

Northern
Ireland
Office

**FINE DEFAULT IN
NORTHERN IRELAND:
A CONSULTATION**

JULY 2008

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FOREWORD

By Paul Goggins MP Minister of State at the Northern Ireland Office and the Rt. Hon. David Hanson MP, Minister of State at the Ministry of Justice with responsibility for the Northern Ireland Court Service

As Government Ministers with joint interests in the criminal law and criminal justice procedures we are pleased to publish this consultation on the issue of fine default in Northern Ireland. From both criminal justice policy and court system perspectives the use of the fine and its underpinning procedures - particularly in dealing with default – are of crucial importance to our joint responsibilities for the criminal justice system in Northern Ireland.

Following the recent and major changes to the sentencing framework in Northern Ireland, fine default and the procedures for dealing with it has, quite rightly, come under a renewed spotlight.

One of the aims of the Criminal Justice Order 2008 is to reserve custody for those whose offences merit it. And this has thrown into sharp relief the numbers of people who end up in Northern Ireland prisons for fine default – approaching 2000 per year over the last three years, returning to the levels last experienced ten years ago.

And whilst the 2008 Order has very recently created a new, community-based option for dealing with default, we are both convinced that more can be done. This consultation provides a very timely opportunity to build on the developments of the 2008 Order.

The consultation

The purpose of this consultation is not only to consider how best the system can deal with fine default but also to look at the systems in place to ensure fines are enforced effectively. The consultation looks at four broad areas: setting the fine; collecting the fine; dealing with default; and strengthening the fine - four crucial areas on which we would welcome views.

There are also a number of key principles that we see as underpinning our proposals. There is a need to identify those that genuinely “can’t pay” from those who “won’t pay” for whom a different approach may need to be considered. As an overarching aim, we want to maintain the fine as an effective and important aspect of sentencing; to build new systems that are deliverable; that are affordable and to scale; and that do not have a detrimental effect on the criminal justice process and its costs as a whole.

And beneath all of that is the core principle of judicial independence in sentencing. Our intention is to give the courts additional powers in dealing with fine default.

Wider issues

Fine default is but one – albeit important – aspect of the fine as a disposal and how it fits into sentencing and criminal justice processes more generally. A parallel consultation has just closed on Alternatives to Prosecution that contained ideas around the issue of fixed penalty notices and prosecutorial fines. These provide other ways of achieving appropriate penalties and procedures for low-level offending. Other issues on the horizon will be victims' strategies and whether or not fines could include some form of recompense.

Improvement will be progressive. Some aspects may be more readily brought forward than others. But we are both convinced that fine default must be tackled as a matter of priority. The current enforcement system is an inappropriate and expensive use of police resources. And while committal to custody in the event of default may need to be retained as an ultimate sanction, imprisonment should not be the standard punishment for fine default. Rather than resorting to imprisonment, the goal is to establish a system that tries to encourage payment and deals with default in a more flexible and innovative way.

In conclusion, our intentions in this consultation are to ensure the fines system is effective, efficient, fair and appropriate; to tackle the problem of fine default; and to set in place powers and procedures that will be deliverable and which will prevent significant numbers of people ending up in prison, many of whom were originally convicted of quite minor offences.

The future

Whilst we will remain responsible for taking decisions in this area up to the point of devolution of justice and policing, after devolution responsibility for these matters will transfer to the relevant Minister in the NI Executive. Any legislative change will then be the responsibility of the NI Assembly.

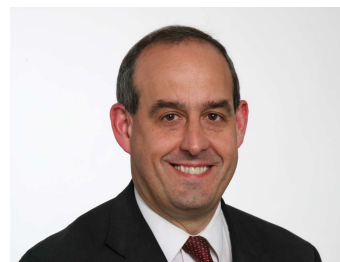
Our intention at this stage is to take steps to improve the immediate problem of custody for fine default, and in doing so provide a firm platform for longer term options from which the Assembly can set long-term goals for the fines system.

We both look forward to the devolution of policing and criminal justice powers to locally elected Assembly Ministers. In the meantime, we welcome comments and contributions to this consultation.



A handwritten signature in black ink that reads "Paul Goggins".

Paul Goggins MP



A handwritten signature in black ink that reads "David Hanson".

Rt. Hon David Hanson MP

SECTION 1: INTRODUCTION

The use of the fine

1.1 The fine is by far the most frequently used penalty in Northern Ireland's courts. Over recent years between 17,000 and 20,000 offenders have been fined annually in Magistrates' courts - roughly 70% of sentences of sentences given in those courts.¹ And in terms of the sentences imposed – because one offender can receive multiple fines – upwards of 45,000² fines can be imposed in any one year. Whilst numbers in Crown Courts are inevitably much lower because of the more serious nature of prosecutions brought at that level, in overall terms nearly two thirds of all offenders across all of Northern Ireland's courts are fined. Key statistics on fines are included at Annex A.

1.2 The fine is also a very effective disposal. It is the most appropriate penalty for the vast majority of summary offences; it has a compliance rate of around 95%; and in terms of reconviction, has the lowest rate – and therefore best performance – of any other disposal. Only 16% of those fined were reconvicted within two years of sentence.

The need for improvement

1.3 The success story of the fine comes, however, at a price – literally, procedurally, and in human terms. Less than half of fines imposed are paid on time; there is often limited information available on offenders' means when enforcing the fine; court and police enforcement procedures are required to raise the initial 45% compliance rate to 95%; and at the end of the process, nearly 2000 people are imprisoned for defaulting on a fine.

1.4 The systems around setting and collecting of fines are ready for review and improvement.

¹ Based on police prosecutions and the principal offence for which an offender is convicted.

² NI Court Service figures reflect the total number of fines imposed which is inevitably much higher than the number of people fined. They also include non-police prosecutions.

The consultation exercise

1.5 This consultation document considers the current position around the fine and its use in Northern Ireland. It provides an overview of the main features of fines legislation. It analyses a number of weaknesses and gaps in legislative provision before outlining recent developments in other jurisdictions.

1.6 The main part of the consultation however is based around options for improving the systems for the setting and collection of fines. The paper identifies four key areas where the system might be improved: *setting the fine*; *collecting the fine*; *dealing with default*; and *strengthening the fine*.

1.7 In each area the consultation makes a number of proposals and poses a number of questions on which views would be welcome. Broadly these are around improving information available to the courts; expanding the court's options in the area of default; proposals that would help prevent default in the first instance; and providing strong backstops to encourage payment.

1.8 The paper also identifies and seeks views on a number of key principles that currently underpin the use of the fine and which it is proposed would be reflected in any decisions taken on the way forward.

Other initiatives

1.9 The consultation also builds on a number of other pieces of work recently completed.

- The *Review of Sentencing Framework* carried out in 2005 identified a need to improve the issue of fine default.
- The *Criminal Justice (NI) Order 2008* created powers for a Supervised Activity Order as an alternative to custodial penalties.

- A policy consultation recently closed on the related topic of *alternatives to court prosecutions*. (The possible expansion of fixed penalty notices, for example, was included as a means of diverting some lower offences that might routinely attract fines into a non-court procedure.)

The way forward

1.10 As indicated by both Ministers in their foreword, a key aspect of the consultation is that this is a developmental process. The consultation seeks views on a range of issues that are important both now and in the future. Changes to be made could be introduced at an administrative and legislative level; some could be prioritised for legislation sooner rather than later; whereas others that may require more involved procedural arrangements could follow thereafter.

1.11 This consultation sets out a range of options to tackle the issue of fine default but in so doing is also establishing a way forward more generally.

1.12 The Government would welcome views on the proposals in this document. Details of how to respond are provided at Section 14.

SECTION 2: EXISTING SYSTEMS IN NORTHERN IRELAND

The process of being fined

2.1 When setting the level of a fine, the court takes into account any available information on the offender's means. Initial means inquiry forms are issued by the Public Prosecution Service along with the summons to appear before the court. The court may also make a financial circumstances order to obtain the information before sentencing (though this power is only rarely used in practice).

2.2 Once the fine has been imposed, the offender is given a specified time in which to pay the sum. This period is normally 28 days, though it can be longer depending on any representations regarding the offender's means. The offender can apply to the court to pay the fine by instalments; for more time to pay the fine; or, in certain circumstances, for the fine to be waived in whole or part. Around 45% of those fined pay within the specified period without enforcement processes being required.

Default

2.3 If payment has not been received within the specified period, a committal warrant is forwarded by the court to the PSNI for execution. A committal warrant gives the police the power to arrest the offender and take them to prison. When the PSNI execute the committal warrant, in practice officers may make considerable effort to ensure that the offender discharges the fine by paying the outstanding amount to the police. Only if the offender is still unable or unwilling to pay the fine will they be imprisoned for default.

2.4 The court does have the option of issuing a distress warrant instead of a committal warrant in the event of default. A distress warrant allows the seizure of goods or property which can be held or re-sold to recover outstanding amounts.

2.5 At the point of sentence when the fine is being imposed, the court will routinely set the custodial default period. These are provided in statute and are set according to the level of the fine:

Lengths of custodial period for fine default

Fine	Maximum Default Period
< £200	7 days
£200<£500	14 days
£500<£1000	28 days
£1000<£2500	45 days
£2500<£5000	3 months
£5000 <£10000	6 months
£10000 +	12 months

2.6 In practice, most periods of imprisonment for fine default tend to be very short. A number of factors - including prison law on remission; discharge requirements; most fines being for low amounts which attract short custodial periods in default; and multiple warrants being treated concurrently – mean that the average custodial period served by fine defaulters is only 4 days. Once the custodial period has been served, the fine is discharged.

SECTION 3: STRENGTHS AND WEAKNESSES OF THE PRESENT SYSTEM

Information

3.1 Existing systems allow the court to take into account an offender's means as well as the seriousness of the offence when setting the level of a fine. In practice, however, obtaining information on a defendant's means can prove difficult. Many do not attend court. Defendants are under no legal requirement to provide the initial means information and the financial circumstances order is only very rarely used by courts. There is presently no penalty for non-compliance with the normal means inquiry. Information on offenders' means is important and fines can be enforced much more effectively when an individual's means are known.

Warrants

3.2 In the majority of cases the fine is an effective disposal and only around 5% of those fined in any given year are imprisoned due to default. The relatively low number is due in large part to the warrant execution process operated by the PSNI. Although only 45% pay the fine within the period specified by the court, the subsequent warrant enforcement process results in a further 50% of those fined paying the amount at this point and not being imprisoned.

3.3 The committal warrant system does, however, put pressure on police time and resources in a comparatively low priority area. The enforcement process costs the PSNI over £850,000 a year and requires the allocation of significant numbers of police officers and vehicles. Inevitably given the competing pressures on police time, warrants for fine default can take a lower priority than other matters.

3.4 The court does have the option of forwarding a distress warrant rather than a committal warrant to the PSNI. In practice, however, the distress warrant system has proved problematic to operate and is rarely used. Difficulties with establishing ownership of goods and the administrative burden of establishing systems for the re-sale of goods mean that committal warrants, rather than distress warrants, are the standard enforcement tool.

Imprisonment

3.5 The 5% of those fined that default and do not pay when the committal warrant is executed end up in prison. The numbers of people imprisoned for fine default represents the most widely publicised concern with the present system.

3.6 In 2006, nearly 2,000 people were committed to prison for fine default. Such numbers put pressure on both prison capacity and resources: fine defaulters account for around 30% of receptions into prison and result in significant costs – around £150,000 per year - and administrative procedures for the Prison Service. Coupled with police costs, the total cost of administering the system per year is upwards of £1 million. In addition, the short periods of imprisonment served by fine defaulters may not provide a significant deterrent and are too short to allow participation in rehabilitative programmes.

3.7 Most of the fine defaulters who end up in custody have defaulted on low level fines imposed for relatively minor offences. 80% of fines imposed are for £600 or less. 55% of fine defaulters imprisoned in 2006 had been fined for motoring offences. The most common offence was driving without insurance, which was the original offence of 37% of imprisoned fine defaulters. This predominance of particular types of offenders suggests that more suitable and tailored disposals could be made available as alternatives to imprisonment for default.

SECTION 4: REFORM IN OTHER JURISDICTIONS

4.1 Recent years have seen a global trend towards both more effective systems of fine enforcement and the creation of alternatives to imprisonment for fine default. Different countries have addressed the issue of fine default by implementing reform throughout the fines system: from sentencing; to collection and enforcement; and ultimately the penalties for default.

Internationally

4.2 Policies intended to reduce default at the sentencing stage tend to be based on linking the means of the offender with the level of the fine. Within this approach, there is variation over how the fine and the means of the offender are correlated. The 'day fines' system (where the offender's daily disposable income is established and the fine then calculated), first established in Scandinavia and now adopted in a number of countries including some U.S. States, is one approach. Other jurisdictions such as the Republic of Ireland have a more conventional approach, the fine being set commensurate with the seriousness of the offence and the offender's means.

4.3 Effective collection and enforcement mechanisms have also been internationally recognised as a crucial way of reducing fine default. Administrative enforcement bodies have been created by many European countries and a number of Australian jurisdictions. Such civil bodies are typically given powers to seize property and take money from benefits or earnings.

4.4 Another approach – which is often used in tandem with efforts to reduce instances of default - is to provide alternatives to imprisonment in the event of default. Alternative penalties for default range from community service orders and supervised attendance orders to suspension of a driving licence. Imprisonment for default is still retained in most jurisdictions though the nature of its coexistence with alternative penalties varies: some countries have strict limitations on its use and prioritise alternative penalties; others allow judicial discretion. Imprisonment has been removed as an option entirely in some cases.

England and Wales

4.5 In recent years, England and Wales have created a largely administrative fines recovery system. The Courts Act 2003 provided the statutory basis for this new system and was followed by a series of pilots and national roll-out. Under the new system, the court makes a Collection Order when imposing the fine. Enforcement then passes to the administrative level, with a Fines Enforcement Officer allocated to manage each case.

4.6 The Fines Enforcement Officers are given a number of powers to enforce the fine. They can allow further time for fine payment; make deductions from benefits; make attachment of earnings orders; and requisition funds from bank accounts (if the court has not already imposed these measures). Deductions from weekly earnings operate on a sliding scale depending on take home pay whilst deductions from benefits are typically set at £5 per week.

4.7 Fines Enforcement Officers can order that vehicles belonging to the defaulter be seized or clamped and in the event of non-compliance can also refer the case back to the court. The court has a number of further sanctions available to it, including ordering the sale of a vehicle; increasing the fine; ordering driver disqualification; or imposing a sentence of imprisonment for default.

4.8 The Crime (Sentences) Act 1997 introduced a number of sentencing alternatives for fine default. In place of imprisonment, the court could impose a 'default order' (either an 'unpaid work requirement', a curfew requirement, or a driving disqualification). The number of hours of the default order is based on the amount of the fine defaulted on. If the fine, or part of the fine, is then paid, the order is revoked or reduced accordingly. Sections in the Criminal Justice and Immigration Act 2008 provide for equivalent sentencing options for young offenders and re-enact provisions in the Power of Criminal Courts (Sentencing) Act 2000 allowing an attendance centre requirement to be imposed on fine defaulters aged under 25.

4.9 The 'unpaid work requirement' is an alternative to imprisonment where the means of the offender are such that options for default such as vehicle clamping and deduction from benefits are impracticable. The 'unpaid work requirement' is essentially similar to the Supervised Activity Order introduced in Northern Ireland and although not yet in force nationally as a disposal, it is currently in the final stages of being piloted.

4.10 In the event of default, imprisonment has been left as the last resort.

Scotland

4.11 Scotland has recently established a similar system to that operating in England and Wales. The Criminal Proceedings etc. (Reform)(Scotland) Act 2007 introduced Fine Enforcement Officers with the power to deduct money from benefits and earnings; and seize funds and vehicles. Scotland already has a Supervised Attendance Order, similar to the Supervised Activity Order, which provides a community-based penalty in the event of default.

SECTION 5: REFORM IN NORTHERN IRELAND

5.1 Recognising the strengths and weaknesses of fines processes in Northern Ireland the Government has already been moving towards improved procedures, systems and powers. A number of steps have been taken both to improve the number of fines being collected and to reduce the numbers imprisoned for fine default.

- An inter-agency working group was set up in 2007 to consider options on the improvement of fines processes. The Group included courts, police, probation, prisons and Northern Ireland Office members. Much of the work contained in this consultation has arisen through that working group.
- Visits to and from other jurisdictions have been undertaken to explore fresh ideas and options.
- The Northern Ireland Court Service has been undertaking a pilot of new enforcement arrangements since November 2007. The pilot - underway in Belfast and Ards county court divisions - trials the use of a more proactive fine enforcement process. Administrative officers remind offenders by phone and letter that their fines are due for payment; warn of the consequences of default; and provide guidance on how to apply for instalment orders and time extensions.

5.2 Other means of providing alternatives to imprisonment in the event of default have also been created. The Criminal Justice (Northern Ireland) Order 2008 created a new community-based disposal, the Supervised Activity Order (the 'SAO'), which will be available to be used in place of imprisonment for fine default. When the SAO comes into effect, the fine is discharged. If the offender fails to comply, the penalty is imprisonment. The SAO is described in further detail at Annex B.

5.3 Looking even further ahead, a thematic inspection currently underway through the Criminal Justice Inspectorate of Northern Ireland (CJINI), into the enforcement of court orders – including fines – will be important. Along with the outcome of the pilot exercise being undertaken by the NI Court Service, both of these will undoubtedly provide further ideas and opportunities for development.

5.4 Such actions and recent reforms have been important steps in tackling the issue of fine default. But the Government acknowledges that more needs to be done to create a more effective, efficient and fair system.

SECTION 6: GOVERNMENT PROPOSALS AND QUESTIONS

Improving processes and outcomes

6.1 Fine default in Northern Ireland and the approaches taken by other countries clearly raise a number of issues. It has been seen that problems can arise around the ability to pay; the effectiveness (or ineffectiveness) of collection; the appropriateness and flexibility around enforcement methods; and how default in itself is ultimately dealt with.

6.2 Whilst the fine in itself is a relatively “successful” and effective court disposal – reconviction rates are very low at 16% alongside an estimated 95% of fines that are (eventually) paid up – are the processes that lead to these outcomes efficient?

6.3 And is custody for fine default the only choice? Year on year nearly 2000 go to prison – imprisonment that arises from often quite minor offences for quite low level fines and for very short periods in custody. Whilst custody remains the concluding backstop on all community penalties, for fine default there should be other options.

6.4 But rather than simply looking at the end, custody outcome, what issues arise across the fines process as a whole? What might be done earlier in the process to prevent default in the first place? Might steps be taken to improve information around the setting of fines? Are there methods of expanding the opportunities for payment? And if default does ultimately occur, does the court have a sufficient range of options to deal with the defaulter? Developments identified in other jurisdictions would suggest not.

Areas for improvement

6.5 The four areas in which Government would seek to improve matters and on which it would seek views are the systems around:

- *setting the fine;*
- *collecting the fine;*
- *dealing with default; and*
- *strengthening the fine.*

6.6 A review across these four aspects might create a better business system; might ensure that those that are fined are more likely to pay promptly; and might ultimately reduce the numbers imprisoned for fine default.

6.7 What might be done in each of these areas?

SECTION 7: SETTING THE FINE

Introduction

7.1 When setting a fine, Northern Ireland courts are required, where possible, to have cognisance of the offender's means. Offenders' means are typically provided either personally or by the legal representative. If an offender's means cannot be ascertained - either through non appearance or by pleading guilty by post - then the court must be able to proceed in the offender's absence. To do otherwise would require adjournments, re-appearances, would incur costs and system delays.

7.2 Information suggests that roughly 20% of fines are imposed in the absence of the defendant with the courts having limited, if any, information about financial means. Whilst there is no information to suggest that it is purely those who do not appear in court who end up defaulting, it would seem appropriate to ensure that when setting a fine, a court has all the information it requires.

7.3 What more might be done to improve the quality of information available to the court without causing delay?

Discussion

7.4 One option would be to make use of information provided for other purposes. A legal aid statement of means will have been completed in many cases and key information could be provided to the court to inform assessment of fines. This would have the advantage of using what in many cases would be a readily available source of information and would avoid delay and the need for further inquiries.

7.5 A complicating factor would be the use of information provided for one purpose (legal assistance) for a second purpose (the setting of a penalty) under data protection and sharing laws; and if it were to be possible, how might it operate in practical terms?

7.6 Another approach to making best use of and improving access to information already held would be to create and build up a “default register”. If an offender had defaulted on a number of previous occasions, that would be information that a court should be alert to.

7.7 A further option would be to address the difficulties with the current methods of collecting information on means. When being summonsed to court, means forms are issued ahead of appearance. But the voluntary nature of such a request results in very few being completed. At court appearance, a financial circumstances order power exists in law requiring an offender to provide details. This remains under-used for a number of reasons: many plead guilty by post; the increased likelihood of adjournment for completion; and concomitant delay in often minor cases.

7.8 A new information order would place a statutory onus on the defendant to provide a broader range of information. It would thereby allow the fine to be set and any possible follow-up action to be planned for. It would be of benefit both to the court and to the defendant. Such a procedure would still need to have flexibility to allow courts to proceed in its absence and would need to be submitted at the appropriate time.

7.9 In particular we seek views on whether failure to comply with an information order should in itself be an offence. If so any penalty for non-compliance – possibly a fine - would also need to be in keeping with fine default solutions.

Questions for consultation

- Might NI courts have enhanced statutory powers to require offenders to provide a statement of means? Might the legal aid statement of means be used as a simple alternative to obtain that information?
- Should an “information order” be created in law which requires defendants to provide financial information? And should it be a criminal offence with its own separate penalty to fail to provide information?
- What might be included in such an “information order”? Along with income details, might contact details including phone numbers be required to assist in fine collection follow-up?
- Should a form of register be created that would record all outstanding fines and fine defaulters?
- Might information sharing be improved more generally in criminal justice matters to allow both the operational system and the services it provides to offenders, participants, and indeed victims, to be improved?
- Are there any other approaches which would ensure that the court has all the information it needs to set fines?

SECTION 8: COLLECTING THE FINE

Introduction

8.1 Once the fine has been set, a number of issues arise as to whether or not the offender has sufficient opportunity to pay and whether or not the processes currently in place help encourage payment. Should the system be more “active” than “passive” in fine collection? Rather than simply impose a fine – coupled with allowing time to pay or to pay by instalments – should systems be created that help offenders “manage” their fines and pay on time? A number may simply forget to meet a payment date and the first they might know is when a committal warrant is presented by a police officer. How might the system help?

Discussion

8.2 The challenges will be to improve the processes whereby fines themselves are collected. The processes involved should be effective, efficient and affordable, delivering more than they do presently. There may be ways to improve payment rates that have a dual benefit. Methods that can help the offender but at the same time provide a more effective – perhaps more administratively based - system.

8.3 One method is the “fines officer” pilot scheme recently undertaken by the Court Service – and the report on the scheme will be important in determining any benefits of an administrative system. A more developed option might be to put the fines officer on a statutory footing, perhaps with a more formal title of ‘fines enforcement officer’. The approach might have a stronger impact if the officer had a legal basis for any follow-up. This would strengthen their function and create a role more akin to “managing” a fine rather than reminding the offender of a fine needs to be paid. Alternatively, a simple reminder system might be more acceptable and more readily deliverable.

8.4 There are balances to be struck. On the one hand, we need a fines follow-up approach that provides a means to encourage payment of the fine and that proactively explores options. One that is cost-effective and helps an offender make recompense. On the other, the fact that police secure an increase in payment rates from 45% to 95% suggests that the system needs some “teeth”. And whilst reducing police involvement could free up local police resources for priority work, it would be important to make defaulters aware of the greater range of penalties — as recommended in Sections 9 and 10 - which may be imposed. These could be made more immediate than the threat of prison.

Questions for consultation

- Might “Fines Enforcement Officers” (FEO’s) be created on a statutory basis with the capacity to contact and work with those who need help to manage their fine?
- Might FEO’s have their own powers (see ‘Methods of Payment’, 9.7 and following) to manage fines?
- Might a non statutory ‘reminder’ system be more deliverable and appropriate? Might it be a prelude to considering a statutory approach?
- Might FEO’s be attached to courts thereby removing the main function from police?
- Are there any other approaches that might assist in the successful collection of fines?

SECTION 9: PREVENTING AND DEALING WITH DEFAULT

9.1 Currently, courts have two options to deal with default. Courts can issue either a distress warrant or a warrant for committal to prison. A third option – the Supervised Activity Order – has been created in the Criminal Justice (NI) Order 2008 and will be available to the court in due course. (A description of the SAO is provided at Annex B).

9.2 The issue, however, is whether or not these options are sufficient for courts. Are these enough either to assist in the prevention of default in the first instance or to deal with it when it occurs? A wider range of options might be appropriate – but what might they include?

Court set penalties

Introduction

9.3 In terms of alternative penalties available to courts, England and Wales have created a curfew order for fine defaulters (Section 300 of the Criminal Justice Act 2003) and an Attendance Centre Order for fine defaulters under the age of 25 (powers from 2000 recently re-enacted in the Criminal Justice and Immigration Act 2008). An Attendance Centre Order requires an offender to attend at a specific location for a set number of hours within a certain time frame. The Criminal Justice Act 2003 also allows for a driving disqualification to be set in default (S. 301).

Discussion

9.4 One option might be to expand the number of penalties available to courts thereby providing a package from which they could choose the option most appropriate to the offender. Rather than look immediately at options to collect the fine if/when default occurs, the court could consider alternative default penalties. Disposals that might in themselves act as an incentive thereby preventing fine collection issues but that would be more tailored to the offender.

9.5 In effect the courts could be choosing from a “menu” based on individual circumstances thereby increasing the likelihood of “success”. If an offender could not perform a work-related activity, an attendance centre might be more appropriate. With so many offenders fined for road traffic offences, the threat of losing a driving licence or a vehicle for a set period might be an incentive for some. A third option might be a form of curfew order that could restrict movement.

9.6 Each of these might provide incentives in different ways for different people. But there are practical issues to be considered. The court would need to know if a defendant did or did not drive – might that be included on an “information order” (thereby preventing the situation whereby an offence of driving without a licence results in a “loss of licence” default)? Mechanisms would also be needed to alert driver and licensing authorities of such penalties.

Questions for consultation

- Attendance Centres (ACs) already exist in Northern Ireland and are already a default fine option for young persons. Might these be a further alternative in parallel to the SAO?
- Might AC Orders provide a better alternative for those who cannot undertake work-based activity in the community but who could attend a centre for a set number of hours?
- Might curfew powers be appropriate?
- Alongside these community disposal ideas, alternatively or additionally, might an offender’s access to a motor vehicle be constrained in default of a fine?
- Might they lose their driving licence for default – the period being based on the level of fine or default?

- Might their vehicle be clamped whilst a fine remains unpaid? And the enforcement authority empowered ultimately to sell or dispose of the vehicle?

Methods of payment

Introduction

9.7 Alongside the power of a court to impose alternative penalties, the Government is particularly keen to see developments in alternative methods for the payment of fines. Presently the offender can pay “forthwith” (ie right away) or within the stipulated 28 days. He/she can seek an extension to the period of payment and can also agree to pay by instalments. Offenders can even pay by credit or debit card. Nevertheless, in the Government’s view, enhanced arrangements for the automatic collection of the fine should also be created.

9.8 As is the case in Great Britain, the court should have available to it means to require direct deduction from wages or benefits. An attachment of earnings power should be created in law; and if an offender is on state benefits, there should be a power to allow a direct deduction system. Anyone fined will still be able to pay within the set periods or will be able to have collection managed in a structured way.

Discussion

9.9 To deliver a number of new “attachment” powers, differing approaches could be followed. One option would be create a general disposal – a generic “collection order” – that contains a number of routes that can be tailored subsequent to the court appearance. The “collection order” could contain options for a fines enforcement officer to select and follow through on if the court were not minded or able to choose at first instance. The court may not actually need to know at the stage of formally hearing the case which of the options would be best. Indeed a default option might be chosen at a better subsequent time, with the right impact, and tailored where appropriate to the offender’s circumstances.

9.10 An advantage would be that the court's time might be better utilised - as back-up functions would be pursued administratively. Offenders might also be able to be dealt with more closely at a working level outside of a court; and there could be reduced follow-up police activity. But there would be have to be clarity around what powers could be delegated and how any powers would be regulated. The likelihood is that these would require statutory provision in their own right.

9.11 Costs too could be a factor. A fully-fledged and statutory system would take time and money to build. It would need to save police time; allow police more appropriately to target resources and create more appropriate disposals; and might be a matter of longer-term consideration. A non-statutory, reminder system could pave the way for more detailed analysis – in all likelihood by the NI Assembly.

Questions for consultation

- Might these methods be combined into a new, unified court disposal called, perhaps, a “collection order”?
- Could the court impose the fine and at the same time impose a generic “collection order” to be pursued in default?
- Could the Fines Enforcement Officer suggested above assume this role? The collection order could be set in general terms by the court with the FEO then deciding on the follow-up action required.
- Could the FEO have the powers to attach earnings or deduct from benefits? Seize and sell goods or land? Impose instalment orders or appoint receivers? Adopt current civil recovery procedures?
- Might the system be that only if subsequent payment problems or default occurred would the FEO revert back to the court?

- Might a such an administrative, statutorily regulated approach, ensure a better fit between fines and payment?

- Or might a non-statutory approach be the preferred route at this stage?

9.12 The Government would welcome views on its proposals for the creation of attachment of earnings and direct benefit deduction powers. And also on the potential for a more administrative procedure around the management of fine default – both statutory and non-statutory.

SECTION 10: STRENGTHENING THE FINE

10.1 There are, of course, other approaches to ensuring compliance with fines and reducing the likelihood of default – approaches that could lead to improvement without recourse to follow-up or enforcement action. The fine itself can be strengthened by providing incentives – and indeed disincentives for failure to pay - in the first instance.

Discussion

10.2 It is therefore unlikely to be sufficient to provide a series of new, alternative back-up options or methods of clearing fines without ensuring that stronger powers can still exist in the alternative. As a substantive penalty in its own right – and indeed mainstay of the Magistrates Courts powers – the fine must be supported and offenders encouraged in a range of ways to comply with the substantive sentence. Proposals must avoid being more attractive than the fine and have the reverse effect of moving offenders into a supervisory-type disposal who do not need to be. The fine itself might merit strengthening.

10.3 A number of options could be considered around the fine level itself. One might be to add a heavier and more realistic enforcement fee onto a fine if it were not to be paid. Another might be to allow for a heavier – though still proportionate - fine to be imposed if an originating fine were to be unpaid.

10.4 Neither should custody for fine default be ignored. The back-stop of a custodial penalty for default – as evidenced in other GB jurisdictions that have expanded their fine default options – would remain, just as it is for non-compliance with almost all community penalties. Default periods (Section 2.5) could in themselves be increased.

10.5 The phenomenon exists where some feel that a few days in prison is more desirable than paying off a fine. For example, a person with three £500 fines must pay £1,500 but can clear all three fines with one concurrent period in prison. In order to discourage this, the practice of clearing a series of fines in one concurrent period could be prevented.

10.6 There are undoubtedly, however, a range of counter-balancing issues to be considered around some of these strengthening options. A fine must be set in accordance with the offence and allowing powers of adjustment would need careful consideration. Increasing default periods might be seen as increasing the levels of custody – or alternatively act as a stronger deterrent. The removal of concurrent clearance could do likewise.

Questions for consultation

- Should there be the option for the fine to be increased in the event of default?
- Instead of failure to pay leading to – say – a vehicle being clamped, could the default order be a heavier fine?
- Additionally, if a default option were to be pursued, could the addition of the full enforcement cost of follow-up be added to the original fine?
- Might there be an argument that increasing the custody default periods (as described in Section 2.3 - 2.5) would have a similar effect? Should default periods be strengthened?
- And for those who do end up in custody might the current practice of clearing a range of fines in one concurrent period be prevented?

SECTION 11: UNDERPINNING ISSUES

11.1 Having reviewed the strengths and weaknesses of the fine, and identified possible means of improvement, it is important to emphasise the underlying principles that apply currently and which will continue to apply as future proposals are considered. These are principles important to the fine as a disposal; to the procedures that may be created; and to individuals themselves as they face the prospect of being fined. Those principles are:

- For the level of fine, the court must take into account the financial circumstances of the offender when imposing a fine. A court can increase or reduce a fine based on an offender's means but to do so it must have the best information possible. The proposals in this consultation seek to ensure that that is the case.
- The systems and disposals created must have capacity to differentiate between the "can't pay" and the "won't pay". Alternative disposals to the fine itself must continue to exist. Systems need to be in place to assist with financial management. For the latter, stronger disincentives for non-payment also need to exist. Again this consultation contains such proposals.
- Support for individuals in need will be an important dimension - the "can't pay" group are likely to continue to exist even with a number of improvements. It is important that they are not doubly penalised. This consultation proposes a number of alternatives to dealing with default to assist those who find it difficult to clear a fine. But in more general terms, both statutory and voluntary bodies will continue to advise those in particular need.
- Proposals must be fair, compliant, and in accordance with requirements under Section 75 of the Northern Ireland Act. Our assessment is that they are. Our equality screening assessment is published on the NIO website (www.nio.gov.uk).

- Broadly this concludes that the proposals for alternatives to fine default are an improvement to current powers; they are to the benefit of, and substantively improve the situation for, offenders who are fined. All Section 75 groups who fall into the offender category will see improvements in the options available. More generally, the criminal law applies only to those who choose to break it and applies equally to all.
- It will be important to improve the fine in such a way as to avoid unintended consequences. The fine itself must remain the key and successful feature of the sentencing package that it currently is. And we must avoid routinely drawing low level offenders “up-tariff” into more supervisory-type disposals.
- Equally, the system and any revisions should prevent perverse incentives – systems whereby offenders can choose simply to avoid paying a fine by, for example, opting for a few nights in custody. Or to actively decide to default on a fine to obtain a community penalty. Where the fine is most appropriate and can be paid, it should be.
- Any new system that is to be created must be deliverable, affordable, and to scale. There would be little point in developing a system that required – for example, fully fledged means courts, national enforcement services, extensive community alternatives – with significant additional costs that might recover relatively small levels of penalty. Proposals for and comments on change must be viewed in that light.
- Judicial discretion will continue to be at the heart of the sentencing process. Disposals and options will be made available to the courts but sentencing will be a matter entirely for them. Administrative options must be designed to support them.

11.2 The Government would welcome views and comments on these underpinning principles on the reform of powers around fine default.

11.3 We also welcome comments and views on our equality screening assessment.

SECTION 12: CONCLUSION

12.1 Improving and rationalising fine enforcement and default in Northern Ireland is an important part of the Government's aim to ensure the criminal justice system is efficient, effective and fair. Reform of the fines system will build on the proposals for alternatives to prosecution to enhance public confidence in both the proportionality and enforcement of criminal justice in Northern Ireland.

12.2 The proposals for more effective fine enforcement and alternatives to imprisonment for default do, of course, only focus on certain aspects of the wider fines system in Northern Ireland. They do, though, offer a real opportunity to enforce fines more effectively and reduce the numbers imprisoned for defaulting on a fine.

12.3 The Government would welcome views on the proposals and issues raised in this consultation paper. In particular, we would welcome views on the questions raised about systems for setting and collecting fines; alternatives to imprisonment for default; and the specific proposals around collection of fines through attachment of earnings and deduction from benefits.

12.4 An equality screening document has been issued alongside this consultation paper and published on the NIO website. Comments are welcome on any aspect of the equality screening assessment.

12.5 For ease of reference, the key questions raised in this paper are provided separately at Annex C.

12.6 The closing date for consultation responses is 31st October 2008. Responses will be analysed and a summary of responses published on the NIO website (www.nio.gov.uk). Information on how to respond to the consultation is provided in the Section 14.

SECTION 13: NEXT STEPS

13.1 This consultation paper offers a broad range of ideas and options as to how the problem of fine default in Northern Ireland can better be addressed. As indicated in the previous Section, the Government would be pleased to receive comments and suggestions – both general and specific – in response to the ideas put forward.

13.2 Following the consultation period and consideration of the responses, the outcome of the consultation and a timetable for the way forward will be published by the Government. The CJINI inspection report and the outcome of the current Court Service pilot will also be important factors in the proposals that are developed. So too will detailed costings assessments and the thoughts of the NI Assembly.

13.3 Certain of the reforms as set out in this paper would require legislation. If that were the route chosen we would consult on its precise wording in the usual way. But meanwhile others will be capable of being progressed administratively and to a shorter timescale.

SECTION 14: RESPONDING TO CONSULTATION

Consultation responses

14.1 Responses should be sent to:

Fine Default Consultation Co-ordinator,
Criminal Law Branch
Northern Ireland Office
Massey House
Stoney Road
Belfast
BT4 3SX

Telephone: 02890 527442

Fax: 02890 527507

Text phone: 02890 527668

Email: CJD.Public@nio.x.gsi.gov.uk

14.2 If you have any concerns about the way this consultation process has been handled you may raise these with the NIO Consultation Co-ordinator at the following address:

Donna Knowles
Central Management Unit
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH

Email: donna.knowles@nio.x.gsi.gov.uk

Telephone: 02890 527015

Text phone: 02890 527668

Alternative Formats

14.3 An electronic version of this document is available to view and download from the NIO website (www.nio.gov.uk). Hard copies will be posted on request. The text phone contact details are provided above. Copies in various other formats, including large print, Braille, audio cassette, computer disk etc may be made available on request. If you wish to access the document in an alternative format or language, please let us know and we will do our best to assist you.

Confidentiality of responses

14.4 The NIO will publish a summary of responses following completion of the consultation process. Unless individual respondents specifically indicate that they wish their response to be treated in confidence, their name and the nature of their response may be included in any published summary of responses. Respondents should also be aware that the NIO's obligations under the Freedom of Information Act may require that any responses not subject to specific exemptions under the Act, be disclosed to other parties on request.

14.5 The closing date for receipt of responses is **31st October 2008**.

Fine statistics**Table 1 Numbers sentenced by all courts: 1997-2006**

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Custody	2157	2043	2009	2178	1778	1888	2203	2252	2111	2204
Suspended custody	2247	1412	1410	1701	1591	1633	1898	2175	2264	2336
Community penalties	1886	2304	2018	1994	1816	1861	1908	1983	1988	2053
Fine¹	21353	17981	18096	17756	16477	16000	17595	18628	17288	17362
Other	3341	3141	2991	2989	2688	2718	3071	2887	2604	2408
Total	30914	26881	26524	26618	24350	24100	26675	27925	26255	26363
Fines as % of all sentences	69%	67%	68%	67%	68%	66%	66%	67%	66%	66%

Table 2: Offences for which fines were imposed in 2006

Offence	Numbers fined	Total numbers convicted
Violence against the person	827	2296
Sexual offences	14	161
Burglary	23	532
Robbery	0	149
Theft	524	1728
Fraud and forgery	102	333
Criminal damage	287	1295
Offences against the state	92	348
Drug offences	425	734
Other offences	12	59
Motoring offences	13467	15083
Summary offences	1589	3645
All offences	17362¹	26363

¹ Based on police prosecutions and the principal offence for which an offender is convicted. NI Court Service figures reflect the total number of fines imposed which is inevitably much higher than the number of people fined. They also include non-police prosecutions.

Table 3: Amounts of fines imposed

2004/5	2005/6	2006/7
£8. 592 million	£8.409 million	£8.689 million

Table 4: Distribution of fine amounts 2006

Fine amount	Number	Percentage	Cumulative totals	Cumulative percent
£200 or less	12,879	74.18	12,879	74.18
£201-£500	4,282	24.66	17,161	98.84
£501-£1000	192	1.11	17,353	99.95
£1001-£2500	8	0.05	17,361	99.99
£2501-£5000	1	0.01	17,362	100.00
Total	17,362	100.00	-	-

Table 5: Prison receptions by category 1997-2006

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Remand	2188	2284	2497	2197	1922	2337	2439	2440	2776	3193
Fine defaulter	1879 (34%)	1915 (34%)	1840 (32%)	1650 (32%)	1393 (32%)	1240 (25%)	1453 (27%)	1647 (30%)	1814 (31%)	1951 (30%)
Immediate custody	1393	1296	1309	1283	1043	1231	1300	1262	1188	1304
Non-criminal	42	70	38	56	58	57	117	106	134	24
Total	5502	5565	5684	5186	4416	4865	5309	5455	5912	6472

Table 6: Fine default receptions in 2006

Fine Amount Level	Fine Amount	Receptions	%
1	<£200	417	21.4%
2	£200<£500	860	44.1%
3	£500<£1000	494	25.3%
4	£1000<£2500	166	8.5%
5	£2500<£5000	13	0.7%
6	£5000 +	1	0.1%
Total		1951	100.0%
Average time served is 4 Days			
Average Fine amount is £486			

Table 7: Fine default receptions in 2006 by offence

Offence class	Gender		Total
	Male	Female	
Violence Against Person	123	13	136
Sexual	11	0	11
Burglary	11	0	11
Theft	93	9	102
Fraud & forgery	15	3	18
Criminal damage	129	9	138
Motoring offences	1009	62	1071
Drug offences	40	1	41
Other	368	55	423
Total	1799	152	1951

Supervised Activity Order

B.1 The Supervised Activity Order ('SAO') was created in the Criminal Justice (Northern Ireland) Order 2008. Article 45 and Schedule 3 of the Order provide for the Supervised Activity Order. A summary of the disposal is provided below.

B.2 When an offender is fined in court, the sentencing judge will set the SAO as the penalty in default and will establish the number of hours to be served in the event of default. If the offender pays the fine by the appropriate time, no further action is necessary.

B.3 If the offender defaults on paying the fine, the Supervised Activity Order will come into force (discharging the fine), with court officials notifying the probation officer assigned to the court that the default mechanism has been triggered. A probation officer will thereafter communicate with the offender to advise him of a date and location to attend for a first meeting with an appointed supervising officer.

B.4 The supervising officer will assess the offender with a view to determining the appropriate form of activity to be completed and establishing a timetable for the completion of the relevant number of hours. The supervising officer will then monitor the offender's compliance with the requirements of the SAO with a view to having the SAO discharged upon the completion of the period of activity set by the courts.

B.5 If the offender does not comply with the requirements of the SAO, the supervising officer can make representations to have the offender brought back before the courts so that breach proceedings can be initiated. The courts will have the power to vary the number of hours to be served; revoke the order; or commit the offender to prison for a longer period of custody than would have been served for defaulting on the fine in the first instance (depending on the circumstances of the individual and any representations they may make in mitigation).

Key questions

Setting the fine

- Might NI courts have enhanced statutory powers to require offenders to provide a statement of means? Might the legal aid statement of means be used as a simple alternative to obtain that information?
- Should an “information order” be created in law which requires defendants to provide financial information? And should it be a criminal offence with its own separate penalty to fail to provide information?
- What might be included in such an “information order”? Along with income details, might contact details including phone numbers be required to assist in fine collection follow up?
- Should a form of register be created that would record all outstanding fines and fine defaulters?
- Might information sharing be improved more generally in criminal justice matters to allow both the operational system and the services it provides to offenders, participants, and indeed victims, to be improved?
- Are there any other approaches which would ensure that the court has all the information it needs to set fines?

Collecting the fine

- Might “Fines Enforcement Officers” (FEO’s) be created on a statutory basis with the capacity to contact and work with those who need help to manage their fine?
- Might FEO’s have their own powers to manage fines?
- Might a non statutory ‘reminder’ system be more deliverable and appropriate? Might it be a prelude to considering a statutory approach?
- Might FEO’s be attached to courts thereby removing the main function from police?
- Are there any other approaches that might assist in the successful collection of fines?

Court set penalties for default

- Attendance Centres (ACs) already exist in Northern Ireland and are already a default fine option for young persons. Might these be a further alternative in parallel to the SAO?
- Might AC Orders provide a better alternative for those who cannot undertake work-based activity in the community but who could attend a centre for a set number of hours?
- Might curfew powers be appropriate?
- Alongside these community disposal ideas, alternatively or additionally, might an offender's access to a motor vehicle be constrained in default of a fine?
- Might they lose their driving licence for default – the period being based on the level of fine or default?
- Might their vehicle be clamped whilst a fine remains unpaid? And the enforcement authority empowered ultimately to sell or dispose of the vehicle?

Methods of payment

- Might attachment of earnings/deduction from benefits be combined into a new, unified court disposal called, perhaps, a “collection order”?
- Could the court impose the fine and at the same time impose a generic “collection order” to be pursued in default?
- Could the Fines Enforcement Officer assume this role?
- Could the FEO have powers to attach earnings or deduct from benefits? Seize and sell goods or land? Impose instalment orders or appoint receivers? Adopt current civil recovery procedures?
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- Might such an administrative, albeit statutorily regulated approach, ensure a better fit between fines and payment?
- Or might a non-statutory approach be the preferred route at this stage?

Strengthening the fine

- Should there be the option for the fine to be increased in the event of default?
- Instead of failure to pay leading to – say – a vehicle being clamped, could the default order be a heavier fine?
- Additionally, if a default option were to be pursued, could the addition of the full enforcement cost of follow-up be added to the original fine?
- Might there be an argument that increasing the custody default periods (as described in Section 2.3 - 2.5) would have a similar effect? Should default periods be strengthened?
- And for those who do end up in custody, might the current practice of clearing a range of fines in one concurrent period be prevented?

Principles

- Are the underpinning principles valid?
- Are there additional issues to consider around equality screening and impacts?

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