



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Fines and Enforcement Bill: DOJ Briefing

27 February 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 Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

Witnesses:

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

The Chairperson: Let me welcome Gareth Johnston, deputy director of the criminal justice policy and legislation division, Pamela Reid, and Tom Haire, all of whom are from the Department of Justice. As usual, this session will be recorded by Hansard and published in due course. Gareth, I will hand over to you at this stage to take us through the paper.

Mr Gareth Johnston (Department of Justice): Thank you, Chairman. I should explain that, of those of us at this end of the Table, Tom Haire is responsible for the policy and the legislation on fine enforcement, while Pamela Reid is responsible for the operational development of our fine collection services.

The paper that we provided covers two topics: the content of the proposed fines and enforcement Bill as a whole; and a consultation paper that the Minister proposes to issue to further develop our legislative proposals. If the Committee is content, I will begin with the consultation paper and return to the wider issue of the Bill in a moment.

The last time that we were in front of the Committee to discuss fine enforcement services was February 2012. We had consulted on the concept of a new specialist fine enforcement service with additional powers. In the Committee, there was a particular focus on the safeguards that would go with those powers, and we gave some additional commitments. After that discussion, we went off to develop the legislation. We got Executive approval to start drafting it, and we launched a programme that was aimed at delivering the new service.

Early last year, we had a judicial review of the fine enforcement arrangements that had been operating in Magistrates' Courts and in the wider justice system in Northern Ireland for decades. The divisional court found that those arrangements were lacking and that default hearings needed to be part of the process before someone could be committed to custody for non-payment. It was not clear, though, whether district judges had the power to convene those default hearings. The Committee will be aware that we brought our own judicial review to clarify matters, and, in case that did not succeed, we had prepared urgent legislation. In the event, the judicial review gave us the clarification that we needed. However, all that meant that we had to go back and look at our policy for the future in the light of the judicial review and proof it against what the divisional court said was acceptable. I agree that it seems that we have been at this with fine enforcement for rather a long time, but quite a lot has been happening in the meantime. We are now on track with a programme to deliver a new fine collection and enforcement service. Part of that involves a fines and enforcement Bill, to which we referred in written briefings to the Committee on the legislative programme.

The package on the fine collection and enforcement service includes three things. First, it involves a civilian-based approach to fine collection that would largely remove the police from all but the most obstinate cases. Secondly, it involves providing powers to deduct money when agreements with a defaulter about instalments and additional time have not worked and where prison might otherwise be imminent. Thirdly, it will allow the community-based supervised activity order, which we have piloted, to be more readily available.

Broadly speaking, the package is, of course, about preventing default and, through supportive means, very much about reducing the numbers of people going to prison for fine default. At the same time, the aim has been to free up police officer time for more front line duties and to increase the availability of police officer time for hard-pressed areas rather than areas such as fine default, which can be dealt with in other ways.

All that builds on the experience of the reminder system that the Northern Ireland Courts and Tribunals Service has operated since May 2009. That has resulted in 28% more defaulters making payment, and the service has also ensured that £5.9 million in total has reached the public purse. We also developed a default register to alert the courts to outstanding fines.

The Minister has taken the approach that — it is important that I emphasise this — the streaming of fine defaulters will be important as we move forward. Across the water, they call it intelligent enforcement. There are those who find that they have genuine difficulty in paying a fine. For them, the emphasis would be on a supportive model, and we have experience of that from the fine reminder service. Fines officers could provide additional time to pay or allow payment by instalments. If that did not work, they could then move to compulsory deductions from earnings or, within tightly controlled limits, from benefits. The object of it is to keep someone out of prison.

Working with colleagues such as Pamela on the practicalities of delivery and on the type of fine collection service that could be created has raised some thoughts with us about additional provisions that it would be useful to have in a new service's armoury. That is why the consultation paper is before the Committee today.

I mentioned streaming or intelligent enforcement. One stream is the people who have difficulty paying, but we can work with them on a solution to that, even it takes some time before the whole fine is paid off. Another stream is people, often multiple offenders, who belligerently refuse to pay. Visits to other jurisdictions have shown the importance of deterrents as an added incentive to clear a fine in those kinds of cases. So, it is important that the service provides both for support and deterrents so that it can adapt and streamline its response according to the individuals who are before it.

With that deterrents theme in mind in particular, the Department is keen to take views on four further options that could be brought into the Bill. The first is a power to seize vehicles. Scottish colleagues have spoken very highly of the deterrent value of that power. Even if it is deployed only very occasionally in particular circumstances, it allows officers to use it as an incentive to encourage payment.

As you will have seen from our paper, many of those who receive fines are fined for motoring offences. So, it has a link to where a big body of fines rests.

As a power, the seizure of vehicles is already available locally for driving without insurance or for driving a nuisance vehicle, so it is not without precedent. However, a code of practice would be needed to ensure that it was used only in serious cases. We are not looking at seizing the car that a

single mum who has been fined for not paying her TV licence fee uses to take her children to school. The code of practice is the way of ensuring that the service takes such a streamed approach. The Mercedes that the persistent offender is driving might be in a very different category.

Similarly, with the second proposed power, which involves direct access to bank accounts, again, the Scots have that power and they have used it where someone has assets but is simply not paying a fine. It is worth noting that, in Northern Ireland, that option is already available for debt recovery.

The other two proposals relate to the use of community disposals or imprisonment if default occurs in the end. I want to stress the words "in the end", because this package, with the new service, specialist officers and new powers, is aimed at doing as much as possible to prevent people from getting to a point where the likes of custody need to be considered. Of those two other proposals, the first relates to the supervised activity order. That means that for any offender with a fine of a certain level, perhaps up to £500, when the service has tried all the routes that I just mentioned, they would normally get a supervised activity order rather than imprisonment. Only if the supervised activity order fails would they potentially go to prison. Prison, as we have acknowledged on a number of occasions previously and for reasons that are familiar to the Committee, is really not a satisfactory way to deal with fine defaulters. The supervised activity order is something that we want to encourage, as it represents giving back to the community.

The second and final of those proposals relates to prison remission. Fine default is not a public protection issue, so it is not within the ambit of the public protection sentences of the 2008 order, which removed remission from many sentences. So, 50% remission is still available on a fine default period. Our paper shows the effect that that can have. Some would say that that adds to the incentive for some people to consciously not pay their fines. If you are crafty about it and turn up at Maghaberry at the right time, you could end up spending a very short period in prison. So, might the removal of that 50% remission encourage more to pay when they are faced with the prospect of spending longer in prison? Might the ultimate backstop of custody be a more meaningful threat in those circumstances and encourage people to deal with their default at the earlier stages, including through the supervised activity order? The Department wants to take views on those issues through the consultation exercise.

As I said, we are considering those four additional developments. We seek the Committee's views and, through the consultation, the wider public's views on them. As I emphasised, at a practical level, a collection officer would consider them only in particular cases, guided by a code of practice and in specific circumstances, particularly with multiple offenders or those who are, in effect, giving two fingers to the system by not paying fines.

Chairman, I thought it worth closing with the plans for the Bill more generally. What I described is perhaps the biggest part of the Bill, but there are other important areas that we want to include. We are getting ready for drafting the areas for which we know we already have Executive approval. The Committee will, I think, recall the Minister's letter advising of the plans to split in two what was then the faster, fairer justice Bill. That Bill was becoming so large that splitting it was inevitable to allow proper scrutiny and delivery. A large part was already drafted, and the fines legislation, as I explained, needed more detailed development.

On the legislative programme as a whole, the Bill dealing with human trafficking has been a priority for the Committee and for the Department. Obviously, it is currently before the Committee. We hope to introduce our short legal aid and coroners Bill to the Assembly next month. That will be followed by the faster, fairer justice Bill. With judicious management and through working with the Committee, our aim is to ensure that the Committee evidence periods for those Bills do not overlap. However, I understand that there is the potential for one Bill to be out to Committee consultation while another is subject to evidence sessions. Our aim is to introduce the fines and enforcement Bill next October and for it to complete its Assembly passage by the summer of 2015. So, that timetable gives us the opportunity to consult on these additional proposals on fine collection and to return to you on the results of that consultation before the summer recess.

As I said, the Bill contains a number of other important changes that the Department plans to make. One is delivering on our commitment for additional protections in the area of extreme pornography. Another is on the changes to youth justice law, which would underpin the move to accommodate under-18s in the juvenile justice centre. There are improvements, which are referred to in the paper, to the positions of the Prisoner Ombudsman and of the Police Ombudsman. There are some changes to police powers, and there is the creation of an early removal scheme for prisoners who are liable to deportation. Although those of us who are in front of you are responsible for overall management of

the Bill, we are not necessarily policy leads for all those areas. A number of those proposals will be returning to the Committee before they are finalised for the Bill, and the proper policy leads will be briefing you.

In closing, the Minister's main message on and concern about fine enforcement is to ensure that, where a person is given a fine, they will pay it. That can be delivered in a range of ways, properly controlled and tailored, importantly, to fit individual circumstances. That is what we are all seeking to achieve. Chairman, we are very happy to answer any questions.

The Chairperson: Thank you very much, Gareth. I will not prolong the session, because, at this stage, I am content for it to be consulted on, and, obviously, we will have the detailed scrutiny at that point. So, we will get into more aspects of it.

I have a couple of quick points. Where prioritising community-based options instead of imprisonment is concerned, you talked about custody still being a fallback. It is entirely understandable that a community-based scheme should be used for such offences as non-payment of a TV licence. Some fines that people receive could be very significant, and, ultimately, custody may also be an option. So, talk me through how it will work to have a community-based approach while retaining a custody element. Could that undermine a community-based approach if people could still, ultimately, resort to custody as an option?

Mr Johnston: The aim of the community-based approach is really to deal with the very large number of lower fines. There is a limit in legislation of £500, as Tom just reminded me. Beyond that, a supervised activity order is not available. The vast majority of fines are in that category. We are trying to reduce the use of prison as far as possible, so we are suggesting that, normally, when someone gets to that point and after the new fine service has tried everything else in the run-up to that, a court will normally give a supervised activity order. The number of hours that that order would cover is specified in legislation. If that supervised activity order were then breached and could not be completed, that breach would result in custody. However, if someone has, say, a fine of £10,000 and has resolutely refused to pay and we could not get at money or seize vehicles, they would go directly to custody at that level of seriousness. In fact, at that level, custody periods are quite elongated.

The Chairperson: Are the additional protections for extreme pornography aimed at covering Internet-based pornography? What is the reach? I know that this is in line with what was stated at Westminster. What areas will that include?

Mr Johnston: It would cover any sort of pornography, whether it was online or offline, printed or on video. There is already provision on extreme pornography, which, for example, depicts necrophilia, bestiality or life-threatening violence. The aim of that provision is to bring depictions of rape into that classification.

Mr Lynch: Gareth, you mentioned instalments coming out of benefits being finely controlled. Can you elaborate on that slightly?

Mr Johnston: We aim to fit the recovery of fines money into the existing regime for deductions from benefits. So, at the moment, for example, child and family maintenance money can be deducted from benefits. There are other examples, too. There are a couple of restrictions on that. One is that there would be a restriction on the amount that could be deducted from benefits in connection with the fine. The other is that there would be an overall restriction on how much in total could be deducted from benefits across that and other categories so that the person is left with an amount that is judged suitable for living on. Even if it is only a small amount a week, the deduction keeps someone out of default and from the threat of prison. That is really what we aim to do through those deductions from benefits. They would not kick in at the start; at that point, the fines officer would look to see what voluntary arrangement could be made. However, that power is available.

Mr Lynch: Are you talking about a percentage coming out and a percentage staying in? What percentage are you indicating?

Mr Tom Haire (Department of Justice): There are two ways of doing that. We have not settled on either of them. One could be a percentage and the other a minimum amount. We have to look at them.

Ms McCorley: Go raibh maith agat, a Chathaoirleach. When talking about fine defaults, the paper refers to site visits to the South of Ireland, England and Scotland. What sort of experience emerged from that?

Mr Johnston: It was useful to see just what had worked and not worked in other jurisdictions. Colleagues went on some visits. In addition, we had a workshop here where people from England, Scotland and Ireland came together to talk about their experiences. Some of the pointers were on the tools that were useful when you had people who resolutely refused to pay. That is where we were being briefed on the value of some of those powers, such as vehicle seizure or direct deduction from bank accounts. Those are not things that you would use very frequently, but if you were seen to use them or if a fine service could remind people that they had the power to do them, they might sometimes encourage payment in appropriate cases.

There were also things that had been tried in other jurisdictions that had not worked. One thing that we had been thinking about at one stage was whether, if you paid a fine within 14 or 28 days, you could get a discount. They piloted that in England. What they found was that the people who were going to pay anyway paid within that period and got the discount, but it did not actually encourage other people to pay. So, we were able to learn from that experience.

Ms McCorley: Can I just ask something about the supervised activity orders? What actual activities are involved?

Mr Johnston: In the pilot, I think that some people were working in charity shops and some were involved in caretaking and maintenance duties.

Mr Haire: That was on sports grounds etc.

Mr Johnston: We would work with the Probation Service to come up with a suitable range of activities. It might be that, for some types of offender, you want to provide activities that are reasonably challenging, and it might be that, for other streams, a different sort of activity would be appropriate. We are going to have those discussions with the Probation Service.

Ms McCorley: Do you learn from the activities that prove to be successful? The reason why I am asking you that is because I had a meeting last week with Probation Board officials, who told me that some of the supervised activity that had been under way included the creation of the pathways up on the Divis Mountain and Black Mountain. They were saying how successful it has been and how people were very enthusiastic about it. I just happened to be up there for a walk last Sunday, and I think that it is brilliant. It has made such a difference. So, I think that there is something to be learned from that. It is about getting the right activity that may inspire people.

Mr Johnston: I think that there is a wider point there about the role of community sentences. Sometimes they can be presented in the media as a soft option. That involved hard work for people, but it also involved putting something back that the whole community can now benefit from, and it is very visible payback to the community. That is a theme that I know that colleagues in the Probation Service are keen to return to.

Mr Dickson: Following on from Ms McCorley's comment about supervised activity orders, you also said that there would be certain circumstances where someone would go to prison and that there was the potential for less remission. That would mean that they are likely to be there for longer, sitting in a warm, cosy prison cell as opposed to perhaps sitting there and being taken out for six hours a day to create those paths. Is there an opportunity to mix supervised activity with being held in custody?

Mr Johnston: I know that, more generally, the Prison Service is interested in activities that are available to prisoners. There have certainly been examples, particularly from Magilligan, of people going out into the community and getting on with work. We can certainly explore whether there is any potential for that for those who end up in prison. However, I think that, until now, the reality has been that some people have been in for one day, two days or four days. There is no potential in that sort of period, but we can certainly discuss whether there is potential for those who are fined significant amounts and are in for longer periods.

The Chairperson: Members, can I assume that we are content for the consultation to go out?

Members indicated assent.

The Chairperson: OK, thank you very much for coming to the Committee.