



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Fine Collection and Enforcement:
Department of Justice

25 June 2014

NORTHERN IRELAND ASSEMBLY

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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 Tom Elliott
Mr William Humphrey
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Jim Wells

Witnesses:

Mr Tom Haire	Department of Justice
Mr Gareth Johnston	Department of Justice
Ms Fiona Marshall	Department of Justice
Ms Pamela Reid	Department of Justice

The Chairperson: I welcome Mr Gareth Johnston, deputy director of the Department's criminal justice policy and legislation division, Mr Tom Haire, head of the criminal law branch, Ms Pamela Reid, programme manager, and Ms Fiona Marshall, from the criminal law branch. As is normal, the session will be reported by Hansard, and a transcript will be published in due course. I invite Gareth to give us a briefing.

Mr Gareth Johnston (Department of Justice): Thank you, Chairman. As you say, we are here to present the findings of the Department's recent consultation on fine collection and enforcement and our proposed way forward. The fines and enforcement Bill, of which we intend these proposals to be a part, is now at the stage of having legislative instructions prepared with a view to bringing it to the Assembly in the autumn. The Bill will contain a range of new measures to prevent default and reduce imprisonment. It will establish a new civilian-based enforcement and collection service, largely freeing up police from the burden of chasing warrants. There will be improvements to the supervised activity order as the community-based alternative to imprisonment and we are also proposing to provide for better payment management by allowing direct deductions from income in certain circumstances, but this would be only where the initial collection activity had not yielded results.

The purpose of this particular consultation, which built on previous work that we had done, was to take views on four particular proposals aimed at taking a balanced approach. In many ways, the proposals we put to the Committee previously were aimed at supporting people who could not pay fines, including by weekly deductions from benefits or from earnings. We wanted to balance those with proposals that looked at situations where people would not pay rather than could not pay — proposals

that were, maybe, a bit more stick than carrot, for use in appropriate situations and in tightly controlled circumstances. For the most part, we have been drawing on the experience of other jurisdictions in framing those proposals.

We put forward four areas for consideration. One was around prioritising the supervised activity order so that it would become the standard and the presumption where a fine of £500 or under was not paid. Instead of ordering a short period of imprisonment, the presumption would be that, other than in certain exceptional circumstances, the court would order a supervised activity order or a community alternative.

The second proposal was to allow bank accounts to be accessed directly in cases where people had funds to pay a fine but simply were not doing so. The third proposal was to allow for vehicle seizure in limited circumstances if a fine was not being paid. Our thinking there was built on the distress warrant, which is already available, in which goods can be seized in certain circumstances. The final thought that we put out for consultation was to remove remission on fine default custody periods, which can still qualify for remission. I will come back to the reasons behind that proposal.

The outcome of the consultation was that we had 12 responses in all, though a wider range of people had previously responded to our main proposals for a civilianised fine enforcement service. While it is always difficult to generalise, we would describe the outcome of the consultation as broadly supportive of the proposals, provided they were subject to strict control and regulation. There were some concerns expressed, obviously, about specific aspects, one of which was the potential impact on children in equality terms. It would be the Department's intention to address those concerns as we bring forward the proposals for legislation.

I will now look at each of the areas in a little more detail. We have long been saying that imprisonment, particularly very short periods of imprisonment, is not the appropriate way to deal with people who default on fines. We want to make sure that the supervised activity order is used as fully as possible as a response. The supervised activity order is not going to be the first port of call, generally speaking. A range of actions would have to be taken before it would be engaged. The collection service would have discussions with the person who has been fined about ways of paying and about payment by instalments, additional time to pay, voluntary payment plans and, if need be, as I have mentioned, deduction options from income, benefits or earnings. After that, the offender would be given the opportunity of a default hearing at which his or her circumstances could be reassessed by the court, but after that the supervised activity order would be the first port of call. We do not see there being a flood of supervised activity orders, but we see them becoming much more the standard response in ultimately preventing fine default as opposed to the option of custody.

On the other proposals, we see merit in providing them as options available in appropriate and controlled circumstances. We want to emphasise that; it was very much the message from the consultation. There was also a sense from the consultation that these options were for the "won't pay" people rather than the "can't pay" people, and that is something that we want to take up in guidance and in our code of practice.

I will look at vehicle seizure first. Our proposal is that when other options had failed, and when a court had made an order for vehicle seizure — so we would need to go back to court — that vehicle seizure would be available but would follow a strict and sequential scheme so that advance warnings would be given and further opportunities would be given to pay the fine.

This, and the other options, would be in the context of this new specialist fine collection service, the message of which will be that if you do the crime, you will pay the fine. In that context, we think that having the option of vehicle seizure would have quite a high declaratory value. It would be useful for a collection service, as can be done in other jurisdictions, to remind people that, ultimately, it could seize their car or impose a supervised activity order or, ultimately, that people could still end up in custody if they do not pay. Scotland has found that while the vehicle seizure order has not been used in very many cases, it has been important to be able to demonstrate that it is an option on the books, and that has been helpful in pulling money in.

Access to bank accounts is the third area we consulted on. Such a power would be available to the collection officer, again, not as a first resort. By definition, it is only for the "won't pay" rather than the "can't pay" because people who cannot pay will not have the money in their bank accounts. To illustrate the sort of circumstance, let us say that someone who has significant means decides, for whatever reason, to hold two fingers up to the justice system and not pay a fine. These would be circumstances where the collection officer could issue an order that would allow direct access to a

bank account or savings account. Again, that is something that has been used in Scotland. It is not unknown here; there are garnishee orders and other options that are available in civil proceedings. We think it would be a useful part of the overall armoury for a new and specialist fine collection service.

I will now cover loss of remission. We took the opportunity to canvass opinion on that. Offenders end up being in custody for fine default for very short periods. There are those, as I have said here on previous occasions, who have worked out ways of playing the system on that and ending up with extremely short periods in custody or more or less nodding at the entrance of Maghaberry and turning on their heels and going. We think that, in appropriate circumstances, the courts having the option of a longer period in custody could be a deterrent. Again, that was something that we tested out and achieved some support for in the consultation exercise.

Just to say something about equality and some of the concerns that were expressed about our equality assessment, those were particularly in relation to impacts on children. For the purposes of criminal justice, when I talk about children, I mean those who are under 18 and in the youth justice system. We screened the four proposals in the context of the fines and enforcement Bill as a whole. That package of the fines and enforcement Bill is very much designed to improve the options available to those who are fined and who have difficulty in paying. It provides opportunities to manage payments better, to prevent default, to increase community options and, significantly, to reduce the potential for imprisonment. We feel that all those are positive developments, and our proposals to further expand community options add to that.

For the more sanctions-based options, our proposals contain significant mitigating aspects, commitments to develop statutory regulations or codes of practice and to reserve key elements for use only by the court. We feel that those add to the balanced approach that we are taking to fines enforcement. However, there were, as I said, specific concerns about children. It is worth starting by emphasising that the numbers of children who are fined are quite limited. In any year, there are maybe only 100 fines given to children and young people. The main disposals for young people focus on the youth conference order or the community responsibility order. That is as it should be.

In response to the youth justice review recommendations, the Bill will effectively remove custody for fine default from under-18s. That fact, about which there was not complete clarity in the responses that we received, will help to reassure those who expressed concern about the impact on children. So, instead of custody for under-18s for fine default, the attendance centre order would be the required disposal. The result would be that no young offender would be going into custody purely for fine default. As I said, that will address a lot of the concerns that were expressed.

There were also concerns that vehicle seizure might limit young people's access to education or training. Again, I will say that vehicle seizure is very much a last resort, but we are proposing that it would be on the back of a court order, and the court would have the opportunity to consider all the impacts of vehicle seizure, including any on education or training.

Subject to the Committee's views today, it is the Minister's intention to begin drafting legislation in these areas for inclusion in the fines and enforcement Bill, which will come before the Assembly in the autumn. Anything that is drafted would be subject to Committee scrutiny and amendment. The Committee Stage of the Bill will clearly be very important for us.

The Chairperson: Thank you. Mr Wells.

Mr Wells: I was asking to get in early, but I did not expect to get in that early. What is the extent of the problem, Mr Johnston? How much is lying out there unpaid?

Mr Johnston: The unpaid figure at the moment is £13.2 million. That has been exacerbated by the outcome of the judicial review last year, which meant that we had to suspend fine enforcement activity. The collection service still ran, but the enforcement activity had to be suspended. Before that, it was £7.5 million. So, you can see how there has been a spike over the last year.

Mr Wells: That is the price of a new school lying out there unpaid. I am a bit confused; maybe I am being a bit simple. If somebody owes money, you can either get it from their pay or from their social security benefits, albeit at £1 a week. Nearly everyone is either being paid or on some form of social security. Where is the problem?

Mr Johnston: The aim of the new arrangements is to capture the majority of people, but there may be situations where benefits are already being attached for a range of moneys owed, and so there is not the opportunity for us to get money there. We will put points into the legislation about accessing HMRC information where we cannot get at employment information or where employers refuse to cooperate. We will have various ways of encouraging that, but some cases still cannot be caught. The aim is to catch the great majority of cases at the enforcement stage through the new civilian enforcement service so that only a relatively small proportion go through to those other options.

Mr Wells: If I were a private creditor and someone owed me money, I know what would happen in my constituency. They bailiffs would arrive some morning, you would be locked out of your house, your possessions would be thrown in the garden and, until you paid the debt, that would be the situation. Why do you seem to have much less power than private creditors?

Mr Johnston: The aim of the proposals is to put state enforcement in a much better place so that powers around bailiffs, seizure of goods and seizure of vehicles are available. Sometimes, with us being the public sector and being subject to the European Convention on Human Rights in a way that the private sector might not be, there are more hoops for us to go through, and we have to give more warnings and more opportunities. Ultimately, this will give us a very comprehensive set of powers, and, unlike the private sector, we will have the threat that, ultimately, if you absolutely refuse to pay, you could end up in prison.

Mr Wells: Access to the bank accounts is a novel change. If someone clearly will not pay and you know that he has the money in the bank account, why do you not just go straight to the bank and get it?

Ms Pamela Reid (Department of Justice): A proposal that we envisage is that the collection officer will have the power, after they have tried the voluntary route of trying to obtain the money, to access the bank account and get that money from there provided that they know that there is sufficient means in the bank account to pay off the fine.

Mr Wells: As for the use of the prison system, the stories are legendary about the people who have clocked themselves in at 3.30 pm on a Saturday afternoon, and you literally pay the cost of processing them, and then you have to pay the cost of processing them straight out again. You have been aware of that abuse for years. I have friends in the constituency who dine out on stories about how they have managed to do that. Surely that should have been done long ago, so that you cannot abuse the parole system and the reduction in sentence and that, if you go in, you go in for significant period of at least three to five days. Why was that allowed to fester for so long?

Mr Johnston: You have to do that in the context of all the other changes that we are making. If we had simply said that, if you go into prison, you go in for a much longer period, we would increase prison numbers and increase the costs. It is important to do that alongside the improvements that you are making to avoid people getting to the prison stage so that we do not flood the prisons with more fine defaults.

Mr Wells: If you come to the conclusion in the process that the only deterrent is prison, it would be farcical to continue with the present arrangement, because anybody in a pub in Belfast could be told what they need to do to make certain that they are in for, maybe, one night. Basically, they are laughing at the authorities, because it is almost a sport, particularly around Christmas. There are certain times when, if you clock in, they cannot keep you at all. That abuse has to be ended permanently, or else you have no deterrent.

Mr Johnston: That is why the removal of remission proposal is important; it will give the courts more scope. What we have learned from other jurisdictions is that there is a tipping point. If you owe an amount of fines, maybe a quick in and out of prison for some people does not seem like too much of a deterrent, but there is a tipping point where it becomes a deterrent. Scotland suggested that that was around about the 10-day mark. Removing remission, as long as the fine was over £200, would open up 14 days that could be served in full, which we think would be much more of a deterrent.

Mr Wells: It would be a deterrent. Finally, on the supervision placements, what are we talking about there? Is it anything that could be perceived as onerous?

Mr Johnston: In the pilots that we ran, the sorts of things that were put in place by the probation service included caretaking work, conservation and environment work — picking up leaves, tidying up community facilities and all of that. The feedback that came from those pilots was interesting. People who were interviewed were saying, "Actually, if I'd known it was going to be what it was, I'd probably have paid the fine if I had had the means to do so". So, we did get some feedback that people were finding it appropriately onerous.

Mr Wells: It is not breaking stones in a quarry, is it?

Mr Johnston: It is not. We would get into some particular difficulties around forced labour and slavery there. But neither is it simply turning up, getting your name taken and going home again.

Mr Dickson: My question relates to the one Mr Wells has just asked on the supervised activity. How can we know the value of that supervised activity in terms of its deterrent or punishment level in the system? Have you secured, or can you secure, sufficient suppliers of that activity to guarantee a fair and equitable outcome both for society and for the individuals undertaking those activities?

Mr Johnston: Tom might want to say something about the periods that people are required to serve on supervised activity orders (SAOs).

Mr Tom Haire (Department of Justice): Yes, it can range between 20, 30 and 40 hours, so, in itself, it is quite an onerous full week of activity. It might be spread out over a number of weeks, but there are a sufficient number of hours to be served for the supervised activity order.

Ms Reid: Plus, the Probation Service ensures that it covers citizenship and victim awareness as part of that. It is not just about sending them out to the charity shop and letting them do their 10 or 20 hours. They have to do that pre-course in citizenship and victim awareness, which will hopefully make them appreciate the impact of the offence.

Mr Johnston: In the pilot, I think there was even the opportunity for probation to take a look at financial management and debt management with some of the offenders. That is something that we could look at developing a bit more when this is rolled out. The advice from probation is that it should be manageable. Part of that is, as Mr Wells has said, to catch as many people as we can at the collection, enforcement and attachment-of-earnings stage.

Mr Dickson: So you are talking about a much smaller number of people, but how can we be assured that a fine of £500 is not actually costing £500 to administer that supervised activity?

Mr Johnston: It certainly costs rather less than the average cost of keeping somebody in prison, so there is that element to it. At the same time, we are not really in the business of just saving money. We want to find better ways of doing things. As we have seen, a very short period of custody is not an effective way.

Mr Dickson: When it comes to the end of that process, and a vehicle is being seized, how can we be sure that you would not be handed over an old banger that is not worth anything, when there is no doubt that the individual knows that in the same way as those individuals who, at the moment, turn up at the turnstiles at prisons know that they will come out in a few hours?

Mr Johnston: Pamela will keep me right here. If it is sold and does not clear the debt, the remaining debt would still be outstanding. We would pursue it in other ways.

Mr Haire: It is also another factor —

Mr Dickson: By supervised activity?

Ms Reid: Yes. The fine would still be outstanding, so the supervised activity order would be an option. It would be a judicial decision for a supervised activity order to be made. The judge would make it when they go back for the default hearings that would commence.

Mr Dickson: With regard to safeguarding, would sufficient investigation be carried out by the probation service to understand that a partner, wife or husband who is another driver of the vehicle did not require it for family purposes?

Mr Johnston: There would be an opportunity to make representations to the enforcement service and the court, so that, if that were something that the court should take into account, it would be before it.

Mr McCartney: I have a couple of questions. I take it that the person who is fined has to be the owner of the vehicle?

Mr Johnston: Yes. There would be a range of tests in the guidance to establish that.

Mr McCartney: With regard to the bank account, let us say that the person is a parent who is claiming benefits for dependants. Could someone mount a legal challenge to say that they are actually taking money, not from the person who is paying the fine, but from the people who are dependent on it?

Mr Johnston: Again, there would be an opportunity to make representations. So, yes, if there were a situation in which somebody was acting for a disabled relative or something, and had money in their account for that reason, they would be able to point that up and show the evidence. The collection officer would take account of that.

Ms Reid: We would work with banks as well. They would also have information like that.

Mr McCartney: Obviously, the figures are there. Has any work been carried out on the profile of people who do not pay fines? Someone who wants to take the risk of going to prison for three or four days might still want to take the risk of going to prison for seven days.

On the other side of that, we had a presentation today. I know that some of you were here. Our prisons are filled to the brim. Here is a process that might add to that burden.

Mr Johnston: The object of this is very much to reduce the numbers who go to prison. In previous years, we have had upwards of 2,000 people going to prison every year. We want to bring that right down.

Sorry; give me your first question again.

Mr McCartney: It was about the profile.

Mr Johnston: Yes. We did some work with the Probation Board to look at the profile of people who were going into prison for fine default and to look at what they had recorded as the issues for those people. So, for example, money management and debt were obviously issues for a number of people. Housing was sometimes an issue. We have those figures. What it did was demonstrate that we need a system that is supportive but authoritative, so that your first step is to try to support payment through more time and instalments. It is only if that does not work that you go to the other methods of enforcement.

Mr McCartney: OK. When the person does the prison sentence, is the fine then —

Ms Reid: It is cleared.

Mr Johnston: It is discharged.

Mr McCartney: Has it been suggested that that gives the person the idea that they can do five days instead of pay the fine?

Ms Reid: That is where a supervised activity order would come in. It will really be the priority. If the outstanding fine were £500 or less, the judge could decide that a supervised activity order would be made as opposed to imprisonment at the default hearing. That is where we would imagine there would be more people doing a supervised activity order than going into prison for those seven days. Instead, they would do 10, 20 or 30 hours of supervised activity.

Mr McCartney: But there is no method. Obviously, as we have heard before, a high percentage of women are imprisoned for not paying TV licence fees. There is a poverty issue as well. As regards the habitual person who sees the seven days in prison as a way in which to quash the fine, is there no way of saying that they will do their seven days in prison but the fine still stands?

Mr Johnston: We did look at that. Some other jurisdictions have had thoughts about it. You can get into situations in which you have done your time in prison, you still owe the fine, and you end up going into prison again. You get into a kind of vicious cycle. There comes a time when the system just has to say that it will actually draw a line under it.

With regard to TV licence fees, if we go back to 2012, we see that 2,239 people were committed for fine default. Of those, 155 were for TV licences, of which 68 were women. So, we are not talking vast numbers. However, there is a proposal now, at last, across the water, that the TV licence fee fine might be considered to change to a civil debt rather than a criminal offence. I have to say that it is always very nice when the Home Office picks up on a proposal that we have been making to it for the past two years that, in the environment that we are now in, it needs to see TV licence fees as a bit like your Sky subscription. Certainly, the Minister has written again to the Minister in the Department for Culture, Media and Sport, welcoming its exploration of that. We think that a civil debt would be a much better way to deal with TV licence enforcement.

Mr McCartney: Will that be pursued by the corporation itself?

Mr Johnston: It is a reserved matter, so it would be Westminster legislation, but, at least, there seems to be some movement on that.

Mr McCartney: OK. Thank you.

Ms McCorley: Go raibh maith agat. Most of the issues have been covered. I did have concerns about people who are on benefits, but you have said that the courts would —

Mr Johnston: I know that there were concerns in the Committee previously about that. We took them away. What we have drawn up, which you will see in the Bill, is a set of procedures that we think will protect people so that there is a limit on what is taken for a fine from benefits each week. There is also a limit on the total amount of deductions that can be taken from benefits so that people still receive a certain amount to be able to live on. So, we are building in those safeguards. We have been working very closely with the Department for Social Development on them and drawing on the kinds of safeguards that apply in other situations in which debts are attached to benefits.

Ms McCorley: Do you envisage someone's disability living allowance (DLA) car being taken from them?

Mr Johnston: We still have to resolve a query with the Department for Social Development about whether disability benefits come into this scheme. Tom might be able to answer.

Mr Haire: Disability benefits do not come into the scheme. Indeed, a car that is used by a disabled person is not subject to seizure.

Mr McCartney: They would not be the registered keeper of the car anyway.

Ms Reid: That is right.

Ms McCorley: Would people who fall under the fine default automatically be on a debt blacklist?

Ms Reid: No. In England, they put that on a register, but it is not part of our proposals.

The Chairperson: Should it not be? For what reason would you not then be further punished, and rightly so?

Mr Johnston: The debt blacklists are very much a private sector initiative. They are kept by private sector companies. Different companies subscribe to them.

Ms Reid: Also, when we spoke to them in England, they said that they did not find a lot of value in it. When the information was put on the register, they were chasing up the debt, and the debt was then paid, there was a difference between when it became an outstanding debt and when it was cleared. They thought initially that people would pay their debt because they were being told that if they did not, it would be put onto a debt register, but they did not find that there was any increase in fines being paid on foot of that. That is one of the reasons why we did not pursue it.

Mr Johnston: Obviously, it adds to our administrative costs. It creates another method of challenge, judicial review and everything else, which, if there is no advantage to it, we are fairly keen to avoid.

The Chairperson: There is no one else to ask questions. Thank you very much.