers to manage and collect fines. Almost all respondents supported that proposal. Fines officers would ultimately act under judicial authority and be there to ensure that the method of enforcement is appropriate to the circumstances of a case. A court would set a fine and leave a fines officer with the responsibility for its management and collection.

The current fine collection scheme, whereby people who are approaching their default period are reminded in advance, would continue. Through that, we have seen almost a 30% reduction in warrants issued, and we have brought in £3.1 million in additional fines collected. Fines officers would also assume some existing powers. They would, for example, have the power to allow extra time to pay and agree instalment options and would take on additional powers in cases in which there is a potential for imprisonment. Those extra powers could include powers to take fine payments from earnings or benefits. I will say more about that in a moment, particularly about how they would be supported by important safeguards and protections. The fines officer model would take most fine enforcement away from the police, although there would be a residual backstop power in difficult or obstinate cases, so significant Police Service of Northern Ireland (PSNI) resources would clearly be freed up for more pressing police work.

Responses to the consultation on deductions from earnings were fairly quiet. Parallel powers already exist in law for deductions such as family maintenance, and the Department is minded to extend into this area of fine payment. Other jurisdictions tell us that the threat of contacting an employer to deduct a fine from wages is often an incentive to ensure payment. We received mixed levels of support on deductions from benefits. Some consultees were very much in favour of the proposals, and some were very much against. When we discussed the issue previously, some members expressed concern about the impact that a deduction from benefits could have on people with low incomes and their dependants.

Such powers are not without precedent. The Department for Social Development (DSD) uses 1987 legislation to allow deductions from benefits and direct payment to third parties. We heard yesterday from Minister Alan Shatter from the South, who was in Belfast for a trilateral meeting, that he is proposing deductions from social welfare benefits when people are not paying fines.

The Committee asked us to look at the profile of people who default on fines in order to assist its consideration of the issue. The best way to do that was to ask the Probation Board to look at those fine defaulters with whom they had had previous contact. That is not a scientific study and does not, by any means, cover all people who default on fines, but it gives illustrative results. The format of those results, at paragraph 2.8 of the report, is: what percentage of fine defaulters had a particular issue affecting them? The Probation Board has been able to tell us that 55% of the defaulters with whom it had been in contact had a significant issue around employment, education or training; 47% had a significant issue around family and personal relationships; and 35% had a significant issue around finances.

People are fined because they have committed offences, but those results, which are not entirely surprising, underline why a careful and proportionate approach is needed to any deduction from benefits. We have listened to what the Committee said previously, and we have given further thought to the safeguards and protections that are needed for deduction from benefits. The issue is set out on page 16 of the report. Essentially, we propose a statutory provision that would ensure that outgoings related to housing costs, rent arrears, fuel costs, domestic rates, child support and maintenance are not affected. There would be a restriction on the number of deductions that could be taken and a maximum total amount that could be deducted from benefits.

The point of the proposal about deduction from benefits is to help people to pay and to assist with debt management by taking a limited sum over a period of time. We believe that even a small amount deducted regularly over an extended period is better for families than the traumatic effects of imprisonment.

I will move on to the issues that the Committee raised about community disposal in place of a fine. It was suggested that, instead of fining people who may simply not have the means to pay a fine, it might be preferable to require them to perform some form of community support work — a "community

service lite" disposal, if you like, that could be set instead of a fine at the point of sentence rather than at the point of default. The Department recognises the importance of community options and is pleased, for example, that the supervised activity order (SAO) disposal has just started to operate in pilot form in the Newry court district. The first two supervised activity orders have been made in the past day or two. We are also in discussions about the potential for a second pilot.

A supervised activity order operates as an alternative to imprisonment at the point of default, rather than as a community disposal instead of a fine in the first instance. At first blush, the idea of a community sentence instead of a fine appears to have a certain attraction, but the Department has a number of concerns, not least of which are the additional costs to the justice system that a new disposal, with supervisory and other additional overheads, would present. With so many fines being imposed by the courts, a community alternative could see a whole volunteer workforce seeking community work, with all the placement supervision, monitoring and insurance requirements that then flow. We have also had some suggestions that, although people welcome participation in community service programmes that address offending behaviour and give something significant back to communities, perhaps an unwilling volunteer who turns up for a day, with all the implications for supervision and training, is not necessarily an attractive prospect for voluntary organisations.

However, with all that said, I think that there is something that we can do. People will come before a court and say that they simply cannot pay a fine. We propose that, in those circumstances, a court would be able to make a supervised activity order, to use the legal term, "forthwith". That would mean that a supervised activity order, instead of taking effect further down the line after other attempts to collect a fine had been made and had failed, would take effect immediately. A person, instead of paying a fine, would proceed immediately to the stage of a supervised activity order, and the Probation Board would work out a community placement for that person. That would apply in particular circumstances, and I realise that we have not gone as far as some members would like us to have gone. However, I hope that it demonstrates that we have listened to what has been said and tried to make accommodation in the proposals.

The report also deals with other issues. It is important that those coming before the courts are aware of the importance of providing income information. We will continue to expand our information initiative on that and on methods of payment so that, for example, community support groups are alert to opportunities and can offer advice. TV licence evasion has been known to lead to imprisonment for default, and the Department is exploring, with the Department for Culture, Media and Sport in London, the potential for a civil recovery system for TV licence fines. However, that is a UK matter and will need to be dealt with on a UK basis.

All those proposals are aimed at assisting the "can't pay", but there will be a few "won't pay" for whom other approaches may be required. As a disincentive for non-compliance, we will explore the potential for increased custody periods in appropriate circumstances. It is important that there is a stick as well as a carrot.

Some proposals were put forward in the consultation paper which, at this stage, we are not proposing to take on. They were not strongly supported in the consultation. Creating powers to seize vehicles, clamp them or add points to driver licences in default of a fine are options that, as we set out in the report, would present practical difficulties. We are, therefore, not actively pursuing that but will keep it under review. We will be particularly interested in what the Criminal Justice Inspection will say in its forthcoming follow-up review on fine enforcement.

One of the problems with seizing vehicles is that people's occupations could come under threat, and that could have even worse implications for future behaviour.

We do not see very much potential in greater use of the distress-warrant approach either. Seizing goods is already fraught with difficulties in validating ownership, and we would not seek to expand on those difficulties. Seizing goods also comes at a cost in terms of storage, retention and disposal.

Finally, we do not see a discount for early payment as viable at this stage. In England, that was tried, among various measures that were being tested, and it was found that it made no significant difference to the number of fines that were collected.

As we move forward, there will be resource implications, and how we fund those is a matter currently receiving attention. In the past, England and Scotland have been allowed to hold back a small proportion of fine income to fund improvements to their system, and we are exploring that option.

As always, Chairman, I thank the Committee for this opportunity to share the Department's thinking, and we look forward to hearing your views.

The Chairperson: Thank you very much, Gareth. Will you elaborate on the areas in which you are considering having an increased period of custody?

Mr Johnston: We are thinking about two aspects. First, imprisonment for fine default still attracts automatic 50% remission. Secondly, if someone is sentenced to a period of imprisonment as well as a fine and decides not to pay the fine but to serve the period in default in prison, it normally runs concurrently with the main sentence rather than consecutively.

We are wondering whether there might be more incentive to pay fines if, first of all, the remission was not available. There is some evidence from other jurisdictions that 10 days is the psychological point at which people may weigh things up and decide to make a special effort to pay the fine rather than risk imprisonment for that period.

Secondly, if there is a period of imprisonment and a fine, we are looking at whether the period of imprisonment for defaulting on the fine should run consecutively with the original period of imprisonment. That would have an impact on the prison population, so we need to look at the situation in the round. We would do all the other things that we have been talking about to reduce the numbers going to prison, but, for those who stubbornly refuse to pay, some increase in imprisonment periods might be set before them as an incentive to pay up.

The Chairperson: Maybe I have missed it, but does it say anywhere in the paper that you will be able to access people's bank accounts and take the money for fines out?

Mr Johnston: Some work has been done in Scotland on attachment to savings as well as to earnings and benefits. I do not know whether that is something that colleagues want to comment on, but I am open to seeing whether there is any potential for that being an option, alongside the earnings and the benefits.

The Chairperson: I mentioned that because I was on the radio talking about this issue, and a gentleman rang up to say that he owed £800 in fines but would rather go to prison for a couple of days because that would be it, and it would be forgotten about. That is the type of person we are after, and that is why I asked about developing proposals to address situations where people clearly have the money but you just cannot get at it.

Mr Dickson: I welcome the way in which you have refined and reviewed the paper in light of comments that were made. Those comments were very serious. I have checked the Hansard report of the comments that members made around the table. The area that I want to explore with you is around the comment that you made about main enforcement moving away from the PSNI. Have you been able to gauge what the benefits to the PSNI will be in terms of resource gain? I suppose that is a question that we also need to ask the PSNI.

Mr Johnston: The PSNI produced an estimate of around 50 to 60 officers. You do not have a cadre of specific officers; it is arms and legs. The overall savings to the Police Service could be of the order of 50 to 60 officers.

Mr Dickson: That would be a significant number of police officers made available for other duties. We need to have a conversation with the PSNI on that at some stage in the future. That is a very welcome element of it. However, I presume, on that basis, it is currently bearing the cost of the work that it does, and that cost will transfer to the Department?

Mr Johnston: That is a discussion that we will need to have. I am sure the police would say that, since it is bits and pieces of people's work, it is hard to realise fungible cash savings. That is not to say that the Department will not go looking for them. However, we also want to pursue other sources of funding. If we could make the invest-to-save argument, and if we were allowed to keep some of the additional money that is being generated from fines, which is going back to the United Kingdom through the Consolidated Fund, it would allow us to improve the process.

Mr S Anderson: Thank you, Gareth. You talked about the fines officer model. That person will have quite a responsibility and power, call it what you like, to negotiate how a fine is paid and the time in which it has to be paid. What happens if two thirds of the fine is paid and payment ceases? Where do we go with that? Will there be anything to say that it would not pay to proceed and that the fine would be written off by the fines officer? That is something that could happen.

Mr Johnston: There is a residual power on courts to remit fines. However, normally, in circumstances in which there is an outstanding amount, you could still move to imprisonment, but I think I am right in saying that the period of imprisonment would be defined by the amount that was outstanding rather than by the amount that you had paid. Under what we are proposing, it would be possible in those circumstances to move to a supervised activity order or to imprisonment.

We are not specifically proposing that fines officers would have a right of power, though it is something that, in limited circumstances, they have had in other jurisdictions. It may be something that we could look at. I heard an example of somebody who turned up with the money for the fine, but there were some extra charges, and they had not brought the money for the extra charges. There are situations like that, where someone has made an effort and very nearly gotten there. It is something that we could look at.

Mr Tom Haire (Department of Justice): Ultimately, the significant powers to enforce imprisonment or something else would go to the court; it would not be up to a fines officer.

Mr S Anderson: There is that area between the fines officer and the court.

Mr Johnston: Yes. There are different options for how we organise the service, but we do make the point that, ultimately, wherever the fines officer sits, there is judicial authority and judicial oversight behind the process.

Mr S Anderson: You do not propose to proceed with a reduction for the early payment of a fine. Is that right? Are there any equality issues with that? A parking fine is £60, if it is not paid within 30 days; if it is paid within 30 days, it is £30. Is there a reason why you do not want to encourage early payment? Is it because of equality issues?

Mr Johnston: There would be other circumstances where something is increased if you do not pay it within a particular period. The issue is down to the experience that other jurisdictions have had with this.

England tried the discounting proposal, and what was found was that the people who can pay will pay anyway; it does not seem to be very much affected by the discount. To the people who cannot or will not pay, a small discount does not make any difference, so the feeling from elsewhere has been that it will reduce the amount of your fine income, and it does not lead to any significant improvement in levels of compliance.

Ms J McCann: Paragraphs 2.7 and 2.8 of the response state that:

"in 2005... 84% of fine defaulters received into prison in a two-month period were unemployed and 82% were in receipt of benefits."

"Finances were also a medium/large problem for 35% of defaulters."

Taking the Chair's point, the problem is not the people who cannot pay, it is the people who habitually will not pay. They are the ones who you want to target, as opposed to the people who cannot pay. You are still talking about taking money out of people's benefits, and taking money from the low-waged and

the working poor; I do not think that is an option. Those people are going to be the ones who obviously cannot pay.

Paragraph 2.11 explains that people are contacted and reminded to pay. I have worked with some of my constituents and managed to get their payments made in installments. That works for some people. Would that not be an option for people who have real difficulties paying, particularly those who earn a low wage, rather than taking it directly from their benefits or earnings? Would something like an installment scheme not be a better option at the beginning?

You previously said that the point is to try to discourage people from going to prison for non-payment of fines, but now you are talking about giving them more time in prison, if I am reading that right. Does that not defeat the purpose of one of the reasons for this?

Mr Johnston: On the first point, it is really a staged approach. We would be putting as much and, through the new service, probably more focus on whether we can negotiate a way in which people can pay and whether we can help people to pay, so installments would be available. In fact, under the new system, that would not need to go back to the judge, it could be granted by the fines officer. We envisage that, in some settings, those installments could mean that quite modest sums of money would come in over an extended period, and that is fine. All of that can be done before we would look at deduction from benefits. The problem is where that does not work, where someone is unwilling to pay, or where those payments dry up and do not start again despite promptings from the fine collection service. In those sorts of circumstances you would move to deductions from earnings and benefits. We want to give people every chance to pay up voluntarily before moving to the more coercive options.

Reducing the numbers of people in prison for defaulting is absolutely the aim, but potentially, if you were to say to that small number of very obstinate offenders that they would be imprisoned for 14 days rather than seven days and there would be no remission, it might make people think twice about taking the prison option instead of the fine. We are trying to use it, in a sense, as a bit more of a threat to keep people out of prison.

We do not see it as affecting a huge number of people. It is very much a case of taking all the other steps, and then, if there is really nothing else you can do, maybe you need a bit more stick than carrot.

Ms J McCann: With respect, when you consider the numbers of women who go to prison – the figures are here somewhere, but I just cannot find them – most of them are in for non-payment of television licences. That goes for most of the prison population. Obviously, when a woman has children, if she can pay a fine, she will do so rather than go to jail. Do you know what I mean? The logic of what you say is that she cannot pay; it is not that she does not want to pay. When you look at that, you need to take it into consideration because that is your target audience: the people who cannot pay.

Mr Johnston: The number of TV licence defaulters who end up in prison is a relatively modest proportion of the overall number, though we recognise that it is likely to have a disproportionate impact on women. Those are the people whom we want to support; people with whom there is a willingness to pay because they do not want to end up in prison. Be it 50p a week or £1 a week that comes in voluntarily, we should go with that and get the thing paid off rather than look at the more coercive options.

Mr A Maginness: The fines collection scheme is a very interesting one and seems to work reasonably well. You are getting a response of about 30% or thereabouts. Perhaps if more resources were put into it, you could raise those figures. What say you to that?

Mr Johnston: I give credit for the fines collection scheme to my colleagues in the Courts and Tribunals Service who have been leading it. It has certainly been very successful. We see the new scheme, with fines officers, as a development of it. The fines collection scheme reminds people and gives them options for payment. The scheme that we propose goes a bit further and takes us into ways of dealing with default other than sending people to prison. Yes, it is a development of the scheme and learns from the approaches that we have been taking — encouraging payment and helping people to pay — and it is, in many ways, the logical next step.

Mr A Maginness: What is the annual average number of fine defaulters? It exceeds 1,000, does it not? Is it 1,800?

Mr Johnston: The number of those who would end up in prison is —

Mr Haire: It is 1,600 or 1,700.

Mr A Maginness: If you cost that out, it comes to quite a substantial amount of money, does it not?

Mr Johnston: If you look at the full cost, yes. The full cost includes the cost of a prisoner place. As you start to pull people out of the system, you do not necessarily realise the saving on those full costs. It does not mean that we can close a wing of Maghaberry and save all the staffing costs. However, as I have said previously, we are not looking at this simply from an economic point of view; people going to prison for ridiculously short periods is not an effective way of dealing with fine default. We want to have much better ways of doing so.

Mr A Maginness: We are in a difficulty, are we not? If we do not attach earnings or get payment from people on benefit, if we simply do not get the money and waive any sort of comeback on that, we get to a stage where we are almost granting people immunity from any sort of penalty.

Mr Johnston: Having an effective service that is focused on collecting fines, promptly follows up those that are not paid and deals promptly with default will send a strong signal that government is serious about the business of fines enforcement.

The Chairperson: Mr Maginness makes a good point about having an ultimate backstop, which should surely still be prison, and that probably touches upon the legislative presumption that it would be a community-type order.

Mr Johnston: Indeed, and it may be that that presumption, which we were talking about a few weeks ago, would cover the fine-default situation. We are just looking at that. Certainly, we want to encourage the use of the supervised activity order as an alternative to custody. It involves up to 100 hours of community service, and we are looking forward to learning, from the pilots that we are running, what would be the best place for those. Custody is the ultimate backstop, yes, but before that you have the community option.

The Chairperson: How many fines officers will you need if you civilianise this?

Mr Johnston: We are working on a strategic outline case at the moment, and then we will make a business case. Based on what Scotland and other jurisdictions have told us, we think that, if we had about 20 officers, we could make very good inroads to providing the service.

The Chairperson: Is there any thought process behind joining up that thinking with the civilian delivery of summonses, as has been talked about in the past?

Mr Johnston: It is certainly something worth thinking about in terms of delivery mechanisms. We already have an enforcement of judgements mechanism that is civilian-led, and that provides a model that we have certainly drawn from in these proposals. I am sure that colleagues will want to think about that as we move forward on the issue of service of summonses. Having said that, service of summonses works very well for those who get served the first time. The challenge comes when service first time around does not work, and it is about finding better ways of dealing with that particular group.

Mr Lynch: I want to ask about fines officers and the powers that they may potentially have. You said that they may have a right to contact people's employers. Is that not open to abuse? Might people not go to — *[Inaudible.]*

Mr Johnston: Can you give me that question again, please? I am sorry.

Mr Lynch: You said that they would have extra powers, did you?

Mr Johnston: Yes.

Mr Lynch: And that they could contract people's employers?

Mr Johnston: Yes.

Mr Lynch: Is that not open to abuse?

Mr Johnston: Well, the people who would be doing that would sit within an agency where their work would be supervised and reviewed. They would only approach employers where someone had been offered the opportunity to pay by installments and so on. I would have thought that, written into the procedures, there would be a provision whereby, before an employer could be contacted, the person would be told, "We will be contacting your employer if we have not heard from you within 14 days", or 28 days or whatever it is. In the statute, there will be potential for us to provide for some regulation of the process. We can make sure that, as far as possible, clear procedures are laid down and people will follow them.

Mr Lynch: May I follow up on that? When you say that the officers will contact employers, is that to make an arrangement with the employer to take the fine?

Mr Johnston: Yes.

Mr Lynch: Directly from wages?

Mr Johnston: Yes. Until the fines officer got to that stage, there would be no reason to contact an employer.

The Chairperson: A bit like when the student loans company did it to me. *[Laughter.]*

Mr McCartney: God love you.

In the Scottish model, as it is called, are targets set?

Mr Johnston: Yes, I believe there are. I could not tell you, off the top of my head, what they are, but there would be targets for the recovery of fines, to improve the effectiveness of the fines officers.

Mr McCartney: Who will be responsible for setting the targets.

Mr Johnston: In our case, the Department of Justice will set them.

The Chairperson: OK. Thank you very much.