

**THE ENFORCEMENT OF FINANCIAL PENALTIES BY
MAGISTRATES' COURTS: AN EVALUATIVE STUDY**

by

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ABSTRACT

Despite the fine's position as the most commonly imposed sentencing disposal, it has been the subject of limited research. This dearth is a particular concern as recent statistics show that a large proportion of financial penalties are in arrears, with significant amounts being written-off. There have been various attempts in recent years to improve the enforcement process, which underscores the need for an evaluation of current policies and practices.

The thesis is based on a study evaluating the enforcement of financial penalties by the Birmingham and Manchester city centre magistrates' courts. The fieldwork was conducted both inside and outside the court building: defaulters' appearances at the fines court, and fines clinic, were observed, and bailiffs and Civilian Enforcement Officers [CEOs] were accompanied as they attempted to execute distress warrants and bail warrants respectively. The thesis outlines various problems, and makes a number of proposals designed not only to raise the levels of effectiveness and efficiency but also the quality of justice. Taken together they provide a new coherent framework for the enforcement process.

DEDICATION

To Mum and Dad

ACKNOWLEDGEMENTS

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LIST OF ABBREVIATIONS

AOE	Attachment of Earnings
ATJA 1999	Access to Justice Act 1999
CEO	Civilian Enforcement Officer
CJA	Criminal Justice Act
CO	Curfew Order
CPO	Community Punishment Order
CRO	Community Rehabilitation Order
C(S)A 1997	Crime (Sentences) Act 1997
DSS	Department of Social Security
HO Advisory Group	Home Office Best Practice Advisory Group
KI	Key Indicator
LCD	Lord Chancellor's Department
MCA 1980	Magistrates' Courts Act 1980
MCC	Magistrates' Courts Committee
MCSI	HM Magistrates' Courts Service Inspectorate
MIS	Management Information System
MPSO	Money Payment Supervision Order
NACAB	National Association of Citizens Advice Bureaux
NCC	National Consumer Council
NPI	National Performance Indicator
POCC(S)A 2000	Powers of Criminal Courts (Sentencing) Act 2000
PRS	Professional Recovery Services
PSA	Public Service Agreement
TNC	TransNational Corporation

CHAPTER ONE

THE DEVELOPMENT OF THE ENFORCEMENT PROCESS

Although the fine is “by far the oldest of the regular non-custodial penalties available to the courts”,¹ the origins of the enforcement process are more recent. Not until the Summary Jurisdiction Act 1879 were justices able to allow time for the payment of a fine or order its payment in instalments.² The impetus for this provision’s introduction was the considerable number of imprisonments for default, and a desire to reduce these has remained a major objective throughout the development of the enforcement process. Recent years have witnessed a dramatic fall in the use of custody for default, but managerialist values and concerns regarding credibility have come to the fore, leading to a yet greater emphasis upon the effectiveness of the enforcement process.

1. Historical background (1900 – 1980)

By the beginning of the twentieth century, the fine “had become the most common form of penalty imposed by courts of summary jurisdiction”.³ Unfortunately, the problem of default and the resulting use of custody was such that, in 1904, a staggering 108,000

¹ M. Cavadino and J. Dignan, *The Penal System: An Introduction* (1997), SAGE Publications, p.209. Beattie notes that by 1660 the fine was available for dealing with various common law offences (J.M. Beattie, *Crime and the Courts in England 1660 – 1800* (1986), O.U.P., p.456). As for compensation, Softley states that “fragmentary provisions for justices to award compensation can be traced back as far as the Stealing from Gardens and Hothouses Act 1826” (P. Softley, *Compensation Orders in Magistrates’ Courts* (1978), HMSO, p.4).

² Section 7. See p.5 below for the current statutory provision.

³ Sir T. Skyrme, *History of the Justices of the Peace* (1994), Barry Rose Publishers, p.735. There is some disagreement concerning the level of use of the fine at the beginning of the twentieth century. Manchester notes that “the fine had reached a peak in terms of the frequency of its imposition; its use simply remained constant during the first half of the twentieth century” (A.H. Manchester, *Modern Legal History* (1980), Butterworths, p.259), but Cavadino and Dignan state that “relatively few offenders were fined in the early twentieth century, even in the magistrates’ courts” (Cavadino and Dignan, *The Penal System: An Introduction*, *op. cit.* p.209). In terms of the other financial penalties, the Forfeiture Act of 1870 provided for the payment of costs and compensation to those who had been defrauded or injured.

fine defaulters were imprisoned, “equivalent to about 20 per cent of all those fined”.⁴ The Criminal Justice Administration Act 1914 attempted to tackle the problem. The relevant provisions concentrated on the imposition stage: section 5(1) required the court to consider the means of the offender,⁵ and section 1(1) restricted the circumstances under which a warrant of commitment could be issued forthwith.⁶ Whilst recognising that this was a “watered-down” version of the “right” to have time to pay that had originally been promised, Radzinowicz and Hood conclude that “it marked an advance of considerable practical significance, by substantially cutting the resort to short term imprisonment”.⁷ The number of imprisonments for default did in fact fall from an average 83,187 per annum during the years 1909-13 to an average 13,433 per annum during 1926-30.⁸

A further fall in the use of custody for default resulted from the Money Payments (Justices’ Procedure) Act 1935. Following the granting of time to pay, section 1(3) provided that a warrant of commitment could not be issued until a post-conviction means inquiry had been conducted in the offender’s presence. It was not an unqualified requirement, however, as a court could determine that “special reason” made it expedient

⁴ Sir L. Radzinowicz and R. Hood, *A History of English Criminal Law and its Administration from 1750, Volume 5: The Emergence of Penal Policy* (1986), Stevens & Sons, p.649. This statistic dwarfs the figures that have caused so much concern in more recent times.

⁵ So far as they appeared or were known to the court. The Criminal Law Commissioners held in their Seventh report of 1843 that “the magnitude of a fine must in justice be proportioned to the offender’s means”. By way of justification, they stated that “if a specific fine be set, the effect must still be oppressive and unequal in its operation. The same fine may be of little importance to the rich man, but ruinous to one in humbler circumstances” (“Seventh Report of Her Majesty’s Commissioners on the Criminal Law” (448), *Parl. Papers* (1843), vol. 19 p.1, at pp.109-111).

⁶ These circumstances being where the court was satisfied that the defendant was “possessed of sufficient means to enable him to pay”, where he expressed no desire for time to pay, where he failed to satisfy the court that he was of fixed abode or where the court believed there was some other “special reason” making time to pay inappropriate. See pp.7-8 below for the current restrictions.

⁷ Sir L. Radzinowicz and R. Hood, *A History of English Criminal Law and its Administration from 1750, Volume 5: The Emergence of Penal Policy*, *op. cit.* p.651.

⁸ M. Grunhut, *Penal Reform: A Comparative Study* (1948), Clarendon Press, p.158.

that the defaulter be imprisoned without such an inquiry.⁹ Nevertheless, the section marks the beginnings of what is now known as the “fines court”.¹⁰ As for offenders under the age of 21, section 6(1) required the court to place them under supervision before committing them to custody,¹¹ although not if judged to be “undesirable or impracticable”. The impact of these provisions was that the number of imprisonments for default fell from an average 11,214 per annum during the years 1931-5 to 7,022 in 1936.¹²

The reduction in the use of custody for default occurred despite an increase in fine impositions at Courts of Summary Jurisdiction from 433,137 in 1923 to 633,929 in 1938.¹³ Explanation for the rise is provided by Grunhut: “public controls of traffic, employment, manufacture and distribution of goods, insurance, and so forth, entail the enforcement of regulations by fine. An increasing resort to fines, too, is a sign of rising social standards”.¹⁴ A further increase resulted from section 13 of the Criminal Justice Act 1948 which expanded the range of indictable offences punishable by way of a fine.¹⁵

⁹ Section 1(1).

¹⁰ See p.8. below.

¹¹ Implementing a recommendation of the report of the “Committee on Imprisonment by Courts of Summary Jurisdiction in Default of Payment of Fines and Other Sums of Money” (Cmnd.4649) (Sir T. Skyrme, *History of the Justices of the Peace*, *op. cit.* p.725-6).

¹² M. Grunhut, *Penal Reform: A Comparative Study* (1948), Clarendon Press, p.158.

¹³ The fall in the percentage of fined offenders imprisoned for default was from 3.6 per cent (1923) to 1.25 per cent (1938) (M. Grunhut, *Penal Reform: A Comparative Study*, *op. cit.* p.158).

¹⁴ M. Grunhut, *Penal Reform: A Comparative Study*, *op. cit.* p.6.

¹⁵ Section 13 states that “any court before which an offender is convicted on indictment of felony (not being a felony the sentence for which is fixed by law) shall have power to fine the offender”. Cavadino and Dignan state that this “paved the way for the spectacular post-war increase in the use of the fine” (M. Cavadino and J. Dignan, *The Penal System: An Introduction*, *op. cit.* p.209). The potential scope of the fine was considered by the Criminal Law Commissioners in 1843. Whilst holding that there were “a few instances where fixed fines were appropriate to more serious crimes”, their general belief was that “fixed and absolute fines should be restricted to cases of minor delinquency punishable by summary jurisdiction” (“Seventh Report of Her Majesty’s Commissioners on the Criminal Law”, *op.cit.* pp.109-111).

Alas, the growing employment of the fine was eventually accompanied by a new upturn in the numbers imprisoned for default. A further attempt to deal with the problem was made in the Criminal Justice Act 1967. Particularly notable is section 44(5), which provided that, at a post-conviction means inquiry, a warrant of commitment could only be issued if the defendant appeared to have “sufficient means to pay forthwith”, or if the court had considered or tried all other methods of enforcement and they appeared to be “inappropriate or unsuccessful”.¹⁶ Further important provisions were enacted four years later by the Attachment of Earnings Act 1971, the purpose of which was to consolidate all previous enactments relating to the method of enforcement known as the attachment of earnings order, hereinafter the AOE order.¹⁷ Section 6(1) stipulated that, by employing this method, the court could instruct an offender’s employer to deduct specified sums from his wages.¹⁸

Despite these efforts at improving the enforcement process, the increase in the use of custody for default continued unchecked. The disappointing figures are given in the following statement from 1981: “Now running at approximately 17,000 receptions per annum the number has more than doubled since the first impact of the measures incorporated in the Criminal Justice Act 1967 designed to reduce resort to custody for enforcement ... In 1973 six persons were received in prison for every 1,000 offenders fined: by 1978 the figure was 10”.¹⁹ Potential for further strain resulted from an increase

¹⁶ See p.8 below for the current restrictions.

¹⁷ For example, section 46 of the Criminal Justice Act 1967.

¹⁸ Section 3 of the 1971 Act has been amended by section 53 of the Criminal Procedure and Investigations Act 1996. The amendment enables the court to make an AOE order, with the offender’s consent, at the point of imposition, rather than at the later stage of default. The HO Advisory Group had previously stated that “where a defendant is employed, the court may invite him to apply for an attachment of earnings order at the time of the sentence” (Home Office, *Fine Enforcement – Part II* (1992), HMSO, p.8). The amendment dispenses with the need for such an application.

¹⁹ R. Morgan and R. Bowles, “Fines: The Case for Review” [1981] *Crim.L.R.* 203, at p.204.

in the employment of compensation orders. The Criminal Justice Act 1972 was particularly important; section 1 dispensing with the need for the victim to make an application prior to such an order being made.²⁰

2. The Magistrates' Courts Act 1980

Many of the current statutory provisions can be found in the Magistrates' Courts Act 1980, hereinafter MCA 1980. It is now section 75(1) of the MCA 1980 that allows an offender time to pay or to pay by instalments,²¹ although the Home Office Best Practice Advisory Group, hereinafter HO Advisory Group, has emphasised that "payment forthwith should be the normal expectation of the court".²² If time to pay is granted, section 75(2) allows for later adjustments, in the form of further time or payment by instalments.²³

²⁰ Tarling and Softely found "in relation to thefts, burglaries and certain frauds ... a substantial increase in the use of compensation by the Crown Court in London" (R. Tarling and P. Softely, "Compensation Orders in the Crown Court" [1976] Crim L.R. 422, at p.427). Further efforts at encouraging greater use of compensation orders can be found in the Criminal Justice Acts of 1982 and 1988. Under section 67 of the 1982 Act, such orders can be the sole penalty, they are to take preference over fines, and the amount of the loss does not have to be formally proved in the absence of agreement (reversing the decision in *Vivian* [1979] 1 All E.R. 48). The 1988 Act expanded the scope of the orders so as to encompass damage to vehicles or property caused by uninsured drivers. More importantly, the Act provided that the court has to give reasons for failing to make a compensation order in any given case. The governing provisions relating to compensation orders are now sections 130 to 134 of the Powers of Criminal Courts (Sentencing) Act 2000; section 130 provides that compensation can be made for any "personal injury, loss or damage" resulting from the offence. The judiciary have held that this extends to distress and anxiety (*Bond* [1983] 1 W.L.R. 40).

²¹ Ryan argues that payment by instalments is beneficial as "it serves as a constant reminder that society will not condone the criminal act" (D.M. Ryan, "Criminal Fines: A Sentencing Alternative to Short-Term Incarceration" (1983) 68 *Iowa Law Review* 1285, at p.1300). Similarly, Bathurst states that "it could be said, with some justification, that only by having to dip into his pocket each week or each fortnight over a protracted period of time can a defendant really be made to feel the pain and inconvenience that a court punishment sets out to inflict" (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts* (1996), Barry Rose Law Publishers, p.2).

²² Home Office, *Fine Enforcement – Part II* (1992), HMSO, p.6. Nevertheless, Elliott and Airs note that "in practice most people are given time to pay – often paying a few pounds every fortnight" (R. Elliot and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots* (2000), The Stationery Office, p.10).

²³ Section 75(2) does not refer to those situations where instalments have already been set, an omission which was remedied by section 51(1) of the Criminal Justice Act 1982. This introduced a new section 85(A) into the MCA 1980, providing that the court may "vary the number of instalments payable, the amount of any instalment payable, and the date on which any instalment becomes payable". By virtue of

Various methods of enforcement are now available to magistrates' courts both before and after conducting a post-conviction means inquiry. Under section 80(1) of the MCA 1980 the court can order the offender to be searched for money; under section 135 he can be detained for one day in the courthouse or at a police station; and under section 136 he can be detained overnight at a police station.²⁴ A further alternative is a Money Payments Supervision Order, hereinafter MPSO. Section 88(1) of the MCA 1980 provides that the court can order such supervision at the point of conviction or post-conviction. In terms of making a MPSO at the former stage, the HO Advisory Group has provided the following elaboration: "This practice, which does not require the consent of the defendant, is not common but may be appropriate where a probation order is made or is in force, or where the defendant is under 21, particularly having regard to the statutory restrictions on the committal for non-payment of young adult offenders".²⁵

Section 76(1) of the MCA 1980 authorises the use of warrants of both distress and commitment. The first allows for the seizure and sale of the offender's goods, with the proceeds being used to pay off the outstanding financial penalties.²⁶ Whether or not goods are seized is the responsibility of individual bailiffs,²⁷ as these warrants are issued to bailiff firms which then proceed with their execution. Court control is thus diminished, although the Lord Chancellor's Department, hereinafter LCD, has recently attempted to

paragraphs 6 and 6A of the Schedule to the Justices' Clerks Rules 1970, the powers found in sections 75(1), 75(2) and 85(A) of the MCA 1980 can be exercised by designated court officials.

²⁴ In relation to the latter the HO Advisory Group has stated that this "can be an effective method of collecting comparatively small sums" (Home Office, *Fine Enforcement – Part II*, *op. cit.* p.12).

²⁵ Home Office, *Fine Enforcement – Part II*, *op. cit.* p.8. Section 88(4) of the MCA 1980 provides that a person aged under 21 should not be committed to prison for default "unless he has been placed under supervision in respect of the sum or the court is satisfied that it is undesirable or impracticable to place him under supervision".

²⁶ Rule 54 of the Magistrates' Court Rules 1981.

²⁷ Certificated or private bailiffs. The former are certificated under the Distress for Rent Rules 1988, requiring authorisation by a Circuit Judge sitting in the county court, but the latter require no qualifications whatsoever.

limit the dispersal of power by recommending that courts should enter into contractual relationships with the bailiff firms, rather than the previously adopted non-binding agreements.²⁸

Further control is retained through section 77(1) of the MCA 1980, as this provision empowers the court to postpone the issuing of a distress warrant “if it thinks it expedient to do so...until such time and on such conditions, if any, as the court thinks just”.²⁹ A committal warrant can be similarly postponed under section 77(2).³⁰ Of vital importance is section 82, as this outlines the current restrictions upon the court’s power to impose imprisonment for default, whether immediate or postponed. The HO Advisory Group has provided the following reasoning for these restrictions:

The purpose of all enforcement measures is to compel payment, and commitment to prison is no exception. If a defaulter actually serves a period of imprisonment, enforcement in his case has failed. The only reasons for implementing the commitment are to clear the outstanding fine from the account and to encourage others to comply with the courts’ orders for payment by demonstrating the ultimate result of non-compliance.³¹

Section 82(1) of the MCA 1980 restricts committal at the point of conviction to three types of situation, the most notable being where the offender appears “to have sufficient means to pay the sum forthwith”.³² Post-conviction, the provisions are rather

²⁸ Kruse states that “the purpose of the contract is to regulate the general administration of enforcement by distress and to ensure that distress is conducted in an acceptable manner” (J. Kruse, *Distress and Execution: A Guide to Bailiffs’ Law and Practice* (1998), Association of Civil Enforcement Agencies, p.12).

²⁹ It was held in *Crossland v Crossland* [1993] 1 F.L.R. 175 that section 77(1) of the MCA 1980 does not enable the court to suspend a distress warrant once it has been issued as the court at this stage has become “functus”. Support for such an interpretation is now provided by *R v Hereford Magistrates’ Court, ex parte MacRae* (*The Times*, December 31, 1998). Simon Brown LJ states that “the legislation is conspicuous for its silence as to any power of suspension following the issue of the warrant although it expressly empowers the postponement of such issue”.

³⁰ A term of imprisonment has to be fixed prior to such postponement.

³¹ Home Office, *Fine Enforcement – Part II, op. cit.* p.16.

³² The HO Advisory Group has stated that in such a situation “an order suspending the term may be appropriate” (Home Office, *Fine Enforcement – Part II, op.cit.* p.7). The other situations are (i) where it appears to the court that the defendant is “unlikely to remain long enough at a place of abode in the United Kingdom to enable payment of the sum to be enforced by other methods”, and (ii) where the court

more complex. Under section 82(3)(b), the court has to inquire into the offender's means, following his conviction, "in his presence on at least one occasion". Committal can then be ordered if "the offender appears to have sufficient means to pay the sum forthwith",³³ or if the court is "(i) satisfied that the default is due to the offender's wilful refusal or culpable neglect; and (ii) has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful".³⁴

A means inquiry is thus a prerequisite for a post-conviction committal, and other methods of enforcement are likewise only available following such an inquiry. The inquiry takes place at what is commonly known as the "fines court", the purpose of which, according to Bathurst, "is first and foremost to impress upon him [the defaulter] the importance of paying the money he owes to the court".³⁵

In order to conduct such an inquiry, section 86(1) of the MCA 1980 provides that when time to pay is granted the court may "on that or any subsequent occasion" arrange a court date for the offender that he must attend if "any part" of the financial penalty remains outstanding.³⁶ Alternatively, under section 83 of the MCA 1980, the court can secure the offender's attendance by issuing either a summons or a warrant of arrest, the latter being with or without bail.

sentences the defendant to immediate imprisonment or detention for the offence or any other offence, or where he is already serving a term of imprisonment or detention.

³³ Section 82(4)(a).

³⁴ Section 82(4)(b).

³⁵ D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op. cit.* p.109.

³⁶ Elaborating upon section 86(1), the HO Advisory Group has held that "in some circumstances it will be sensible to set a review date at the point of sentence" (Home Office, *Fine Enforcement – Part II*, *op. cit.* p.6). Bathurst provides the following example: "it may be that the court is not in a position to judge how quickly the defendant can pay the monies outstanding, because, for instance, there is likely to be a significant change in his circumstances, either for the better or for the worse" (*ibid*, p.76).

There is no requirement for a summons to be issued first,³⁷ but if it is and proves unsuccessful an arrest warrant can then be issued,³⁸ as it can when an offender fails to appear on a day fixed under section 86.³⁹ The summons, which can be sent by post, sets a date for the defaulter to appear at the fines court, although naturally the hope is that the defaulter will pay beforehand. In contrast, the arrest warrant, with or without bail, is issued to specified persons who then proceed with its execution. These persons are often Civilian Enforcement Officers, hereinafter CEOs,⁴⁰ who, unlike bailiffs, are employed by the courts themselves. Bathurst argues that there is scope for these officers to be very “proactive”:

A court enforcement officer, working “in the field”, can:

- (i) Inform the court of genuine hardship ...
- (ii) Invite non-payers who cannot immediately be traced...to attend at a means inquiry court voluntarily without having to be arrested.
- (iii) Counsel individual defendants about their payments and negotiate mutually agreeable payment plans ...
- (iv) Draw the attention of the court to cases which are suitable for the signing of statutory declarations.
- (v) Glean information as to the whereabouts of defendants ...
- (vi) Note anything which may be relevant to a means inquiry at court – e.g., a defendant telling the court enforcement officer he has no intention of paying, or a defendant being found in possession of saleable luxury goods.
- (vii) Establish “surgeries” or “clinics” ... to facilitate a fuller and more frank discussion with defendants on warrant”.
- (viii) Collect monies and give receipts.
- (ix) Ultimately, arrest defendants.⁴¹

³⁷ Section 83(1).

³⁸ Section 83(2). Under paragraph 2 of the Schedule to the Justices’ Clerks Rules 1970, a designated court officer has the power to issue a means inquiry summons and a warrant of arrest, but the latter has to be for failure to surrender to court. In other words, the warrant has to follow an unsuccessful summons.

³⁹ Section 86(4).

⁴⁰ Particularly after the official transfer of responsibility for warrant execution (see pp.27-30 below). The courts have been employing CEOs for some time, but the history is somewhat complicated by the existence of both CEOs and fine enforcement officers. In considering the differences between them, Davies concludes that “sometimes the duties overlap, but, essentially, a civilian enforcement officer is employed to serve summonses and execute enforcement warrants and a fine enforcement officer is employed to carry out these duties and oversee the enforcement of fines and fees generally, including, sometimes, the supervision of a money payments supervision order” (F.G. Davies, “Fine Enforcement” (1994) 158 J.P. 476).

⁴¹ D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op. cit.* pp.97-98.

Once a means inquiry has been conducted, section 87(1) of the MCA 1980 authorises enforcement by the High Court or a county court.⁴² The advantage is that certain powers can be utilised that are unavailable to the magistrates' courts themselves, including garnishee orders,⁴³ charging orders on land,⁴⁴ attachments of debts,⁴⁵ and the appointment of receivers for land or rents and profits. Alternatively, section 85(1) enables a magistrates' court to remit the whole or any part of the fine if it thinks it "just to do so having regard to any change in his circumstances since the conviction".⁴⁶ There was some confusion as to the appropriate interpretation of the term "a change of circumstances", but the HO Advisory Group has since provided the following elaboration:

[It] has generally been interpreted as meaning a change in the defendant's means, but there is room for a wider, more practical approach ... "Changes of circumstances" may reasonably be found where:-

- (a) the defendant's means have changed;
- (b) the information available to the court on a means enquiry was not before the sentencing court; an example may be the imposition of a 'standard' fine where a case has been dealt with in the absence of a defendant who subsequently turns out to be unemployed;
- (c) arrears have accumulated by the imposition of additional fines to a level which makes repayment of the total within a reasonable time unlikely.⁴⁷

3. Other statutory provisions

A further method of enforcement can be found in the Criminal Justice Act 1991, hereinafter CJA 1991, with section 24 authorising courts to deduct outstanding sums

⁴² Section 87(3) provides that a means inquiry must have taken place.

⁴³ Whereby the defaulter's bank or building society account is frozen and money withdrawn.

⁴⁴ Whereby the land is repossessed and sold.

⁴⁵ Whereby the defaulter's debtors are ordered to pay.

⁴⁶ Section 85(1) does not apply to compensation orders (section 85(2)).

⁴⁷ Home Office, *Fine Enforcement – Part II*, *op. cit.* p.22. Bathurst states that "remission is nothing more and nothing less than an act of mercy, where clearly it is not in the interests of justice that the defendant should have to continue to pay the full sum outstanding against him" (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op. cit.* p.61). He also notes that "on the face of it, remission benefits everybody... The defendant is pleased; he has less money to pay. The court is pleased; it has less money to collect" (*ibid.* p.60).

directly from unemployed offenders' benefits.⁴⁸ A Home Office study, preceding the legislation, estimated that such deductions could reduce the number of annual imprisonments for default by up to 13,000.⁴⁹ Further advantages were outlined as follows:

Apart from savings in prison costs, deductions would yield substantial savings in enforcement costs incurred by criminal justice agencies due to the reduction in means summonses and warrants and means enquiries...The advantages of deductions from income support to both defendants and the criminal justice system would be further enhanced if it encouraged courts to make more use of fines in preference to more expensive disposals.⁵⁰

The details of the scheme are found in the Fines (Deductions from Income Support) Regulations 1992.⁵¹ Regulation 2(2) provides that the court has to inquire into the offender's means, whilst under regulation 7(2) he must be in default, over eighteen years old, and entitled to income support or jobseekers' allowance.⁵² Once an application has been made,⁵³ regulation 6 states that if there is "sufficient entitlement to income support the Secretary of State may deduct a sum equal to 5 per cent of the personal allowance".⁵⁴

⁴⁸ Basically an extension of the principle of "attachment of earnings" to the unemployed.

⁴⁹ D. Moxon, C. Hedderman, and M. Sutton, *Deductions from Benefit for fine Default* (1990), HMSO, p.iv. It was noted in this study that deductions from income support were first considered by a NACRO working party in 1981(p.iii).

⁵⁰ *ibid*, p.12.

⁵¹ S.I. 1992/2182.

⁵² Jobseekers' allowance having been introduced by the Jobseekers Act 1995.

⁵³ Under paragraph 8A of the Schedule to the Justices' Clerks Rules 1970, a designated officer has the power to make the application.

⁵⁴ Cooney recognises that whether a defaulter has "sufficient entitlement" is a "complex" issue, but he explains that deductions can be broken down into two types: deductions for arrears (encompassing arrears of gas, electricity, housing costs, water charges and fines) and deductions for current costs (encompassing deductions for fuel and water cost). If the deductions for arrears are more than three times 5 per cent of the personal allowance, a deduction for the financial penalty will not be made. Alternatively, if the deductions for arrears and current costs together exceed 25 per cent of the entitlement, then the defaulters consent must be obtained (P. Cooney, "Attendance Centre Orders in Fine Enforcement – A Straightforward Alternative to Custody", *op.cit.* p.781).

The current deduction level is in fact £2.70, having increased by five pence in both April 2000 and 2001.⁵⁵

In the years preceding the CJA 1991 there was a growing recognition of the need to pay further attention to initial impositions. Particularly notable is the following statement from the Government White Paper, *Crime, Justice and Protecting the Public*, emphasising the link between such impositions and enforcement: “If magistrates impose a fine which is ill-matched to an offender’s means then the likelihood of default and the subsequent need for enforcement measures will be that much greater than if the financial penalty succeeds in combining affordability with a punitive element”.⁵⁶ Following a successful Home Office study,⁵⁷ the CJA 1991 introduced, somewhat controversially, a “unit fine” system for impositions. Section 18(2) provided that the amount of the fine should be the product of a number of units, “commensurate with the seriousness of the offence”, and the value given to each unit, representing “the offender’s disposable income”. Supporters of the scheme, which came into force in October 1992, argued that it combined “‘simplicity’, ‘fairness’, ‘clarity’, ‘greater precision’, ‘effectiveness’ and consistency””.⁵⁸

However, in what has been described as “perhaps the most astonishing *volte face* in the history of the English criminal justice system”,⁵⁹ the “unit fine” system was abolished

⁵⁵ £2.70 is five per cent of £54. Benefit levels are, however, somewhat more complex. In terms of jobseekers allowance alone, the current levels are £42 for under 25s and £53.05 for those who are 25 and older. These levels increased from £41.35 and £52.20 in April 2001 and from £40.70 and £51.40 in April 2000.

⁵⁶ Home Office, *Crime, Justice and Protecting the Public*, *op.cit.* pp.7-8.

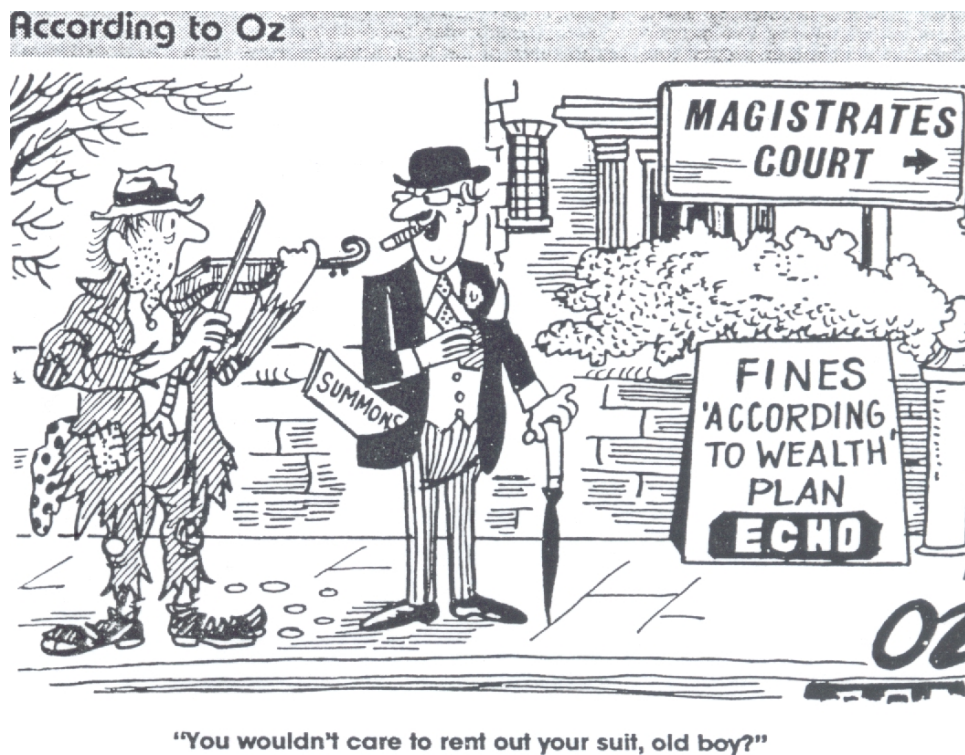
⁵⁷ D. Moxon, M. Sutton, and C. Hedderman, *Unit Fines: Experiments in Four Courts* (1990), HMSO. The study was carried out in four courts between 1988 and 1990, and it was found that “fines were paid more quickly...[with] a significant drop in the proportion of those who were imprisoned for default” (C. Bazell and I. Lomax, *Unit Fines* (1992), Fourmat Publishing, p.10).

⁵⁸ B. Gibson, *Unit Fines* (1990), Waterside Press, p.11.

⁵⁹ M. Cavadino and J. Dignan, *The Penal System: An Introduction*, *op. cit.* p.211.

by section 65 of the Criminal Justice Act 1993, hereinafter CJA 1993. It appears that the Home Secretary was swayed by criticism from both magistrates and media: the magistrates arguing that the scheme was too rigid, and the press drawing attention to people who had committed similar offences and yet received very different fines, as indicated by figure A below.⁶⁰ The turnabout has, nevertheless, been criticised by various commentators. It has been stated, for example, that it represents “a short-term triumph of political expediency over principle”.⁶¹

Figure A: Unit Fines Cartoon⁶²



⁶⁰ Bazell and Lomax had emphasised that “the practical effect of the unit fine system needed to be drawn to everybody’s attention...[otherwise] the system could well fall into ridicule and not be generally accepted” (C. Bazell and I. Lomax, *Unit Fines*, *op.cit.* pp.46-7). This warning, it seems, was not heeded, with Ashworth noting that “statements both in the media and among politicians repeatedly ignored the elementary justice of the principle of equal impact” (A. Ashworth, *Sentencing and Criminal Justice* (1995), Weidenfield and Nicolson, p.264). Further problems were caused by the introduction of far higher maximum amounts per unit than in the experimental study.

⁶¹ M. Cavadino and J. Dignan, *The Penal System: An Introduction*, *op. cit.* p.213.

⁶² B. Gibson, *Unit Fines*, *op. cit.* p.18.

The “unit fine” system was replaced by a much more flexible approach towards fine impositions. The relevant provisions are now to be found in the Powers of Criminal Courts (Sentencing) Act 2000, hereinafter POCC(S)A 2000. Sections 128(2) and (3) require the court to ensure that the fine reflects both the seriousness of the offence and the offender’s financial circumstances.⁶³ One important advance from the pre-1991 approach is section 128(4), which provides that the offender’s financial circumstances shall be taken into account if the result is an increase, rather than a reduction, in the amount of the fine.

Under section 126(1) of the POCC(S)A 2000, the courts are able to make an order requiring an offender to submit a statement of his financial circumstances. Subsections (4) and (5) give some bite to the section by outlining related offences, which are committed where an offender fails, without reasonable excuse, to comply with such an order,⁶⁴ or where he makes a statement which he knows to be false in a material particular, where he is reckless as to its falsity, or where he knowingly fails to disclose any material fact.⁶⁵

If an offender fails to comply with an order under section 126(1), section 128(5) of the POCC(S)A 2000 allows a court to make such determination of his financial circumstances as it thinks fit. This is also permitted where an offender is convicted in his absence or otherwise fails to co-operate with the court in its inquiry into his

⁶³ Section 128(2) states that “the amount of any fine fixed by a court shall be such, as in the opinion of the court, reflects the seriousness of the offence”, and section 128(3) states that “...a court shall take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear to the court”. Tailoring fines according to an offender’s means is emphasised further by section 128(1) as this provides that “before fixing the amount of any fine...a court shall inquire into his financial circumstances”.

⁶⁴ Section 126(4).

⁶⁵ Section 126(5).

circumstances. As was stated above,⁶⁶ a fine can be wholly or partly remitted due to a “change of circumstances”. But evaluating such change will naturally be difficult in those case where there was “insufficient information” at the point of imposition. With such cases in mind, section 129 of the POCC(S)A 2000 enables a court to remit in whole or in part if it subsequently inquires into the offender’s circumstances and concludes that it would have imposed a lower fine or would not have fined the offender at all if the inquiry had been made at the point of sentence.

A method of enforcement now also found in the POCC(S)A 2000 is the Attendance Centre Order, hereinafter ACO. Under section 60(1), defaulters less than 25 years of age can be ordered to attend such centres for a specified number of hours whenever the court has the power to detain them for their default.⁶⁷ The Attendance Centre Rules of 1958 demonstrate that the orders are intended to occupy offenders in a manner “conducive to health of mind and body”.⁶⁸

4. The important case law

Analysing the amended provisions of the CJA 1991, now found in the POCC(S)A 2000, Ashworth concludes that the courts have been left “relatively unfettered by legal requirements in calculating the amounts of fines”.⁶⁹ Some further guidance is provided by the case law, however, with many of the judgments which preceded the recent legislation

⁶⁶ See p.10 above.

⁶⁷ The previous provision was section 17(1)(a) of the Criminal Justice Act 1982, as amended by section 36 of the Crime (Sentences) Act 1997. The amendment extended the availability of the order to those aged 21 or over but under 25. Conney states that “although not explicit...the court must be satisfied of culpable neglect/ wilful refusal before imposing an ACO [Attendance Centre Order]. To make such a finding, the court would surely need to conduct a means inquiry” (P. Cooney, “Attendance Centre Orders in Fine Enforcement – A Straightforward Alternative to Custody” (1996) 160 J.P. 507).

⁶⁸ Rule 2(1) (S.I. 1958/1990)

⁶⁹ A. Ashworth, “Sentencing”, in: M. Maguire, R. Morgan, and R. Reiner, *The Oxford Handbook of Criminology* (1997, Clarendon Press), p.1122.

still being applicable. One such case is that of *Olliver and Olliver*,⁷⁰ in which Lord Lane CJ said that it was perfectly proper that the offender endure a degree of hardship, the reasoning being that “one of the objects of the fine is to remind the offender that what he has done is wrong”. Another important judgment is that of *Charambous*,⁷¹ where the Court of Appeal emphasised that the fine is to reflect the offender’s means and is not intended as a fine on the family.⁷² In the cases of *Knight*⁷³ and *Nunn*,⁷⁴ meanwhile, it was held that any fine should be capable of being paid in full within 12 months. Some doubt was cast upon this latter requirement by *Olliver and Olliver*, but the HO Advisory Group has clarified matters as follows: “financial penalties should, in principle, generally be capable of being paid within a year, subject to exceptions in appropriate cases”.⁷⁵

A more recent and particularly important judgment is that of Simon Brown LJ in *R v Oldham Justices and another, ex parte Cawley*.⁷⁶ Recognising that custody is supposed to be a last resort, he said that “offenders generally and young offenders in particular ought not to be locked up for non-payment of fines unless no sensible alternative presents itself”.⁷⁷ Simon Brown LJ then outlined the statutory provisions restricting the committal of defaulters under the age of 21, highlighting section 88(5) of the MCA 1980, which requires magistrates to state in the warrant why supervision is “undesirable or

⁷⁰ (1989) 11 Cr. App. R. (S.) 10. In considering the making of compensation orders, the Court of Appeal cautioned sentencers against “simply plucking a figure out of the air”.

⁷¹ (1984) 6 Cr. App. R. (S.) 389.

⁷² More recently, it was held in *R v Barnet Magistrates’ Court, ex parte Cantor* [1999] 1 W.L.R. 334 that it is unlawful for a magistrates’ court to impose a fine that is clearly beyond an offender’s means in the expectation that a third party will make the necessary payments. It was held that this also applies to orders for costs.

⁷³ (1980) 2 Cr. App. R. (S.) 82.

⁷⁴ (1983) 5 Cr. App. R. (S.) 203.

⁷⁵ Home Office, *Fine Enforcement – Part II*, *op. cit.* p.6. As for orders for costs, it was held in *R v Szrajber (Josef Michael)* [1994] Crim. L.R. 543 that a court should not make such an order unless satisfied that the defendant has the means to pay within a reasonable time.

⁷⁶ [1996] 1 All E.R. 464

⁷⁷ *ibid*, p.466.

impracticable”, and section 1(5A) of the CJA 1982, which requires them to state in open court why no other method of dealing with the defaulter is appropriate.⁷⁸

Simon Brown LJ’s declared aim was for magistrates’ courts to adopt “a more rigorous approach” to the imprisonment of young defaulters,⁷⁹ and his judgment caused one commentator to predict considerable changes to the courts’ practices:

It is submitted that an inevitable consequence of the *Cawley* case is that a greater variety of non-custodial enforcement measures will be utilized by courts ... The probation service should brace itself for more money payment supervision orders, employers will be receiving more attachment of earning orders, and the Department of Social Security will be making more deductions from income support. It is submitted that the same applies to ACOs [Attendance Centre Orders].⁸⁰

There is now evidence that these claims could be accurate. The judgment led to the issuing of guidance by the Working Group on the Enforcement of Financial Penalties,⁸¹ inviting magistrates to explain why each enforcement measures is inappropriate,⁸² and to many courts revising their enforcement procedures.⁸³ Even more significantly, change is demonstrated by a considerable fall in the number of imprisonments for default. The 8,600 defaulters imprisoned in 1996 was “less than half the 1995 level and well below the figures for the previous decade”.⁸⁴ More recent prison statistics indicate that the downward trend has continued, with 2,480 receptions for default during the year 2000,

⁷⁸ *ibid*, p.469.

⁷⁹ *ibid*, p.480.

⁸⁰ P. Cooney, “Attendance Centre Orders in Fine Enforcement – A Straightforward Alternative to Custody”, *op.cit.* p.509.

⁸¹ Working Group on the Enforcement of Financial Penalties, *Guidance on Enforcement of Financial Penalties* (1996), EFPWG.

⁸² Staughton LJ stated, in *R v Stockport Justices, ex parte Conlan; R v Newark & Southwell Justices, ex parte Keenaghan* (*The Times*, January 3, 1997), that this pronouncement goes further than required by law, as s.1(5A) of the CJA 1982 only applies to the commitment of young offenders.

⁸³ C. Whittaker and A. Mackie, *Enforcing Financial Penalties, op.cit.* p.38. It seems that change was not immediate, however, with *The Guardian* reporting as follows: “in the couple of months since that judgment, magistrates across the country have continued to bypass their statutory duty to consider alternatives to prison. In some cases they appear to be processing a never-ending supply of fine-defaulters on the judicial equivalent of a conveyor belt” (February 8, 1996).

⁸⁴ Home Office, *Prison Statistics, England and Wales 1996* (1997), HMSO, p.105.

less than one third of the 1996 level.⁸⁵ According to the 2000 prison statistics, the judgment of Simon Brown LJ was a major factor behind the fall, although reference is also made to a “number of initiatives” of the Government’s Working Group on the Enforcement of Financial Penalties.⁸⁶ These, it is stated, include the issuing of *Good Practice Guides* (July 1996) and the extension of the courts’ power to employ an AOE order.⁸⁷

5. Impetus for further change

Throughout the last two decades the fine has been fully accepted as a criminal sanction of great value.⁸⁸ For example, the Howe Report of 1981 stated that “the fine is attractive to sentencers because it is flexible and is seen to combine elements of both reparation and deterrence. In terms of reconviction rates it compares well with other sentences and is also economical”.⁸⁹ The fine was similarly praised at the outset of the following decade in the Government White Paper, *Crime, Justice and Protecting the Public*:

The fine has great advantages for the public as well as the offender. It involves the offender actually paying back to the community something in return for the damage he has done, rather than requiring society to spend even more money upon him so that he can repay that debt. A fine, if properly assessed, can punish

⁸⁵ Home Office, *Prison Statistics, England and Wales 2000* (2001), The Stationery Office, p.12. As for the periods defaulters spend in custody, the average time served during 2000 was seven days for males and five days for females (*ibid*, p.12).

⁸⁶ *ibid*, p.12.

⁸⁷ Section 53 of the Criminal Procedure and Investigations Act 1996 (see f.n.18 above).

⁸⁸ Fulsome praise for the fine can be found back in the nineteenth century. In their Seventh Report of 1843, the Criminal Law Commissioners said “as an abstract position, it seems to be generally true that restraint by the infliction of just and moderate pecuniary fines, is, as regards the mode of punishment, advantageous to society. For it is better to attain to the same object by moderate privation of property, than by subjecting offenders to imprisonment or bodily suffering, which cannot be inflicted without risk of moral taint or personal degradation and disgrace” (“Seventh Report of Her Majesty’s Commissioners on the Criminal Law”, *op.cit.* pp.109-111).

⁸⁹ Howe Report, *Fine Default* (1981), NACRO, para.1.12. The claim that fines are penologically effective has been doubted, but Harding and Koffman conclude that “despite the well supported ‘case for agnosticism’, these is an enduring impression...that fines are reasonably effective when judged in terms of reconviction rates” (C. Harding and L. Koffman, *Sentencing and the Penal System: Text and Materials* (1995), Sweet & Maxwell, p.333).

the offender without damaging his opportunities for employment or his responsibilities towards his family.⁹⁰

Yet, despite such endorsements and the dramatic fall in the number of imprisonments for default,⁹¹ the impetus for further change has gathered momentum. The driving force has been an increased emphasis upon the effectiveness of the enforcement process, which, in turn, has two rationales: first, the incorporation of managerialist values, and, second, concerns regarding credibility.

In terms of managerialism, the Public Service Agreements, hereinafter PSAs, published in 1998,⁹² illustrate that greater “efficiency” is being sought throughout the public sector. The criminal justice system is no exception,⁹³ and its PSA sets out the following overarching aims: “A. to reduce crime and the fear of crime and their social and economic costs; B. to dispense justice fairly and efficiently and to promote confidence in the rule of law”.⁹⁴ The incorporation of efficiency into aim B can be seen as the culmination of developments over the last two decades. As Raine and Wilson put it, “most of the criminal justice initiatives which the government took from the mid-1980s onwards appeared to contain, or were founded upon, elements of the public sector managerialist agenda”.⁹⁵

⁹⁰ Home Office (1990), HMSO, para.5.1.

⁹¹ See p.18 above.

⁹² HM Treasury, *Public Services for the Future: Modernisation, Reform, Accountability* (1998), The Stationery Office

⁹³ Faulkner states that “it is natural for a consumerist government and a cost conscious public to expect the criminal justice services to show improvements in efficiency and effectiveness” (D. Faulkner, *Darkness and Light: Justice, Crime and Management for Today* (1996), The Howard League for Penal Reform, p.2).

⁹⁴ Repeated in Annex D to the Government White Paper, *Criminal Justice: The Way Ahead* (Home Office (2001), The Stationery Office)

⁹⁵ J.W. Raine and M.J. Wilson, “Beyond Managerialism in Criminal Justice” (1997) 36 *The Howard Journal* 80, at p.82. Jones refers to the following efficiency initiatives: “the introduction of pre-trial review, use of skeleton arguments, paper procedures, advanced disclosure, greater use of para-legals and para-judicials, diversion of cases out of the criminal justice system, the introduction of alternatives to the criminal justice system, and refusal of legal aid for ‘frivolous’ cases” (C. Jones, “Auditing Criminal Justice” (1993) 33 *British Journal of Criminology* 187, at pp.195-6).

The enforcement process has been important in developing managerialism at magistrates' courts.⁹⁶ For example, it was a Home Office Working Group Report evaluating enforcement, as well as delay, which produced "the first comprehensive set of statistics on cost efficiency and productivity".⁹⁷ Management Information System (MIS) statistics soon followed (1987), introducing four key indicators, hereinafter KIs, to measure court performance. Three of the four KIs were efficiency-based, with one measuring the level of outstanding fine arrears.⁹⁸ The introduction of a cash-limited grant in 1992 maximised their importance, linking each court's entitlement to its KI performance.⁹⁹

The indicators have now developed into seven National Performance Indicators, hereinafter NPIs,¹⁰⁰ which the LCD report upon quarterly. The enforcement process is evaluated under NPI 4, the debt analysis indicator, which measures the percentage of impositions paid.¹⁰¹ The draft LCD target, for the period beginning April 2001, is to increase the payment rate by five per cent by the end of October 2002. By way of elaboration, the LCD recognises that "it is likely that higher performing MCCs [Magistrates' Court Committees] will need to maintain performance, with lower performing MCCs needing to make improvements of more than 5%".¹⁰²

⁹⁶ The *Justice of the Peace* editors argue that this is not surprising, considering that "the imposition of a fine is one method whereby the escalating costs of the criminal justice system can be offset" ("Civilian Enforcement Officers" (1990) 154 *J.P.* 466). See Chapter Two below, at p.35, for figures.

⁹⁷ J.W. Raine and M.J. Wilson., *Managing Criminal Justice* (1993), Harvester Wheatsheaf, p.111.

⁹⁸ The subject areas of the indicators were (i) costs, (ii) case completion, (iii) fine enforcement, and (iv) quality of service. They were supplemented by various secondary indicators.

⁹⁹ Even greater scrutiny was placed upon the courts the following year through the establishment of HM Magistrates' Courts Service Inspectorate.

¹⁰⁰ The new title reflecting their contribution to overall performance against the PSA targets.

¹⁰¹ Raine and Wilson believe the enforcement indicator might encourage "tactically minded" clerks to press the Bench to "sentence with smaller fines" and to accept the "lowest possible weekly instalments" (J.W. Raine and M.J. Wilson., *Managing Criminal Justice*, *op.cit.* p.136).

¹⁰² Lord Chancellor's Department, *Annual Report on National Performance Indicators for 1999/2000* (2000), LCD, p.2.

Further monitoring is recommended by HM Magistrates' Courts Service Inspectorate, hereinafter the MCSI. Somewhat confusingly, during the development of the NPIs, the MCSI developed twelve Core Performance Measures [CPMs], two of which relate to enforcement. CPM 4 measures the amount of arrears as a proportion of outstanding balances, whilst CPM 5 measures write-offs, due to failure of enforcement, as a proportion of impositions.¹⁰³ Unlike the NPIs, the CPMs are evaluated on a local basis only, although the MCSI expressed the hope that MCCs would "work together to establish benchmarks for good performance using the CPMs".¹⁰⁴

The drive towards managerial efficiency has been accompanied by concerns regarding the credibility not only of the fine but of the prosecution process as a whole. These concerns have placed further pressure upon the courts to raise collection rates,¹⁰⁵ with the following White Paper statement highlighting effective enforcement as essential to maintaining such credibility: "If the system of prosecution and punishment currently operating in England and Wales is to retain credibility, the financial penalties imposed on offenders must be enforced consistently and promptly".¹⁰⁶ The message has filtered through to the judiciary, with Lord Bingham CJ, in *R v Corby Justices, ex parte Mort (Agnes)*,¹⁰⁷ stating that "the effectiveness of the fine as a penalty of course depends on its

¹⁰³ For definitions of "arrears" and "write-offs", see Chapter Two below at pp.37-38.

¹⁰⁴ HM Magistrates' Courts Service Inspectorate, *Information for Management: The Core Performance Measures (CPMs)* (1999), The Stationery Office, p11. More recently, the Inspectorate has reported "more widespread use of the CPMs" (HM Magistrates' Courts Service Inspectorate, *Annual Report of Her Majesty's Chief Inspector of the Magistrates' Courts Service 1999-2000* (2000), The Stationery Office, p.23).

¹⁰⁵ The pressure upon clerks from the Lord Chancellor's Department has been termed "insidious" (*The Guardian*, February 8, 1996).

¹⁰⁶ Home Office, *Crime, Justice and Protecting the Public*, *op.cit.* p.i. Towards the end of the decade the language had changed but the underlying message was the same: "The penalties imposed by the courts will only be taken seriously if they are effectively enforced... if the enforcement of fines and community sentences is weak and patchy, the guilty are able to escape unpunished, and the criminal justice system is brought into disrepute" (Home Office, *Modernising Justice* (1998), The Stationery Office, para.5.12).

¹⁰⁷ *unreported*, Divisional court, March 9, 1998.

credibility, and it loses credibility if payment is not enforced in the minority of cases where the offender does not, without more, comply with the order of the court”.

The concerns have in no way diminished, as demonstrated by the 2001 White Paper *Criminal Justice: The Way Ahead* which states that “rigorous enforcement is crucial to demonstrate to offenders and the public that the courts’ order cannot be evaded with impunity”.¹⁰⁸

6. Latest developments

(a) Further methods of enforcement

Yet further methods of enforcement can be found in the Crime (Sentences) Act 1997, hereinafter C(S)A 1997. Section 35 authorises magistrates’ courts to impose community service orders, now renamed community punishment orders [CPOs],¹⁰⁹ or curfew orders [COs] against fine defaulters whenever they have the power to issue warrants of commitment for their default.¹¹⁰ The maximum permitted length of the CPO is 100 hours and the minimum is 20 hours,¹¹¹ whilst the CO may be between two and twelve hours per day, for a maximum of 180 days.¹¹²

¹⁰⁸ *op.cit.* p.44. Similarly, the LCD Green Paper *Towards Effective Enforcement* states that “unless there is prompt and effective enforcement, the authority of the courts, the effectiveness of penalties, and public confidence, is undermined” (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.8).

¹⁰⁹ Renamed by section 44 of the Criminal Justice and Court Services Act 2000. Jane Kennedy, Parliamentary Under-Secretary at the LCD, justified the change in terminology as follows: “Our reason for renaming certain community sentences is to make their purpose clearer and to promote greater confidence in our criminal justice system. The public must be readily able to understand the language that we use and victims need to be able to relate to sentences. The change of name more accurately reflects that the main purpose of the community order is to punish the offender. Too often, the public sees community sentences as a soft option, yet statutory work in the community places rigorous demands on the offender. The punitive nature of this type of community sentence is frequently overlooked. The change of name would remedy that” (H.C. Standing Committee G, 18 April 2000, col. 192).

¹¹⁰ See pp.8&17 above for the restrictions upon the issuing of such warrants. If the outstanding amount is compensation then permission has to be obtained from the person owed.

¹¹¹ Section 35(5). This compares to a range of 40 to 240 hours for a CPO which is imposed as a sentence in its own right (POCC(S)A 2000 s.46(3)).

¹¹² Section 35(9).

Interestingly, imposing community service against fine defaulters was considered in the Advisory Council report that recommended their introduction as a sentencing option.¹¹³ A provision enabling such use was then included in the Criminal Justice Act of 1972,¹¹⁴ but it was never brought into force and has since been repealed.¹¹⁵ The use of COs, in contrast, is a more recent innovation, and Baroness Blatch has justified their application to fine defaulters by stating that “they provide a way of restricting liberty comparable in many ways to imprisonment, and which can be strictly enforced”.¹¹⁶

Section 40 of the C(S)A 1997 provides the further alternative of disqualifying fine defaulters from holding or obtaining driving licences for up to twelve months, whenever the court has the power to issue warrants of commitment for their default. In support of the provision, Mr. David Maclean, the Minister of State for the Home Office, has stated that “people cherish the freedom to drive and disqualification would prove an effective means of enforcing fines without the need to commit the defaulter to prison”.¹¹⁷

Both sections 37 and 39 of the C(S)A 1997 have the potential to affect the use of the fine, as they enable a magistrates’ court to employ CPOs and COs against “persistent petty offenders”, and driving disqualifications against all offenders. In relation the former, the qualifying criteria are that “(a) one or more fines imposed on the offender in respect of one or more previous offences have not been paid; and (b) if a fine were imposed in an amount which was commensurate with the seriousness of the offence the

¹¹³ Home Office, *Non-custodial and Semi-custodial Penalties: Report of the Advisory Council on the Penal System* (1970), HMSO, p.14.

¹¹⁴ Section 49(1).

¹¹⁵ Repealed by the Crime and Disorder Act 1998, ss.106 & 120(2), sch.7, para.12 and sch.10.

¹¹⁶ H.L. Committee, 20 February 1997, col. 864.

¹¹⁷ H.C. Standing Committee A, 10 December 1996, col. 330.

offender would not be able to pay it”.¹¹⁸ As Elliot and Airs note, the section can therefore be seen as a further attempt at strengthening the fine, providing “an alternative to a fine which is unlikely to be paid”.¹¹⁹

A pilot scheme has been conducted assessing the merits of all the above sections,¹²⁰ but as yet none have been introduced on a permanent basis.¹²¹ Notably, however, only the provisions enabling the use of CPOs and COs against “persistent petty offenders” and driving disqualifications against all offenders were incorporated into the POCC(S)A 2000,¹²² seemingly casting doubt upon the likely introduction of the corresponding fine default measures. On the other hand, under the framework outlined in the 2001 Sentencing Review, *Making Punishments Work*, it “would be possible to impose a non-custodial penalty in cases of fine default”.¹²³

(b) Greater use of distress warrants

An examination of the enforcement process in 1990 led HM Inspectorate of Probation to highlight the drive towards managerial efficiency:

The overriding concern in each clerk’s fine department was on accounting for payment with an increasing emphasis on efficiency. This had led to the following developments:

¹¹⁸ Now section 59(2) of the POCC(S)A 2000. “Persistent petty offenders” is the term used in the marginal heading alongside the statutory provision, and Wasik notes that it “must be intended to give some indication of the audience at which these measures are meant to be targeted” (M. Wasik, *Emmins on Sentencing* (2001), Blackstone Press, p.225). He is clearly far from impressed with the more precise criteria: “Paragraph (a) is a rather token attempt to capture the element of ‘persistence’, requiring that the offender has now communicated at least three offences, and the meaning of ‘petty’ is also contentious. It clearly means that these offences are ordinarily punishable by way of fine, but it says nothing about the level of the fine. If s.59 is really confined to ‘petty’ cases, why is it made available to the Crown Court?” (*ibid*, p.225).

¹¹⁹ R. Elliott and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots* (2000), The Stationery Office, p.3.

¹²⁰ Conducted in Norfolk and Greater Manchester from the 1st January 1998 to the spring 2000.

¹²¹ Results of the pilot study have been published (R. Elliott and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots*, *op.cit.*). See Chapter Two below, at pp.45-47.

¹²² Sections 59 and 146 respectively.

¹²³ J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales* (2001), The Stationery Office, p.43.

- (a) computerisation – administrative decisions regarding summons, etc. being more automatic;
- (b) greater use of distress warrants being applied by bailiffs employed as agents of the court;
- (c) courts appointing fine enforcement officers. Civilian appointments were increasingly replacing police in the execution of warrants, etc.¹²⁴

There have since been further advances in these three areas, and, in relation to the first two, certain statutory and judicial developments have encouraged the courts to adopt an automated “fast-track” approach for issuing distress warrants.¹²⁵ The relevant statutory provision is section 45 of the Justices of the Peace Act 1997, allowing justices’ clerks, instead of justices themselves, to exercise the judicial discretion over whether or not to issue such a warrant. In other words, the section enables a distress warrant to be issued without any formal inquiry into the defaulter’s means.¹²⁶

As for the recent case law, it is appropriate to draw attention first to *R v Guildford Justices, ex parte Rich* and the following conclusion of Newman J:

A procedural aspect of procedural fairness which should be followed in a magistrates’ court, where someone is unrepresented and the court has in mind to issue a warrant of distress so as to deprive someone of their property, is that sufficient notice should be given to that individual so that he understands that that is what he is in jeopardy of suffering. It is right that he should be given an opportunity to object and to show good cause, if he can, as to why such an order should not be made.¹²⁷

Interpreting this judgment, one writer surmised that “debtors must receive notice of the intention to issue distress”,¹²⁸ but a Deputy Clerk to the Justices disagreed, arguing that the case was only concerned with those situations where the defendant was present in

¹²⁴ HM Inspectorate of Probation, *The Role of the Probation Service in Avoiding the Use of Custody for Fine Default: Report of a Thematic Inspection* (1992), HMSO, p.29.

¹²⁵ See pp.6-7 above for an overview of distress warrants, and see Appendix A (R. Moore, “Issuing Distress Warrants against Fine Defaulters: The Automated “Fast-track” Approach” [2000] *Crim.L.R.* 365) for an evaluation of the “fast-track” approach.

¹²⁶ A “formal inquiry” being one that is conducted by magistrates in a courtroom.

¹²⁷ [1996] 160 J.P. 645, at p.648.

¹²⁸ J. Kruse, “In Distress” (1997) 53 *The Magistrate* 185.

court.¹²⁹ Clarification is now provided by the pivotal case of *R v Hereford Magistrates' Court, ex parte MacRae*,¹³⁰ where the High Court had to evaluate a policy of “automatically” issuing distress warrants following an unsuccessful final demand.¹³¹ The demand warned the defaulter that failure to pay would “result in a distress warrant being issued”, and Simon Brown LJ held that it constituted the “specific notice” that was missing in *ex parte Rich*. It is readily apparent, however, that, in finding “no fault” in the respondent’s procedure, he was largely influenced by more general considerations, and in particular by the need for the enforcement process to be both efficient and effective.¹³²

Wherever possible offenders will be fined rather than imprisoned. Central to that policy is the need to have effective machinery for fines enforcement. If fines lose credibility, if, in other words, offenders so punished are regarded as “getting away with it” in every sense, then the balance will inevitably shift towards custodial disposals. It is, therefore, imperative that fines should be paid and that the system for enforcing them is efficient, expeditious and effective. But it is important too that the enforcement process, in turn, whenever possible, avoids custodial disposals. It should, in short, prefer distraint to committal.

The judgment of Simon Brown LJ was followed in *R v Hereford Magistrates' Court, ex parte Wallwyn*,¹³³ despite communication from the defaulter following the issuing of the final demand.¹³⁴

¹²⁹ S. Jones, “Distress Warrants” (1997) 53 *The Magistrate* 267.

¹³⁰ *The Times*, December 31, 1998.

¹³¹ Although manual checks were in place to ensure that there were no “known circumstances” making the issuing of the distress warrant inappropriate. The following circumstances are mentioned: (i) the defendant residing at a bail hostel; (ii) the defendant being of no fixed abode; and (iii) the amount outstanding being less than £25. The Chief Finance Officer would perform a further check, and a warrant would not be issued if there was contact with the defaulter or if the file revealed a reason for not so issuing.

¹³² It has been argued, however, that the use of bailiffs to execute distress warrants is not a simple consequence of the drive towards managerial efficiency. Their use has instead been explained on the basis of an “off-loading strategy” (A. Harrison and J. Morgan, “Efficiency and Off-Loading in the Criminal Justice System”, in: A. Harrison and J. Grotton, *Crime UK 1988: An economic, social and policy audit* (1988, Policy Journals), p.43) and a “competitive market approach” (J.W. Raine and M.J. Wilson, “Beyond Managerialism in Criminal Justice” (1997) 36 *The Howard Journal* 80, at p.87). Expanding upon the latter term, Raine and Wilson state that “whereas the managerial approach had emphasised hierarchies of control and efficiency, the competitive market approach now emphasised entrepreneurial activity and the use of (usually) short term contracts with providers of services”.

¹³³ *unreported*, April 14, 1999.

(c) Transfer of responsibility (and accompanying provisions)

The use of bailiffs to execute distress warrants has to be considered in the light of the Access to Justice Act 1999, hereinafter ATJA 1999. For many years the police have viewed the execution of warrants for magistrates' courts as a low priority,¹³⁵ encouraging the courts to contract with bailiffs and to employ their own CEOs.¹³⁶ The Government has now gone one step further, announcing in the 1998 White Paper, *Modernising Justice*, the transfer of responsibility for warrant execution from the police to the Magistrates' Courts Committees, hereinafter MCCs.¹³⁷ The following statement in the White Paper highlights the continuing emphasis upon effectiveness and efficiency: "The Government believes the system will be more effective and efficient if the magistrates' courts take over responsibility for this work from the police ... The courts will be expected to give a high priority to the prompt and efficient enforcement of the penalties they impose".¹³⁸

The formal transfer of responsibility took place on the 1st April 2001, with the accompanying legislation having been brought into force on the 1st January 2001.¹³⁹ The core of the legislation is sections 92 to 97 of the ATJA 1999, clarifying and extending the

¹³⁴ There was a written request from the applicant for a reduced rate of payment, and a payment of £21 was made, which temporarily brought the account up to date. The warrant was issued when no further payment was made in the following three weeks.

¹³⁵ The drive towards managerial efficiency across the criminal justice system has resulted in each agency concentrating upon its own targets. Unfortunately, as Raine and Wilson state, "the requirement to meet such targets creates tensions with other agencies since one agency's efficiency or saving is often gained at the expense of other" (Raine and M.J. Wilson., *Managing Criminal Justice*, *op.cit.* p.1).

¹³⁶ See pp.6-7&9 above. The Home Office has held that bailiffs are supposed to "supplement" these officers, rather than being "a substitute for them" (Home Office, *The Use of Bailiffs* (1991), Chadwyck-Healey, p.1).

¹³⁷ The transfer has been "under discussion" since 1990 (J. Rowe, "Can't Pay, Won't Pay" (1996) 52 *The Magistrate* 38, at p.39).

¹³⁸ Home Office, *Modernising Justice*, *op.cit.* para.5.13.

¹³⁹ Lord Chancellor's Department, *Transfer of responsibility for warrant execution: Proposed changes to secondary legislation* (2000), The Stationery Office, p.2.

powers for executing warrants issued against fine defaulters.¹⁴⁰ More precisely, under sections 92 and 93, both CEOs and bailiffs, working for “approved enforcement agencies”,¹⁴¹ are able to execute warrants of arrest, commitment, detention or distress anywhere in England and Wales.¹⁴² It has been left, however, to the individual MCCs to decide which warrants to issue and to whom: the LCD stating that “there will not be one nation-wide template for dealing with warrants ... Each MCC will require the flexibility to adopt its own approach within the statutory framework”.¹⁴³ It appears that various approaches have been adopted:

Some are employing their own civilian enforcement officers, others are contracting this work out to Approved Enforcement Agencies or back to the police, and some are using a combination of these methods. In addition, some MCCs still contract with private or certificated bailiffs (who are not necessarily Approved Enforcement Agencies) to execute distress warrants.¹⁴⁴

Section 94 of the ATJA 1999 has attracted particular attention, removing barriers to the sharing of information.¹⁴⁵ The provision allows “basic personal information” held by a “relevant public authority” to be disclosed to court employees and employees of an “approved enforcement agency”. The information is for the purposes of warrant execution only, and is confined to details that allow an offender’s whereabouts to be traced. As for the “relevant” public authorities, the first such designated authority is the

¹⁴⁰ One commentator states that the law was “cloudy and in need of clarification” (P. Evans, “Transfer of Warrants” (1999) 163 J.P. 227).

¹⁴¹ To gain approved status, an enforcement agency has to satisfy the requirements of the Approval of Enforcement Agencies Regulations 2000.

¹⁴² Sections 92 and 93 insert a section 125A and a section 125B into the Magistrates’ Courts Act 1980, and a section 31A into the Justices of the Peace Act 1997. Section 96 of the ATJA 1999 provides that the CEOs and bailiffs will not necessarily need to have the warrant in their possession at the time of execution.

¹⁴³ Lord Chancellor’s Department, *Transfer of responsibility for warrant execution: Proposed changes to secondary legislation*, *op.cit.* p.3.

¹⁴⁴ Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.15.

¹⁴⁵ The LCD has since held that “information is the key issue to improve enforcement ... information, relating primarily to personal details, is absolutely essential to an improved enforcement system” (*ibid*, p.16).

Department of Social Security, hereinafter DSS.¹⁴⁶ The court must first pursue all other reasonable lines of enquiry, but once a request has been made the DSS aims to respond within ten working days. Such an arrangement was first proposed in 1998, and the following commentary from *The Times* indicates that credibility concerns were at the fore:

Ministers want to allow courts access to confidential files held by local benefit offices so they can identify fine defaulters who cost the state more than £50 million a year ... The move is fuelled by fears that the extent to which individuals are ignoring financial penalties is threatening the status of the fine as a form of punishment.¹⁴⁷

7. Further developments?

The enforcement process seems set to continue developing, with new proposals being announced at regular intervals. For example, it was reported in October 1999 that ministers wanted to withdraw benefits from those who failed to pay their financial penalties,¹⁴⁸ whilst the criminal justice system's strategic plan declared that the

¹⁴⁶ Designated as such in the Enforcement of Warrants (Disclosure of Information) Order 2000 (S.I. 2000/3277). The order came into force on the 8th January 2001. The LCD notes that "the DSS was chosen first as their records are considered to be of most use to the courts" (Lord Chancellor's Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.41). Previously the DSS could only release information where an individual gave consent, where fraud was suspected or where there was overwhelming public interest. But the Government realised that meeting their aims for the criminal justice system required "a real partnership approach" beyond the criminal justice agencies (Criminal Justice Joint Planning Unit, *Criminal Justice System Strategic Plan 1999-2002 and Business Plan 1999-2000* (1999), The Stationery Office, p.9). Concentrating upon these agencies, it has been stated that "a key component in better co-ordination and performance across the CJS is effective integration of business processes and information systems" (HM Treasury, *Public Services for the Future: Modernisation, Reform, Accountability*, *op.cit.* p.36.) A particularly important development at the "overarching CJS level" is the "greater alignment of local and regional boundaries" (*ibid.* p.40), resulting in 42 amalgamated MCCs by April 2001 (Criminal Justice Joint Planning Unit, *Criminal Justice System Business Plan 2000-2001* (2000), The Stationery Office, p.7).

¹⁴⁷ R. Watson, "Chase on for Cheats", *The Times*, December 1, 1998, pp.1-2.

¹⁴⁸ S. Schaefer, "No benefits for anyone who dodges court fines", *The Independent*, October 23, 1999, p.2. Sections 62 and 63 of the Child Support, Pensions and Social Security Act 2000, authorising the withdrawal of benefits from those who breach their community orders, are to be piloted in four areas for four weeks beginning in October 2001. Lord Windlesham believes that this "ill-considered scheme...may well lead to more offenders absenting themselves from the system, and more, not less, crime" (Lord Windlesham, "Loss of Benefit: A Misplaced Sanction" [2000] *Crim.L.R.* 661, at p.665). The National Association of Probation Officers similarly believes that the scheme will lead to an increase in property

Government was considering re-investing the money received from financial penalties to improve performance, with one potential area for re-investment said to be enforcement.¹⁴⁹ More recently, it has been stated that the Home Secretary is “working on a new package of measures to increase collection of fines, including allowing courts to keep a percentage of cash recovered”.¹⁵⁰

Further developments are also possible due to the implementation of the Human Rights Act 1998. Beginning with the fines court, Darbyshire believes that “the dual role of the clerk as both prosecutor and justices’ legal adviser makes enforcement proceedings unfair in both substance and appearance”. She concludes that a declaration that the clerk’s role breaches the European Convention is “long overdue”.¹⁵¹ As for enforcement outside the court building, there are question marks concerning the issuing and execution of distress warrants. For example, Ashcroft *et al* state that “it is possible there may be challenges to the issue of distress warrants claiming breaches of Article 8 (right to respect for family life) and the First Protocol, Article 1 (peaceful enjoyment of possessions)”.¹⁵²

The most recent proposals are found in the White Paper *Criminal Justice: The Way Ahead* and the Green Paper *Towards Effective Enforcement*, both published in 2001. The goal outlined in the former is that “everyone who can pay, will pay their fine or compensation order”. The White Paper announces that the Government “will establish a countrywide programme of improvement in enforcement methods, based on proven success, and bring forward proposals for rationalising and streamlining the existing

crime and has told members to refuse to comply (I. Burrell, “Probation staff rebel over plan to withdraw social security cash”, *The Independent*, April 2, 2001, p.2).

¹⁴⁹ Criminal Justice Joint Planning Unit, *Strategic Plan 1999-2002 and Business Plan 1999-2000* (1999), The Stationery Office, p.21.

¹⁵⁰ D. Bamber, “Government writes off £72m in unpaid fines”, *The Sunday Telegraph*, July 9, 2000, p.2.

¹⁵¹ P. Darbyshire, “A Comment on the Powers of Magistrates’ Clerks” [1999] *Crim.L.R.* 377, at p.386.

¹⁵² P. Ashcroft *et al*, *Human Rights and the Courts: Bringing Justice Home*, *op.cit.* p.95.

powers and structures”.¹⁵³ Whilst this is a little vague, the White Paper also communicates the Government’s intention to introduce “specialist review hearings”, which would provide sentencers with “a greater active role in overseeing sentences, to tailor them to the response of the individual offender”.¹⁵⁴ The extent to which these hearings would differ to traditional fines court hearings remains unclear, although it is added that a “review hearing might re-sentence for non-payment of fines”.

The Green Paper meanwhile sets out a regulatory structure for a “new class” of enforcement agents, encompassing those who collect financial penalties for magistrates’ courts.¹⁵⁵ Particularly notable are its proposals for increased information and data sharing. A two-stage procedure is outlined, stage one of which is based upon section 94 of the ATJA 1999.¹⁵⁶ Stage two represents a further step forward in the form of a Data Disclosure Order. Whilst details regarding its application to fine enforcement are a little sketchy,¹⁵⁷ the orders would allow magistrates’ courts to check employers’ details and ascertain whether defaulters are in receipt of benefits,¹⁵⁸ enabling greater use of both AOE and deduction from benefit orders.

¹⁵³ Home Office, *Criminal Justice: The Way Ahead*, *op.cit.* p.44.

¹⁵⁴ *ibid*, p.45.

¹⁵⁵ The remit of the review was widened in March 2001 from civil enforcement agents within the High Court and county court to enforcement agents generally (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.3).

¹⁵⁶ See pp.29-30 above.

¹⁵⁷ Perhaps not surprising given the civil origins of the enforcement review. The general proposal is that “post wilful non-compliance by the debtor, a Data Disclosure Order could be sought by the creditor through application to the court” (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.41). It was shown above, at p.8, that wilful refusal or culpable neglect is required in one of the two limbs for a post-conviction ordering of committal.

¹⁵⁸ Information would be requested from designated third parties, including Government Departments, banks and building societies (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* pp.41-42).

8. Summary

The enforcement process clearly underwent considerable development throughout the twentieth century. Particularly notable is the expansion in the range of enforcement methods available to magistrates' courts. The driving force for change during the majority of these years was the desire to reduce the number of imprisonments for default, and there has recently been significant success in this regard. The emphasis has now shifted, however, to the effectiveness of the enforcement process, due to the incorporation of managerialist values and concerns regarding credibility. This new focus has led to the attempts at improving the enforcement process continuing apace, with yet further proposals announced at regular intervals.

CHAPTER THREE

THE STRUCTURE OF THE EMPIRICAL STUDY

Having outlined both the historical development of the enforcement process and the pressing need for evaluation at the present time, attention now shifts to the structure of the study. The fieldwork was conducted at the Birmingham and Manchester city centre magistrates' courts. These two courts have similarly heavy workloads, but have adopted different enforcement policies. The aim is to present a rounded, impartial view of these policies, and the way they are being applied in practice. To do this, the study utilises various sources of information and employs a range of research methods. The fieldwork consists of observations, analysis of the available statistics, and interviews with all the relevant parties (those responsible for overseeing the policies adopted, the magistrates, bailiffs and CEOs who put them into practice, and the defaulters who feel their impact). Based upon the research findings, recommendations will be offered for improving the enforcement process.

1. Aims

The aims of the research are as follows:¹

- (1) to evaluate the enforcement policies and performance of the Birmingham and Manchester city centre magistrates' courts;
- (2) to investigate defaulters' circumstances;
- (3) to analyse the execution of warrants by bailiffs and CEOs;

¹ The aims are dealt with in the following chapters in turn, i.e. aim 1 is dealt with in Chapter Four, aim 2 in Chapter Five, and so on.

- (4) to analyse enforcement inside the courtroom;
- (5) to produce recommendations for improving the enforcement process.²

2. Methodology

(a) Sources of data

The sources of data can be divided into the following three categories:

- (i) the courts;
- (ii) the defaulters;
- (iii) the bailiffs and CEOs;

(b) Sampling

The sampling techniques are considered in relation to each of the above sources.

- (i) The courts: the practical restrictions of time and cost limited the number of courts that could be included in the study. Bearing in mind the need for sufficient sample sizes of defaulters, the research was confined to two courts: the Birmingham and Manchester city centre magistrates' courts. These two courts were chosen for several reasons.³ First, previous research demonstrates that difficulties relating to enforcement are particularly evident at the busier urban courts.⁴ Second, contact was made with the Finance Officer at Birmingham, Graham Rutherford, and the Post-Court Group Manager at Manchester, Chris Flanagan, and both were found to be

² It is recognised that there is a need to evaluate fully the effects of any proposed changes to the enforcement process. As Brown *et al* state, "it must be remembered that the fines enforcement system functions somewhat as an organised whole; changes applied to any particular action in the system may result in untoward and disproportionate effects occurring in other components of the system" (R. Brown, A. Lee, S. Holm, G. Dunn and H. Tavassli, *An Evaluation of Fines Enforcement* (1985), Department of Justice (N.Z.), p.292). This leads West to the conclusion that "extreme caution would seem to be the right attitude to any proposal to tamper with the dynamics of this system, for it is almost certainly impossible to modify the residue without substantially altering the dynamics" (J. West, "Community Service for Fine Defaulters" (1978) 142 *Justice of the Peace* 425, at p.427).

³ Having accommodation near to both courts was a crucial factor.

⁴ See, for example, P. Softley and D. Moxon, *Fine Enforcement: An Evaluation of the Practices of Individual Courts*, *op.cit.* p.54.

receptive to this particular piece of research. This was vitally important as these two persons were the gatekeepers to much of the relevant information.⁵ Third, it was discovered that the two courts had adopted differing enforcement processes. Whilst both courts were employing bailiffs' firms to execute distress warrants,⁶ there was much greater reliance upon this approach at Birmingham.⁷ The West Midlands court was also running a "fines clinic".⁸ Manchester meanwhile employed its own CEOs,⁹ and was piloting the provisions of the C(S)A 1997.¹⁰ These differences, it was thought, would enable useful comparisons to be made.

- (ii) The defaulters: samples were taken of those defaulters against whom some form of enforcement action was taken at the fines courts of both Birmingham and Manchester, and the fines clinic at Birmingham.¹¹ It was recognised that any other form of sampling would increase greatly the time required in court. Following piloting, it was estimated that five-week periods would produce sample sizes of approximately one hundred defaulters for each court, sufficient for statistical

⁵ Jupp states that "gatekeepers are people who can control the access which researchers are permitted to have...to secondary sources such as organisational records and statistics" (V. Jupp, *Methods of Criminological Research*, *op.cit.* p.134).

⁶ See Chapter One above, at pp.6-7.

⁷ At Manchester, distress warrants were only issued on balances of £60 or less. But note that the enforcement processes at the two courts were modified during the course and since the completion of the study. See Chapter Four below, at pp.73-75.

⁸ For a description of the clinic, see Chapter Four below, at p.73.

⁹ See Chapter One above, at p.9. Manchester decided to employ CEOs as long ago as 1966, recognising that for the police the execution of enforcement warrants was an "ancillary function" (C. Latham, "Enforcement of Fines", *op.cit.* p.552). Since the completion of the fieldwork, the West Midlands MCC, comprising, Birmingham, has employed 26 CEOs (see Chapter Four below, at p.74).

¹⁰ See Chapter One above, at pp.22-24.

¹¹ "Enforcement action" included adjournments for further time to pay. See Charts A and D below for the exact points in the enforcement process in which the samples were drawn.

analysis.¹² It was thought that these samples would produce a fairly accurate picture of the enforcement methods employed inside the courtroom.

- (iii) The bailiffs and CEOs: naturally the sampling frame comprises the bailiffs and CEOs who executed warrants for the Birmingham and Manchester city centre courts. During the period of the fieldwork only the Manchester court employed its own CEOs, and, due to time restrictions, the research was restricted to the bailiffs at Birmingham and the CEOs at Manchester. In other words, the bailiffs at Manchester were excluded.

(c) Research methods

Once again the sources of data are taken in turn.

- (i) The courts: a range of research methods was utilised in relation to the courts.¹³ First, open-ended interviews were conducted with those responsible for overseeing the enforcement processes adopted by the two courts.¹⁴ Second, the available court statistics were analysed, along with relevant court publications, guidelines and memorandums.¹⁵ Third, semi-structured interviews were conducted with magistrates sitting in the fines courts. The easiest way of obtaining these interviews was with the benches at the end of the court sessions.¹⁶ The advantage of this approach was that

¹² Although it was appreciated that a longer period might be required at Manchester, due to the fines court only sitting three days per week, compared to every weekday at Birmingham.

¹³ It was recognised that such a range of methods maximises the “theoretical value” of the research “by revealing aspects of phenomena which the use of one method alone would miss” (V. Jupp, *Methods of Criminological Research* (1989), Routledge, p.74).

¹⁴ These persons being Graham Rutherford and Chris Flanagan (see p.54 above).

¹⁵ The following comment of O’Connell Davidson and Layder can be applied to explain the value of court statistics: “They...represent a very cheap, comprehensive and relatively high quality data source, providing information on a scale which would be impossible for any individual academic researcher, or indeed team of researchers to match” (J. O’Connell Davidson and D. Layder, *Methods, Sex and Madness, op.cit.* p.65).

¹⁶ The Birmingham interviews were set up through Stephen Abbott, Director of Legal Services, and Freda Johnson and David Bradnock, Chairpersons of the Magistrates’ Bench. The Manchester interviews were set up through David Scanlan, the then Deputy Justices’ Clerk. The interviews naturally depended upon the willingness of the individual magistrates to participate.

magistrates were able to engage with each other and to relate their points to cases in the preceding session. Rowe has stated that “in practice, there are plenty of ideas for improving enforcement floating around the magistrates’ courts community”,¹⁷ and it was hoped that the interviews would be able to tap into these ideas.

- (ii) The defaulters: courtroom appearances were observed, notes were taken of any exchanges, the relevant court lists were analysed,¹⁸ and, in order to expand upon the information gained in the courtroom, face-to-face interviews were conducted with defaulters. These were preferred to self-completion questionnaires as the response rate for the latter was likely to be poor. The easiest way of conducting interviews was in the court building, following the defaulters’ appearances at the fines court. To encourage the defaulters to take part, the interview schedule was carefully structured and limited in length.
- (iii) The bailiffs and CEOs: the execution of distress warrants by bailiffs, and bail warrants by CEOs, was observed, the warrants were analysed, notes were taken of any dialogue, and the bailiffs and CEOs were questioned about these encounters. Semi-structured interviews were employed to obtain bailiffs’ and CEOs’ more general views regarding warrant execution.

(d) Pilot work

Where necessary pilot work was conducted.

¹⁷ J. Rowe, “Can’t Pay, Won’t Pay”, *op.cit.* p.38.

¹⁸ The court lists at both Birmingham and Manchester have the following sections: case number, offence, date fined, amount of fine, amount paid, date of last payment, number of payments, and amount due.

- (i) The courts: the magistrates' interview schedule was piloted using magistrates known to the researcher, and the requisite feedback obtained.¹⁹
- (ii) The defaulters: initial visits were made to the fines courts.²⁰ Observational schedules were produced, and piloted through further visits.²¹ Interview schedules for the defaulters were also piloted at this time.²² Initially, there was a plan to track offenders from the point of imposition of a financial penalty, but that approach proved impractical. Whilst many fines are imposed in the motoring court, it was thought desirable to encompass a wider range of offences. Unfortunately, even with the aid of charge sheets, it was impossible to predict which of the other courtrooms would produce a sufficient number of impositions.
- (iii) The bailiffs and CEOs: a pilot study was conducted between March and April 1999 with the two bailiff firms employed by the Birmingham court: TransNational Corporation, hereinafter TNC, and Professional Recovery Services, hereinafter PRS.²³ The two firms provided confidential documents and performance figures, and allowed the author to accompany individual bailiffs on their visits to defaulters' homes. During one such outing 45 properties were attended, indicating that a full-scale study would quickly generate numbers sufficient for statistical analysis. Individual bailiffs were found to possess strong opinions about their work and to be

¹⁹ See Appendix B for the interview schedule. Consideration was given to the following comment of Morgan and Bowles: "research must be carried out *with* sentencers... the research must be relevant in their eyes, focussing on the policy choices and problems which, because of their wide discretion, confront them as penal decision makers" (R. Morgan and R. Bowles, "Fines: The Case For Review", *op.cit.* p.213).

²⁰ And the fines clinic at Birmingham.

²¹ See Appendices C and D for the observational schedules.

²² See Appendices E and F for the interview schedules.

²³ Graham Rutherford set up the necessary contacts, these being Richard Keitch, the General Manager of TNC, and Shaun Bletchley-Lewis, the Managing Director of PRS. The distress warrants are divided between the two firms according to the first letter of the defaulters' surnames.

keen to outline their frustrations, and defaulters' reactions ranged from the hostile to the distressed. It was clear, therefore, that the bailiff firms represented a source of considerable empirical value. Using the information gained from the pilot study, observational and interview schedules were devised.²⁴

A similar pilot study for the CEOs employed by the Manchester court was deemed unnecessary, due to the knowledge and experience gained from observing and interviewing the Birmingham bailiffs and the many similarities between their two roles. The necessary observational and interview schedules were instead devised following informal discussions with the senior CEO, Mick Galt, and his deputy, Bob Piers, during which time sample bail warrants were analysed.²⁵

3. The samples

Courtroom observations produced a sample of 259 defaulters against whom some form of enforcement action was taken. One hundred and thirty two of these cases were at the Birmingham court, 21 of which at the fines clinic, and were observed between November 1999 and May 2000. The remaining 127 cases at the Manchester court were observed between June and August 2000. Two hundred and five of the above defaulters were then interviewed, 103²⁶ at Birmingham and 102²⁷ at Manchester. Twenty-five of the defaulters were not asked for an interview, as I was either conducting another interview when they left the court or they were otherwise occupied, were in custody or were judged too emotional to be interviewed. Of the 234 defaulters who were asked for an interview,

²⁴ See Appendices G,H and I. A separate observational schedule was devised for those warrants that had proceeded to the "van stage" (see Chapter Six below, at pp.136-137).

²⁵ See Appendices J and K.

²⁶ 20 at the fines clinic.

²⁷ One of the Manchester interviews is incomplete, the defaulter having to leave suddenly.

only 29 declined, 15 at Birmingham and 14 at Manchester, producing an overall response rate of 87.6% (205/234). By far the most common reason for refusal was a lack of time.

Twenty-two magistrates' benches were interviewed at the end of the courtroom sessions, 13 at Birmingham and nine at Manchester. No requests for interviews were refused, but there needed to be sufficient time at the end of the session.²⁸

Finally, at Birmingham "on the street" interviews were conducted with ten bailiffs, five each from PRS and TNC.²⁹ One bailiff refused to take part, claiming to be "too busy". Accompanying bailiffs, during the period May to September 2000, produced a sample of 209 distress warrants. At Manchester, interviews were conducted with all eleven CEOs.³⁰ Accompanying these officers, between July and August 2000, produced a sample of 185 bail warrants.³¹

4. Limitations

No empirical research is perfect, but attempts have been made to ensure that the results are both valid and reliable.³² Restrictions of time and cost inevitably constrained the fieldwork in certain respects. Defaulters were not followed through the system and there is no sample of non-defaulters: those who are fined and pay as ordered.³³ Perhaps more significantly, the evaluation was confined to two courts. The reasons for choosing the Birmingham and Manchester city centre courts have been given,³⁴ but it is recognised

²⁸ The Manchester fines court took place in the morning and the magistrates sat in other courts in the afternoon. Clearance for the interviews also took some time, as it was necessary meet all the persons listed in f.n16, explaining the purpose of the research and the need to interview magistrates.

²⁹ Throughout the study, both firms employed five bailiffs to execute warrants for the Birmingham court.

³⁰ Excluding the senior CEO whom I spoke to informally.

³¹ The bailiffs and CEOs were accompanied on mutually convenient days.

³² May explains that "research is valid when the conclusions are true. It is reliable when the findings are repeatable" (T. May, *Social Research: Issues, methods and process* (1997), Open University Press, p.68).

³³ Constructing such a sample would undoubtedly raise questions of confidentiality.

³⁴ See pp.54-55 above.

that a rural court would have provided a useful comparison. Nevertheless, it is thought that many enforcement problems apply across the court system. Furthermore, Jupp's defence of a Crown Court study by Baldwin and McConville is equally applicable here: "the value...lies not in its ability to demonstrate beyond doubt the external validity of the findings but in its raising of questions and issues about the operation of the Crown Court system which up to that point had not been considered".³⁵

Another limitation is that the fieldwork took place over a single twelve-month period. The enforcement process is continually developing, and a greater period of time would have enabled these changes to be evaluated. It is submitted, however, that the value of the research is not greatly diminished. Twelve months of fieldwork is a lengthier period than carried out for many pieces of empirical research. In any case, as Jupp states, "to criticise the work simply on the grounds that it represented a sample of people, of time and of context is unreasonable in so far as all research is of this nature".³⁶

There are certain weaknesses with the individual research methods adopted. A danger with observational studies is that the presence of the researcher affects the behavior of those observed. Such an impact cannot be discounted in relation to the bailiff and CEO observations. The "researcher effect" is less likely to occur in the context of the courtroom, but a further complication is that not all of the information before the magistrates is stated verbally. When interviewing, meanwhile, it cannot be guaranteed that respondents are fully honest in their responses.³⁷ Defaulters were informed that the

³⁵ V. Jupp, *Methods of Criminological Research*, op.cit. p.165.

³⁶ V. Jupp, *Methods of Criminological Research*, op.cit. p.16.

³⁷ May states that "there is some value in documenting people's attitudes, provided we do not claim that by doing so we have proven what they do" (T. May, *Social Research: Issues, methods and process*, op.cit. p.148).

research was both confidential and independent of the court, but maybe remaining in the court environment encouraged the overstating of any problems. Magistrates were asked for their own personal opinions, but perhaps interviewing in benches induced more “official” views.³⁸ Finally, bailiffs and CEOs saw themselves as competing for work,³⁹ and some were uncertain about their future roles, possibly motivating an emphasis upon positive aspects. More generally, it is a facet of human nature that “people often avoid describing aspects of behavior or attitude that are inconsistent with their preferred self-image”.⁴⁰

Interviews with magistrates, bailiffs and CEOs were semi-structured, enabling the interviewer to probe for more detail when thought appropriate. It is recognised, however, that there is a thin line between probing and becoming actively involved in the interview, leading the respondent to a particular response. As May states, “in its literal sense, to which all but the most crude behaviorists would subscribe, the standardised method can only be assumed to elicit information untainted by the context of the interview”.⁴¹ A final point is that none of the interviews were tape-recorded because of the need to make the interviewees feel as relaxed as possible. But once again there is a downside in that the odd statement is missed and one cannot guarantee that responses are recorded with word-for-word accuracy.⁴²

³⁸ Jupp notes that “individuals or groups of individuals may have an investment in the protection of interests of the ‘system’ of which they see themselves as being a part” (V. Jupp, *Methods of Criminological Research*, *op.cit.* p.135).

³⁹ See Chapter Six below, at p.150.

⁴⁰ T. May, *Social Research: Issues, methods and process*, *op.cit.* p.114.

⁴¹ *ibid.* p.112.

⁴² May notes that tape recording “guards against interviewers substituting their own words for those of the person being interviewed” (*ibid.* p.125).

Whilst these weaknesses are not insignificant, it is maintained that the value of the research remains intact. The methodology adopted resulted in a cross-method triangulation of observations, statistical analysis and interviewing. There is no doubt that such a multi-method approach balances “the strengths and weaknesses of [the] differing methods”.⁴³

5. Analysis and evaluation

The study aims to build upon the findings of past research and assess whether recent developments have improved the enforcement process, bearing in mind the problems that have been identified and the negative performance statistics. Due to the range of methods adopted, the analysis is both quantitative and qualitative. For the former, SPSS has been utilised.

Throughout the evaluation it has been kept in mind that there are differing ways of measuring the effectiveness of the courts’ policies and procedures. The following statement illustrates the potential for varying appraisals of write-offs:⁴⁴ “From a purely accounting point of view reducing the amount outstanding by whatever means can be regarded as success ... From any other point of view the ‘writing-off’ of outstanding fines must indicate a lack of success in the enforcement of those fines”.⁴⁵ At the other end of the enforcement spectrum is the use of custody. Although the usefulness of its threat has been emphasised at regular intervals,⁴⁶ Davies notes that its implementation can

⁴³ V. Jupp, *Methods of Criminological Research*, *op.cit.* p.72.

⁴⁴ See Chapter Two above, at p.37, for an explanation of write-offs.

⁴⁵ D. Chandler, *Fine Enforcement Ideas From A Survey* (1987), University of Cambridge, p.52.

⁴⁶ For example, the judgment of Simon Brown LJ in *ex parte Cawley* (see Chapter One, at pp.16-17) has been criticised as follows: “Our understanding has been from fine enforcement officers, that a suspended prison sentence or an activated prison sentence often concentrate the mind and produce the required results. This case result only serves to distance the threat from most of our clients who know the system and will play it to the limits” (R.E. Downes, “Fine Enforcement” (1996) 52(4) *The Magistrate* 89, at pp.89-90).

similarly be evaluated in different ways: “By resorting to the method used in the last example [custody], courts could raise their standards of efficiency, but in so doing they would not only turn their backs on a humane approach to the treatment of offenders, but would inevitably place a greatly increased burden on the already overcrowded prisons”.⁴⁷

Consideration has been given during the evaluation to the impact that a financial penalty is intended to have upon an offender. For those who default, the burden depends largely upon the court’s approach towards enforcement,⁴⁸ and Bathurst is keen to emphasise that “the aim of enforcement is to collect the monies due, not to punish”.⁴⁹ As for the intended impact at the point of imposition, the basic premise has been outlined by the Magistrates’ Association as follows: “Where the means are limited the underlying principle should be a penalty to cause extreme economy but short of actual hardship”.⁵⁰

Various commentators have attempted to expand upon the distinction between “extreme economy” and “actual hardship”. The following passage represents one such attempt:

Of course, a fine is meant to be a punishment, and it is perfectly proper that the offender should have to endure a degree of ‘hardship’... Such hardship might properly involve the offender giving up other expenditure and leisure activities or postponing the purchase of some item in order to pay. But a fine which is so large that the offender will not be able to pay it and, at the same time, provide for the necessities of life, is counter-productive.⁵¹

⁴⁷ M. Davies, *Financial Penalties and Probation*, *op.cit.* p.18.

⁴⁸ Morgan and Bowles state that “enforcement policy determines the burden, punitive value and thus credibility of the sentence” (R. Morgan and R. Bowles, “Fines: Where Does Sentencing End and Enforcement Begin?” [1983] *Criminal Law Review* 78, at p.83).

⁴⁹ D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op. cit.* p.71. Davies argues that “the flexibility in the fine-collection process may well be a reflection of the court’s desire to exercise its punitive responsibilities humanely and fairly” (M. Davies, *Financial Penalties and Probation*, *op.cit.* p.17).

⁵⁰ Magistrates’ Association, “Fines and Fine Enforcement”, *op.cit.* p.131.

⁵¹ M. Wasik, *Emmins on Sentencing*, *op.cit.* p.220.

A further question is whether the distinction is sustainable in all situations, with various commentators recognising that a defaulter may have no spare income at all.⁵² The existing research does in fact indicate that many defaulters are unemployed,⁵³ and Payne believes that in the current system of benefits “there is absolutely no lee-way for the payment of fines”.⁵⁴ Similarly, in relation to the deduction from benefits order, Cavadino and Dignan state that “any deductions are likely to aggravate whatever financial problems such offenders may have (and which may have been responsible for the offence being committed in the first place)”.⁵⁵

Concerns regarding the employment of financial penalties against offenders of low means are long-standing. For example, a Scottish report from 1960 held that “it is absurd to extract money from a man or woman who is dependent on national assistance”.⁵⁶ The concerns have also filtered through to the judiciary, as demonstrated by the judgment of Staughton LJ in *R v Stockport Justices, ex parte Conlon; R v Newark & Southwell Justices, ex parte Keenaghan*,⁵⁷ which recognised that whilst a claimant may have a few spare pounds one week, this is no guarantee that he or she will do so the next.

Finally, attention has been given to the potential scope for improving the enforcement process. Whilst some defaulters may have insufficient means to pay even small amounts, various commentators have argued that other defaulters will refuse to pay

⁵² The importance of this point is emphasised by Gibson’s following statement: “The idea that it is fair to punish people of different levels of means by depriving them of their spare income, whatever it happens to be, underpins everything else” (B. Gibson, *Unit Fines*, *op. cit.* p.73).

⁵³ See Chapter Two above, at pp.42-43.

⁵⁴ D.S. Payne, “Fines, Their Enforcement and Effect” (1998) 163 *Justice of the Peace* 621.

⁵⁵ Cavadino and Dignan, *The Penal System: An Introduction*, *op. cit.* p.214.

⁵⁶ Scottish Home Department, *Use of Short Sentences of Imprisonment by the Courts* (1960), HMSO, pp.19-20.

⁵⁷ *The Times*, January 3, 1997.

no matter what.⁵⁸ Elliott and Airs, for example, state that “there will always be a small minority who will not pay whatever enforcement methods are used”.⁵⁹ Furthermore, there are practical limitations to consider. In terms of enforcement proceedings at fines courts, Morris and Gelsthorpe note that “on average each case lasts about 10 minutes and so magistrates must reach their decision very quickly”.⁶⁰ As for original impositions, the limitations have been outlined in an Advisory Council report as follows:

We think that in this area we are at the mercy of what it is possible to achieve, and that it would be unrealistic to think that hard-pressed magistrates’ courts, in dealing with the very large numbers of offenders who are sentenced in their absence, could accurately differentiate between all of them according to their means, even if the relevant information were made available.⁶¹

6. Summary

This study will elaborate and expand upon the findings of past research. The aim is to present a rounded, impartial view of the policies of the Birmingham and Manchester city centre magistrates’ courts, and the way in which these policies are being applied in practice. The methodology adopted is a triangulation of observations, statistical analysis and interviewing, and the size of the samples helps to ensure that the results are both valid and reliable. The quantitative and qualitative analysis of these results will form the basis for the recommendations, outlined in the concluding chapter, for improving the enforcement process.

⁵⁸ See Chapter Two above, at pp.41-42.

⁵⁹ R. Elliot and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots*, *op.cit.* p.3.

⁶⁰ A. Morris and L. Gelsthorpe, “Not Paying for Crime: issues in fine enforcement”, *op.cit.* p.846.

⁶¹ Home Office, *Non-Custodial and Semi-Custodial Penalties: Report of the Advisory Council on the Penal System*, *op.cit.* p.7.

CHAPTER TWO

THE NEED FOR EVALUATION

Having outlined the historical development of the enforcement process, it will now be demonstrated that there is a pressing need for an evaluation of current policies and practices. While the fine holds a leading position as the most commonly imposed sentencing disposal, it has been the subject of limited research. This dearth is particularly concerning as the percentage use of the fine has recently declined, questioning whether its credibility is being maintained. Effective enforcement is viewed as essential to such credibility, but the current statistics demonstrate that a large percentage of financial penalties imposed are in arrears, with significant amounts being written-off. These figures highlight the importance of the very latest developments, but there are already some doubts regarding their potential for success. Furthermore, there is accompanying concern that the quality of justice is being eroded by the drive towards managerial efficiency.

1. Worrying statistics

The sentencing of offenders is an integral part of the criminal justice process,¹ and the fine dominates as the most commonly imposed of all the penal sanctions.² In fact, the

¹ Pennington and Lloyd Bostock emphasise that “for legal professionals, the caring professionals, the criminal and the general public, sentencing is where justice is seen to be done”(D.C. Pennington and S. Lloyd-Bostock, *The Psychology of Sentencing: Approaches to Consistency and Disparity* (1987), University of Oxford, p.v). The purpose of sentencing has been considered more recently in the 2001 sentencing review, which states as follows: “At its roots, sentencing contributes to good order in society. It does so by visibly upholding society’s norms and standards; dealing appropriately with those who breach them; and enabling the public to have confidence in its outcomes. The public, as a result, can legitimately be expected to uphold and observe the law, and not to take it into their own hands” (J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.1).

² Nevertheless, Wasik argues that “the importance of the fine in sentencing should not be overstated”, the reasoning being that “crimes of violence, sexual offences and serious crimes against property are unlikely to be dealt with by way of a fine, since their seriousness renders the fine an unsuitable punishment” (M.

most recent criminal statistics demonstrate that 70 per cent of all offenders were fined in 1998.³ At the same time, the statistics indicate that the use of the fine has recently declined. For instance, its proportionate use at magistrates' courts for indictable offences has fallen from 43 per cent in 1992 to 34 per cent in 1999,⁴ leading to the conclusion in the 2001 Sentencing Review that "there is a possibility that they [fines] are not being used to the extent that they could be".⁵

The diminishing use of the fine is cause for concern. From an economic viewpoint, Gibson noted in 1990 that whilst the average revenue from a fine is £71, imprisonment costs almost £300 a week and probation or community service costs around £1000 a year.⁶ More up-to-date figures are included in the criminal justice system's strategic plan, which reports that the annual costs of community rehabilitation orders, CPOs and community punishment and rehabilitation orders are £1,170, £1,502 and £2,786 respectively,⁷ while the average annual cost of an "uncrowded prison place" is £23,940.⁸

Wasik, *Emmins on Sentencing*, *op.cit.* p.210). The Criminal Justice Act of 1991 did in fact create three tiers of seriousness, with financial penalties seen as appropriate for the least serious offences, community sentences for those offences "serious enough" to require punishment in the community, and custodial sentences for those sentences "so serious" that no other sentence was adequate.

³ Home Office, *Criminal Statistics England and Wales 1999* (2001), The Stationery Office, p.150.

⁴ *ibid.*, p.18. The figures for 1999 disprove the previous year's conclusion that the fall in the use of the fine had "levelled off" (Home Office, *Criminal Statistics England and Wales 1998* (2000), The Stationery Office, p.144).

⁵ J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.39.

⁶ B. Gibson, *Unit Fines* (1990), Waterside Press, p.122.

⁷ The orders were renamed from probation orders, community service orders and combination orders by sections 43-45 of the Criminal Justice and Court Services Act 2000.

⁸ Criminal Justice Joint Planning Unit, *Criminal Justice System Strategic Plan 1999-2002 and Business Plan 1999-2000*, *op.cit.* p.19. The criminal justice system costs over £12 billion per year to run, "more than £200 for every man, woman and child", with magistrates' courts costing over £300 million (*ibid.* p.20). The weight to be given to such financial considerations is controversial, but Ryan argues that "while the primary purpose of fines should never be to supplement the government's income, the cost effectiveness of fines should not be overlooked" (D.M. Ryan, "Criminal Fines: A Sentencing Alternative to Short-Term Incarceration", *op.cit.* p.1300).

Concern is not limited to financial consideration, however, as the following statement from a Home Office report illustrates:

The fall in the use of the fine has, over the years, placed increasing demands on criminal justice agencies responsible for giving effect to other sentences, especially the probation service. Apart from raising costs and reducing revenue, there is a risk that the use of a sentence which has traditionally been regarded as more severe than a fine will lead to a more severe sentence being imposed in the event of a subsequent conviction.⁹

The reasoning behind the decline in the employment of the fine has been the matter of some debate. There has been a corresponding fall in the number of compensation orders imposed,¹⁰ leading Flood-Page and Mackie to comment that “there seems to have been a general disenchantment with financial penalties”.¹¹ More precisely, these commentators hold that “the increase in unemployment, the proliferation of other sentencing options and the spread of cautioning (which diverts minor cases) have no doubt played a part”.¹²

Elliot and Airs, on the other hand, state that the decline in the fine’s employment is “possibly because of concern about the amount of fines actually collected”.¹³ Despite the emphasis on the need for an effective enforcement process in order to maintain the fine’s

⁹ D. Moxon, C. Hedderman, and M. Sutton, *Deductions from Benefit for fine Default*, *op.cit.* p.1.

¹⁰ In 1990 compensation orders were imposed, at magistrates’ courts, in 55 per cent of violent offences and 30 per cent of property offences. The corresponding figures for 1996 were 51 per cent and 22 per cent respectively (C. Flood-Page and A. Mackie, *Sentencing Practice: An Examination of Decisions in Magistrates’ Courts and the Crown Court in the Mid-1990s* (1998), HMSO, p.17). This fall appears to have ended, however, with 102,600 offenders ordered to pay compensation in 1998, “6 per cent more than in 1997” (Home Office, *Criminal Statistics England and Wales 1998*, *op.cit.* p.146).

¹¹ C. Flood-Page and A. Mackie, *Sentencing Practice: An Examination of Decisions in Magistrates’ Courts and the Crown Court in the Mid-1990s*, *op.cit.* p.127.

¹² *ibid.* p.127. But the 2001 Sentencing Review notes that “the high levels of unemployment used to explain their decline no longer exist” (J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.5).

¹³ R. Elliot and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots*, *op.cit.* p.1. Similarly, the 2001 Sentencing Review argues that “lack of confidence in the enforcement of fines is likely to have contributed” to the decline in the fine’s employment (J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.39).

credibility,¹⁴ the courts' performance statistics are far from commendable, leading the Government to conclude that "the procedures available today for enforcement and 'sentence management' are complex, inefficient and insufficiently effective".¹⁵

Whilst there has been a reduction in the use of custody against defaulters,¹⁶ the default rates remain high. In fact, the MCSI, has noted that it was "not unusual" for their Inspectors to find more than 60 per cent of outstanding accounts in arrears.¹⁷ It is obviously important to define "arrears" clearly,¹⁸ for which the MCSI provide the following guidance:

The amount of **arrears** is the total value of impositions not yet paid, excluding amounts which:

- are not yet payable under an order of the court
- are payable by instalment, where all instalments due have been received
- are subsequent impositions, to be paid only on settlement by the offender of preceding impositions
- relate to offences currently the subject of appeal to the Crown or Divisional Court
- are subject to payment from DSS benefit, unless no payment has been received for four months
- are subject to payment by Attachment of Earnings, or under a Money Payment Supervision Order (under one month or three months respectively)
- have been transferred to the courts of either Scotland or Northern Ireland for collection.¹⁹

¹⁴ See Chapter One above, at pp.21-22.

¹⁵ Home Office, *Criminal Justice: The Way Ahead*, *op.cit.* p.41.

¹⁶ See Chapter One above, at pp.17-18.

¹⁷ HM Magistrates' Courts Service Inspectorate, *The Fourth Annual Report of Her Majesty's Chief Inspector of the Magistrates' Courts service 1996-1997* (1998), HMSO, p.12. The Inspectorate had previously stated that "the large amounts in arrears must call into question the efficacy of the fine as a means of punishment" (HM Magistrates' Courts Service Inspectorate, *Magistrates' Courts and Fine Enforcement* (1996), HMSO, p.i). There are some early signs of improvement. Recently, the MCSI reported that four of the six MCCs inspected in 1999-2000 had arrears of 40 per cent or less (HM Magistrates' Courts Service Inspectorate, *Annual Report of Her Majesty's Chief Inspector of the Magistrates' Courts Service 1999-2000*, *op.cit.* p.23).

¹⁸ Particularly as they are measured as CPM 4 (see Chapter One above, at p.21).

¹⁹ HM Magistrates' Courts Service Inspectorate, *Magistrates' Courts and Fine Enforcement*, *op.cit.* p.42. Interestingly, the MCSI has found some variability in calculations, with the main inconsistency relating to payment by instalments: "Where an instalment is missed some MCCs regard the whole outstanding balance as in arrears. However, arrears can also be seen as counting only the missed instalment. The effect of the difference is dramatic; in one example seen by Inspectors, the proportion of arrears – counting only missed instalments – stood at 40%, whereas the alternative calculation produced a figure of 79%" (HM Magistrates' Courts Service Inspectorate, *Annual Report of Her Majesty's Chief Inspector of the Magistrates' Courts Service 1999-2000*, *op.cit.* p.23).

There is accompanying concern about the amounts of financial penalties being written-off.²⁰ Such write-offs can only occur in limited circumstances, most notably where the offenders cannot be traced. Once again, the MCSI provides further guidance.

The amount of **write-offs** is the total value of outstanding impositions in respect of which no further enforcement action is to be taken, but which remains enforceable if circumstances should subsequently change. Write-offs do not, therefore, include amounts which are required to be closed by law, or by a decision of the courts, such as in the following situations:

- committal of the offender upon default
- “lodgement” of the imposition where the offender is already in prison
- transfer to another court in England and Wales
- remission of the imposition
- setting aside of the conviction and sentence
- successful appeal against an imposition
- compensation being no longer payable following a review by the court
- Statutory Declaration by an individual upon whom a fixed penalty has been imposed.²¹

Bathurst emphasises the need to avoid write-offs, arguing that they are “a means of escaping from the responsibility of enforcement”.²² Nevertheless, the total amount of fines and costs written-off has risen dramatically from £4 million in 1985/86²³ to £47.2 million in 1999/2000.²⁴ Returning to the MCSI report, it found that the amounts written-off could exceed the amounts collected, leading it to conclude that “sometimes apparently acceptable performance...was found upon closer examination to be the result of high write-off”.²⁵

²⁰ Write-offs are measured under CPM 5 (see Chapter One above, at p.21).

²¹ HM Magistrates’ Courts Service Inspectorate, *Magistrates’ Courts and Fine Enforcement*, *op.cit.* p.42.

²² *ibid*, p.65.

²³ C. Whittaker and A. Mackie, *Enforcing Financial Penalties* (1997), HMSO, p.1.

²⁴ Figure provided by Miss Nike Awogbamiye at the Enforcement Branch of the LCD’s Criminal Justice Division. £211.6m was collected in 1999/2000.

²⁵ HM Magistrates’ Courts Service Inspectorate, *The Fourth Annual Report of Her Majesty’s Chief Inspector of the Magistrates’ Courts service 1996-1997*, *op.cit.* p.12

2. The research findings

Despite the fine's prominent position, a constant criticism throughout its history has been the lack of research devoted to it. For example, Mannheim noted in 1939 that "both as regards the public interest it arouses as well as in the amount of scientific study devoted to it, the fine is the Cinderella among penal methods".²⁶ He then attempted to explain this paucity, referring to the "entire lack of sensation, mysticism and romance around the method of punishment".²⁷ Somewhat worryingly, the following comment by Shaw demonstrates that very little has changed over the following fifty years: "Given that in the region of 1.5 million fines are passed by the courts each year, one wonders if there can be any other such commonplace experience which has so escaped the attentions of research".²⁸

Although criticisms concerning the level of research remain,²⁹ there have now been several important studies,³⁰ one of which was conducted by Softley and Moxon in 1982.³¹ Their findings led them to conclude that successful enforcement is dependent upon three factors: "First, the ability to identify defaulters quickly; second, prompt action against the defaulter once he has been detected; and, third, swift follow-up action".³² The

²⁶ H. Mannheim, *The Dilemma of Penal Reform* (1939), Routledge and Kegan Paul, p.127.

²⁷ *ibid*, p.129.

²⁸ S. Shaw, "Monetary Penalties and imprisonment: the realistic alternatives", in: P. Carlen and D. Cook, *Paying For Crime* (1989, Open University Press), p.30. He also attempts to provide an explanation for the lack of research, holding as follows: "It is almost as if the everyday nature of the fine (and, for that matter, the relatively undistinguished nature of the crimes for which it is usually imposed) has discouraged the interest of academics and research values" (*ibid*, p.30).

²⁹ See, for example, C. Flood-Page and A. Mackie, *Sentencing Practice: An Examination of Decisions in Magistrates' Courts and the Crown Court in the Mid-1990s*, *op.cit.* p.47.

³⁰ Perhaps encouraged by the warning of Morgan and Bowles that "if the strains associated with our use of fines are not to get worse or are to be reduced...then a systematic research programme must be undertaken" (R. Morgan and R. Bowles, "Fines: The Case For Review", *op.cit.* p.211).

³¹ P. Softley and D. Moxon, *Fine Enforcement: An Evaluation of the Practices of Individual Courts* (1982), HMSO.

³² *ibid*, p.10.

HO Advisory Group has since acknowledged the importance of the first factor, holding that those offenders who “fail to pay as a result of lack of means to do so or an inability to order their financial affairs satisfactorily...should be identified at an early stage in the enforcement process to avoid unnecessary wastage of court resources in repeated enforcement hearings”.³³

As for the other factors identified by Softley and Moxon, it is worth emphasising that there is still no standard approach towards enforcement.³⁴ Although content to leave the courts much discretion, the HO Advisory Group has stressed the need for evaluation: “It is considered an important part of the management of the enforcement process that the enforcement timetable is kept constantly under review and that the effectiveness of the overall timetable and each step within it is periodically tested”.³⁵ Unfortunately, the recent research evidence is that the courts’ monitoring procedures are insufficient. For example, the recent MCSI report concludes that “fine enforcement was one of the areas where monitoring was often found to be poor, with many courts being unaware of the effectiveness of individual enforcement measures, and failing to set targets either for their own staff or for bailiffs and police”.³⁶ Perhaps not surprisingly, therefore, the 2001 Sentencing Review concludes that “current arrangements for the enforcement of sentences are inconsistent and unclear. There is a patchwork of ‘enforcement’ activity –

³³ Home Office, *Fine Enforcement* (1990), HMSO, p.21.

³⁴ Despite the issuing of good practice guides, Ashworth notes that “the speed at which offenders are brought back to court for default proceedings varies considerably” (A. Ashworth, *Sentencing and Criminal Justice* (1995), Weidenfield and Nicolson, p.267-8). Differences also exist at the imposition stage (see, for example, C. Walker and D. Wall, “Imprisoning the Poor: Television Licence Evaders and the Criminal Justice System” [1997] *Crim.L.R.* 173, at p.180).

³⁵ Home Office, *Fine Enforcement*, *op.cit.* p.13. The HO Advisory Group has also emphasised the importance of evaluation as follows: “If magistrates, hearing an enquiry into a fine defaulter’s means, consistently select enforcement measures which are relatively ineffective, the problems of collection and enforcement may be exacerbated both in the individual case and more generally” (*ibid*, p.8).

³⁶ HM Magistrates’ Courts Service Inspectorate, *The Fourth Annual Report of Her Majesty’s Chief Inspector of the Magistrates’ Courts service 1996-1997*, *op.cit.* pp. 12-13.

with no consistent principles underlying the current legislation, structures and practices”.³⁷

The research suggests that the majority of enforcement methods are rarely used. Whittaker and Mackie state that they “agree with the findings of numerous other studies that little use is made...of enforcement measures other than suspended committal and setting instalment terms”.³⁸ Perhaps the lack of variance in enforcement methods is not so startling, however, as the research has identified various criticisms relating to their use. Such criticisms include the resource implications of MPSOs and the fact that “they are considered as otiose by most probation officers”,³⁹ the reality of the AOE order bringing the offence to the employer’s notice with “uncertain consequences for the offender”,⁴⁰ and the limited amount that can be deducted in a deduction from benefits order.⁴¹

Unfortunately, when one takes into account the further research evidence regarding offenders’ circumstances, the lack of flexibility in approach raises obvious concern. Although their circumstances have yet to be fully explored, it is clear that “offenders range from well-heeled businessmen speeding on motorways to single parents left to cope with four children and no money with which to licence the ‘essential’ TV set, the only source of family entertainment”.⁴² This is no great surprise, bearing in mind the great disparity in wealth and income levels throughout the country. For instance, National Statistics for 1997-98 show that “the 10 per cent of individuals on the lowest incomes in

³⁷ J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.4.

³⁸ C. Whittaker and A. Mackie, *Enforcing Financial Penalties*, *op.cit.* p.37.

³⁹ S. Shaw, “Monetary penalties and imprisonment: the realistic alternatives”, *op.cit.* p.34.

⁴⁰ *ibid*, p.34.

⁴¹ P. Cooney, “Deduction of Fines from Income Support – A Practical Guide” (1996) 160 *Justice of the Peace* 780, at p.782.

⁴² B. Gibson, *Unit Fines*, *op. cit.* p.27-8.

Great Britain received around 3 per cent of total disposable income. Those in the bottom half of the income distribution received around a quarter of total income... a similar share to those 10 per cent of individuals with the highest incomes”.⁴³

More significantly, there is a long-standing belief in dividing defaulters into those who “can’t pay” and those who “won’t pay”.⁴⁴ Whether defaulters are primarily of the former or latter type clearly has implications for devising recommendations. If the former, it would appear that further attention needs to be paid to imposition levels, or, perhaps, the use of financial penalties.⁴⁵ But if the latter, it would seem that enforcement procedures are insufficiently stringent. After all, as the LCD has recently stated, “people ordered to pay...criminal penalties...have little incentive to do so if they know there is no effective means of enforcing it”.⁴⁶

There is evidence that both types of defaulter exist. Beginning with those who “won’t pay”, the Magistrates’ Association has stated that “some fine defaulters appear to manipulate the system”.⁴⁷ Such defaulters were identified by Davies, enabling him to conclude that there is the occasional offender “who takes advantage of the weakness of the situation and procrastinates as much as he possibly can while simultaneously spending money on his leisure time pursuits”.⁴⁸ Alternatively, the HO Advisory Group has stated that “courts should be alert to the possibility that some defaulters may actually

⁴³ F. Drever, K. Fisher, J. Brown and J. Clark, *Social Inequalities 2000 edition* (2000), The Stationery Office, p.34. In 1996 ten per cent of the population owned more than half of the total wealth (*ibid*, p.49).

⁴⁴ Despite “the sparsity of surveys which attempt to glean from defaulters, at first hand, their views on and reasons for defaulting” (L. Nicholson, *A Survey of Fine Defaulters in Scottish Courts* (1990), Central Research Unit, p.3).

⁴⁵ See Chapter Three below, at p.65.

⁴⁶ Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.8.

⁴⁷ Magistrates’ Association, “Fines and Fine Enforcement” (1988) 44(7) *The Magistrate* 131, at p.132.

⁴⁸ Davies also held, however, that this situation was “remarkably rare” (M. Davies, *Financial Penalties and Probation* (1970), HMSO, p.18).

wish to serve a period of imprisonment”.⁴⁹ Nicholson attempted to pinpoint such persons, concluding that those with “previous prison experience, relatively high fines, and family support for their decision” were the prime candidates.⁵⁰

Various studies suggest, however, that a greater number of defaulters simply “can’t pay”. Two such studies, evaluating the circumstances of defaulters appearing at selected fines courts, were published in 1990. The first, conducted in Scotland by Nicholson, found that 57 per cent of the defaulters in her sample espoused “limited financial means” as the reason for their default.⁵¹ The second, conducted in England by Morris and Gelsthorpe, found that almost two-thirds of their sample of defaulters were on benefits, whilst many of the employed appeared to have higher outgoings than income.⁵² Furthermore, Morris and Gelsthorpe emphasised that a payment being made was not necessarily evidence that it could be afforded.⁵³ Brown *et al*, from their experiences working as probation officers, had also previously identified offenders over-stretching their finances as cause for concern:

Some only discharge their obligation to the court by foregoing basic needs, often thereby inflicting serious hardship on their families: others cope by neglecting other commitments such as rent, board, and fuel bills, which may do no more than postpone hardship or shift the problem, eventually, from the criminal to the civil court: still others, especially in the face of a real or imagined threat of imprisonment, may borrow from family or friends, which can lead to worsening of their personal relationships, or from moneylenders or institutions, often at a crippling rate of interest. Such strategies, in their several ways, tend to create continuing and sometimes prolonged stress, which may, in its turn, conduce to the commission of further crime.⁵⁴

⁴⁹ Home Office, *Fine Enforcement – Part II*, *op. cit.* p.16.

⁵⁰ L. Nicholson, *A Survey of Fine Defaulters in Scottish Courts*, *op.cit.* p.30.

⁵¹ *ibid*, p.15.

⁵² A. Morris and L. Gelsthorpe, “Not Paying for Crime: issues in fine enforcement”, *op.cit.* p.842.

⁵³ *ibid*, p.842.

⁵⁴ T. Brown, A. Cook and R. King, “Fines can ruin” (1982) 38 *The Magistrate* 55.

The 1997 study by Whittaker and Mackie similarly found that the majority of defaulters appearing at a fines court relied upon state benefit as their main source of income.⁵⁵ The researchers noted that many of the fines had “accumulated over successive court appearances”.⁵⁶ There is also evidence that financial penalties can be accompanied by various other debts, making it difficult for the offender to meet his or her obligations to the court. Davies, for example, found that certain offenders had “debts in all directions”, the reality being that the financial penalties “merely added to the list”.⁵⁷

The existence of other debts raises the issue of the priority afforded by offenders to the financial penalties imposed upon them. Nicholson found that “of the 124 offenders with competing financial commitments only 16 per cent (20) identified their fine as having priority over other items of expenditure... Most interviewees attached more importance to paying general living costs”.⁵⁸ Furthermore, Bathurst argues that it may be unrealistic for magistrates to expect offenders to prioritise their financial penalties:

Magistrates who admonish a defendant with the words “The HP / loan company can’t send you to prison whereas we can” may not realize that the tactics employed by debt collectors to claim what is owing to them may be intimidating and frightening ... Even debts owing to family members, if not paid, may result in family pressures and conflicts which ultimately may be far more emotionally damaging to a defendant than is realized by a means inquiry court.⁵⁹

⁵⁵ C. Whittaker and A. Mackie, *Enforcing Financial Penalties*, *op.cit.* p.14.

⁵⁶ *ibid*, p.22. A Home Office consultation paper has recognised this problem of multiple fines, stating that “it is not uncommon for offenders to have accumulated more outstanding fines than they can reasonably pay off” (Home Office, *Alternative Penalties for Fine Defaulters and Low Level Offenders* (1996), HMSO, p4).

⁵⁷ M. Davies, *Financial Penalties and Probation*, *op.cit.* p.19. More recently, McKevitt has stated that “fine defaulters with mortgage arrears, credit card problems, fuel debts, county court judgments and family and relationship difficulties are not uncommon” (M. McKevitt, “Getting Fines Right” (1999) 55 *The Magistrate* 298).

⁵⁸ L. Nicholson, *A Survey of Fine Defaulters in Scottish Courts*, *op.cit.* p.16.

⁵⁹ D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op. cit.* p.136-7.

3. Merits of the latest developments

It was obviously hoped that the enforcement methods found in the C(S)A 1997 would prove valuable alternatives,⁶⁰ but various points of caution have been raised. In the consultation paper, which preceded the legislation, the Home Office noted that there could be some unwanted effects: “the courts might reduce the numbers for whom fines are remitted.... [and] cases of default might increase, if a CSO [community service order] or a CO were seen by the offender as preferable to paying the fine”.⁶¹ It was also recognised that there might be exceptional cases where a community service order, now a community punishment order [CPO],⁶² or CO is inappropriate,⁶³ and Block has argued that if the number of CPO hours imposed is “unreasonably high” the result will be a familiar one of default.⁶⁴ The probation service meanwhile has opined that there is a danger of diminishing the CPO’s credibility as a “substantial penalty suitable for more serious offenders”.⁶⁵ As for the employment of CPOs and COs against “persistent petty offenders”,⁶⁶ there is a concern that this will discriminate against those of low means. Shaw, for example, claims that such employment will ensure that “the poor are moved more rapidly up the sentencing tariff”.⁶⁷

⁶⁰ See Chapter One, at pp.22-24.

⁶¹ Home Office, *Alternative Penalties for Fine Defaulters and Low Level Offenders*, *op.cit.* p.14.

⁶² See Chapter One above, at f.n.109.

⁶³ *ibid*, p.12. Before imposing a CPO, the court has to be satisfied that the fine defaulter is a suitable person for performing the work. The *Justice of the Peace* editors have in fact questioned “the motivation of a fine defaulter who has already been chased from pillar to post by the court in the vain attempt to persuade him to pay” (September 2, 1995).

⁶⁴ B.P. Block, “Fine Sentiments” (1997) 161 *Justice of the Peace* 61.

⁶⁵ As quoted by the honourable Member for Coventry South East, Mr Jim Cunningham, during the passage of the bill (HC Standing Committee A, 3 December 1996, col.255). Interestingly, the government was once of the view that “introducing community service in lieu of a committal warrant would add to the complexity of the fine enforcement process and consume probation service resources without appreciably reducing imprisonment in default” (S. Shaw, “Monetary Penalties and imprisonment: the realistic alternatives”, *op.cit.* p.36).

⁶⁶ See Chapter One above, at pp.23-24, for the more precise qualifying conditions.

⁶⁷ S. Shaw, “Monetary Penalties and imprisonment: the realistic alternatives”, *op.cit.* p.43.

These fears now have to be considered in light of findings from the pilot study. Across the seventeen pilot courts, 1,289 orders were made against fine defaulters during the period January 1998 to the end of June 1999.⁶⁸ Unfortunately, the proportion of all defaulters that received these orders is unknown, although estimates are made of 19 per cent at Norwich and two per cent at Manchester.⁶⁹ The CPO was “far and away the most popular” measure, accounting for 82 and 72 per cent of orders in Norfolk and Greater Manchester respectively.⁷⁰ Analysing their use in more detail, Elliott and Airs believe their success has been somewhat mixed:

The fine default measures have been popular with sentencers: they seem to fill a gap felt to have been created by the increased restrictions on use of imprisonment. They also seem to have had reasonably good completion rates. However the evidence is that the pilots have had very little or no effect on the use of imprisonment for fine default or on payments. They would be very expensive to roll-out nationally. The measures have probably been net-widening, given to groups of people for whom they were not intended. There is also a risk that offenders will be drawn up the tariff faster than would be the case if they had not received one of the new measures – although in practice offenders may not view community sentences as necessarily harsher than fines.⁷¹

Far fewer orders were made against “persistent petty offenders” than against fine defaulters. A total of 508 such orders were made, and the CPO was again the most popular, being employed in about three-quarters of these cases.⁷² Explaining the low take-up of the “persistent petty offender” measures, Elliott and Airs noticed that magistrates seemed “less enthusiastic about them and found them more difficult to

⁶⁸ R. Elliott and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots*, op.cit. p.17.

⁶⁹ Elliott and Airs state that “in practice this data is not available. We do not know what proportion of people dealt with in each court have outstanding fines at any time, and we cannot say what proportion of those are guilty of wilful or culpable neglect” (*ibid*, p.18).

⁷⁰ *ibid*, p.19.

⁷¹ *ibid*, p.81.

⁷² *ibid*, pp.47&49. As with the fine default measures, it is not known what proportion of persistent petty offenders received the new orders. Elliott and Airs state that “we do not know what proportion of people dealt with in each court have outstanding fines at any time, and we cannot say what proportion of those will be reconvicted for another offence where they could be fined” (*ibid*, p.48).

understand”.⁷³ Moreover, some courts found it difficult to identify “persistent petty offenders”, due to the necessary information being unavailable until the later stage of default.⁷⁴

The disqualification from driving measure was rarely used in the pilot areas, either as an “all-purpose penalty” or as a measure against fine defaulters. In fact, seven of the pilot courts disqualified no defaulters whatsoever.⁷⁵ Elliott and Airs refer to various reasons for the low take-up, including the difficulty of identifying cases where a ban would be “meaningful”, and perceptions that such bans were “too harsh (particularly in rural areas where public transport is poor), unjust or even illogical for non-motoring offences”.⁷⁶

As yet none of the piloted C(S)A 1997 provisions have been introduced on a permanent basis.⁷⁷ A development that has occurred, however, is an increase in the employment of bailiffs to execute distress warrants.⁷⁸ The HO Advisory Group has stated that “their flexibility, speed and the absence of cost to the taxpayer means that they have a useful part to play in the enforcement process”.⁷⁹ On an equally positive note, Bathurst argues that “the prospect of life without a car, satellite television system, state-of-the-art music centre or some other luxury will often have a defendant digging deep into his pocket to find monies which mysteriously were not present at any stage before”.⁸⁰

⁷³ *ibid*, p.79.

⁷⁴ *ibid*, p.79.

⁷⁵ *ibid*, p.19. Section 39 was only employed on 29 occasions between January 1998 and 26th October 1999 (*ibid*, p.67).

⁷⁶ *ibid*, p.79.

⁷⁷ See Chapter one above, at p.24.

⁷⁸ *ibid*, at pp.24-26.

⁷⁹ Home Office, *The Use of Bailiffs*, *op.cit.* p.1.

⁸⁰ D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op. cit.* p.33.

The early indicators regarding the effectiveness of distress warrants were also promising.⁸¹ Most notably, the HO Advisory Group observed that they had proved “particularly successful” in the collection of relatively small sums.⁸² Unfortunately, though, more recent evidence suggests that the Advisory Group may have been over optimistic. Particularly significant is the MCSI finding that nearly 60 per cent of those courts responding to a postal questionnaire rated the use of distress warrants as ineffective.⁸³ Similarly, Whittaker and Mackie refer to the statements of two fine enforcement officers that only 30-40 per cent and “as low as 20 per cent” of distress warrants were successful in their respective courts.⁸⁴

Furthermore, doubts have been expressed as to the propriety of issuing distress warrants against defaulters of low means. Shaw, for example, states that “it requires little imagination to see that the enforcement of fines through the threat of carrying off the possessions of an unemployed family leaves a great deal to be desired”.⁸⁵ Interestingly, following consideration of the implications of the Human Rights Act,⁸⁶ the Justices’ Clerks Society has advised that “distress warrants should no longer be issued without

⁸¹ See Chapter One above, at pp.6-7, for an overview of distress warrants.

⁸² Home Office, *Fine Enforcement – Part II*, *op. cit.* p.12.

⁸³ HM Magistrates’ Courts Service Inspectorate, *Magistrates’ Courts and Fine Enforcement*, *op.cit.* p.8. The MCSI also notes that “a number of respondents identified factors which limited bailiffs’ performance, such as the difficulty bailiffs experience in identifying property owned by the defaulters as distinct from that owned by members of their families, friends or rental companies”(ibid. p.8).

⁸⁴ They note that this is particularly worrying as “unsuccessful distress warrants add severe delays to the enforcement process as it can take many weeks for the warrant to be issued, for bailiffs to conclude that it cannot be executed and return it to the court” (C. Whittaker and A. Mackie, *Enforcing Financial Penalties*, *op.cit.* p.33). The statistics can be contrasted to the comment of a 1989 scrutiny of magistrates’ courts that “a success rate of 50-60 per cent should be expected” (quoted in National Consumer Council, *Private Bailiffs: Their Role in Debt Collection* (1990), NCC, p.9). Performance in the civil field is also far from good, with the LCD reporting a payment rate for warrants of execution of 35 per cent (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.12).

⁸⁵ S. Shaw, “Monetary Penalties and imprisonment: the realistic alternatives”, *op.cit.* p.34.

⁸⁶ See Chapter One above, at p.30.

judicial consideration either by a magistrate or a Legal Advisor in the presence of the defaulter”.⁸⁷ Even more recently, the Green Paper *Towards Effective Enforcement* states that “as an ideal the Government would like to see a system that encourages the use of the most appropriate enforcement method rather than the widespread use of distress”.⁸⁸

The latest development concerning enforcement is the formal transfer of responsibility for the execution of warrants from the police to the MCCs.⁸⁹ The Justices’ Clerks Society has identified “inertia on the part of police in the execution of warrants” as a factor contributing to poor enforcement performance,⁹⁰ and the government believes that “as a result [of the transfer] more money ... will be collected”.⁹¹ Furthermore, the existing evidence regarding the merits of employing CEOs, whilst extremely limited, is generally positive. The MCSI, for example, refers to a justices’ clerk’s statement that they “had had a major impact on collection, proving more effective than either the police or bailiffs”.⁹² The Inspectorate then notes that “the fact that the courts could control the performance and priorities of CEOs was seen by many as a significant advantage”.⁹³

Despite these positives, concerns were raised throughout the history of the proposed transfer. In fact, the MCCs even applied for judicial review of an earlier decision to transfer responsibility for 149 London CEOs, believing that the courts lacked the

⁸⁷ Justices’ Clerks’ Society, “Human Rights Issues” (2000) 36 JCS News Sheet 1, at p.4.

⁸⁸ Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.13.

⁸⁹ See Chapter One above, at pp.27-29.

⁹⁰ Home Office, *Select Committee on Home Affairs Third Report* (1998), The Stationery Office. The other factors identified were the “high mobility of some offenders” and “the giving of false names, addresses and dates of birth”, suggesting that section 94 of the ATJA 1999, removing barriers to the sharing of information (see Chapter One above, at pp.28-29), is a step in the right direction.

⁹¹ Home Office, *Modernising Justice*, *op.cit.* para.5.13.

⁹² HM Magistrates’ Courts Service Inspectorate, *Magistrates’ Courts and Fine Enforcement*, *op.cit.* p.9.

⁹³ *ibid*, p.9. This corresponds with an earlier study conducted by Rock, who refers to a statement by a court registrar that the alternative of using bailiffs “transfers judicial discretion from the judiciary to the bailiff, who is not equipped, by education and training, to exercise it” (P. Rock, *Making People Pay* (1973), Routledge & Kegan Paul, p.165).

necessary resources, whilst the CEOs would lack “expertise and back-up” once detached from the police.⁹⁴ The concern regarding resources was repeated in *The Magistrate*, which raised the following question: “Is the £8 million which the police used to spend on carrying out tasks to which they give low priority sufficient for the courts to provide the first class service we need?”⁹⁵

Although the intention behind the core of the legislation⁹⁶ accompanying the transfer is to give CEOs and approved enforcement agencies “wider and clearer powers to execute warrants”,⁹⁷ Evans notes that the provisions are silent as to powers of arrest.⁹⁸ His belief is that, in their current form, these powers are “inadequate” and, unless addressed, will lead to “unnecessary confrontation”, harming “the reputation of the courts and the officers they employ”.⁹⁹ Furthermore, he submits that the demands upon the police could actually increase due to enforcement officers needing their assistance more regularly.¹⁰⁰

There does appear, however, to be some promise for section 94 of the ATJA 1999. The arrangements with the DSS were piloted at four magistrates’ courts in early 2001,

⁹⁴ A. Travis, “Magistrates take Howard to High Court”, *The Guardian*, December 4, 1994, p.6.

⁹⁵ “Difficulties Over Execution of Warrants” (1995) 51 *The Magistrate* 228.

⁹⁶ Sections 92-97 of the ATJA 1999.

⁹⁷ Home Office, *Modernising Justice*, *op.cit.* para.5.13.

⁹⁸ P. Evans, “Transfer of Warrants” (1999) 163 *Justice of the Peace* 227.

⁹⁹ *ibid.* p.228. The potential for confrontation has been reported by *The Independent*: “Civil rights groups, including Liberty, warned that the proposals could lead to dangerous door-step confrontations between criminals and untrained bailiffs as well as breaches of human rights” (R. Verkaik, “Bailiffs will get powers of arrest to relieve burden on police”, *The Independent*, September 13, 2000, p.5).

¹⁰⁰ *ibid.* p.228. Denney et al are of a similar opinion, claiming that “enforcement agents might simply refer the more difficult cases back to the police” (D. Denney, T. Ellis and C. Nee, “Community Penalties Warrants: A Gap in the Criminal Justice System?” (1999) 38 *The Howard Journal* 300, at p.309). These commentators favor “the retention of symbolic police authority” (*ibid.* p.309). Latham notes, however, that “experience so far gained at Manchester is... that provided enforcement officers of the right quality are recruited, there is very little need to call upon the police for assistance in executing default warrants” (C. Latham, “Enforcement of Fines” [1973] *Crim.L.R.* 552, at p.555).

and in approximately 50 per cent of cases new information was provided,¹⁰¹ suggesting that many more defaulters will be located.

4. Diminishing justice?

In addition to the concerns regarding credibility and the question marks concerning the merits of the recent developments, there is a general worry that the drive towards managerial efficiency is diminishing the quality of justice. Raine and Henshaw emphasise that “without question the most important component of the output of the magistrates’ courts’ service is the quality of justice”,¹⁰² but various commentators believe that managerialism has shifted the courts’ focus. Jones, for example, states that “there is now in the ascendant an ideology which wholly legitimates the pursuit of administratively rational ends over substantive justice goals”.¹⁰³ Of all the resulting criticisms, the following quotation from Raine and Wilson is the most notable:

Social cultures, and organisations as social phenomena, are subject to fashion. Since fashion is dictated as much by whimsy as by the weather, we in turn might take the opportunity to ask just how warm, dry and respectable – or glamorous – is Justice when, high over the Old Bailey, her lissom form is clothed in management as compared with the traditional Grecian drapes?¹⁰⁴

A question raised is whether the current fashion is set to change. Raine and Wilson suggest an affirmative answer, arguing that an emerging “new morality” can provide the context for redressing the balance between managerialism and justice.¹⁰⁵ Underlying the

¹⁰¹ Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.41.

¹⁰² J.W. Raine and L.G. Henshaw, *Resource Requirements and Value for Money in the Magistrates’ Courts’ Service* (1985, The University of Birmingham Press, p.62). The Howard League has declared that justice “demands attention to individual rights and responsibilities, to due process, fairness, certainty, and openness even where this is costly and cumbersome to provide” (*The Dynamics of Justice* (1993), Howard League for Penal Reform, p.16).

¹⁰³ C. Jones, “Auditing Criminal Justice”, *op.cit.* p.196.

¹⁰⁴ Raine, J.W. and Wilson, M.J., *Managing Criminal Justice*, *op.cit.* p.72.

¹⁰⁵ Raine, J.W. and Wilson, M.J., “Beyond Managerialism in Criminal Justice”, *op.cit.* p.92. The Howard League believes that “resolving the tensions between the demands of managerialism and those of justice is the greatest challenge facing the criminal justice system today” (Howard League for Penal Reform, *The*

“new morality”, they argue, is a “shift from a preoccupation with the core values of the management accountant – cost-efficiency and productivity – to a concern with other, more humanitarian values”.¹⁰⁶ These comments can now be considered in light of the Human Rights Act 1998. Perhaps its implementation will prove to be the catalyst for the “new morality” coming to the fore, with its emphasis upon freedoms and minimum standards.¹⁰⁷ Encouragingly, the 2001 Sentencing Review outlines “principles of justice and fairness” before the “practical principles” of efficiency, effectiveness and economy.¹⁰⁸

5. Summary

There is clearly a pressing need for an evaluation of the policies and practices adopted by magistrates’ courts for the enforcement of financial penalties. Despite the dominant position of the fine in the sentencing hierarchy, it was until very recently the subject of little research. Although the 1990s witnessed an increase in the level of research, the negative findings of this decade have simply increased the need for yet further evaluation. Of particular concern are those statistics demonstrating that the percentage use of the fine has recently declined, and that a large proportion of financial

Dynamics of Justice, *op.cit.* p16). In resolving these tensions, Raine and Wilson believe there is “plenty of scope for greater emphasis on fairness” (Raine, J.W. and Wilson, M.J., *Managing Criminal Justice*, *op.cit.* p.213).

¹⁰⁶ *ibid*, p.92.

¹⁰⁷ Ashcroft *et al* conclude that “it is clear that the Convention will play a significant role in the enforcement process” (P. Ashcroft, F. Barrie, C. Bazell, A. Damazer, R. Powell and G. Tranter, *Human Rights and the Courts: Bringing Justice Home* (1999), Waterside Press, p.92). For specific potential developments, see Chapter One above, at p.30.

¹⁰⁸ The principles of justice and fairness, the review states, “require sentencing to be proportionate, consistent, free from improper discrimination, compliant with human rights, and transparent” (J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.12). An aim of the LCD Green Paper *Towards Effective Enforcement* is to create a regulatory system for enforcement agents which will “encourage effective, fair and appropriate enforcement” (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.11).

penalties are in arrears, with significant amounts being written-off. These statistics question whether credibility is being maintained, and, in conjunction with the drive towards managerial efficiency, have led to the attempts at improving the enforcement process continuing apace. An empirical study is needed to evaluate the merits of these latest developments, paying particular attention to the concerns regarding diminishing justice and credibility.

CHAPTER THREE

THE STRUCTURE OF THE EMPIRICAL STUDY

Having outlined both the historical development of the enforcement process and the pressing need for evaluation at the present time, attention now shifts to the structure of the study. The fieldwork was conducted at the Birmingham and Manchester city centre magistrates' courts. These two courts have similarly heavy workloads, but have adopted different enforcement policies. The aim is to present a rounded, impartial view of these policies, and the way they are being applied in practice. To do this, the study utilises various sources of information and employs a range of research methods. The fieldwork consists of observations, analysis of the available statistics, and interviews with all the relevant parties (those responsible for overseeing the policies adopted, the magistrates, bailiffs and CEOs who put them into practice, and the defaulters who feel their impact). Based upon the research findings, recommendations will be offered for improving the enforcement process.

1. Aims

The aims of the research are as follows:¹

- (1) to evaluate the enforcement policies and performance of the Birmingham and Manchester city centre magistrates' courts;
- (2) to investigate defaulters' circumstances;
- (3) to analyse the execution of warrants by bailiffs and CEOs;

¹ The aims are dealt with in the following chapters in turn, i.e. aim 1 is dealt with in Chapter Four, aim 2 in Chapter Five, and so on.

- (4) to analyse enforcement inside the courtroom;
- (5) to produce recommendations for improving the enforcement process.²

2. Methodology

(a) Sources of data

The sources of data can be divided into the following three categories:

- (i) the courts;
- (ii) the defaulters;
- (iii) the bailiffs and CEOs;

(b) Sampling

The sampling techniques are considered in relation to each of the above sources.

- (i) The courts: the practical restrictions of time and cost limited the number of courts that could be included in the study. Bearing in mind the need for sufficient sample sizes of defaulters, the research was confined to two courts: the Birmingham and Manchester city centre magistrates' courts. These two courts were chosen for several reasons.³ First, previous research demonstrates that difficulties relating to enforcement are particularly evident at the busier urban courts.⁴ Second, contact was made with the Finance Officer at Birmingham, Graham Rutherford, and the Post-Court Group Manager at Manchester, Chris Flanagan, and both were found to be

² It is recognised that there is a need to evaluate fully the effects of any proposed changes to the enforcement process. As Brown *et al* state, "it must be remembered that the fines enforcement system functions somewhat as an organised whole; changes applied to any particular action in the system may result in untoward and disproportionate effects occurring in other components of the system" (R. Brown, A. Lee, S. Holm, G. Dunn and H. Tavassli, *An Evaluation of Fines Enforcement* (1985), Department of Justice (N.Z.), p.292). This leads West to the conclusion that "extreme caution would seem to be the right attitude to any proposal to tamper with the dynamics of this system, for it is almost certainly impossible to modify the residue without substantially altering the dynamics" (J. West, "Community Service for Fine Defaulters" (1978) 142 *Justice of the Peace* 425, at p.427).

³ Having accommodation near to both courts was a crucial factor.

⁴ See, for example, P. Softley and D. Moxon, *Fine Enforcement: An Evaluation of the Practices of Individual Courts*, *op.cit.* p.54.

receptive to this particular piece of research. This was vitally important as these two persons were the gatekeepers to much of the relevant information.⁵ Third, it was discovered that the two courts had adopted differing enforcement processes. Whilst both courts were employing bailiffs' firms to execute distress warrants,⁶ there was much greater reliance upon this approach at Birmingham.⁷ The West Midlands court was also running a "fines clinic".⁸ Manchester meanwhile employed its own CEOs,⁹ and was piloting the provisions of the C(S)A 1997.¹⁰ These differences, it was thought, would enable useful comparisons to be made.

- (ii) The defaulters: samples were taken of those defaulters against whom some form of enforcement action was taken at the fines courts of both Birmingham and Manchester, and the fines clinic at Birmingham.¹¹ It was recognised that any other form of sampling would increase greatly the time required in court. Following piloting, it was estimated that five-week periods would produce sample sizes of approximately one hundred defaulters for each court, sufficient for statistical

⁵ Jupp states that "gatekeepers are people who can control the access which researchers are permitted to have...to secondary sources such as organisational records and statistics" (V. Jupp, *Methods of Criminological Research*, *op.cit.* p.134).

⁶ See Chapter One above, at pp.6-7.

⁷ At Manchester, distress warrants were only issued on balances of £60 or less. But note that the enforcement processes at the two courts were modified during the course and since the completion of the study. See Chapter Four below, at pp.73-75.

⁸ For a description of the clinic, see Chapter Four below, at p.73.

⁹ See Chapter One above, at p.9. Manchester decided to employ CEOs as long ago as 1966, recognising that for the police the execution of enforcement warrants was an "ancillary function" (C. Latham, "Enforcement of Fines", *op.cit.* p.552). Since the completion of the fieldwork, the West Midlands MCC, comprising, Birmingham, has employed 26 CEOs (see Chapter Four below, at p.74).

¹⁰ See Chapter One above, at pp.22-24.

¹¹ "Enforcement action" included adjournments for further time to pay. See Charts A and D below for the exact points in the enforcement process in which the samples were drawn.

analysis.¹² It was thought that these samples would produce a fairly accurate picture of the enforcement methods employed inside the courtroom.

- (iii) The bailiffs and CEOs: naturally the sampling frame comprises the bailiffs and CEOs who executed warrants for the Birmingham and Manchester city centre courts. During the period of the fieldwork only the Manchester court employed its own CEOs, and, due to time restrictions, the research was restricted to the bailiffs at Birmingham and the CEOs at Manchester. In other words, the bailiffs at Manchester were excluded.

(c) Research methods

Once again the sources of data are taken in turn.

- (i) The courts: a range of research methods was utilised in relation to the courts.¹³ First, open-ended interviews were conducted with those responsible for overseeing the enforcement processes adopted by the two courts.¹⁴ Second, the available court statistics were analysed, along with relevant court publications, guidelines and memorandums.¹⁵ Third, semi-structured interviews were conducted with magistrates sitting in the fines courts. The easiest way of obtaining these interviews was with the benches at the end of the court sessions.¹⁶ The advantage of this approach was that

¹² Although it was appreciated that a longer period might be required at Manchester, due to the fines court only sitting three days per week, compared to every weekday at Birmingham.

¹³ It was recognised that such a range of methods maximises the “theoretical value” of the research “by revealing aspects of phenomena which the use of one method alone would miss” (V. Jupp, *Methods of Criminological Research* (1989), Routledge, p.74).

¹⁴ These persons being Graham Rutherford and Chris Flanagan (see p.54 above).

¹⁵ The following comment of O’Connell Davidson and Layder can be applied to explain the value of court statistics: “They...represent a very cheap, comprehensive and relatively high quality data source, providing information on a scale which would be impossible for any individual academic researcher, or indeed team of researchers to match” (J. O’Connell Davidson and D. Layder, *Methods, Sex and Madness, op.cit.* p.65).

¹⁶ The Birmingham interviews were set up through Stephen Abbott, Director of Legal Services, and Freda Johnson and David Bradnock, Chairpersons of the Magistrates’ Bench. The Manchester interviews were set up through David Scanlan, the then Deputy Justices’ Clerk. The interviews naturally depended upon the willingness of the individual magistrates to participate.

magistrates were able to engage with each other and to relate their points to cases in the preceding session. Rowe has stated that “in practice, there are plenty of ideas for improving enforcement floating around the magistrates’ courts community”,¹⁷ and it was hoped that the interviews would be able to tap into these ideas.

- (ii) The defaulters: courtroom appearances were observed, notes were taken of any exchanges, the relevant court lists were analysed,¹⁸ and, in order to expand upon the information gained in the courtroom, face-to-face interviews were conducted with defaulters. These were preferred to self-completion questionnaires as the response rate for the latter was likely to be poor. The easiest way of conducting interviews was in the court building, following the defaulters’ appearances at the fines court. To encourage the defaulters to take part, the interview schedule was carefully structured and limited in length.
- (iii) The bailiffs and CEOs: the execution of distress warrants by bailiffs, and bail warrants by CEOs, was observed, the warrants were analysed, notes were taken of any dialogue, and the bailiffs and CEOs were questioned about these encounters. Semi-structured interviews were employed to obtain bailiffs’ and CEOs’ more general views regarding warrant execution.

(d) Pilot work

Where necessary pilot work was conducted.

¹⁷ J. Rowe, “Can’t Pay, Won’t Pay”, *op.cit.* p.38.

¹⁸ The court lists at both Birmingham and Manchester have the following sections: case number, offence, date fined, amount of fine, amount paid, date of last payment, number of payments, and amount due.

- (i) The courts: the magistrates' interview schedule was piloted using magistrates known to the researcher, and the requisite feedback obtained.¹⁹
- (ii) The defaulters: initial visits were made to the fines courts.²⁰ Observational schedules were produced, and piloted through further visits.²¹ Interview schedules for the defaulters were also piloted at this time.²² Initially, there was a plan to track offenders from the point of imposition of a financial penalty, but that approach proved impractical. Whilst many fines are imposed in the motoring court, it was thought desirable to encompass a wider range of offences. Unfortunately, even with the aid of charge sheets, it was impossible to predict which of the other courtrooms would produce a sufficient number of impositions.
- (iii) The bailiffs and CEOs: a pilot study was conducted between March and April 1999 with the two bailiff firms employed by the Birmingham court: TransNational Corporation, hereinafter TNC, and Professional Recovery Services, hereinafter PRS.²³ The two firms provided confidential documents and performance figures, and allowed the author to accompany individual bailiffs on their visits to defaulters' homes. During one such outing 45 properties were attended, indicating that a full-scale study would quickly generate numbers sufficient for statistical analysis. Individual bailiffs were found to possess strong opinions about their work and to be

¹⁹ See Appendix B for the interview schedule. Consideration was given to the following comment of Morgan and Bowles: "research must be carried out *with* sentencers... the research must be relevant in their eyes, focussing on the policy choices and problems which, because of their wide discretion, confront them as penal decision makers" (R. Morgan and R. Bowles, "Fines: The Case For Review", *op.cit.* p.213).

²⁰ And the fines clinic at Birmingham.

²¹ See Appendices C and D for the observational schedules.

²² See Appendices E and F for the interview schedules.

²³ Graham Rutherford set up the necessary contacts, these being Richard Keitch, the General Manager of TNC, and Shaun Bletchley-Lewis, the Managing Director of PRS. The distress warrants are divided between the two firms according to the first letter of the defaulters' surnames.

keen to outline their frustrations, and defaulters' reactions ranged from the hostile to the distressed. It was clear, therefore, that the bailiff firms represented a source of considerable empirical value. Using the information gained from the pilot study, observational and interview schedules were devised.²⁴

A similar pilot study for the CEOs employed by the Manchester court was deemed unnecessary, due to the knowledge and experience gained from observing and interviewing the Birmingham bailiffs and the many similarities between their two roles. The necessary observational and interview schedules were instead devised following informal discussions with the senior CEO, Mick Galt, and his deputy, Bob Piers, during which time sample bail warrants were analysed.²⁵

3. The samples

Courtroom observations produced a sample of 259 defaulters against whom some form of enforcement action was taken. One hundred and thirty two of these cases were at the Birmingham court, 21 of which at the fines clinic, and were observed between November 1999 and May 2000. The remaining 127 cases at the Manchester court were observed between June and August 2000. Two hundred and five of the above defaulters were then interviewed, 103²⁶ at Birmingham and 102²⁷ at Manchester. Twenty-five of the defaulters were not asked for an interview, as I was either conducting another interview when they left the court or they were otherwise occupied, were in custody or were judged too emotional to be interviewed. Of the 234 defaulters who were asked for an interview,

²⁴ See Appendices G,H and I. A separate observational schedule was devised for those warrants that had proceeded to the "van stage" (see Chapter Six below, at pp.136-137).

²⁵ See Appendices J and K.

²⁶ 20 at the fines clinic.

²⁷ One of the Manchester interviews is incomplete, the defaulter having to leave suddenly.

only 29 declined, 15 at Birmingham and 14 at Manchester, producing an overall response rate of 87.6% (205/234). By far the most common reason for refusal was a lack of time.

Twenty-two magistrates' benches were interviewed at the end of the courtroom sessions, 13 at Birmingham and nine at Manchester. No requests for interviews were refused, but there needed to be sufficient time at the end of the session.²⁸

Finally, at Birmingham "on the street" interviews were conducted with ten bailiffs, five each from PRS and TNC.²⁹ One bailiff refused to take part, claiming to be "too busy". Accompanying bailiffs, during the period May to September 2000, produced a sample of 209 distress warrants. At Manchester, interviews were conducted with all eleven CEOs.³⁰ Accompanying these officers, between July and August 2000, produced a sample of 185 bail warrants.³¹

4. Limitations

No empirical research is perfect, but attempts have been made to ensure that the results are both valid and reliable.³² Restrictions of time and cost inevitably constrained the fieldwork in certain respects. Defaulters were not followed through the system and there is no sample of non-defaulters: those who are fined and pay as ordered.³³ Perhaps more significantly, the evaluation was confined to two courts. The reasons for choosing the Birmingham and Manchester city centre courts have been given,³⁴ but it is recognised

²⁸ The Manchester fines court took place in the morning and the magistrates sat in other courts in the afternoon. Clearance for the interviews also took some time, as it was necessary meet all the persons listed in f.n16, explaining the purpose of the research and the need to interview magistrates.

²⁹ Throughout the study, both firms employed five bailiffs to execute warrants for the Birmingham court.

³⁰ Excluding the senior CEO whom I spoke to informally.

³¹ The bailiffs and CEOs were accompanied on mutually convenient days.

³² May explains that "research is valid when the conclusions are true. It is reliable when the findings are repeatable" (T. May, *Social Research: Issues, methods and process* (1997), Open University Press, p.68).

³³ Constructing such a sample would undoubtedly raise questions of confidentiality.

³⁴ See pp.54-55 above.

that a rural court would have provided a useful comparison. Nevertheless, it is thought that many enforcement problems apply across the court system. Furthermore, Jupp's defence of a Crown Court study by Baldwin and McConville is equally applicable here: "the value...lies not in its ability to demonstrate beyond doubt the external validity of the findings but in its raising of questions and issues about the operation of the Crown Court system which up to that point had not been considered".³⁵

Another limitation is that the fieldwork took place over a single twelve-month period. The enforcement process is continually developing, and a greater period of time would have enabled these changes to be evaluated. It is submitted, however, that the value of the research is not greatly diminished. Twelve months of fieldwork is a lengthier period than carried out for many pieces of empirical research. In any case, as Jupp states, "to criticise the work simply on the grounds that it represented a sample of people, of time and of context is unreasonable in so far as all research is of this nature".³⁶

There are certain weaknesses with the individual research methods adopted. A danger with observational studies is that the presence of the researcher affects the behavior of those observed. Such an impact cannot be discounted in relation to the bailiff and CEO observations. The "researcher effect" is less likely to occur in the context of the courtroom, but a further complication is that not all of the information before the magistrates is stated verbally. When interviewing, meanwhile, it cannot be guaranteed that respondents are fully honest in their responses.³⁷ Defaulters were informed that the

³⁵ V. Jupp, *Methods of Criminological Research*, op.cit. p.165.

³⁶ V. Jupp, *Methods of Criminological Research*, op.cit. p.16.

³⁷ May states that "there is some value in documenting people's attitudes, provided we do not claim that by doing so we have proven what they do" (T. May, *Social Research: Issues, methods and process*, op.cit. p.148).

research was both confidential and independent of the court, but maybe remaining in the court environment encouraged the overstating of any problems. Magistrates were asked for their own personal opinions, but perhaps interviewing in benches induced more “official” views.³⁸ Finally, bailiffs and CEOs saw themselves as competing for work,³⁹ and some were uncertain about their future roles, possibly motivating an emphasis upon positive aspects. More generally, it is a facet of human nature that “people often avoid describing aspects of behavior or attitude that are inconsistent with their preferred self-image”.⁴⁰

Interviews with magistrates, bailiffs and CEOs were semi-structured, enabling the interviewer to probe for more detail when thought appropriate. It is recognised, however, that there is a thin line between probing and becoming actively involved in the interview, leading the respondent to a particular response. As May states, “in its literal sense, to which all but the most crude behaviorists would subscribe, the standardised method can only be assumed to elicit information untainted by the context of the interview”.⁴¹ A final point is that none of the interviews were tape-recorded because of the need to make the interviewees feel as relaxed as possible. But once again there is a downside in that the odd statement is missed and one cannot guarantee that responses are recorded with word-for-word accuracy.⁴²

³⁸ Jupp notes that “individuals or groups of individuals may have an investment in the protection of interests of the ‘system’ of which they see themselves as being a part” (V. Jupp, *Methods of Criminological Research*, *op.cit.* p.135).

³⁹ See Chapter Six below, at p.150.

⁴⁰ T. May, *Social Research: Issues, methods and process*, *op.cit.* p.114.

⁴¹ *ibid.* p.112.

⁴² May notes that tape recording “guards against interviewers substituting their own words for those of the person being interviewed” (*ibid.* p.125).

Whilst these weaknesses are not insignificant, it is maintained that the value of the research remains intact. The methodology adopted resulted in a cross-method triangulation of observations, statistical analysis and interviewing. There is no doubt that such a multi-method approach balances “the strengths and weaknesses of [the] differing methods”.⁴³

5. Analysis and evaluation

The study aims to build upon the findings of past research and assess whether recent developments have improved the enforcement process, bearing in mind the problems that have been identified and the negative performance statistics. Due to the range of methods adopted, the analysis is both quantitative and qualitative. For the former, SPSS has been utilised.

Throughout the evaluation it has been kept in mind that there are differing ways of measuring the effectiveness of the courts’ policies and procedures. The following statement illustrates the potential for varying appraisals of write-offs:⁴⁴ “From a purely accounting point of view reducing the amount outstanding by whatever means can be regarded as success ... From any other point of view the ‘writing-off’ of outstanding fines must indicate a lack of success in the enforcement of those fines”.⁴⁵ At the other end of the enforcement spectrum is the use of custody. Although the usefulness of its threat has been emphasised at regular intervals,⁴⁶ Davies notes that its implementation can

⁴³ V. Jupp, *Methods of Criminological Research*, *op.cit.* p.72.

⁴⁴ See Chapter Two above, at p.37, for an explanation of write-offs.

⁴⁵ D. Chandler, *Fine Enforcement Ideas From A Survey* (1987), University of Cambridge, p.52.

⁴⁶ For example, the judgment of Simon Brown LJ in *ex parte Cawley* (see Chapter One, at pp.16-17) has been criticised as follows: “Our understanding has been from fine enforcement officers, that a suspended prison sentence or an activated prison sentence often concentrate the mind and produce the required results. This case result only serves to distance the threat from most of our clients who know the system and will play it to the limits” (R.E. Downes, “Fine Enforcement” (1996) 52(4) *The Magistrate* 89, at pp.89-90).

similarly be evaluated in different ways: “By resorting to the method used in the last example [custody], courts could raise their standards of efficiency, but in so doing they would not only turn their backs on a humane approach to the treatment of offenders, but would inevitably place a greatly increased burden on the already overcrowded prisons”.⁴⁷

Consideration has been given during the evaluation to the impact that a financial penalty is intended to have upon an offender. For those who default, the burden depends largely upon the court’s approach towards enforcement,⁴⁸ and Bathurst is keen to emphasise that “the aim of enforcement is to collect the monies due, not to punish”.⁴⁹ As for the intended impact at the point of imposition, the basic premise has been outlined by the Magistrates’ Association as follows: “Where the means are limited the underlying principle should be a penalty to cause extreme economy but short of actual hardship”.⁵⁰

Various commentators have attempted to expand upon the distinction between “extreme economy” and “actual hardship”. The following passage represents one such attempt:

Of course, a fine is meant to be a punishment, and it is perfectly proper that the offender should have to endure a degree of ‘hardship’... Such hardship might properly involve the offender giving up other expenditure and leisure activities or postponing the purchase of some item in order to pay. But a fine which is so large that the offender will not be able to pay it and, at the same time, provide for the necessities of life, is counter-productive.⁵¹

⁴⁷ M. Davies, *Financial Penalties and Probation*, *op.cit.* p.18.

⁴⁸ Morgan and Bowles state that “enforcement policy determines the burden, punitive value and thus credibility of the sentence” (R. Morgan and R. Bowles, “Fines: Where Does Sentencing End and Enforcement Begin?” [1983] *Criminal Law Review* 78, at p.83).

⁴⁹ D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op. cit.* p.71. Davies argues that “the flexibility in the fine-collection process may well be a reflection of the court’s desire to exercise its punitive responsibilities humanely and fairly” (M. Davies, *Financial Penalties and Probation*, *op.cit.* p.17).

⁵⁰ Magistrates’ Association, “Fines and Fine Enforcement”, *op.cit.* p.131.

⁵¹ M. Wasik, *Emmins on Sentencing*, *op.cit.* p.220.

A further question is whether the distinction is sustainable in all situations, with various commentators recognising that a defaulter may have no spare income at all.⁵² The existing research does in fact indicate that many defaulters are unemployed,⁵³ and Payne believes that in the current system of benefits “there is absolutely no lee-way for the payment of fines”.⁵⁴ Similarly, in relation to the deduction from benefits order, Cavadino and Dignan state that “any deductions are likely to aggravate whatever financial problems such offenders may have (and which may have been responsible for the offence being committed in the first place)”.⁵⁵

Concerns regarding the employment of financial penalties against offenders of low means are long-standing. For example, a Scottish report from 1960 held that “it is absurd to extract money from a man or woman who is dependent on national assistance”.⁵⁶ The concerns have also filtered through to the judiciary, as demonstrated by the judgment of Staughton LJ in *R v Stockport Justices, ex parte Conlon; R v Newark & Southwell Justices, ex parte Keenaghan*,⁵⁷ which recognised that whilst a claimant may have a few spare pounds one week, this is no guarantee that he or she will do so the next.

Finally, attention has been given to the potential scope for improving the enforcement process. Whilst some defaulters may have insufficient means to pay even small amounts, various commentators have argued that other defaulters will refuse to pay

⁵² The importance of this point is emphasised by Gibson’s following statement: “The idea that it is fair to punish people of different levels of means by depriving them of their spare income, whatever it happens to be, underpins everything else” (B. Gibson, *Unit Fines*, *op. cit.* p.73).

⁵³ See Chapter Two above, at pp.42-43.

⁵⁴ D.S. Payne, “Fines, Their Enforcement and Effect” (1998) 163 *Justice of the Peace* 621.

⁵⁵ Cavadino and Dignan, *The Penal System: An Introduction*, *op. cit.* p.214.

⁵⁶ Scottish Home Department, *Use of Short Sentences of Imprisonment by the Courts* (1960), HMSO, pp.19-20.

⁵⁷ *The Times*, January 3, 1997.

no matter what.⁵⁸ Elliott and Airs, for example, state that “there will always be a small minority who will not pay whatever enforcement methods are used”.⁵⁹ Furthermore, there are practical limitations to consider. In terms of enforcement proceedings at fines courts, Morris and Gelsthorpe note that “on average each case lasts about 10 minutes and so magistrates must reach their decision very quickly”.⁶⁰ As for original impositions, the limitations have been outlined in an Advisory Council report as follows:

We think that in this area we are at the mercy of what it is possible to achieve, and that it would be unrealistic to think that hard-pressed magistrates’ courts, in dealing with the very large numbers of offenders who are sentenced in their absence, could accurately differentiate between all of them according to their means, even if the relevant information were made available.⁶¹

6. Summary

This study will elaborate and expand upon the findings of past research. The aim is to present a rounded, impartial view of the policies of the Birmingham and Manchester city centre magistrates’ courts, and the way in which these policies are being applied in practice. The methodology adopted is a triangulation of observations, statistical analysis and interviewing, and the size of the samples helps to ensure that the results are both valid and reliable. The quantitative and qualitative analysis of these results will form the basis for the recommendations, outlined in the concluding chapter, for improving the enforcement process.

⁵⁸ See Chapter Two above, at pp.41-42.

⁵⁹ R. Elliot and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots*, *op.cit.* p.3.

⁶⁰ A. Morris and L. Gelsthorpe, “Not Paying for Crime: issues in fine enforcement”, *op.cit.* p.846.

⁶¹ Home Office, *Non-Custodial and Semi-Custodial Penalties: Report of the Advisory Council on the Penal System*, *op.cit.* p.7.

CHAPTER FOUR

POLICIES AND PERFORMANCE

In line with the Government's drive towards managerial efficiency, the Birmingham and Manchester city centre magistrates' courts have their own strategic plans, supplemented by business plans and annual reports. Their policies and performance are also scrutinised through inspections conducted by the MCSI, helping to foster a climate in which monitoring and evaluation are all-important. The enforcement process has a crucial role as it is assessed under one of the seven National Performance Indicators, and the two courts have set themselves various other supplementary targets. These targets are somewhat disparate, reflecting recent performance, and contrasting enforcement processes have been adopted in order to meet the defined targets. These processes are continually evolving, reflecting the changing nature of enforcement and the pressure to produce results.

1. Goals and objectives

The strategic plans for the Birmingham and Manchester city centre magistrates' courts outline near identical statements of purpose. The Birmingham court, as part of the West Midlands MCC, is "committed to ensuring the local delivery of an efficient, equitable, timely, high quality and visibly fair system of summary justice".¹ Similarly, the City of Manchester MCC is "committed to the delivery, locally, of an efficient, timely, high quality and manifestly fair system of summary justice".²

¹ West Midlands Magistrates' Courts Committee, *Strategy 2004: A Five Year Strategic Plan for the West Midlands Magistrates' Courts Committee* (1999), p.5.

² City of Manchester Magistrates' Courts Committee, *Strategy 2001: Taking the City of Manchester Magistrates' Courts Service Into The Next Millenium* (1996), p.3.

Both statements begin by emphasising the need for the courts' systems to be efficient, adhering to the Government's yearning for managerial efficiency.³ The courts' goals and objectives relating to enforcement highlight the same desire, as well as the need to maintain credibility, which provides a second rationale for the increased emphasis upon effectiveness.⁴ More precisely, the goal for the Birmingham court is "the maintenance of the financial penalty as a credible and effective sentence of the court", with the accompanying objective "to develop systems for the efficient and effective collection of financial penalties".⁵ The comparable "paramount objective" of the Manchester court is that "the fine is maintained as a credible and effective sentence of the court by the existence of an efficient and effective system of fine collection and enforcement".⁶

2. Performance

The Birmingham and Manchester courts have clearly set themselves admirable goals and objectives relating to enforcement. Equally important, however, is actual performance, and one can begin with the findings of the MCSI. The inspectorate evaluates the administration and management of magistrates' courts throughout the country, and inspections were conducted at the Birmingham and Manchester city centre courts during 1998. Comparing the resulting reports, the enforcement process at Birmingham is presented, on the whole, least positively:

There is a commendably wide range of payment options and an innovative approach to encouraging people to make payments. However, there are weaknesses in monitoring procedures, especially with regard to the execution of

³ See Chapter One above, at pp.19-21.

⁴ *ibid*, at pp.21-22

⁵ West Midlands Magistrates' Courts Committee, *Strategy 2004: A Five Year Strategic Plan for the West Midlands Magistrates' Courts Committee* (1999), p.13.

⁶ City of Manchester Magistrates' Courts Committee, *Strategy 2001: Taking the City of Manchester Magistrates' Courts Service Into The Next Millenium* (1996), p.6.

warrants, and enforcement efforts need to be more focused in order to reduce the high levels of uncollected financial penalties.⁷

In contrast, the report on Manchester states that “the court has established effective procedures for collecting fines imposed, and for enforcing those fines which are in arrears. Good arrangements are in place for measuring the effectiveness of the court’s civilian enforcement officers”.⁸ The report continues, however, that “more work needs to be done to measure and analyse the complete range of enforcement measures deployed, and to expand the methods of payment”.⁹

Both courts are criticised therefore for failing to test the effectiveness of all parts of their enforcement processes, as has been recommended by the HO Advisory Group.¹⁰ There have since been improvements in monitoring overall performance,¹¹ but the recent figures demonstrate much room for improvement. The MCSI noted in its inspection report for the Birmingham court that the statistics indicated “poor performance in the collection and enforcement of financial penalties”,¹² and the Justices’ Chief Executive has since admitted that “there is only one way the new MCC can go by way of performance, and that is up”.¹³ The Manchester MCC, meanwhile, concluded in its 1998-1999 Annual Report that “despite the considerable effort and resource which is deployed

⁷ HM Magistrates’ Courts Service Inspectorate, *Inspection Report: Birmingham District Magistrates’ Courts Committee Area: 13 – 23 October 1998* (1999), Stationery Office, p.5.

⁸ HM Magistrates’ Courts Service Inspectorate, *Inspection Report: City of Manchester Magistrates’ Courts Committee Area: 20 April – 1 May 1998* (1998), Stationery Office, p.5.

⁹ *ibid.* p.5.

¹⁰ See Chapter Two above, at p.39.

¹¹ As indicated by table 1, with a wider range of statistics provided for 2000 than for 1999.

¹² HM Magistrates’ Courts Service Inspectorate, *Inspection Report: Birmingham District Magistrates’ Courts Committee Area: 13 – 23 October 1998*, *op.cit.* p.42.

¹³ West Midlands Magistrates’ Courts Committee, *Annual Report 1999 – 2000: “Accountability, effectiveness and accessibility”* (2000), p.15.

in the process of enforcing the payment of fines, its effectiveness is by far the weakest aspect of Manchester's otherwise good performance".¹⁴

Comparing the statistics for the year 2000, as outlined in table 1, Birmingham was the stronger performer in terms of the National Performance Indicator relating to enforcement [NPI 4],¹⁵ with a collection rate of 47 p per £1 imposed, compared to 36p per £1 for Manchester. The Manchester MCC's collection rate for the period April 1999 – March 2000 was in fact the fourth worst out of 73 MCCs.¹⁶ In contrast, the Manchester court performed better in terms of CPM 4, with a lower percentage of its outstanding balance in arrears: 31p per £1 compared to 56p per £1 for Birmingham.¹⁷ Thus, although a higher percentage of impositions were collected at Birmingham, collection was still often not without difficulty.

As for the proportion of impositions then written-off, now measured as CPM 5, the MCSI referred to high levels at both courts. The inspectorate was particularly critical of the level at Birmingham, stating that it "indicates that the financial penalties imposed by the courts are failing to have their intended impact".¹⁸ There has since been a notable fall in the Birmingham write-off percentage, and, despite a corresponding fall at Manchester, the latter court had the higher write-off value for the year 2000: 28p per £1 compared to

¹⁴ City of Manchester Magistrates' Courts Committee, *1998-1999 Annual Report* (1999), p.7.

¹⁵ See Chapter One above, at pp.20-21, for an overview of the performance measures and indicators.

¹⁶ Lord Chancellor's Department, *Annual Report on National Performance Indicators for 1999/2000* (2000), *unpublished*.

¹⁷ But Manchester still has 68.4% of its outstanding accounts in arrears (for the year 2000), concurring with the MCSI statement that it was "not unusual" for their inspectors to find a percentage over 60 (see Chapter Two, at p.36).

¹⁸ HM Magistrates' Courts Service Inspectorate, *Inspection Report: Birmingham District Magistrates' Courts Committee Area: 13 – 23 October 1998*, *op.cit.* p.42.

25p per £1.¹⁹ The MCSI report concluded that high write-off at Manchester was “partly a result of the court’s robust policy for the control of warrants”.²⁰

Table 1: Overall Performance Figures for 1999 and 2000²¹

	Birmingham 1999	Birmingham 2000	Manchester 1999	Manchester 2000
Total imposed	£9,673,099	£10,334,607	£8,685,360	£9,502,269
Average imposition	£172.15	£207.61	£182.09	£192.05
Total collected	£4,746,876	£5,154,413	£2,932,515	£3,420,671
Collection Rate [NPI 4]	49p per £1	49p per £1	34p per £1	36p per £1
Average debtor days	304	251	N/A	229
% Arrears [CPM 4]	60p per £1	59p per £1	N/A	31p per £1
Average days in arrears	N/A	143 (July – Dec)	N/A	139
Value LCD write-offs	£3,184,291	£2,609,922	£2,771,196	£2,682,232
% Written off [CPM 5]	33p per £1	25p per £1	32p per £1	28p per £1
Average write-off value	N/A	£123.45 (July – Dec)	£142.24	£159.49

Both courts measure their performance against the objectives outlined in their Strategic and Business Plans, and against various “efficiency and effectiveness targets”.²²

These targets are set according to previous performance, hence the differing targets for

¹⁹ Across all the courts, £47.2 million was written-off in 1999/2000 (see Chapter Two above, at p.37).

²⁰ HM Magistrates’ Courts Service Inspectorate, *Inspection Report: City of Manchester Magistrates’ Courts Committee Area: 20 April – 1 May 1998*, *op.cit.* p.38. See Chapter Six below, at pp.127-128.

²¹ NPI 4, CPM 4 and CPM 5 are explained in Chapter One above, at pp.20-21. “Debtor days” is the number of days taken for full payment, whilst “days in arrears” is the number of days that an account remains in arrears once the offender has defaulted. Those figures which were not calculated in 1999 are recorded as N/A.

²² West Midlands Magistrates’ Courts Committee, *Annual Report 1999 – 2000*, *op.cit.* p.5. The LCD is seeking an increase in the overall MCC collection rate of 5 per cent between April 2001 and October 2002 (see Chapter One above, at p.20).

the two courts, and, comparing them to current performance, they are clearly challenging. Contrasting the targets imposed for April 2000 to March 2001, outlined in table 2, to the performance figures for the calendar year 2000 demonstrates that both courts were on course to meet three of the five targets. Birmingham was on track in terms of the all-important collection rate, measured as NPI 4, as well as the targets for the average debtor days and average days in arrears. Manchester, on the other hand, met the two CPMs, percentage arrears [CPM 4] and percentage written-off [CPM 5], as well as the average debtor days target.

Table 2: Performance Targets for April 2000 – March 2001

	Birmingham	Manchester
Collection rate [NPI 4]	40p per £1	40p per £1
Average debtor days	310	230
% Arrears [CPM 4]	40p per £1	33p per £1
Average days in arrears	180	133
% Written off [CPM 5]	20p per £1	32p per £1

Neither court appears to lack determination to meet their enforcement targets. The Justices' Chief Executive for the West Midlands MCC has stated that “no one who has taken a long hard look at the reality of the current West Midlands performance in terms of ... fines collection ... seriously believes that standing still is an option”.²³ The Manchester MCC meanwhile is seeking to “continue to encourage an improved fine

²³ *ibid.* p.15.

collection”,²⁴ having previously identified “effective fine enforcement as a priority area”.²⁵

3. Policy

Perhaps not surprisingly, given the deficiencies in performance, the enforcement processes at Birmingham and Manchester are continually evolving. At the time of the fieldwork, Birmingham was running a “fines clinic” which was manned by members of the finance department.²⁶ As these were not formal court hearings with magistrates presiding, various enforcement methods, including deduction from benefits orders and AOE orders, could not be employed. Efforts were instead concentrated upon negotiating acceptable payment rates and obtaining payments. Unfortunately, attendance rates at the clinic were low and it was thus disbanded in October 2000 on the grounds that it was not a cost-effective use of manpower.

The MCSI was particularly critical of the lack of flexibility in the enforcement process at Birmingham. At the time, and during the period of the fieldwork, distress warrants were issued in all cases to one of two bailiff firms, PRS or TNC,²⁷ after 35 days of default, as demonstrated by chart A. The inspectorate was concerned that there was “no attempt to identify cases in which a distress warrant is likely to be effective”,²⁸ leading it to recommend that “consideration be given to varying tactics and...trying to

²⁴ City of Manchester Magistrates’ Court Service, *Business Plan Targets for 2000/2001* (2000), action no. 3.2.

²⁵ City of Manchester Magistrates’ Courts Committee, *1998-1999 Annual Report* (1999), p.7.

²⁶ A date to appear at the clinic, if there were problems with paying, was included in the original fines notice (see Chart A below).

²⁷ Birmingham has contracted with the two firms for the work, as recommended by the LCD (see Chapter One above, at pp.6-7).

²⁸ HM Magistrates’ Courts Service Inspectorate, *Inspection Report: Birmingham District Magistrates’ Courts Committee Area: 13 – 23 October 1998*, *op.cit.* p.42.

select the best enforcement measures for different types of case”.²⁹ The Birmingham District MCC defended its policy, however, drawing attention to the support for the automated “fast-track” approach for issuing distress warrants found in *R v Hereford Magistrates’ Court, ex parte MacRae*.³⁰

Nevertheless, the enforcement process at Birmingham was modified in October 2000. The impetus for change was the implementation of the Human Rights Act 1998. Following the advice of the Justices’ Clerks Department,³¹ the decision was made to postpone the issuing of distress warrants to a later stage in the enforcement process, providing defaulters with greater notice. As demonstrated by chart B,³² the warrants are now issued by magistrates at the fines court, following defaulters’ non-appearances.³³ A further change has resulted from the transfer of responsibility for warrant execution,³⁴ with the West Midlands MCC, incorporating the Birmingham court, deciding to employ, from April 2001, 26 CEOs for the execution of bail and no bail warrants.³⁵

The enforcement process at Manchester has also undergone recent change. In contrast to Birmingham, Manchester has for many years employed its own CEOs.³⁶ At the outset of the study bail warrants were issued to CEOs after 49 days of default for all amounts over £60, as demonstrated by chart C,³⁷ with distress warrants issued to one of

²⁹ *ibid.* p.43. See the recent Green Paper statement in Chapter Two above, at p.48.

³⁰ *ibid.* p.44. See Chapter One, at pp.25-26.

³¹ See Chapter Two above, at pp.47-48.

³² The chart also illustrates that Birmingham have discarded the reminder letter.

³³ The new approach differs to the advice of the Justices’ Clerks’ Department in that distress warrants are still issued without the defaulter present. The Finance Officer, Graham Rutherford, declared that it was a case of “safety first”, and that the change did not represent an admission that the previous approach breached the European Convention.

³⁴ See Chapter One above, at pp.27-29.

³⁵ See Chapter One above, at p.9.

³⁶ See Chapter Three above, at f.n.9.

³⁷ The chart illustrates that the enforcement process at Manchester began with an arrears notice. Unlike the fines notice at Birmingham, it was sent out once the offender had fallen into arrears. It was followed by a

two bailiff firms for lesser amounts. Positively, the MCSI found that the CEOs' activities were subject to "regular monitoring", with monthly reports detailing the warrants executed and monies collected.³⁸ Unfortunately, the inspectorate then noted that "other parts of the enforcement process were not subject to the same level of scrutiny", leading them to recommend that the court "extend its current monitoring to provide an analysis of the effectiveness of the various last actions possible before an account is closed".³⁹

Following a period of deliberation, the Manchester court revised its approach so that from November 1999, and during the period of fieldwork, bail warrants were issued against all defaulters after 28 days of default, and distress warrants issued at a later stage if necessary, as illustrated by chart D.⁴⁰ In the memorandum accompanying the change, it was announced that the amended policy would "provide the beginnings of effective comparative monitoring of CEOs and Bailiffs in processing like for like warrants".⁴¹ The change in approach can thus be seen as an important step forward in ensuring that all parts of the enforcement process are sufficiently tested.⁴²

4. Summary

Both the Birmingham and Manchester city centre magistrates' courts are under pressure to improve their enforcement performance. They have had to outline their governing goals and objectives, monitor their performance and set themselves various

final demand. Birmingham preferred the language of a reminder letter, but the goal was the same: to encourage payment or at least contact with the court.

³⁸ HM Magistrates' Courts Service Inspectorate, *Inspection Report: City of Manchester Magistrates' Courts Committee Area: 20 April – 1 May 1998*, *op.cit.* p.38.

³⁹ *op.cit.* pp.38-39.

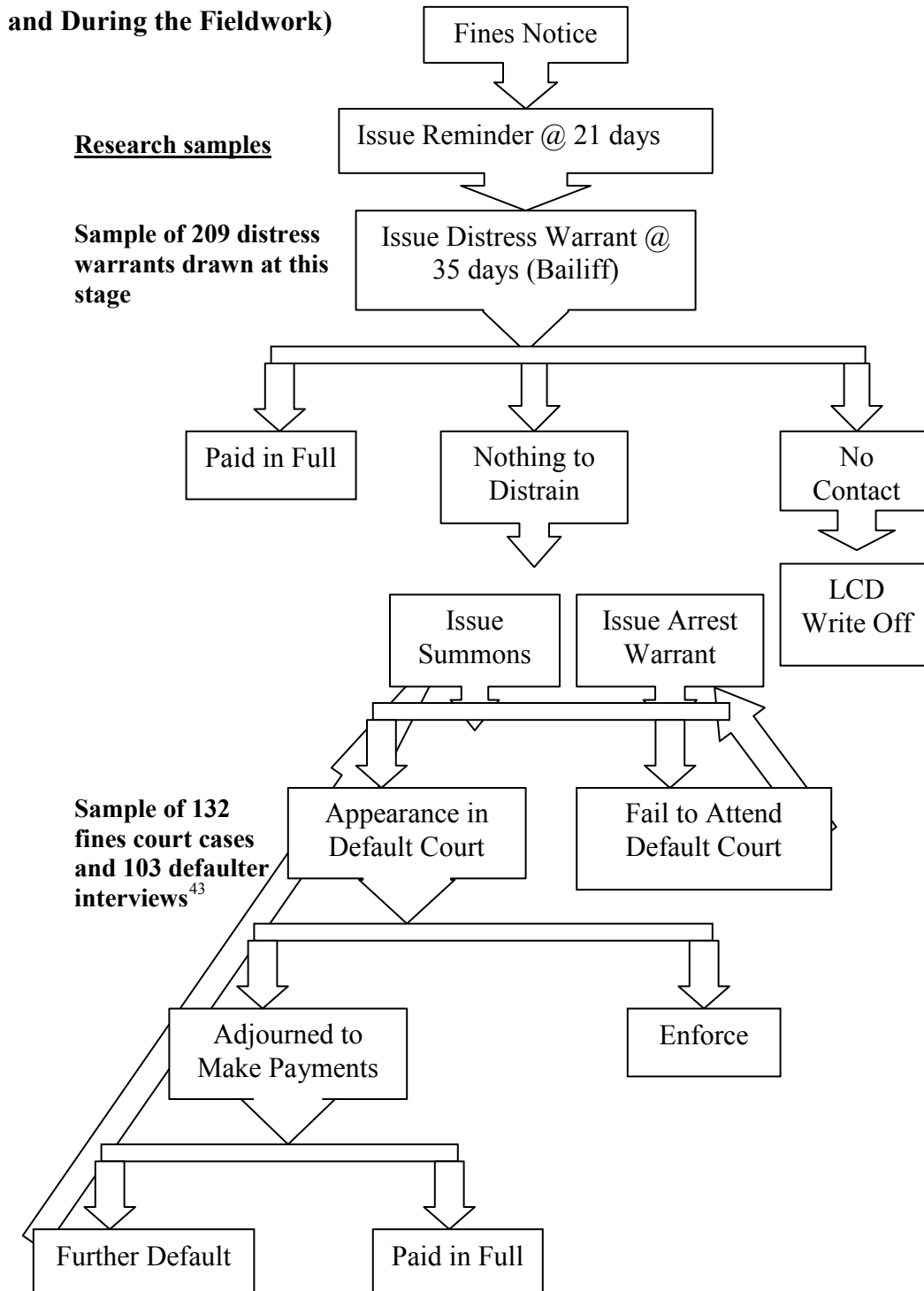
⁴⁰ A distress warrant is now issued when the defaulter is bailed to the fines court and either fails to appear or defaults after being granted further time to pay. The chart also illustrates that Manchester have discarded the final demand.

⁴¹ A memorandum from Chris Flanagan, the Post-Court Group Manager, dated 15th October, 1999. It is also stated that distress provides an "extra dimension and an outlet to avoid prolonged cyclical internal activity".

⁴² As recommended by the HO Advisory Group (see Chapter Two above, at p.39).

targets. Such monitoring has illustrated much room for improvement, as recognised by the courts themselves and the MCSI, and, in order to meet their latest targets, differing enforcement processes have been adopted. The following chapters evaluate how these processes are operating in practice.

**Chart A: Birmingham Enforcement Process Mark I (Operating until October 2000
and During the Fieldwork)**



⁴³ 21 cases were actually at the fines clinic (see p.73 above). 20 of these defaulters were interviewed.

Chart B: Birmingham Enforcement Process Mark II (Operating from October 2000)

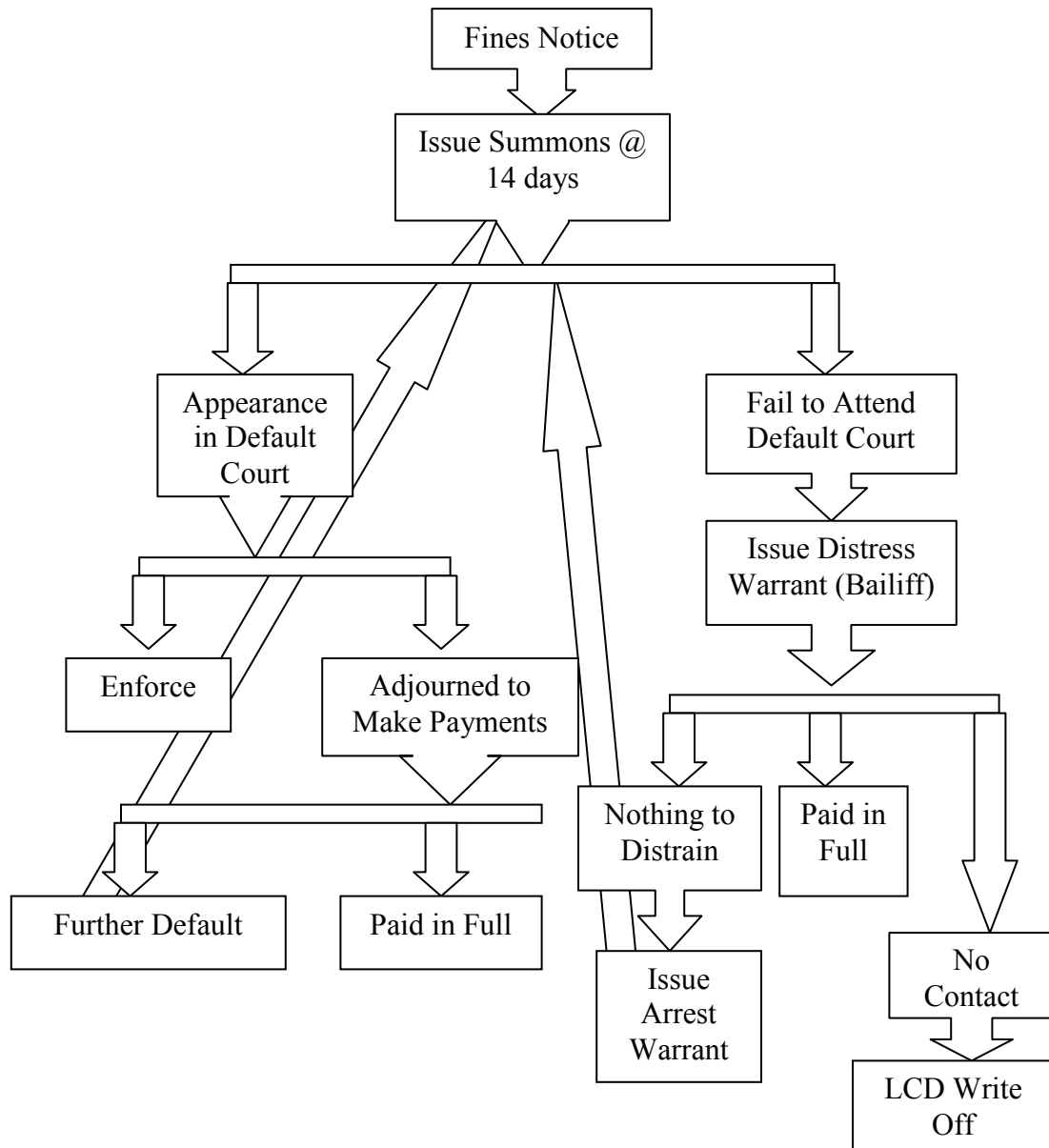


Chart C: Manchester Enforcement Process Mark I (Operating until November 1999)

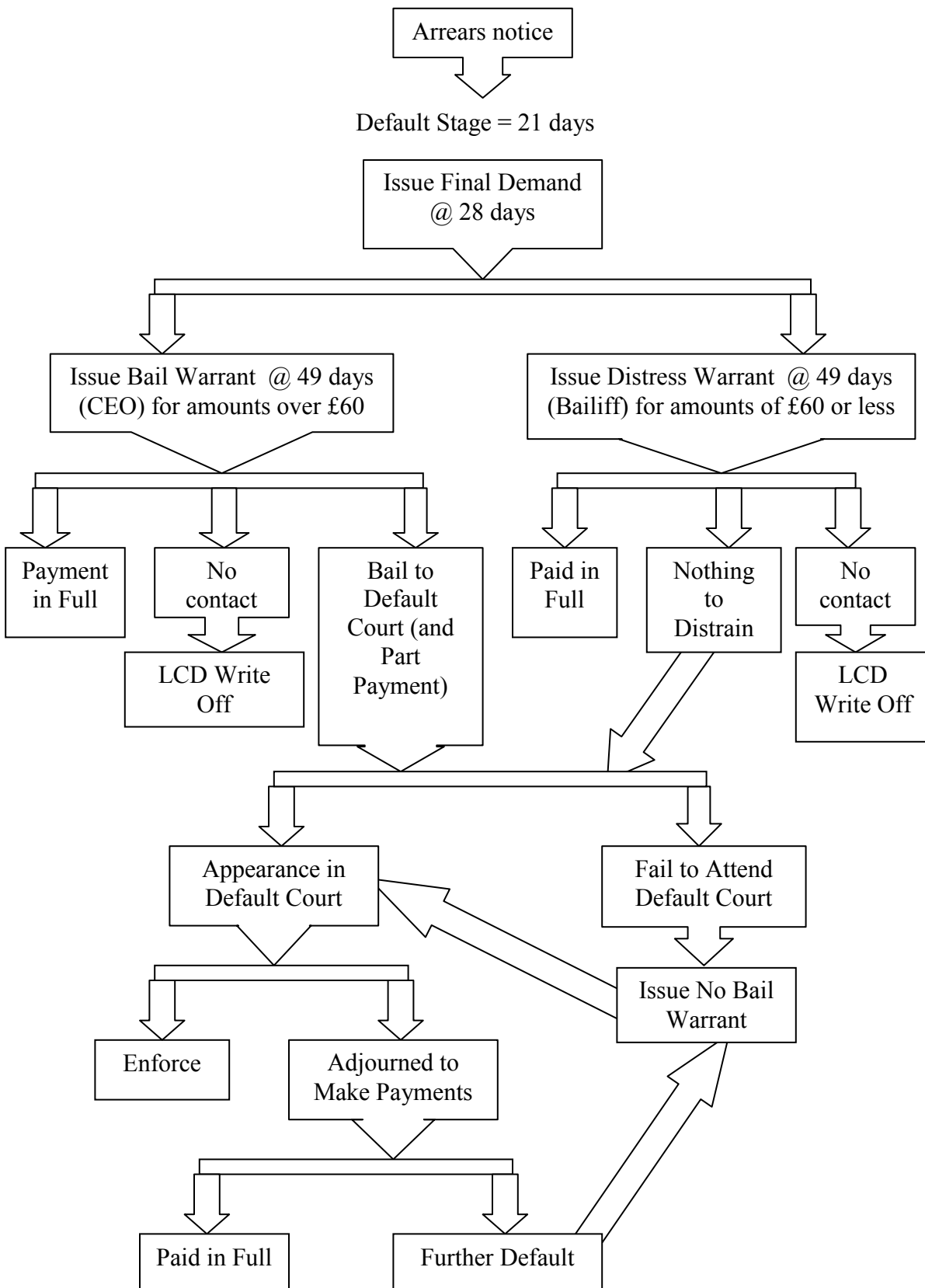
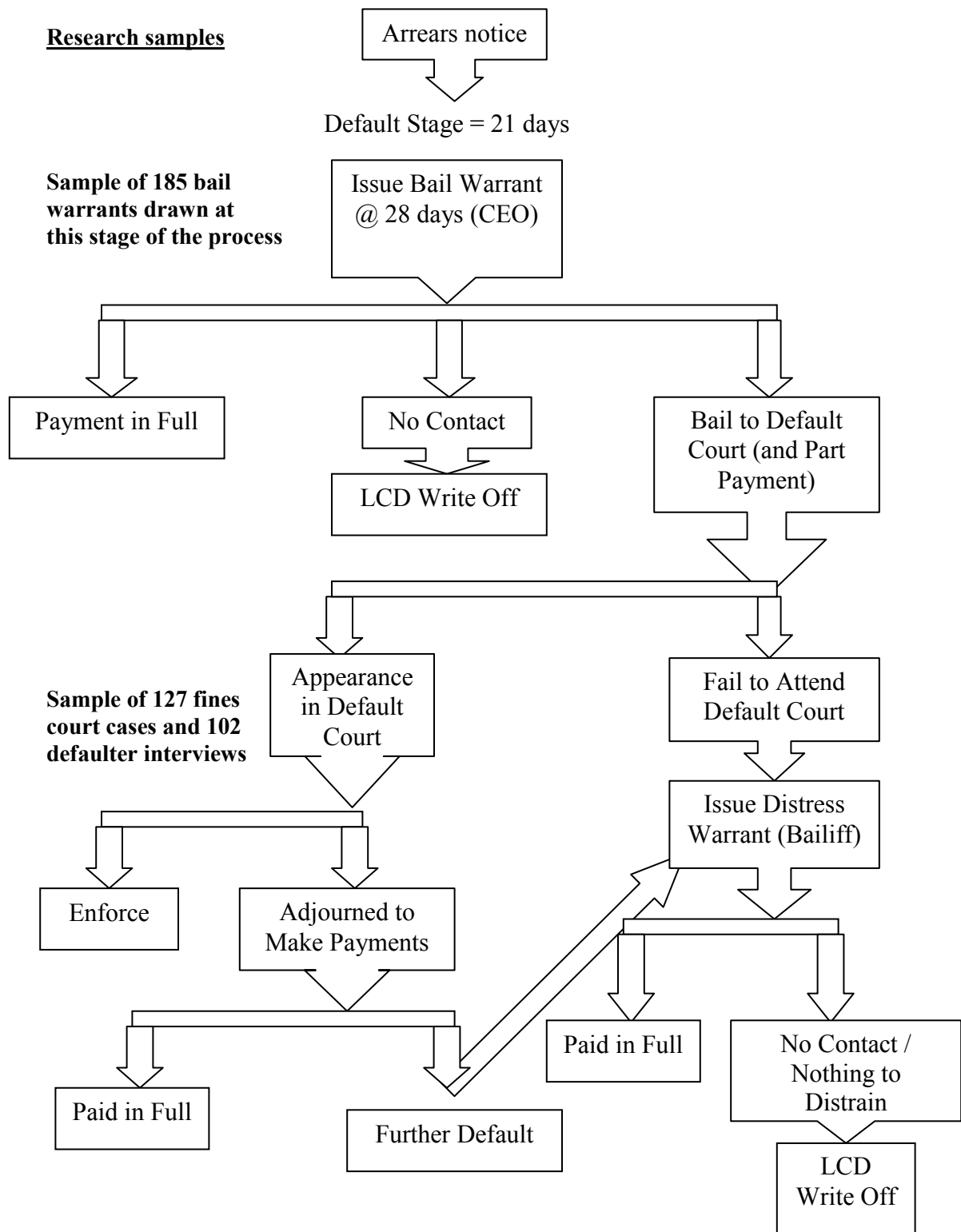


Chart D: Manchester Enforcement Process Mark II (Operating from November 1999 and During the Fieldwork)



CHAPTER FIVE

THE DEFAULTERS AND THEIR FINANCIAL PENALTIES

This chapter sets out findings from the empirical research regarding the samples of defaulters at Birmingham and Manchester. There are two separate samples: (i) 259 fines court cases, which were followed by 205 defaulter interviews; and (ii) 394 warrant executions. These samples can in turn be broken down into four sub-samples: (i) 132 fines court cases at Birmingham, followed by 103 interviews; (ii) 127 fines court cases at Manchester, followed by 102 interviews; (iii) 209 distress warrant calls at Birmingham; and (iv) 185 bail warrant calls at Manchester.¹ By analysing the defaulters' circumstances in relation to the financial penalties imposed, it has been possible to assess whether the courts are maintaining a distinction between "extreme economy" and "actual hardship".²

1. The financial penalties

In approximately two-thirds (66%) of the fines court cases the magistrates were dealing with a single outstanding financial penalty,³ as demonstrated by chart E, although

¹ See Chapter Three above, at pp.54-60, for the methodology and complete samples. For the purposes of the analysis in this chapter, the cases heard by the fines court and by the fines clinic are considered together. Nevertheless, for ease of reference, cases heard at both the court and clinic are referred to as "fines court" cases. This should be borne in mind throughout the chapter. In Chapter Seven, in contrast, the cases are separated, because the analysis in that chapter is based upon the powers that are available to enforce financial penalties, which are more limited at the clinic. It was not possible in every case to obtain the same information, and smaller sample sizes are indicated in the text. One of the Manchester interviews was not completed, the defaulter having to leave suddenly, and some questions were not always applicable (see Appendices E and F), thus producing differing sample sizes. When courtroom exchanges and defaulter or bench quotes are included in the text, the letter B or M, found in brackets following the specific reference number, indicates whether it is from a Birmingham or Manchester sub-sample. Finally, the defaulter interview numbers correspond to the fines court case numbers.

² See Chapter Three above, at p.64.

³ Similar figures for Birmingham and Manchester of 64 per cent (n=132) and 67 per cent (n=127) respectively.

the average number of financial penalties before the court was two.⁴ At the upper end of the spectrum, six defaulters had ten or more outstanding amounts,⁵ and in one case the number had reached 16. It was clear from the courtroom observations that a few defaulters were struggling to keep track of their accounts.⁶

Case 216 (M): *The defaulter had six outstanding financial penalties, amounting to £1039.59. Nothing had been paid.*

Def: There's no excuse for not paying them, I know that. But there's so many fines I don't know where I am. I want to pay the fines but I need them to be put together so that I can pay every week on one form...

Case 79 (B): *The defaulter had five outstanding financial penalties, amounting to £993.92. A payment rate of £20 per week had been imposed, and £214 had been paid, leaving £779.92 outstanding.*

Def: I've been paying three fines. I didn't even know that these other two were outstanding.⁷

In other cases, the magistrates and court clerk were initially unaware of the existence of other outstanding financial penalties, and they only came to light when mentioned by the defaulters themselves.

Case 35(B): *The defaulter had been fined £355 for a road traffic offence nearly 100 days previously. Nothing had been paid.*

Clerk: What could you offer the magistrates?

Def: I am currently paying some fines off and I'm paying them regular.

Clerk: How much are you paying on those other matters?

Def: Supposed to be £5 but I am paying £10.

Case 208(M): *The defaulter had been fined £626.67 for a road traffic offence more than 100 days previously. £30 had been paid.*

Def: I just can't afford to pay it all at once. I haven't been working for 18 months.

Mag: What offer can you make?

Def: I've got two other fines, which I'm paying at £3 per week, so it's difficult. I can't really afford to pay any more.

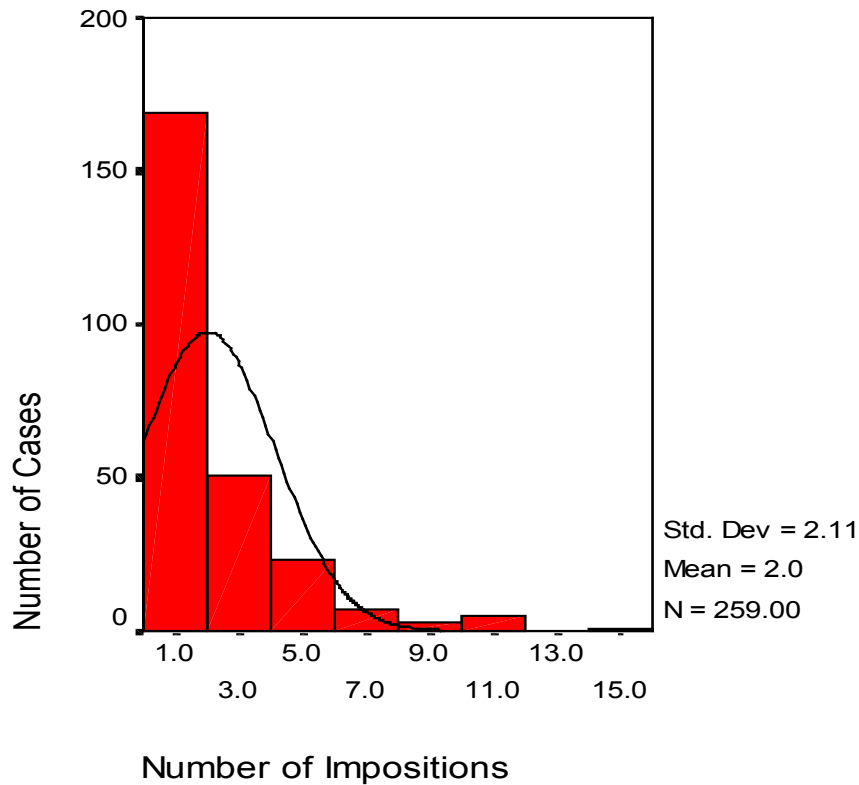
⁴ 2.0 and 2.1 for Birmingham and Manchester respectively.

⁵ Two defaulters at Birmingham and four at Manchester.

⁶ The vast majority of defaulters were not represented, and only 28 per cent (n=205) had sought advice prior to their court appearance. More than half (57%; n=58) of this sub-sample had sought advice from a solicitor. Only four defaulters had been to a Citizens Advice Bureau.

⁷ When interviewed, the defaulter elaborated as follows: "I didn't expect these other fines to be there. Because I've paid fines over such a long period, I didn't realise I had them".

Chart E: Number of Impositions (Total Fines Court Sample)

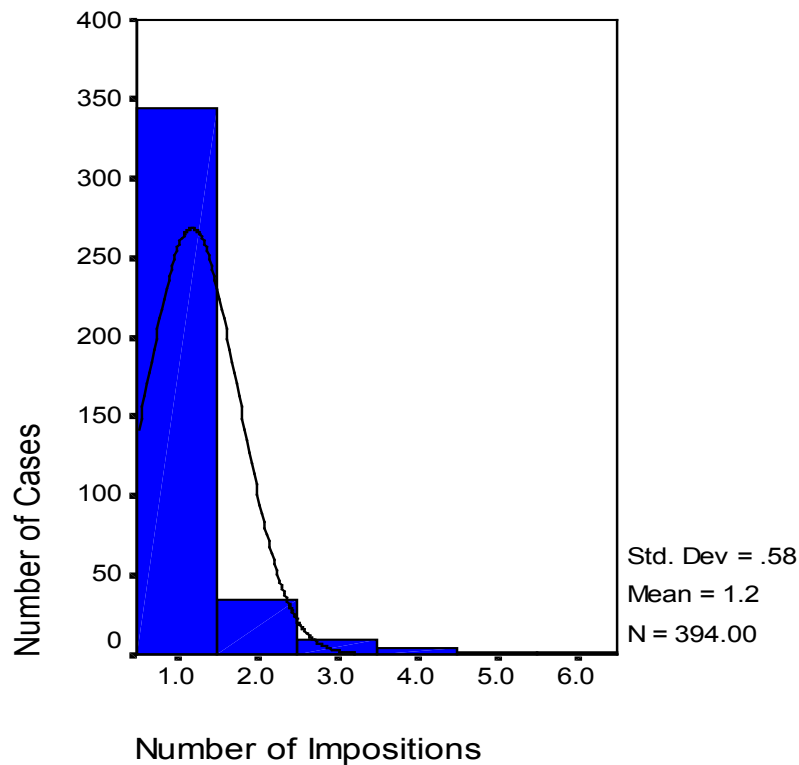


In contrast, the maximum number of outstanding financial penalties for the sample of warrant executions was six, with only 15 defaulters (4%) having three or more outstanding accounts. In the vast majority (87%) of cases the bailiff or CEO was executing a warrant in relation to a single financial penalty,⁸ as demonstrated by chart F. The lesser prevalence of multiple financial penalties is not particularly surprising given that the defaulters' accounts were often brought together at the fines court.⁹

⁸ Similar figures for the distress warrant and bail warrant calls of 85.6 and 89.2 per cent respectively.

⁹ Although outstanding distress warrants sometimes made this difficult (see Chapter Six below, at pp.154-155)

Chart F: Number of Impositions (Total Warrant Executions Sample)



In more than three-fifths (61%: n=626) of all cases,¹⁰ the only or the largest outstanding financial penalty had been imposed for a road traffic offence.¹¹ In the majority of other cases, the only or highest amount related to a property offence (12%)¹² or had been imposed for having no TV licence (11%).¹³ A full breakdown is provided in charts G and H.¹⁴

¹⁰ Both fines court and warrant executions.

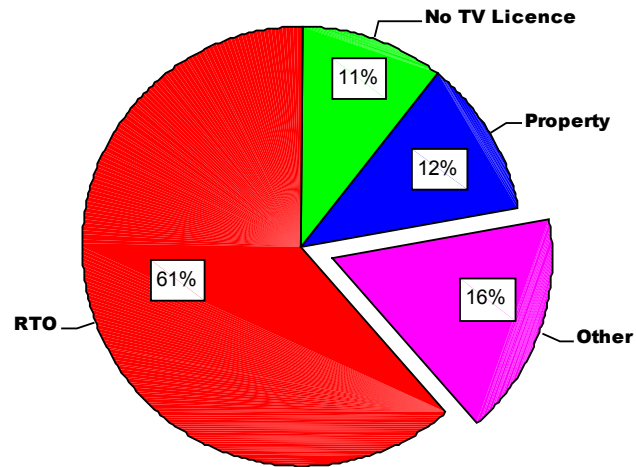
¹¹ 56 per cent (n=126) of court cases at Birmingham, 58 per cent (n=126) of court cases at Manchester, 77 per cent (n=209) of distress warrants, and 49 per cent (n=165) of bail warrants. Note that the information is missing for seven court cases and 20 twenty bail warrants; the latter due to the CEO not having the bail warrants in his possession.

¹² 15 per cent of Birmingham court cases, 15 per cent of Manchester court cases, 6 per cent of distress warrants, and 13 per cent of bail warrants.

¹³ 14 per cent of Birmingham court cases, 13 per cent of Manchester court cases, 2 per cent of distress warrants, and 16 per cent of bail warrants.

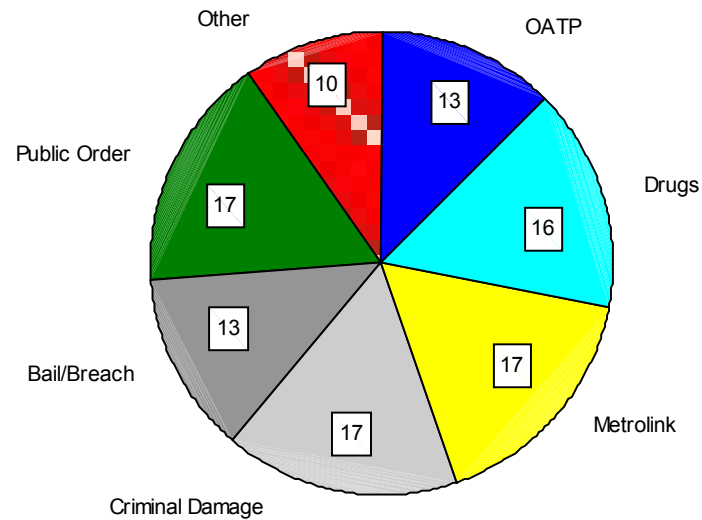
¹⁴ Note that metrolink fare evasion offences were unique to Manchester.

Chart G: Offence Committed (All Cases: Fines Court and Warrant Executions)



N=626 RTO = Road Traffic Offence

Chart H: Offence Committed (All Cases: Breakdown of “Others”)



N=103
 OATP = Offence Against The Person
 Metrolink = Metrolink Fare Evasion
 Bail/Breach = Bail Offence or Breach of a Court Order

The average total imposed in the fines court sample was £465 (n=249),¹⁵ significantly higher than the median total of £268¹⁶ as very large financial penalties had been imposed in a number of cases. In fact, 12 per cent of defaulters had been ordered to pay more than £1,000, as demonstrated by table 3. There was, however, a huge variation in the sums imposed, ranging from £30 to £3,510. At the lower end of the scale, one in ten (10%) had been ordered to pay £100 or less. Unsurprisingly, given the lesser prevalence of multiple outstanding financial penalties in the sample of warrant executions, the average total amount imposed for this group was a lower £223 (n=328),¹⁷ with the sums ranging from £10 to £1,911.¹⁸ Over a third (34%) had been ordered to pay £100 or less.

Magistrates, bailiffs and CEOs were asked for their views regarding the amounts imposed at their respective courts. Fourteen of the 22 magistrates' benches believed that they were about right.

Bench 4 (B): We are very conscious of the fact that most defendants are of very limited means, and we are mindful to take into account those means and not make the fine too onerous.

Bench 14 (M): I think Manchester is one of the most realistic courts in the first place. I don't ever leave the court thinking that we've got the fines wrong. There isn't a blanket setting. We do try to set the fine at a realistic level, taking into account both the offence and the ability to pay. That's the balance we are aiming at.

¹⁵ Remarkably similar figures for Birmingham and Manchester of £465 (n=123) and £466 (n=126) respectively. The courts' own figures for the year 2000 report average single impositions of £208 at Birmingham and £192 at Manchester.

¹⁶ Medians of £295 and £250 for Birmingham and Manchester respectively.

¹⁷ Averages of £232 (n=143) and £215 (n=185) for the distress warrants and bail warrants respectively. Many of the TNC distress warrants only stated the amount currently outstanding.

¹⁸ The distress warrant sums ranged from £14 to £1,911, and the bail warrant sums ranged from £10 to £1,305.

Table 3: Total Amounts Imposed in Fines Court and Warrant Execution Samples

	Fines Court (n=249)	Warrant Executions (n=328)
£0 - £100	10%	34%
£101 - £200	25%	29%
£201 - £300	18%	17%
£301 - £600	23%	12%
£601 - £1000	12%	6%
£1001 - £2000	10%	2%
Over £2000	2%	0%

None of the benches thought that the amounts imposed by magistrates at their respective courts were too high, but six believed they were sometimes too low, either in relation to the offence committed or the offenders' means.¹⁹ There were two perceived causes of the latter: either the guidelines being too low for those in employment, or magistrates failing to increase the levels of fines according to offenders' financial circumstances, as enabled by section 128(4) of the POCC(S)A 2000.²⁰

Bench 9 (B): Because we have to balance the fine to the defendant's means, it doesn't always reflect the true nature of the crime. With no insurance, for example, you feel frustrated because you are fining them less than the cost of the insurance. I know of at least one magistrate who resigned from the bench because they couldn't cope with this outcome. I think that most defendants laugh when they leave court after being given a fine, and I don't think that the bench has much clout in dealing with most of them.

Bench 22 (M): As long as we know what the defendant earns we've got half a chance. We can't set them up to fail and I accept low fines, but £60 for no insurance is ridiculous.

Bench 10 (B): If anything, the fines for people who are in work and have disposable income are perhaps too low. The guidelines seem to have been at the

¹⁹ The remaining two benches expressed no opinion.

²⁰ The subsection allows fines to be raised, as well as lowered, according to offenders' financial circumstances.

same level for a long time, and I do think that the starting points should be reviewed more often. We have to get the guidelines right and we have to encourage magistrates to be a bit more flexible in applying them.

Bench 13 (B): I don't think that average is high enough. Some magistrates don't take into account the fact that the defendant is on benefit, but they also don't use the guidelines when the person is in employment and multiply the fine up. We tend to bang out the same fine irrespective.

Seven of the eleven CEOs, in contrast, believed the current imposition levels to be too high. Whether the study's findings support their claim will be considered following analysis of the defaulters' circumstances and the reasons for defaulting.²¹

CEO 3: Some of the fines are far in excess of what they should be, and in a lot of cases I think community service would be a better thing for them. If you have a young kid or a single mother who isn't working they're not going to pay a £500 fine. I had a guy the other week for whom I had 18 warrants totalling over £1,000. He went back to court and what happened to him. They remitted every single one.

CEO 9: At one time there was a lot of means testing going on in court, and there were a lot of good things in place. You are in a position then to efficiently and effectively enforce that fine. Now they seem to have left things a little, and sometimes fines are being imposed without proper means testing. We're left trying to sort it out, finding out that they haven't got two pennies to rub together.

Five CEOs, as well as two magistrates' benches, referred to the particular problem of fining offenders in their absence, and the HO Advisory Group has recognised that later remissions may be appropriate in these cases.²² Seven benches expressed the further view that amounts set by other courts were often less realistic.²³ Such variance between courts is not particularly surprising given the great discretion they have been afforded.²⁴

CEO 2: I'm not too keen on fining in absence. How can you possibly whack out a £100 fine when you don't know a person's financial circumstances. Invariably they're in debt with the catalogue and the loan shark. It's going to end up in a warrant for non-payment. You can't keep mercilessly fining and fining a person.

Bench 7 (B): We do fine according to income, but some fines transferred in from other courts are absolutely ridiculous. You have to be realistic in your fines. If

²¹ See pp.102-106 below.

²² See Chapter One above, at p.10. For an example of such a case, see Chapter Seven below, at p.186.

²³ A view based upon those financial penalties transferred in from other courts.

²⁴ See Chapter One above, at p.14.

you fine persons on a low income excessively then they can't cope and they don't bother. The fine needs to be painful but not ridiculous and out of all proportion to their means.

Bench 11 (B): I think we're quite reasonable. We do find ourselves remitting when fines have been transferred in or when fines have been set in the defendants' absence.

Bench 20 (M): From what I understand, other courts do impose very heavy sentences and I don't think they get as much in. Fining someone whom has nothing £1,000 is ridiculous. You're wasting your time. But in their absence, we do set it at a higher level than we might have done.

Strikingly, when the benches were asked what they thought could be done to improve the court's enforcement performance, one of the two most common responses (6/22) was to ensure that all financial penalties were realistic. Whilst achieving realism in imposition will always be difficult in those cases in which magistrates have limited information, a need for greater efforts is further suggested by the response of six of the ten Birmingham bailiffs that the paramount problem regarding imposition is inconsistency.

Bailiff 1: You can go to one address for no TV licence and it's a fine of £100. You go to the next address and it's £400 ... I've also been to a detached house and it's a small fine, and then to defaulters who are not so wealthy and it's a larger fine.

2. The account histories

The average time period since imposition for the sample of Birmingham distress warrants was 277 days (n=130),²⁵ with less than a half (46%) of the warrants falling within the range 0 to 200 days. At Manchester, in contrast, the average time period since imposition for the sample of bail warrants was significantly lower at 171 days (n=184).²⁶ For more than four in five (83%) of these defaulters, the time lapse was 200 days or less,

²⁵ Many of the TNC warrants lacked this particular information. With all samples the time lapse since the first imposition has been taken where there is more than one outstanding financial penalty.

²⁶ The data was missing for one warrant.

as demonstrated by table 4. In consequence, there was a significant, although fairly weak association between the time outstanding and the identity of the court.²⁷

Table 4: Time since Imposition in Birmingham and Manchester Fines Court and Warrant Execution Samples

No. of Days Since Imposition	Warrant Executions		Fines Court	
	Birmingham (n=130)	Manchester (n=184)	Birmingham (n=117)	Manchester (n=113)
0-100	4%	47%	19%	20%
101-200	42%	36%	13%	48%
0-200	46%	83%	32%	68%
201-300	30%	6%	15%	9%
301-400	11%	3%	10%	10%
401-500	5%	3%	7%	2%
201-500	46%	12%	32%	21%
501-750	5%	3%	15%	4%
751-1000	2%	1%	9%	3%
Over 1000	2%	2%	12%	4%
501+	9%	6%	36%	11%

A similar pattern emerges at the fines court. The average period since imposition at Birmingham was 488 days, exceeding a year in 44 per cent of cases (n=117), much higher than the corresponding figures at Manchester of 272 days and 16 per cent of cases (n=113) respectively. Furthermore, for more than a third (36%) of the defaulters appearing at the Birmingham fines court, the time period since imposition exceeded 500 days. In consequence, there was once again a significant, although fairly weak association

²⁷ An eta value of 0.227.

between the time outstanding and the identity of the court.²⁸ A clear finding, therefore, is that the financial penalties at Birmingham tended to be significantly older, illustrating that they were passing through the enforcement process much more slowly.²⁹

The courtroom observations and the following interviews demonstrated that some defaulters were frustrated by the lengths of time for which their respective financial penalties had been outstanding.³⁰

Case 234 (M): *The defaulter had five financial penalties, totalling £1,150.83. The earliest had been imposed some 3,272 days earlier. £633.45 had since been paid and £140 remitted, leaving a sum due of £377.38.*

Def: If I've not got the money after I've paid the bills, what am I supposed to do?

Clerk: I understand Mr S, but the fines are to take priority.

Def: These fines I've had since I was 16. I've learnt my lesson and I am trying to pay them off ...

In the sample of warrant executions, 17 per cent (n=331) of defaulters had made at least one payment to the court,³¹ leaving an average amount outstanding when the warrants were issued of £211 (n=394).³²

More in-depth information was obtained regarding the account histories of the fines court sample. For nearly two-thirds (65%: n=250) of defaulters a rate of payment had already been imposed at the time of sentence or at a previous attendance at the fines court.³³ Unsurprisingly, given the older nature of the financial penalties at Birmingham,³⁴

²⁸ A similar eta value of 0.227.

²⁹ For the enforcement processes adopted by the two courts at the time of the fieldwork, see charts A and D above, and for a partial explanation for the difference in time periods, see pp.95-96 below. The courts' own performance figures indicate much closer debtor day values for the year 2000: 251 at Birmingham and 229 at Manchester.

³⁰ Two defaulters claimed to have attended court on more than ten previous occasions.

³¹ Corresponding figures for the distress and bail warrants of 19 (n=146) and 15 per cent (n=185) respectively. Once again many of the TNC distress warrants lacked this information.

³² Corresponding figures for the distress and bail warrants of £220 and £201 respectively.

³³ As authorised by sections 75(1)&(2) of the MCA 1980 (see Chapter One above, at p.5). It was unknown how many defaulters had previously attended a fines court. Some were attending for the first time but some

a payment rate was more likely to have been established at the West Midlands court: corresponding figures for Birmingham and Manchester of 75 per cent (n=126) and 54 per cent (n=124).³⁵ The average rate of payment imposed across both courts was £6.48 per week (n=150).³⁶

In more than half (59%: n=257) of the fines court cases the defaulter had made at least one payment prior to his or her court appearance. The average amount paid was £115 (n=141). Interestingly, one magistrates' bench believed that ensuring early payment was a factor behind successful enforcement.

Bench 20 (M): The major factor to me is trying to get it there and then. If you can get as much out of them as you can at the time you are more likely to succeed. If not, the shortest time possible.

The figures for the two courts again differ. Previous payments were more common at Birmingham: occurring in 63 per cent (n=130) of cases compared to 54 per cent (n=127) of cases at Manchester, and the average amount paid was higher, £128 (n=73) compared to £102 (n=68).³⁷ Once again one needs to recognise the context of the older nature of the financial penalties at Birmingham.

Notably, there was a moderate degree of association between the amounts paid and the times outstanding.³⁸ Previous payments were also more likely when a rate of payment had been imposed: three-quarters (n=161) of defaulters had made a payment when a rate had been imposed, compared to under a third (32%: n=88) of defaulters when no rate had

could have attended on several previous occasions, particularly those defaulters with multiple outstanding financial penalties.

³⁴ Potentially increasing the number of previous court appearances.

³⁵ Producing a *phi* coefficient of 0.224 (significant at the 0.001 level).

³⁶ A higher average at Birmingham of £7.01 (n=83), compared to £5.82 (n=67) at Manchester, due to the setting of one particularly high rate of £40 per week at the West Midlands court.

³⁷ But these associations were not statistically significant.

³⁸ A pearson's *r* correlation coefficient of 0.473 (significant at the 0.01 level).

been imposed.³⁹ But whilst the establishment of a payment rate encouraged some level of payment, there was no significant association with the total amounts paid.⁴⁰

In 19 of the fines court cases (7%) the defaulter had already had an amount remitted from that originally imposed.⁴¹ The average sum remitted was £356, with a huge range in amounts from £15 to £1,240. Deducting the amounts paid and remitted from the sums imposed, the average amount outstanding for the sample was £383 (n=252),⁴² a reduction of only £82, under 20 per cent, from the original average.

Concentrating upon the cases in which the court had received previous payment, the average period since the last or, in some cases, the only instalment was 120 days (n=110). Yet again, there was a significant difference between the two courts, with a much higher average for Birmingham: 154 days (n=68) compared with 64 days (n=42) for Manchester.⁴³ These differing figures clearly support Ashworth's conclusion that "the speed at which offenders are brought back to court for default proceedings varies considerably".⁴⁴ Taking prompt action against defaulters has previously been identified as essential to successful enforcement,⁴⁵ and when magistrates' benches were asked what they thought could be done to improve the court's enforcement performance, one of the

³⁹ A *phi* coefficient of 0.423 (significant at the 0.01 level).

⁴⁰ The average amounts paid when payment rates had been agreed and not agreed were £112 (n=112) and £131 (n=26) respectively.

⁴¹ As authorised by section 85(1) of the MCA 1980 (see Chapter One above, at p.10). Six of the cases were at Birmingham and 13 at Manchester.

⁴² There was a huge range in the total amount outstanding of £2,468.

⁴³ The association between time since payment and the identity of the court was significant but fairly weak, with an eta value of 0.230. In contrast, the average days in arrears statistics supplied by the two courts themselves are very similar: 143 days at Birmingham (July – Dec 2000) and 139 days at Manchester (2000).

⁴⁴ A. Ashworth, *Sentencing and Criminal Justice*, *op.cit.* pp.267-268.

⁴⁵ P. Softley and D. Moxon, *Fine Enforcement: An Evaluation of the Practices of Individual Courts*, *op.cit.* p.10 (see Chapter Two above, at pp.38-39).

two most common responses (6/22) was to ensure that defaulters were brought to court quickly.⁴⁶

Bench 10 (B): We have to get the fine right in the first place. We then have to use the fines clinic as soon as possible, get them back to court as soon as possible and we need to use our options. We could try employing these options earlier in order to get down to the final stage.

Bench 14 (M): The biggest problem with fines collection is delays. You would have thought that with the new intricate computer system we've got that the delays would have been reduced, but they've probably extended.

Bench 22 (M): At one stage it could have been three or four months before they returned to court. Bringing them back to court on a shorter default period is probably a good deterrent.

Clearly, therefore, the default periods at Birmingham are a matter for concern. The differing figures also provide a partial explanation for the older nature of the financial penalties at the West Midlands court. But it is not a full explanation: the difference between the average default periods is 90 days, much lower than the 216 day difference between the average time periods since imposition. Furthermore, the association between the times outstanding and the times since payment was significant, but not very strong.⁴⁷

In an attempt to explain the differing default periods one needs to turn to the enforcement processes adopted by the two courts.⁴⁸ At Birmingham, distress warrants were issued after 35 days of default, with an agreed retention period for the warrants of 90 days. At Manchester, meanwhile, bail warrants were issued after 28 days of default, with the same retention time of 90 days. There is clearly no great difference between these figures, but there is no guarantee of adherence, and actual retention periods were found to be much longer in certain cases at Birmingham.⁴⁹ Furthermore, there was then

⁴⁶ The other most common response was to ensure that all fines were realistic (see p.89 above).

⁴⁷ A pearson's *r* correlation coefficient of 0.288 (significant at the 0.01 level).

⁴⁸ See charts A and D, for the processes adopted at the time of the fieldwork.

⁴⁹ See Chapter Six below, at pp.121-122.

the additional stage at Birmingham of issuing a summons to bring the defaulter to court, adding further to the time lapse.⁵⁰

3. Defaulters' circumstances

Of the 226 defaulters appearing at the fines court whose employment status was known, more than three-quarters (77%) were unemployed.⁵¹ The high prevalence of unemployment corresponds to the findings of earlier research,⁵² and some magistrates' sympathies appeared limited.

Case 80 (B): *The defaulter had been fined £816.45 for a property offence some 577 days previously. £50 had been paid.*

Sol: He hopes that a job may be offered to him within the next few weeks.

Mag: There are jobs around. It's in your interest to get something sorted out.

The average weekly income of the 132 defaulters whose earnings were known was £81 (see chart I).⁵³ Strikingly, three-quarters of these defaulters had a weekly income of £100 or less, with seven defaulters claiming to have no income whatsoever. As the following four cases demonstrate, the latter sub-sample gave different reasons for their lack of income.

Case 170 (M): *The defaulter had been fined £100 for metrolink fare evasion more than 100 days previously. The full amount remained outstanding.*

Clerk: Have you brought any money with you today?

Def: I'm out of work at the moment ... I've not been claiming. They tried to send me on a course but I wanted to find a job.

Mag: You're going to make a fresh claim?

Def: Yes.

Mag: I think you should.

Case 205 (M): *The defaulter had been fined £90 for having no TV licence more than 200 days previously. £20 had been paid.*

Def: I'm claiming family credit but there has been a problem with it. I'm waiting for it to come through.

⁵⁰ At Birmingham the CEO bails the defaulter to court.

⁵¹ Corresponding figures for Birmingham and Manchester of 82 (n=108) and 74 (n=118) per cent.

⁵² See Chapter Two above, at pp.42-43.

⁵³ Corresponding figures for Birmingham and Manchester of £90 (n=82) and £68 (n=50).

Case 207 (M): *The defaulter had been fined £784.23 for a road traffic offence. £175 had been paid.*

Sol: For the last month he [the defaulter] has been residing at his Uncle's address. The problem is that his Uncle claims benefits, so Mr R has not been getting benefits for himself.

Case 232 (M): *The defaulter had been fined, on three occasions, a total of £341.67. The full amount remained outstanding.*

Sol: Mr W was remanded in custody and all his benefits were stopped. As soon as the charges were discharged, he moved out of the bail hostel and reclaimed for benefits. He should be due Jobseekers allowance next week.

Eighty-nine of the defaulters appearing at the fines court were known to have children to support.⁵⁴ The existence of such dependants was often emphasised in court, as well as in the defaulter interviews.

Def. 30 (B): I'm in a risk centre. In order to care for my children, I have to provide for them. It's my last chance or I'll lose my children.

Def. 47 (B): They asked me why I had £2,700 and why I didn't pay. I gave them a simple answer. I had to pay mortgage arrears, otherwise we would have been thrown out. I have four small children. It was essential.

Def. 173 (M): I'm on my own, a divorcee with custody of two kids. I had been paying the fines religiously for two years, but I got in a mess. It's just poverty. I got my money yesterday. I had £20 in my pocket and I've given them a fiver now. Say it's a Wednesday. You've got £30 in your pocket. One of your kids needs shoes and the other needs a jumper. What are you supposed to do?

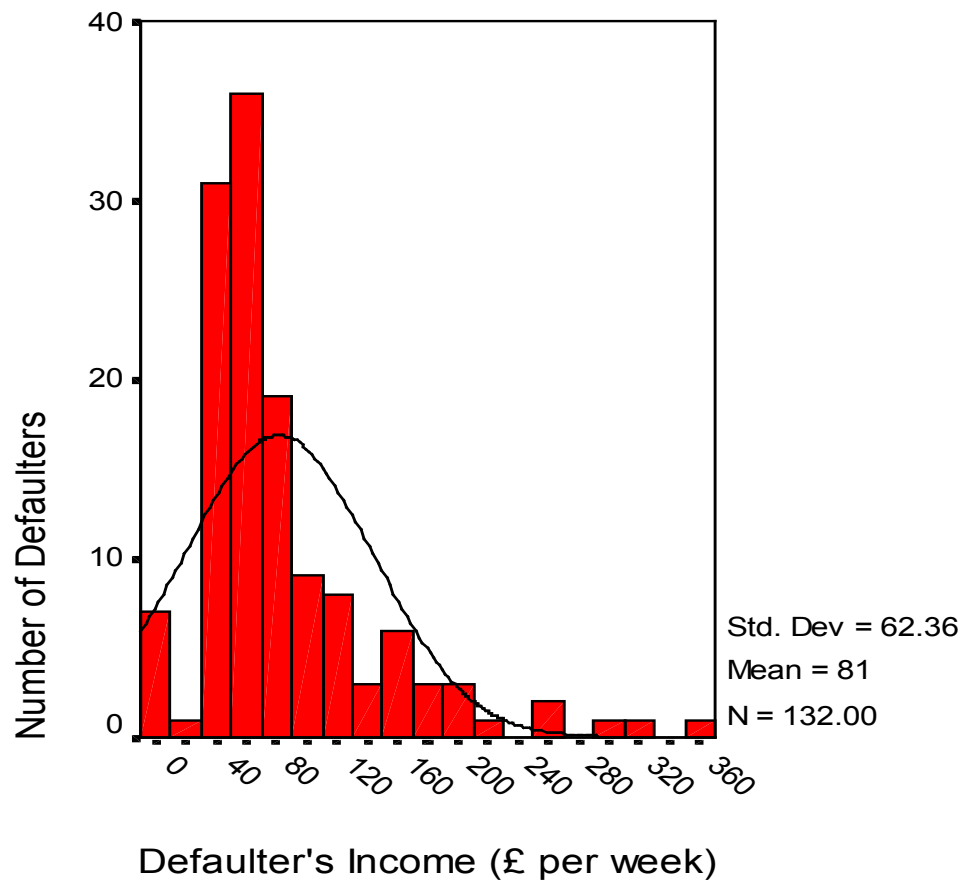
Def. 181 (M):⁵⁵ My wife's left and my kid's in hospital with me left fighting for custody.

Def. 185 (M): I haven't got much money and I've got a disabled child. I don't think it's fair that I've got to come to court to pay fines. It's all fucked up.

⁵⁴ Representing 71 per cent of the cases in which this information was gained, but whether or not the defaulter had dependants was more likely to be raised in the courtroom if there were such dependants.

⁵⁵ For the case facts and courtroom comment, see p.98 below.

Chart I: Defaulters' Incomes (Total Fines Court Sample)



4. Reasons for defaulting

The standard approach at the fines court was for the clerk to ask the defaulter why he or she had failed to pay.⁵⁶ The responses were varied, as demonstrated by table 5,⁵⁷ but approximately two-thirds (65%: n=252)⁵⁸ of defaulters referred to financial problems, slightly greater than the 57 per cent espousing “limited financial means” in Nicholson’s

⁵⁶ When instalments had already been set, and bearing in mind the defaulters’ financial circumstances outlined above, it would surely be more reasonable to ask the defaulter why he or she had failed to maintain the payments.

⁵⁷ Thirty-two defaulters (13%) gave more than one reason. Fourteen defaulters (6%) were clearly less concerned to explain their default, giving no reason whatsoever.

⁵⁸ The valid total is 252 as in four cases it emerged that the defaulter was no longer in arrears and in three cases the reason given was missed.

Scottish survey.⁵⁹ Seventeen per cent of defaulters highlighted personal problems, which accompanied the aforementioned financial problems in nine per cent of cases. In certain cases, the financial and personal problems appeared severe.

Case 9 (B): *The defaulter had been fined £265 for a road traffic offence more than 600 days previously. £120 had been paid.*

Def: About three or four months ago my Aunt died. I went to Swindon to comfort my sister, and left my social book with a trusted friend. He then disappeared with the book and various belongings from my flat.

Case 22 (B): *The defaulter had been fined, on two occasions, a total of £388. The first penalty had been imposed more than 600 days previously, and £25 had since been paid.*

Sol: The defendant has been into hospital for an operation on a deformed rib cage. He also has a drugs problem and is currently attending a unit where he is prescribed methadone.

Case 34 (B): *The defaulter had been fined £130 for having no TV licence more than 200 days previously. The full amount remained outstanding.*

Sol: The defendant was suffering from a nervous breakdown at the time of the conviction. She didn't realise that she could come to the court to explain her side of the story. She is now no longer working and is in receipt of long term disability benefit.

Case 76 (B): *The defaulter had been fined £200 for a public order offence more than 800 days previously. £70 had been paid.*

Sol: The defendant has been in and out of work. He was then diagnosed as having testicular cancer and he lost interest in a lot of things he had to pay.

Case 88 (B): *The defaulter had been fined £135 for a property offence more than 300 days previously. Nothing had been paid.*

Def: I've had a lot of problems with the property I'm living in. My door keeps getting kicked in and I've had death threats, so my child has had to go and live with its father.

Case 181 (M): *The defaulter had been fined £165 for a road traffic offence nearly 150 days previously. Only £6 had been paid.*

Sol: Mr R was living with his girlfriend until a drastic set of events. The girlfriend left home, went on a drinking binge and assaulted Mr R. The problem is that the girlfriend is collecting the benefits on behalf of the family. He has been left with two children and no benefits.

Case 245 (M): *The defaulter had been fined £325 for a property offence more than 600 days previously. £75 had since been remitted, leaving £250 outstanding.*

⁵⁹ L. Nicholson, *A Survey of Fine Defaulters in Scottish Courts*, op.cit. p.15.

Sol: Mr O has had numerous problems in his life. He has struggled with drug dependency and there have been a great deal of problems with the payment of his benefits. At times he has only received £25 per week. Since he has been in connection with the DSS, they have indicated that they are now willing to raise the payments from £25 per week to £32 per week. He is therefore prepared to make the payments as previously ordered [£5 per fortnight].

Table 5: Reason Given in Court for Failure to Pay (Total Fines Court Sample)

Reason	Frequency	Percentage
Financial problems	164	65.1
Personal problems	42	16.7
Paying off other fines	30	11.9
No correspondence / knowledge	18	7.1
Thought it had been paid / dealt with	15	6.0
In custody (past or present)	6	2.4
Waiting for court appearance /other development	5	2.0
Missed payment date	4	1.6
Moved address	4	1.6
Mix up on accounts	2	0.8
Been abroad / on holiday	2	0.8
Thinking of appealing	2	0.8
Forgot	1	0.4

Previous research has found that other debts were not uncommon, and that these were often afforded priority by defaulters.⁶⁰ Such other debts were occasionally mentioned in court.⁶¹

Case 78 (B): *The defaulter had been fined £1,548 for a property offence more than 1,800 days previously. £393 had been paid.*

Sol: The defendant was stabbed several times and spent some time in hospital. This caused him to lose his job, but he is now back in employment and is willing to continue his payments at £20 per week.

⁶⁰ See Chapter Two above, at pp.42.

⁶¹ See, for example, cases 78 and 252 below.

Mag: Has he got any money with him today?
Sol: No, I'm afraid he got behind with all sorts of debts.

Case 252 (M): *The defaulter had been fined £145 for a road traffic offence nearly 450 days previously. £80 had been paid.*

Def: My husband had a nervous breakdown and I found out that he was £11,000 in debt. He is seeing a debt counselor and all our wages are going towards the debts. He owes everybody.

Whilst magistrates claimed that they took into account even extreme circumstances when imposing financial penalties,⁶² the defaulters' views regarding the original impositions were rather more mixed. On the positive side, more than four out of ten (44%: n=205) of the interviewed defaulters thought the original impositions fair, as illustrated by chart J.⁶³ But the remainder were less content. Eleven per cent maintained their innocence, and a further eleven per cent believed the imposition of a financial penalty overly severe.

Def. 207 (M): It was totally unfair. I was defending myself because I couldn't afford a brief. The driver couldn't identify me, but it was like a kangaroo court.

Def. 257 (M): It was an awful injustice in the first place. I wasn't even driving the car, and I got disqualified for a year for something that I wasn't supposed to be done for.

Def. 161 (M): I got caught with a spliff. Not even that. It was worth about 60p. I can't believe he charged me for it.

Def. 229 (M): The last time I was fined it was £500. I've got all the bills coming through the door, I'm trying to feed 2 kids and trying to go to college. Then you are told that you'll be sent to prison, all for a TV licence. What is the world coming to? Why don't they give me a bit of support instead of fining me?

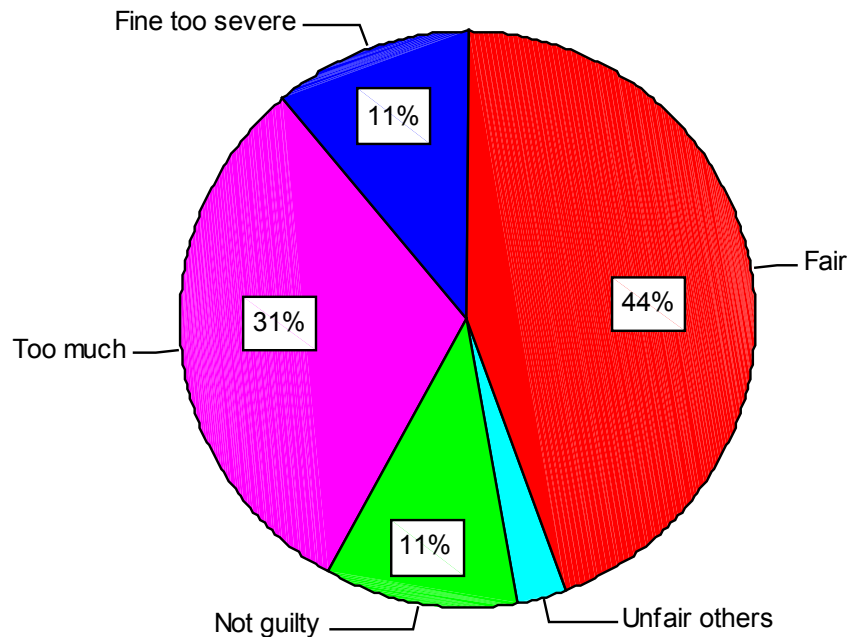
Def. 132 (B): I don't think the whole licensing scheme is fair, and I don't believe I should be paying for a licence... The whole TV licensing system needs to be reviewed, especially for people on low income.

Def. 12 (B): At least community service is paying something back. With a fine you can't see where it's going.

⁶² See p.86 above.

⁶³ A higher rate of satisfaction at Birmingham: 50 per cent (n=103) compared to 38 per cent (n=102) at Manchester.

Chart J: Defaulters' Views of Original Impositions (Fines Court)



N=205

Too much = Amount (£) too much

By far the most common reason for defaulter discontent, held by 31 per cent of respondents, was a belief that the amounts imposed were too steep.⁶⁴ In fact, there was a significant, although fairly weak, association between the defaulters' views regarding fairness and the amounts imposed,⁶⁵ with those fined large amounts more likely to view the original impositions as unfair. It should be emphasised, however, that it is not the objective of magistrates to appease defaulters, bearing in mind that the fine is imposed as

⁶⁴ Supporting the concerns of the Manchester CEOs (see p.88 above).

⁶⁵ An *eta* value of 0.151. The average amount imposed for those defaulters who thought the original impositions fair was £386 (n=86), compared to £533 (n=110) for those who thought them unfair.

a punishment. The need for it to impact upon the offender's pocket was even recognised by one of the defaulters.

Def. 114 (B): It wouldn't be a legitimate financial penalty if there wasn't a degree of awkwardness. Otherwise what's the point?

The crucial question is whether the financial penalties are impacting at the appropriate level. When the magistrates were asked what impact the disposal should have upon a defaulter, nine of the 22 benches emphasised that it is imposed as a punishment. In a similar vein, five benches held that the penalty should be painful. These responses correspond to the statement of Lord Lane CJ, in *Olliver and Olliver*,⁶⁶ that it is perfectly proper for the offender to endure a degree of hardship as "one of the objects of the fine is to remind the offender that what he has done is wrong". The following responses were typical:

Bench 4 (B): They should realise that it's their punishment for the crime; it is money that has to be paid and it is more important than their catalogue debts for which they cannot go to prison.

Bench 5 (B): It is a punishment which should be significantly felt. It shouldn't be something which is part of the Tesco shopping basket.

Bench 6 (B): The fine should hurt, taking into account the defendant's income and ability to pay. That's a philosophy I would take pretty much the whole time.

Bench 7 (B): It must be painful but not horrific. The defendants must be made aware that they have broken the law. If they are fined for the third time for no insurance they need to be told that it is not fair to those who are paying.

The idea that a fine should be painful but not horrific corresponds closely to the ideal outlined by the Magistrates' Association that "where the means are limited the underlying principle should be a penalty to cause extreme economy but short of actual hardship".⁶⁷ Various commentators have attempted to elaborate upon this distinction,⁶⁸

⁶⁶ 11 Cr. App. R. (S.) 10.

⁶⁷ Magistrates' Association, "Fines and Fine Enforcement", *op.cit.* p.131.

and approximately one third (7/22) of the sampled benches argued that the aim is to reduce the offender's spare income, requiring them to alter their lifestyle.⁶⁹

Bench 1 (B): It is obviously a form of punishment, and it should deprive a defendant of any spare income. Hitting someone in the pocket is the hardest thing that you can do.

Bench 11 (B): It hits them in the pocket so they don't have as much spending money. They must see it as a prime obligation, but they don't all see it that way.

Bench 14 (M): What is the aim of the fine? It's to take away their disposable income; to take the luxuries away. Unfortunately, the things you'll never restrict are the booze and the fags. It comes off the kids' shoes.

Bench 15 (M): It should stop them having the holiday, but it shouldn't effect the family. You should be able to say that the father shouldn't be having five pints a night.

Bearing in mind the above ideal, those defaulters who had made payments were asked whether they had been caused a degree of hardship. Strikingly, 48 per cent (n=124) responded that the payments had caused them a lot of hardship, with 28 per cent claiming that they had been caused a little hardship. Under a quarter (23%) held that the payments had caused them no hardship whatsoever.⁷⁰

Analysis of the statistics suggests that these responses are not so surprising. First, despite section 128(4) of the POCC(S)A 2000 instructing courts to tailor fines according to offenders' financial circumstances, the association between defaulters' incomes and the amounts imposed was weak.⁷¹ Second, there was no significant association between

⁶⁸ See Chapter Three above, at p.64.

⁶⁹ Four benches said that the financial penalty needs to be fair, just and proportionate to the offence. A number of benches also said that the financial penalty could satisfy other traditional sentencing rationales. More precisely, six benches stated that the disposal can deter offenders from future offending, whilst two benches believed it to have a retributive effect. These responses support the 1981 Howe Report statement that "the fine is attractive to sentencers because it is flexible and is seen to combine elements of both reparation and deterrence". The Report continues that "in terms of reconviction rates it compares well with other sentences and is also economical" (Howe Report, *Fine Default* (1981), NACRO, para.1.12).

⁷⁰ There was no association with the amount paid or the rate of payment imposed, and only a weak association with the amount imposed (*eta* value of 0.197) and with the establishment of a payment rate (*eta* value of 0.130).

⁷¹ A Pearson's *r* correlation coefficient of 0.196 (significant at the 0.05 level).

defaulters' incomes and the payment rates imposed. Third, the average weekly income was less than a fifth of the average total amount imposed,⁷² extrapolating to a hearty fine of approximately £2,000 for a person with a gross income of £20,000 per annum.⁷³ The maintenance of a distinction between “extreme economy” and “actual hardship” thus appears to have broken down.

Def. 49 (B): The amounts are disgusting. £600 for one driving offence. The whole fine amounts to £3,000. I am struggling because I'm on disability, and I recently got married.

Def. 93 (B): For somebody who's unemployed, the amount [£2,050] was stupid. You try to get somebody to pay something like that with something like I've got [£84 per week]. The government gives you just enough to stay above the breadline and you end up having to give it out.

Def. 102 (B): One week I'll get fined £80 or £90. The week after I'll get the same. Each time they expect you to offer them the same. You end up paying out £60 or £70. You get new fines which you cannot even start to pay. They don't care how much you already owe them ... They don't take into account your situation. I've had to pay £60 when I only get £50. I'm not a criminal but it gives you the urge to commit crime to earn some money.

Def. 175 (M): I'm on income support and I've got to pay £800 on four different fines. It's caused my kids hardship because anything I have spare goes to them. You put it to them what you can pay, and they double it up. If I could afford to pay them, I wouldn't have been here in the first place.⁷⁴

Def. 189 (M): It was dealt with in my absence so I didn't have a chance to explain my means. It was a total of £800. I don't know where they expected me to get that from. I only get £45 per week benefits.

Def. 208 (M): Because I'm not working, it's unrealistic to give me a £600 fine. I've got a kid to support and food to buy.

Def. 211 (M): I'm already in a mess with my gas and electricity bills. If I was to pay all the fines in a year it works out at over fifty per cent of my benefits.

⁷² See pp.86&95 above. Only 13.7 per cent had been assisted by contributions from others. For judicial comment regarding third party payments, see Chapter One above, at f.n.70.

⁷³ Offenders over-stretching their finances has been previously identified as cause for concern (see Chapter Two above, at p.42).

⁷⁴ It is stated in the Government White Paper, *Crime, Justice and Protecting the Public*, that “a fine, if properly assessed, can punish the offender without damaging his opportunities for employment or his responsibilities towards his family” Home Office ((1990), HMSO, para.5.1).

The financial penalties were not only hitting a number of defaulters hard in the pocket. Forty per cent of the interviewed defaulters (n=204) claimed to have been caused a lot of distress or anxiety and 28 per cent claimed to have suffered a little,⁷⁵ leaving less than a third (32%) who asserted that they had not suffered at all.

Def. 28 (B): I haven't been sleeping properly. I feel run down and stressed. I was so worried when I went into the court.

Def. 41 (B): It's on your mind all the time. When you don't pay it, you worry about what is going to happen.

Def. 196 (M): I've never been to court before. It scared me. I thought I was going to prison.

Def. 234 (M): £24 [per month] is a lot of money, but they didn't really want to listen. There's not a night that goes by without me thinking about it.

Def. 252 (M): I've never been in trouble and I've had to come to court for the first time in my life. I've hardly slept at night.

Clearly, therefore, it is highly questionable whether the financial penalties had an appropriate impact on the defaulters.⁷⁶ After all, a number of defaulters appeared to have been affected severely, mentally as well as financially. Furthermore, 32 per cent (n=204) said that, with hindsight, a different type of penalty would have been more appropriate in their case.⁷⁷ There was a significant, although fairly weak, association between this response and the times for which the financial penalties had been outstanding, with those defaulters with particularly long-standing financial penalties more likely to express a preference for an alternative.⁷⁸ Nearly a quarter (23%) would have preferred a CPO,⁷⁹

⁷⁵ Higher figures at Birmingham of 48 and 31 per cent (n=103), compared to 33 and 24 per cent (n=101) at Manchester, resulting in a significant, although fairly weak, association between distress caused and court identity, with a *phi* coefficient of 0.238 (approximate significance 0.03). The financial penalties tended to be of a longer-standing nature at Birmingham (see pp.89-91 above), but there was no significant association between the distress caused and the time outstanding.

⁷⁶ See Chapter Eight below, at pp.228-231, for proposals regarding the setting of fines.

⁷⁷ Another two defaulters were unsure.

⁷⁸ An *eta* value of 0.168. The average times since imposition for those defaulters who thought another penalty more appropriate and those who didn't were 461 (n=59) and 309 (n=118) days respectively.

casting serious doubt upon its conventional treatment as the more severe sentencing disposal.⁸⁰

Def. 14 (B): They just want the money, but they need to look at all the mitigating circumstances and get realistic. At the end of the day a lot of people don't have the money, and many would prefer to do something for the community.

Def. 71 (B): They should charge you a daily rate and set some voluntary work. I can't see it happening, but it would help a lot of impoverished people.

Def. 99 (B): They don't take into consideration peoples' situations. They look at the person in front of them and don't see what's really going on. They impose these big fines and expect people to pay. They are then going to go and commit more crime. But if they got some of the fines and gave community service to those who are out of work it would give them a bit of satisfaction.

Def. 132 (B): I could be working it off in the community. I'm unemployed. I have got some skills. I could give them £100 worth of my time. Surely that would be better as I haven't got the money to give to them.

Def. 175 (M): With community service, you're actually helping the community. Just paying the money makes you feel like going out thieving again.

Def. 180 (M): Community service could benefit the old or the handicapped, and maybe give people a bit of moral fibre.

Def. 189 (M): If you're working a fine would be OK, but if you're unemployed it would be better to do some community service.

5. Opinions concerning defaulters

Magistrates, bailiffs and CEOs were asked for their opinions as to why certain offenders pay their financial penalties, whilst others do not. In contrast to the reasons given by defaulters for their non-payment,⁸¹ the responses emphasised attitudinal factors (see table 6), raising the question of whether magistrates fully understand the financial

⁷⁹ When considering the CPO as an enforcement measure, certain magistrates' benches expressed concern that some defaulters would prefer the order to paying the financial penalty (see Chapter Seven below, at pp.198).

⁸⁰ The 2001 Sentencing Review concludes that "fines can be as punitive in their effect as other non-custodial sentences" and recommends the removal of the distinction between fines and community sentences, currently based upon the latter's reservation for offences which are "serious enough" (J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.13).

⁸¹ See pp.97-99 above.

hardship suffered by some defaulters. More specifically, the two most common responses were that certain defaulters, first, do not want to pay, and, second, believe in their ability to play the system and avoid payment.

Bench 15 (M): You've got regulars who know that it's very difficult for the court to get the money from them. They're the same as their parents before them.

Bench 19 (M): Basically I think some people are not afraid of the courts any more. It's the fourth generation. They know the system and they play the system.

Bailiff 1: The people that pay are those that have stretched it out for as long as they can and it's finally caught up with them. Others just don't want to pay. They want to beat the system. They're basically 'toe rags'.

Bailiff 4: You've got those people who flatly don't want to know about it. They've got a mate who's told them that they don't have to pay.

Bailiff 5: Some of them are so damn cocky that they don't want to pay. They know the score and simply aren't bothered. Persistent offenders are hard to get. Once they've not paid once, they know that they can get away with it.

Bailiff 6: Repeat offenders are not remotely bothered by the bailiffs. They're not bothered about the police. They're not even scared of going to prison for a few days. You do meet people who tell you that they've been fined dozens of times and never paid a penny.

Bailiff 10: If they realise that the court is not going to enforce it properly then they won't pay. You do need a certain amount of co-operation from the defaulters. It's probably about 10 per cent who think they're above the law, and ultimately if they push it to the limit then they won't pay.

CEO 3: Others know that if they keep their heads down for three months they can get away with it. But why should they?

CEO 6: The trouble is that a lot of people in these areas don't want to pay anything. They want all the benefits but if they can get away with anything they will do. You can't simply say they're all poor. They all have Sky TV and they all have cars.

Table 6: Reasons given by Magistrates' Benches, Bailiffs and CEOs for Payments and Non-Payments

Reason	Magistrates' Benches	Bailiffs	CEOs	Total
Wanting to pay (or not)	4	4	3	11
Belief in ability to escape payment	4	5	2	11
Honest / decent character	3	3	4	10
Background / culture	5	-	3	8
Responsibility / respect for the law	4	2	2	8
Means to pay	1	5	2	8
Acceptance of fine	4	1	-	5
Priorities	1	1	2	4
General attitude	3	-	-	3
Financial management	1	-	1	2

Other commonly mentioned non-financial factors were the defaulters' particular backgrounds and cultures, whether they were of an honest and decent character, and whether they had a sense of responsibility and respect for the law.

Bench 1 (B): Basically you have the honest and the dishonest in any cross section of the community. For those of a criminal persuasion it's a game and they will do anything to wait to the very death. Most are reasonable, however. You might have to get them back a few times, but they will pay.

Bench 2 (B): Generally speaking, those who don't pay lack any sense of responsibility. It's very seldom that those with a sense of responsibility don't respond in one way or another.

Bench 7 (B): There are still some people who have a natural regard for the law.

Bench 14 (M): Some have no responsibility towards anybody or anything. They'd be absolutely the same to anything else. It's down to personal integrity; it's a matter of honour to some people.

Bench 16 (M): I think that some people have traditional values towards family and work. Others, due to their personality or upbringing, don't have those values.

Bench 19 (M): You know that they pay for great quantities of liquor and pay for their car, but they won't pay their fines. It's a different culture. They don't work and they've never worked, and they have no respect for the self or anybody else.

Bailiff 6: The more honest defaulters will pay; the completely dishonest will not. Some laugh and think it's a joke and throw the letter in the bin. Others get into a panic and I've had some in tears.

Bailiff 8: Some don't want bailiffs to come and feel obligated to pay. They think it's a fair cop. Others are just laughing at the system

CEO 2: A lot of it goes back to the old family way of life. Having someone knocking on the door is an embarrassment to them. Others have got no scruples. They just don't care.

CEO 6: Some defaulters are like me and you. We're dealing with a lot of decent people. Some are rough and ready, but they still respect the law. If they get caught they hold their hands up and know they have to do something about it.

CEO 11: I think it depends on how they've been brought up. We're not only talking about fines here. Some are brought up to pay nothing. For example, if they know that their water can't be cut off then they won't pay. That's their mentality.

It was noted above that a number of defaulters maintained their innocence,⁸² and another factor seen as relevant to payment, particularly by magistrates, was the need for defaulters to face up to their crimes, accepting the consequent financial penalties.

Bench 5 (B): If, in their minds, they don't think that they were guilty then that's one issue.

Bench 6 (B): Inevitably some defendants accept their punishment and pay their fine.

Bench 10 (B): Others feel aggrieved because they believe that they weren't guilty. Finally, some people, particularly younger people, are going through a phase in their life when they're not prepared to face up to it.

By far the most common reason given by defaulters for non-payment was some form of financial problem, but only bailiffs emphasised means to pay as a relevant

⁸² See p.100 above.

factor.⁸³ In doing so, they adhered to the long-standing belief in a division between those who “can’t pay” and those who “won’t pay”.⁸⁴

Bailiff 5: A lot of people just haven’t got the money, but some of them are so damn cocky that they don’t want to pay.

Bailiff 6: Basically we have a very difficult job. We’re sent out to get money off people who either haven’t got it or those who’ve got it but don’t want to pay it. Strangely enough it’s easier to get money off those who haven’t got it.

Bailiff 10: With this job you get the can’t pays and the won’t pays. You do get some satisfaction when you get money from the latter group. That’s when it’s an effective form of enforcement.

Whilst magistrates and CEOs also referred to defaulters’ finances, they were much more likely to emphasise poor financial management or the prioritising of other expenses.

Bench 6 (B): There are some defendants who frankly are not very good in managing their money. Some are in such a mess that they really don’t know where to turn.

Bench 10 (B): Some defendants are on low income and don’t pay because they prioritise other things.

CEO 9: They agree to pay a certain amount per week when they’re in the court, but when they leave they forget about it. They might make a couple of payments, but they want to get on with their own lives. It’s just not a priority for them.

CEO 8: A lot of people in these areas only have so much money. A lot of them are not organised ... It’s low down on their priorities.

Bailiffs and CEOs were asked whether they categorised defaulters into different types, bearing in mind that Rock has previously found “a threefold scheme of classification” under which “defaulters are feckless or professional or unfortunate”.⁸⁵ Five bailiffs and seven CEOs answered in the affirmative. The Manchester CEOs tended

⁸³ Means to pay is perhaps a greater consideration to bailiffs due to the fees that they impose against defaulters and their desire for payment in full. See Chapter Six below, at pp.116-118&122-125.

⁸⁴ See Chapter Two above, at pp.41-43.

⁸⁵ P. Rock, *Making People Pay*, *op.cit.* p.266. He defines these categories as follows: “The professional is an elusive, predatory person who has no wish to retain any links with the creditor; the feckless debtor is too disorganized and irresponsible to make moral decisions; and the unfortunate is a co-operative, guilt-ridden individual who will pay whatever he can afford” (*ibid.* p.272).

to employ a threefold classification, although the groupings differed slightly in nature. For example, one CEO distinguished between those who will pay, those who will only pay once pressure is exerted upon them, and those who have moved on; whilst another referred to those who can't pay, those who won't pay, and those who will get away with it if they can. The categorisations employed by the Birmingham bailiffs tended to be more straightforward.

Bailiff 1: The decent people and the not so decent people. The people who want to pay and can't, and those who just want to beat the system.

Bailiff 2: Persistent defaulters who know the system and know not to let you in; people who blatantly lie; people that you know are going to pay eventually, but like to create a fuss beforehand.

Whether these categorisations are sufficient is questionable.⁸⁶ Rock admits that the “simplifying paradigm” which he outlines is “based on surmises about the meanings of certain responses”,⁸⁷ and can, therefore, lead to instances of unsuitable labelling. Furthermore, he states that paucity of information, speed of response, economy and scale all seriously curtail the categorisations that can be employed.⁸⁸ It is perhaps not surprising, therefore, that one of the Birmingham bailiffs recognised that his colleagues’ were “not always right”.

Bailiff 5: I’ve been to some real shit-holes and they’ll fork out three or four hundred quid. It makes you wonder where they get the money from.

⁸⁶ One commentator has held that “the remedy of distress is a blunt instrument incapable of distinguishing between those who are able but unwilling to pay and those who are unable to pay”. (D. Forbes, “Foreword”, in: J. Kruse, *Dealing with Distraint: Bailiffs’ Law for Advisers*, *op.cit.* p.7). More positive is Rock’s comment that “bailiffs can gauge more accurately than any judge the style of life of a debtor” (P. Rock, *Making People Pay*, *op.cit.* p.1). A separate issue is whether the employment of categorisations by bailiffs and CEOs represents an appropriate shifting of judicial functions. Rock, for example, states that “bailiffs have...taken over a judicial function in deciding whether to impose sanctions and when this imposition should take place” (P. Rock, *Making People Pay*, *op.cit.* p.127).

⁸⁷ *ibid.* p.272.

⁸⁸ *ibid.* pp.267 & 270. Of particular relevance to the automated ‘fast-track’ approach for issuing distress warrants (see Chapter One above, at pp.25-26) is Rock’s comment that “the greater the scale of the bureaucratic enterprise, the greater will be the dependence upon a simplifying paradigm” (P. Rock, *Making People Pay*, *op.cit.* p.267). It is noted in Chapter Six below, at p.120, that five Birmingham bailiffs held that they were given insufficient time to execute warrants.

Magistrates were asked whether they ever had doubts at the time of imposition that the offender would pay. Sixteen of the 22 benches admitted to such doubts.⁸⁹ Whilst this was sometimes on the basis that the offender would try to avoid payment, in other instances it was because of the offenders' limited means, providing support to the long-standing concerns regarding the employment of financial penalties against offenders of such low means.⁹⁰

Bench 6 (B): The longer you have been on the bench, the more cynical you become. You do sometimes get that feeling.

Bench 14 (M): You can't get blood out of a stone, and there are many cases where there are a string of fines already and you know that they can't pay, but there is no alternative to the fine.

Bench 15 (M): Quite often when there is no chance of getting the money in, there's no choice and nothing you can do about it.

Bench 21 (M): The fine is the one penalty you can realistically impose when the defendant is absent. So already you are dealing with a section of society that hasn't bothered coming to court.

Clearly, therefore, it is open to question whether the bench has an adequate range of sentencing options when dealing with so-called lesser offences.⁹¹ The magistrates were in fact keen to emphasise that their hands were tied, as they often had no choice but to impose a financial penalty. The provisions in the POCC(S)A 2000 enabling the use of

⁸⁹ Four benches disagreed and the other two remained neutral.

⁹⁰ See Chapter Three above, at pp.65.

⁹¹ The 2001 Sentencing Review states that "the current restriction of sentencing options for less serious offences presents the courts with an unsatisfactory choice to make between a financial penalty – which may seem unaffordable, particularly if the offender already has a string of debts for previous offences – and a discharge, which can seem to give the wrong message – of condonement rather than punishment" (J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.39). The adequacy of the range of sentencing disposals is considered further in Chapter Eight below, at pp.224-228.

CPOs and COs against “persistent petty offenders” and driving disqualifications against all offenders would thus appear to be a step in the right direction.⁹²

Bench 4 (B): There are some offences for which you can only fine. The typical one is fining a prostitute for soliciting. What else can you do? That’s why having an alternative disposal might be better.

Bench 8 (B): It’s very difficult. There’s not much else you can do. If you’ve come to the conclusion that a financial penalty is the most appropriate punishment then it’s unlikely that you would want to move up to a community sentence. You either have to impose the fine and wait to see them in the debtors’ court or use a conditional discharge.

Bench 15 (M): Quite often there’s no choice. For no insurance, for example, we can only fine them. We can lower the fine and then keep bringing them back. Eventually we can send them to prison but it doesn’t really achieve very much.

Bench 16 (M): We want to do something positive, but often we do not have any choice. It might not warrant a CSO, and we really have nothing left. You know it’s not going to work, and you think ‘what the hell do you do’?

6. Summary

The typical case found in this study, both at the fines court and when a warrant was executed, was that of a fairly substantial, single outstanding financial penalty, imposed many days previously for a road traffic offence. A number of defaulters at the fines court had numerous outstanding penalties, however, producing particularly large impositions when combined together. The financial penalties at Birmingham were generally older, indicating that defaulters were proceeding less quickly through this court’s enforcement process. A partial explanation was provided by longer default periods at Birmingham, which is a matter of concern given the research evidence that prompt action is essential to successful enforcement.

More than three-quarters of those defaulters appearing at the fines court, for whom the information was obtained, were unemployed, with an average weekly income of less

⁹² See Chapter One above, at pp.22-24.

than £100. A large number also had dependants to support. On the whole, therefore, defaulters' means were limited, and approximately two-thirds gave financial problems as the reason for their default. When asked about their financial penalties, approximately three in ten held that the amounts imposed were too steep, and, of those who had made payments, nearly half stated that they had been caused a lot of hardship. Two-fifths also claimed to have been caused a lot of distress and anxiety, and strikingly, nearly a quarter stated their preference for the supposedly up-tariff CPO.

Nevertheless, only CEOs expressed concern that the current imposition levels were too high, although a couple of magistrates' benches replicated their further anxiety regarding those fines set in absence. When asked why they thought certain offenders failed to pay, both magistrates and CEOs emphasised attitudinal factors, with only bailiffs highlighting means to pay. The above evidence suggests, however, that greater attention needs to be paid to offenders' means, particularly when one recognises that there was only a weak association between income levels and the amounts imposed, and that the average weekly income was less than a fifth of the average total amount imposed. The distinction between "extreme economy" and "actual hardship", it seems, has not been maintained.

One can even question whether the financial penalty is sufficiently flexible to cater for all offenders' financial circumstances. The majority of magistrates' benches admitted to harbouring doubts at the point of imposition that certain offenders would pay, and a number were clearly frustrated by the lack of options available to them, stating that in many cases their hands were tied.

CHAPTER SIX

WARRANT EXECUTION

The lack of research in the enforcement field is most evident in the area of warrant execution.¹ The dearth is regrettable when one considers that the use of distress warrants has increased in recent years,² and that responsibility for warrant execution was transferred from the police to the MCCs on the 1st April 2001.³ The time for evaluation is thus ripe, and this chapter sets out findings from the empirical research regarding the execution of distress warrants by bailiffs at Birmingham and bail warrants by CEOs at Manchester.⁴ These findings are the result of (i) interviewing ten bailiffs, who worked for PRS and TNC on behalf of the Birmingham magistrates' court, and the eleven CEOs employed by the Manchester court, and (ii) accompanying these bailiffs and CEOs on visits to properties as they executed or attempted to execute 209 distress warrants and 185 bail warrants respectively.⁵ A comparison is clearly of value, bearing in mind that it has been left to the individual MCCs, following the formal transfer of responsibility for warrant execution, to decide which warrants to issue and to whom. To aid this

¹ The only substantial empirical research evaluating the work of bailiffs was conducted by Rock in the early 1970s and was concerned with county court warrants (P. Rock, *Making People Pay*, *op.cit.*). The only major empirical research concerning enforcement officers has been in other fields. Hawkins has evaluated the work of pollution control officers (Hawkins, K., *Environment and Enforcement: Regulation and the Social Definition of Pollution* (1984), Clarendon Press), whilst Hutter has looked at environmental health officers (Hutter, B.M., *The Reasonable Arm of the Law?: The Law Enforcement Procedures of Environmental Health Officers* (1988), Clarendon Press).

² See Chapter One above, at pp.24-26.

³ *ibid*, at pp.27-29.

⁴ See Chapter One above, at pp.6-9 for an overview of the warrants and the roles of bailiffs and CEOs. See Chapter Two above, at pp.47-49, for concerns regarding their use.

⁵ The warrants are numbered from 1 to 394 throughout the text. The first 209 are distress warrants, as indicated by the letter "D" in brackets following the specific number. The bail warrants are numbered from 210 to 394 and are marked by a "B" in brackets following the specific number.

comparison, the bailiffs and CEOs were asked to comment upon each other's roles, and magistrates' benches were questioned about both types of warrant execution.⁶

1. The warrant histories

Only 12 defaulters (three per cent) had made any payments since the warrants had been issued.⁷ Eight of these defaulters were in the Birmingham distress warrants sample, despite only one of the bailiff firms, TNC, accepting part payments, compared to all Manchester CEOs.⁸ PRS had previously accepted part payments, but they were discontinued as many defaulters failed to adhere to their payment plans.⁹ Yet when the bailiffs were asked for their opinions regarding the appropriateness of part payments, four of the five PRS bailiffs announced their support, compared to only two of the five TNC bailiffs. The CEOs, in contrast, were unanimous in their support for such payments.

Bailiff 1: If you honestly believe that it's the only way that PRS and the court will collect the fine [then part payments are appropriate]. You have to use your discretion. A lot of the people don't pay the fine because they don't want to, but others simply can't. Particularly when it's a large fine and the person is on benefits.

CEO 11: For someone who can't pay in full, part payments have got to be appropriate. You get a few who come and burn them off, but for someone who's on benefits £200 is a non-starter.

CEO 8: There's not that many who can pay in full, unless it's a low amount. Once you go above £50, for a lot of people it's out of their reach entirely. You do sometimes get surprised, but for the majority, unless they're working, £20 is a lot of money to find ... It's always better to have the money than have them going to court.

⁶ See Chapter Three above, at pp.54-60, for the methodology and complete samples.

⁷ For the pre-warrant account histories, see Chapter Five above, at pp.89-91.

⁸ The NCC has stated that "in some cases they [bailiffs] refuse to negotiate at all and will only accept payment in full, even when a person only has benefit income" (NCC, *Private Bailiffs: Their Role in Debt Collection*, *op.cit.* p.13). The contracts between the firms and the Birmingham court provide that part payments can only be accepted prior to the bailiffs' visits.

⁹ Shaun Bletchley-Lewis, the Managing Director of PRS, stated that the change in policy had not affected performance levels.

Five of the six positive bailiff responses were heavily qualified, with three bailiffs stating that the number of payments should be minimised.¹⁰

Bailiff 2: In certain circumstances [part payments are appropriate], but I don't mean £2 per week. Being able to pay in two halves or four payments, something like that.

The remaining four bailiffs were strongly opposed to any form of part payments, holding that such payments were not cost-effective, continued for too long and were often not maintained, adding to the cost for the defaulter. These bailiffs believed that an insistence upon full payment benefited the defaulter as well as themselves, their firms and the court.¹¹

Bailiff 7: A lot are single parents and simply cannot afford to pay. They can't afford £20 per week out of their income support and they won't go and ask Dad ten times for the money. But they might go once for the full amount. It's actually better for them to do so because if we keep giving them arrangements and they keep breaking them, it will cost them a lot more in the long run.

In practice, throughout the observations, bailiffs proved much less willing than CEOs to negotiate payments with defaulters.

Warrant 32(D): *The defaulter had been fined, on two separate occasions, a total of £665.84, for road traffic offences. No payments had been made, and £239.70 bailiff fees had been added, producing a total amount outstanding of £905.54. No previous calls had been made*

Def: I can't pay it today.

Bff: We don't accept part payments. All I can do for you is accept payment on one and give you a little time for the other.

Def: OK. Can I pay one next Thursday. I'll definitely have the money.

Baff: OK. And I'll give you a month for the other one.

Warrant 154(D): *The defaulter had been fined for a road traffic offence. £120 was outstanding when the warrant was issued, and £99.91 bailiff fees had now*

¹⁰ TNC look to restrict payments to a six-week period.

¹¹ Alternative reasoning for the refusal to accept part payments is provided by the National Association of Citizens Advice Bureaux: "Bailiffs, naturally enough, have to earn a living, and need to be seen as effective by creditors in order to keep their business. Their incentive lies therefore in pressing for full payment, or at the very least, large instalments, rather than reaching payment arrangements which are affordable for the debtor" (National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients' experience of bailiffs* (2000), NACAB, p.10).

been added, producing a total amount outstanding of £219.91. Once again, this was the bailiff's first visit to the property.

Def: I thought it had been sorted ... What's the bottom line? When do I have to pay it?

Bff: It's supposed to be 48 hours, but I could give you longer if you have the means to pay it.

Def: I can't do it within 48 hours.

Bff: If I give you till the end of the month, can you do it by then?

Def: No problem ... I hadn't realised it had got that serious.

Warrant 340 (B): *The defaulter had been fined £50 for no TV licence nearly 100 days previously. The full amount remained outstanding, and the CEO had visited the property on three previous occasions.*

Def: I was coming to see you tomorrow...

CEO: I can give you some time to pay if you like.

Def: Is it a weekly payment?

CEO: I can give you until the end of September.

Def: I'm on income support at the moment.

CEO: The most I can give you is eight weeks.

Def: Well, the most I can afford to pay is a fiver per week.

CEO: If you keep making regular payments then the week before I can give the court a ring to see what they say.

Warrant 215 (B): *The defaulter had been fined £225 for an offence against the person more than 200 days previously. The full amount remained outstanding, and the CEO had called at the property on five previous occasions, meeting the mother on one such occasion.*

Nan: He doesn't live here and he won't go into the police station because he's nervous. He had 300 stitches in a head injury and can get aggressive. But I'll pay £10 per week if you drop the warrant.

£10 per week accepted, despite the large amount still due. After leaving the property, the CEO explained why he agreed to this rate of payment.

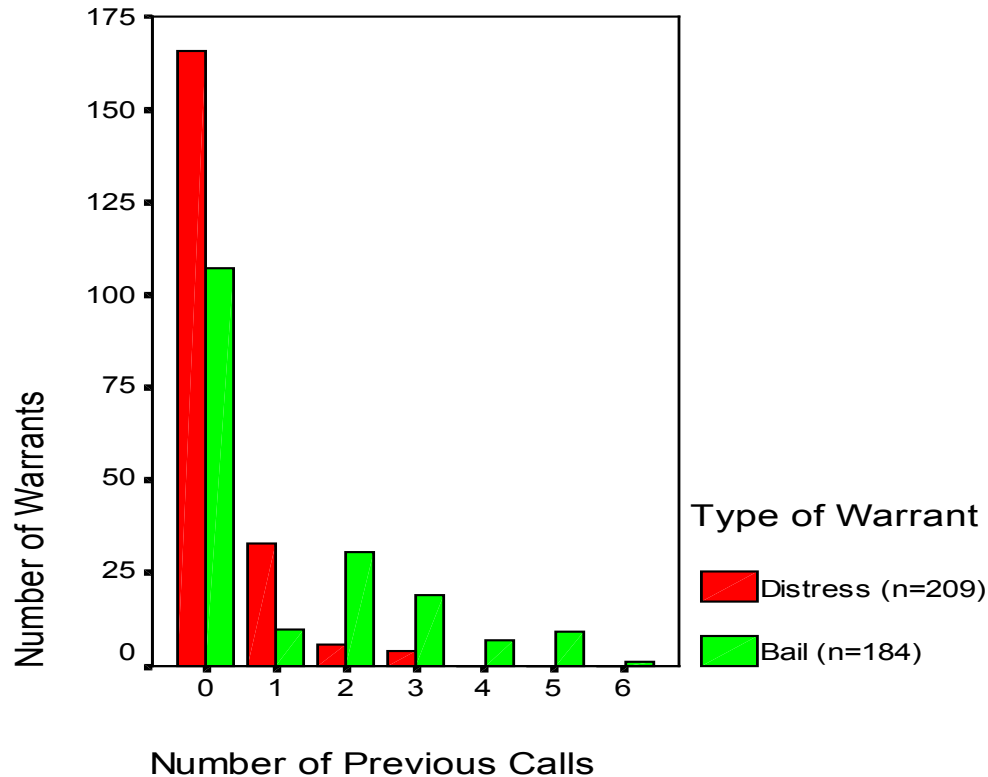
CEO: We might as well take the £10. If he's bailed he won't go to court, and what are the bailiffs going to get out of it? It's a bit like the tail wagging the dog, but what else can be done? She could probably pay the full amount if I pushed it, but next time she'll say they don't live there and nothing else.

In more than three-quarters (79%: n=209) of cases in the Birmingham distress warrants sample the bailiff was visiting the property for the first time, as shown by chart K.¹² Previous calls were much more common in the Manchester bail warrants sample, although in the majority (58%: n=184) of cases the CEO was attending the property for

¹² At least in terms of the current warrant. Some defaulters were "regulars".

the first time.¹³ Nevertheless, there was a significant, although fairly weak, association between the number of previous calls and type of warrant,¹⁴ with CEOs having called on more than one previous occasion in 36 per cent of cases, compared with just five per cent of cases in the distress warrants sample.

Chart K: Number of Previous Calls by Type of Warrant



In those 43 distress warrant cases in which a previous call had been made,¹⁵ the average time since the last call was 57 days, but there was considerable variance in the time period, ranging from eight to 339 days. In the bail warrants sample, despite the many more cases with numerous previous calls,¹⁶ the average time period since the last

¹³ At least in terms of the current warrant. Once again, some defaulters were “regulars”. When asked what responses they commonly received, one CEO commented, “Hello D, how are you?”

¹⁴ An eta value of 0.310.

¹⁵ There had been more than one previous attendance in only ten cases.

¹⁶ There had been more than one previous attendance in just the ten cases at Birmingham.

visit was only 12 days, with a much narrower range from one to 67 days.¹⁷ As a result, there was a significant, moderately strong association between the time since last attendance and the type of warrant.¹⁸

Generally, therefore, the Manchester CEOs were returning to properties earlier and more often than bailiffs. One potential explanation for this finding is that CEOs were dealing with more manageable workloads. Both were asked whether they had sufficient time to execute their warrants, and seven CEOs said that they had. Three emphasised that the workload had become much less burdensome since the court had modified its approach, making greater use of distress warrants.¹⁹ There was a clear difference in opinion amongst the bailiffs, however, with five answering in the affirmative and the other five disagreeing.²⁰

CEO 6: Under the new system, with work going to the bailiffs, we're not doing bad at all. Before it was a little bit of a struggle.

Bailiff 5: I do them and get them back. The more warrants I have, the more I get through ... I've never had a problem.

Bailiff 6: It takes a couple of days to put the information on the computer. The first letter is then sent out and you have to wait seven days. In the last two weeks of the twelve you might have to wait for a cheque to be cleared. We therefore only really have eight or nine weeks. Practically you can't make more than three calls.

Bailiff 8: There are too many warrants. Two weeks last Friday they sent me 400 warrants, which is impossible to do properly. There are simply not enough bailiffs.

Comparing the two courts' own figures for the year 2000, Birmingham issued 27,605 distress warrants to the two bailiff firms, resulting in each of the ten bailiffs

¹⁷ There was also less variance in the time lapse: a range from one to 67 days.

¹⁸ An *eta* value of 0.405.

¹⁹ See Chapter Four above, at pp.74-75.

²⁰ There was a significant drop in the number of warrants issued when Birmingham modified its enforcement process (*ibid*, at pp.73-74), but numbers picked up again as defaulters progressed through the preceding stages.

attempting to execute, on average, 53 warrants per week.²¹ Manchester, in contrast, issued 23,848 warrants to its eleven CEOs, resulting in each CEO attempting to execute, on average, 42 warrants per week. Whilst these figures indicate a greater workload for the bailiffs, the difference is not huge, and it is reasonable to conclude that the bailiffs were deliberately choosing to call back less often. After all, they were reliant upon defaulters paying the bailiff fees for their earnings, and by leaving letters at properties,²² they were able to wait to see if the defaulters made contact, maximising the use of their time. The CEOs, in contrast, needed to make contact with the defaulters to either obtain payment or to bail them back to court.

Interestingly, three bailiffs said that many courts, including Birmingham, were flexible regarding the retention of warrants, suggesting that in certain cases the chances of obtaining payment overrode any insistence upon returning the warrants within the set time.

Bailiff 3: We're continually getting memos regarding the court's concern about the length of time the warrants are being held. But it can take four weeks for me to get the warrant, and there's no point making two calls in the same week. The person may then not want to pay until a certain date. By and large, you have to go with the flow. It doesn't leave you much leeway. But I do accept that the courts are somewhat flexible with the 12 weeks.

This comment supports Bathurst's comment that "bailiffs may 'sit' on an unexecuted warrant for an untraced defendant for several months before returning it to the court".²³ Similar concern was raised by the MCSI in its 1998 inspection report for the Birmingham court: "There are quite unacceptable delays in the recovery of unexecuted warrants from both bailiffs and police ... checks carried out in July 1998 revealed that, in

²¹ This weekly figure is approximate only. The bailiffs were sometimes required to execute warrants for other courts, and some defaulters will have paid before the warrant was allocated to an individual bailiff (after receiving correspondence from the bailiff firm).

²² See pp.134-135 below.

general, warrants were allowed to remain outstanding for considerably longer than the agreed retention period”.²⁴ This period remains 90 days and in nearly a quarter (23%: n=43) of those cases in the distress warrants sample in which a previous call had been made the time elapsed since the first visit exceeded this figure.²⁵ Clearly, therefore, the concern of the MCSI has not been sufficiently addressed.

The Manchester court also aims to process bail warrants within 90 days, and the time period since the first attendance exceeded this figure in just six per cent of cases. Clearly, therefore, these warrants were being processed more quickly than the Birmingham distress warrants.

2. Bailiff fees

Whilst courts employ and pay the salaries of CEOs, bailiff firms charge the defaulters rather than the courts for the execution of distress warrants.²⁶ There is no statutory scale of fees, and those imposed are agreed between the individual court and bailiff firm, with the Home Office providing the guidance that the justices’ clerk “should satisfy himself that the scale of charges is reasonable and that it is not disproportionate to the debt which the court seeks to recover”.²⁷

There were two main fees at Birmingham. First, an administration fee of £30 or 15 per cent of the outstanding amount, whichever was the greater, which was imposed when the firm received the warrant and sent out its first correspondence. Second, an attendance fee of £69.91. The fees could increase further, however. PRS had separate “van fees”,

²³ D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op. cit.* p.12.

²⁴ HM Magistrates’ Courts Service Inspectorate, *Inspection Report: Birmingham District Magistrates’ Courts Committee Area: 13 – 23 October 1998*, *op.cit.* p.42.

²⁵ Unfortunately, the warrants did not state the date of issuing, so the total time periods that they had been outstanding was not known.

²⁶ See Chapter Two above, at pp.46-47, for the attractions of the distress warrant.

²⁷ Home Office, *The Use of Bailiffs*, *op.cit.* p.18.

imposed when a warrant proceeded to those bailiffs operating a van for removal, which required an individual bailiff to have previously levied upon goods.²⁸ These fees were set at £29.38 for the first 20 minutes of attendance at a property and £17.63 for each subsequent 20 minutes. TNC, in contrast, whilst not operating a van, imposed a separate attendance fee for each visit to a property. Furthermore, at both firms, further charges were attached to dishonoured cheques, vehicle clamping or removals, as well as storage and sale.

This structure of fees produced for my sample of 209 Birmingham distress warrants an average bailiff fee of £144,²⁹ resulting in an average amount outstanding of £359. Clearly, therefore, substantial fees were imposed and they formed a significant proportion, 40 per cent on average, of the total amounts outstanding. There was a strong association between the fees imposed and the amounts due at the time the distress warrants were issued,³⁰ but the structure of fees was such that in a startling four out of ten cases the charges were greater than the amounts owed to the court. Furthermore, in some instances the charges far outweighed the amounts originally imposed.

Warrant 111 (D:PRS): *Two previous visits had been made to the property and on the second occasion the bailiff had levied on a vehicle and a wide range of household goods.*

£30 fixed penalty (no seat belts)
+ £30 administration fee
+ £69.91 attendance fee
+ £86.25 van fee
= £212.16 total amount paid

Warrant 124 (D:TNC): *A visit had been made to the property twenty days previously but no contact had been made.*

²⁸ One bailiff informed me that approximately fifteen warrants per week proceed to the van. Five such cases were observed.

²⁹ Very similar averages for PRS and TNC of £142 and £146 respectively. As Chart K above illustrates, the number of previous calls in the distress warrants sample varied. The average bailiff fee for the five PRS van calls was £135.

³⁰ A Pearson's *r* correlation coefficient of 0.612 (Significant at the 0.01 level).

£30 fixed penalty (no waiting)
+ £30 administration fee
+ £69.91 attendance fee
+ £69.91 attendance fee
= £199.82 total amount due

These two warrants clearly highlight the differing charges imposed by PRS and TNC. Whilst TNC imposed two separate attendance fees, the highest charge imposed by PRS was the van fee, the exact amount of which resulted from the length of time for which the bailiffs were present at the property. In this particular case, the time attended resulted in a bailiff fee exceeding the original financial penalty six times over.³¹ Indisputable support is thus provided for the belief of the National Consumer Council, hereinafter NCC, that “the cost of bailiff action for the small debtor can be completely out of proportion to the amount being claimed”.³²

The National Association of Citizens Advice Bureaux, hereinafter NACAB, has been particularly critical of bailiff fees, noting that “the addition of fees and charges means that a debtor can very quickly, sometimes in a matter of days, see his debt increase two or three fold, often more, without any improvement in his ability to pay even the original amount”.³³ Eight CEOs and magistrates’ benches expressed similar concerns.

Bench 1 (B): They [distress warrants] impose extra costs for the defendants who are struggling anyway. Suddenly they have a bill for another £50 or whatever, and sometimes the actual fine is less than the cost of the distress warrant. It’s not justice in my opinion.

CEO 1: Some people say that they’re making poor people even poorer...Once the bailiff gets hold of a £30 fixed penalty it becomes £60 or £70. It’s OK when dealing with the middle class, but some just haven’t got that money. They’re getting deeper into debt for things they don’t understand.

³¹ It is worth emphasising that this particular defaulter paid the outstanding amount.

³² NCC, *Bailiffs and Sheriffs: Response to the Lord Chancellor’s Review of the Organisation and Management of Civil Enforcement Agents* (1992), NCC, p.9. In an earlier report the NCC criticised a £70 charge for a van visit on the basis that it was too high (NCC, *Private Bailiffs: Their Role in Debt Collection*, *op.cit.* p.18).

³³ National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients’ experience of bailiffs*, *op.cit.* p.7.

There is thus a strong argument that the Birmingham court failed to comply with Home Office guidance that bailiff fees must be both “reasonable” and “not disproportionate”.³⁴ Nevertheless, only two bailiffs thought that the fees imposed generally against defaulters were too high, with seven maintaining that they were set at about the right level. Six of these bailiffs had certain reservations, however, and three were keen to emphasise that the payers were subsidising the non-payers.³⁵

Bailiff 6: At the end of the day we’re providing a free service to the courts, and somebody has to pay. The firms are required to set reasonable charges, but what is reasonable? You can say they’re unfair, but in reality the ones who pay are paying for those who don’t. The 35 per cent that pay are paying for all the warrants that are issued. It’s almost like the weak paying for the strong. But whatever system is implemented, it isn’t fair. And what people often fail to mention is that they’ve failed to respond to any of the correspondence that has been sent to them.³⁶

3. The observed visits

Contact was made with a person at the property in approximately half (49%) of all bailiff and CEO visits,³⁷ but unfortunately the respondent was confirmed as the defaulter in only 11 per cent of cases.³⁸ A full breakdown of respondents’ identities is provided in chart L. Even more worryingly, the defaulter’s residence at the address was denied in 33

³⁴ The contracts between the firms and the Birmingham court simply provide that “the Bailiff company shall charge fees as they deem appropriate but they should not exceed the levels as set by the Certified Bailiff Association”. The LCD Green Paper *Towards Effective Enforcement* is highly critical of the current system, and notes that it is the Government’s belief that “general principles” governing fees need to be set out in primary legislation, with clear fee scale(s) set out in secondary legislation (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement, op.cit.* p.37). The Green Paper then raises various questions. For example, “should the fee be a standard amount, or reflect the amount of the debt of the value of the goods seized? Or a mix of both?”, and “if more than one call is required to the same debtor...how should this be remunerated” (*ibid*, p.38).

³⁵ Similarly, the LCD Green Paper refers to those “concerns...about the inevitability of debtors who pay subsidising enforcement against those who do not” (*ibid*, p.38). The question is then raised if such subsidence is in fact inevitable or morally acceptable (*ibid*, p.39).

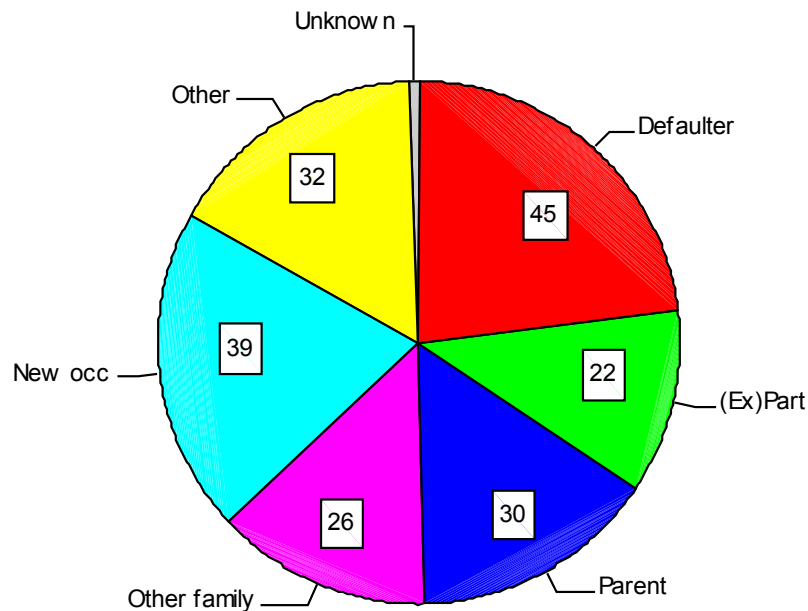
³⁶ For the actual percentage of warrants returned paid, see table 7 below.

³⁷ Corresponding figures for the distress and bail warrants of 49 and 50 per cent.

³⁸ Corresponding figures for the distress and bail warrants of 11 and 12 per cent.

per cent of cases,³⁹ and confirmed in only 29 per cent.⁴⁰ Furthermore, a forwarding address was obtained in just two cases, with even immediate family members claiming to have no knowledge of defaulters' current whereabouts.

Chart L: Identity of Respondents (All Warrants)



N=195

(Ex) Part = Partner or Ex-partner

New occ = New occupier

The difficulty of contacting defaulters has been recognised by Rock, who states that “the search for commitment debtors is often frustrating because males are rarely at home in the daytime and may not even be there at night”.⁴¹ The findings of this study

³⁹ Corresponding figures for the distress and bail warrants of 29 and 38 per cent. The property was clearly empty in seven per cent of cases, and in four cases there was no such address. On finding a property empty, the CEO stated that “you could come next week and there’d be lovely curtains up. A month later it could be empty again”.

⁴⁰ Corresponding figures for the distress and bail warrants of 28 and 30 per cent.

⁴¹ P. Rock, *Making People Pay*, *op.cit.* p.215.

show that even when contact is made at a property, the respondent is usually not the defaulter and, furthermore, the defaulter's residence at the property is often denied.⁴² In fact, contact was made and the defaulter's residence confirmed in under a quarter (24%) of all bailiff and CEO calls.⁴³ It can be stated without hesitation, therefore, that section 94 of the ATJA 1999, removing barriers to the sharing of information between public authorities, in the hope that this will help courts track down defaulters, is a step in the right direction.⁴⁴

Further support for this conclusion is provided by the overall performance figures for the two courts' warrants. More than four in five Birmingham distress warrants were returned unpaid over a period from October 1999 to April 2001, as demonstrated by table 7. In the vast majority of these cases either no contact was made with the defaulter or the defaulter's residence at the address was denied.⁴⁵

Despite "a more robust approach" being demanded from the Manchester CEOs, "geared towards prompt payment in full or bail to court",⁴⁶ the most common outcome for the bail warrants during the year 2000 was write-off, as demonstrated by table 8. In terms of the percentage of defaulters who pay in full, the CEOs' performance was behind

⁴² In the field of civil enforcement, the LCD has reported that the address is wrong for as many as half the warrants issued (Lord Chancellor's Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p12).

⁴³ Twenty-four per cent of both distress and bail warrant calls. Bathurst similarly reports as follows: "During a five-hour session in which this writer observed a court enforcement officer attempt to execute a bundle of warrants in a busy seaside resort, there were numerous occasions on which there was no reply to a knock on the door, or the person who did answer the door curtly informed the officer that the subject was not living there any more or had "just popped out" (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op. cit.* p.99).

⁴⁴ See Chapter One above, at pp.28-29. At present PRS check the electoral roll. Shaun Bletchley-Lewis said that access to the DSS database would be "very useful". For further proposals regarding the accessing of information, see Chapter Eight below, at pp.220-224.

⁴⁵ Contracts between the court and the bailiff firms provide that "if a warrant is returned to the court unexecuted the company shall state the reason for failure".

⁴⁶ In a memorandum from Chris Flanagan, the Post-Court Group Manager, dated 15th October, 1999.

that of the bailiffs at both Birmingham and Manchester,⁴⁷ and well short of the court-imposed target at Manchester for April 2000 to March 2001 of 15 per cent.

Table 7: Breakdown of Distress Warrants Returned to Birmingham

	PRS (23/04/00 – 22/04/01)	TNC (01/10/99 – 09/02/01)	Combined
Returned paid	2,779 (15.7%)	2,480 (19.6%)	5,259 (17.4%)
Returned unpaid	14,875 (84.3%)	10,142 (80.4%)	25,017 (82.6%)
No contact	4,716 (26.7%)	5,956 (47.2%)	10,672 (35.2%)
Denied at address	4,942 (28.0%)	2,104 (16.7%)	7,046 (23.3%)
No such address / Property empty / Unable to locate	1,552 (8.8%)	859 (6.8%)	2,411 (8.0%)
Requested by court	709 (4.0%)	633 (5.0%)	1,342 (4.4%)
Unable to gain entry	1,694 (9.6%)	367 (2.9%)	2,061 (6.8%)
Debtor in prison	186 (1.1%)	99 (0.8%)	285 (0.9%)
Insufficient goods	955 (5.4%)	63 (0.5%)	1,018 (3.4%)
Other	121 (0.7%)	60 (0.5%)	181 (0.6%)
Total returned	17,654	12,622	30,276

Table 8: Manchester CEO and Bailiff Warrant Performance for 2000

	Warrants issued	Cash collected (£)	% Paid in full	% Bailed to court	% Write off	% Other*
CEOs	23,848	£190,454	9%	35%	47%	10%
Bailiff Firm A	5,736	£68,733	18%	3%	42%	11%
Bailiff Firm B	6,204	£73,694	17%	4%	52%	13%

* includes court approved write-off, withdrawn and transferred

⁴⁷ The change in the enforcement process at Manchester has enabled comparative monitoring of CEO and bailiff performance (see Chapter Four above, at pp.74-75).

The bailiffs and CEOs were asked what difficulties they faced when executing warrants, and the most common response was wrong addresses, with eight of the bailiffs and all eleven CEOs highlighting the problem.

Bailiff 3: The main problem is that defendants have gone. The most common outcome is denied at address or moved away. In Birmingham, the movement of defendants is incredible.

Bailiff 7: You can tell that a bailiff is making the calls by the number of warrants that are returned for the defaulter having moved on.⁴⁸ They swap council houses so often.

CEO 1: In many calls, they've not lived there for a long time. They just move about, and people never know where they are.

CEO 11: It's like musical chairs. There's one particular family. They're in this block, then in that one. They're being re-housed all the time.

A reason for this rapid movement was offered by one CEO, and supporting evidence is provided by two of the observed exchanges.

CEO 4: What makes a lot of these communities float is pressure. Pressure from us and pressure from various finance companies. They run up massive debt and bugger off.

Warrant 368(B): *The defaulter had been fined, on two occasions, a total of £170 for metrolink fare evasion. The first of these fines had been imposed more than 450 days previously, and the full amount remained outstanding. No previous calls had been made to the property.*

CEO: Are you M?

Occ: No, I've been here four weeks. I've had the bailiffs and the lot. I might as well have you as well.

CEO: You don't know where she's gone?

Occ: I haven't a clue.

Warrant 322(B): *The defaulter had been fined £40 more than 300 days previously, and nothing had been paid. This was the first call to the property.*

Occ1: She doesn't live here. She was here but she's now in Chorlton. She was bringing too much trouble to the door.

Occ2: If you do see her tell her she still owes me some money.

Several CEOs stated that many addresses were likely to be wrong at the outset of proceedings,⁴⁹ and the observational study proved that some defaulters had long since

gone, if they were ever there at all. For example, two respondents said that they had been living at their respective properties for 27 and 35 years and had never heard of the named persons.

CEO 3: You wouldn't believe how many people vanish in this city. With the metrolink fares I've hardly had one which is a correct address. The addresses simply aren't checked. It's so easy to get away with it.

CEO 9: There is a weakness in the system from the start. At one time checks would be carried out before they left court. Nowadays they glibly give their information. That needs to be tightened up. They would then think that there's no point in giving a false address.

CEO 8: They sometimes use an address simply as a giro drop. It's the parents' address or the sister's address.

Four bailiffs and nine CEOs said that the problem of wrong addresses was complicated by lies and evasiveness.⁵⁰ During one exchange, the respondent mother even admitted "trying it on".

Warrant 348(B): *The defaulter had been fined £230 over 100 days previously for a road traffic offence, and nothing had been paid. No previous visits had been made to the property.*

Mum: He doesn't live here.

CEO: Do you still see him?

Mum: Sometimes...

CEO: Are you sure he doesn't live here?

Mum: *Laughs.* I can't lie me...

The CEO left a bail form, giving the defaulter six weeks to pay.

CEOs were confident in their ability to assess the truthfulness of responses, which, they stated, required judgement, experience and intuition. In certain observed cases the CEOs suspected the respondent of lying: one declared "you and I know they were lying through their teeth", and another stated that the respondent father "couldn't lie straight in

⁴⁸ The suggestion is that as bailiffs make their calls, there is a shift from the "no contact" to the "denied at address" category (see table 7 above).

⁴⁹ Shaun Bletchley-Lewis also held that defaulters' details were often incorrect at the outset.

⁵⁰ The need for enforcement officers to deal with lies has been suggested by Hawkins in the field of pollution control: "The impression of enforcement as a game is buttressed by the belief that polluters are often prepared to engage in bluffs of their own, in keeping with the prevailing view of dischargers, however

bed”. In contrast, eight bailiffs held that it was sometimes very difficult to assess the truthfulness of information given on the doorstep.⁵¹ Perhaps these responses were the more realistic and honest, as there was no indication that bailiffs lacked any powers of insight possessed by CEOs.

Bailiff 3: It depends what tools you have to work with. With this warrant here I had the registration of the car, and the car was sitting on the drive. It is then very difficult for them to continue to deny that the defaulter lives at the address. It also depends on how willing you are to ask questions. I have challenged people and told them what I’m going to do.

Bailiff 5: I’ve had them tell me that they’re someone else when the car is sitting on the drive and I’ve met them before. At the end of the day you have to take what they tell you unless you can prove otherwise.

Bailiff 9: You have to follow your own judgement. They are very plausible. It could be my inexperience in being too trusting. There are no real guidelines which I guess is why people work differently. If you think they’re telling a lie you just go back and put more pressure on. Half honest people get more worried by a notice of removal than a notice of attendance.

As for evasiveness, a number of Manchester CEOs said that certain defaulters refuse to answer their doors in an attempt to avoid contact.⁵² The issue thus raised is the sufficiency of the CEOs’ current powers, and one commentator has claimed that these are “inadequate”, believing that CEOs’ “arrest powers should include the right to force entry to premises in the reasonable belief that the defaulter is inside evading arrest”.⁵³ Seven CEOs agreed that their powers were insufficient, but there was no real consensus as to the necessary changes.⁵⁴

compliant, as willing to pull a fast one” (Hawkins, K., *Environment and Enforcement: Regulation and the Social Definition of Pollution*, *op.cit.* p.154).

⁵¹ Rock states that bailiffs require both “judgement” and “keen insights into human behavior” (P. Rock, *Making People Pay*, *op.cit.* p.207).

⁵² Five CEOs referred to the further difficulty of gaining access to certain blocks of flats.

⁵³ Evans, P., “Transfer of Warrants”, *op.cit.* p.227.

⁵⁴ The LCD has recently proposed that forced entry should only be possible with prior judicial authority, at least until a strong regulatory system is in place (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p27).

CEO 3: They're not really [sufficient], but what do you want? Do you want to go and knock someone's door down? It causes more aggravation.

CEO 4: If they're not going to pay then pressure has to be borne upon them, but we're not really geared up to exert that pressure. To be able to do the job properly, you have to be able to back up the threats. The court should have a couple of vans so that we're able to lock them up. Once they knew that the vans were operational, more people would come to see you.

CEO 8: We could do with a lot more power as regards entry, if they wanted it done as it should be done ... You shouldn't be able to kick doors in, but if you're not satisfied with what they've told you, you should be able to do something.

CEO 9: Our powers are, at the moment, very limited. I do think it's time for new powers to be made available; to give us a new toolbag. It would give us independence.

Gaining entry is a crucial step for bailiffs, enabling them to levy upon household goods when necessary. In the sample of Birmingham distress warrants, the bailiff gained entry in 28 per cent (n=50) of those cases in which contact was made and the defaulter's residence confirmed. It should be emphasised, however, that entry was not always attempted, with the bailiffs preferring to give defaulters a further opportunity to pay. There is disagreement in the limited literature as to whether gaining entry is problematical for bailiffs.⁵⁵ Interestingly, only two of the ten interviewed bailiffs mentioned it as a difficulty.⁵⁶

Bailiff 3: Some of the areas are fairly run down and once you've announced yourself as a bailiff they're not going to let you in. You simply cannot levy distress.

Bailiff 4: Getting access, although I'm not saying that we should be able to go round kicking doors in. You have the Citizens Advice telling them to lock all their doors. That's fine for county court matters but not for criminal matters.

⁵⁵ In Rock's study, "over a third (37.4 per cent) of enforcements were complicated by difficulties at this point" (*ibid.* p.159), but Kruse states that "most bailiffs get in most of the time by some means or other" (J. Kruse, *Dealing with Distraint: Bailiffs Law for Advisers* (1994), National Money Advice Training Unit, p.13).

⁵⁶ Shaun Bletchley-Lewis said that those defaulters who know the ropes slam the door.

A number of bailiffs believed, however, that the conduct of the courts was, in several ways, far from helpful. First, there was a feeling that the courts were sending out the message to defaulters that non-compliance and non-payment was a real option.

Bailiff 4: Another thing that annoys me is that defaulters phone the courts saying that they can't afford to pay, and the court ends up telling them to wait for it to be returned to court when they can pay the original amount. People know that now. It just makes the job harder for us.⁵⁷

Bailiff 1: Another problem is individuals at the courts telling defaulters not to let the bailiffs in so that the warrant can be returned to the court for them to deal with.

In the observations of fines courts, there was no instance where advice of this kind was proffered, although a defaulter was informed that the bailiffs had no right of entry, to which he responded that he would refuse to open the door.⁵⁸

The bailiffs' second complaint was that the courts were too hasty in satisfying the wishes of defaulters by recalling warrants.

Bailiff 4: I was paid on a warrant and then found out that the guy had a further eleven fines. He said that he wouldn't pay any more so I levied. There was sufficient goods in the house, but he made an application to the court and they pulled me off it. He's a taxi driver who's well known and he's going to tell his mates. It's getting harder all the time.

Such a recall of warrants was observed on one occasion at the Manchester court.

Once again the defaulter was a taxi driver.

Court Case 226: *The defaulter had been fined, on five separate occasions, a total of £950 for road traffic offences. Only £75 had been paid. Some of the financial penalties were long standing, the first having been imposed more than 300 days previously, and, when interviewed, it emerged that the defaulter had been in contact with both the bailiffs and a CEO.*

Def: I'm a cab driver and my taxi was smashed up in February. Since then I've only been driving one or two nights per week, and I've got other outstanding fines which I have been paying bits and pieces off.

Records checked.

⁵⁷ During one observed call, the defaulter's mother told the bailiff to return the warrants to court, claiming to "know" that this could be done. The bailiff responded that it was not so simple, causing the respondent to swear repeatedly and to throw the notices into the road.

⁵⁸ This case was at the fines clinic.

Clerk: You have three other accounts, which are all with the bailiffs.
 Def: So who do I pay, the bailiffs or the court?
 Clerk: They have to be paid in full to the bailiffs.
 Def: I can't afford to pay in full. It's my wife's house anyway ... I did speak to a Mr M from the bailiff firm and he said I could arrange a payment plan with them.
 Clerk: A member of our staff will phone the bailiffs direct so if you'd like to wait a little while.
Warrants recalled.
 Clerk: There remains over £800. How are you going to pay that?
 Def: I can pay £20 per week.
 Mag: Are you sure that you can reasonably keep that up?
 Def: Yes, but can you make it clear to me, who am I paying that to, Equity [the bailiff firm] or the magistrates' court?
 Clerk: The court.
 Def: So what do I say if Equity keep coming to my door?
 Clerk: They won't because all the paperwork has been returned to court.

A third element to the bailiffs' criticism of the courts was the latter's insistence upon a soft approach.

Bailiff 6: Because we're encouraged to go softly, softly on people, so that there aren't any complaints, we're simply less likely to be paid. Bailiffs work in a constant fear of a complaint being made. The courts used to back bailiffs to the hilt but it's not like that anymore. If you remove people's stuff then you get really serious complaints. People make up some horrendous things and we get grilled ... I do believe that in the near future vanishing will cease completely, while it used to be the norm. It's a shame in a way because it was effective, but the chiefs frown upon it. Now we're just playing around. They're removed the bully boy tactics but they still want to use bailiffs.

Bailiff 8: We don't remove goods. The Birmingham court doesn't like it. It's all cock-eyed. They want us to do the job with one hand tied behind our back.⁵⁹

It was in this context that more than half (55%) of all bailiff and CEO calls concluded with correspondence being left at the property, as demonstrated by chart M. The aim of the letters, as indicated by the tone of their wording, was to spur defaulters into paying or at least making contact. Unfortunately, however, the stage in the enforcement process was such that notices had already been sent, and, in many cases,

⁵⁹ It is noted below, at p.137, that goods were never actually seized. Shaun Bletchley-Lewis held that the court wants "maximum recovery with the minimum hassle".

ignored.⁶⁰ Even less promisingly, a third (34%) of calls ended with the bailiff or CEO taking no action whatsoever. The CEO was more likely to resort to this approach,⁶¹ with the bailiff preferring to leave a letter, but in many cases it was left more in hope than expectation.⁶² Interestingly, there was a significant, although fairly weak, association between the adoption of these two methods and the amount outstanding.⁶³ In other words, there is some evidence to support an argument that the bailiffs and CEOs were less likely to give up on larger amounts.

Immediate progress with the warrants was, therefore, very limited. In fact, full payment was received in only ten cases (3%), and a part payment received in just two cases. Seven of these payments, all full payments, were made to the Birmingham bailiffs and were fairly sizeable, ranging from £210 to £860, with a fairly substantial average of £420. In contrast, all five payments to the CEOs were of a value under £100. As for future payments, a verbal agreement for such payments resulted from six distress warrant calls, whilst a rate of payment was, or already had been, established in eight cases in the bail warrants sample, at an average rate of £18 per week.

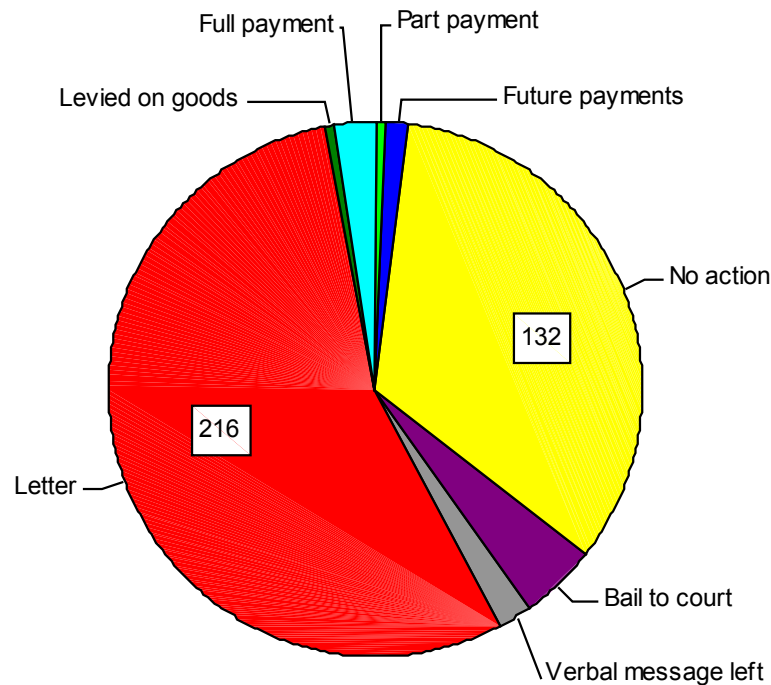
⁶⁰ At Manchester, an arrears notice had been sent, whilst at Birmingham a fines notice, a reminder, and the first letter from the bailiff firm had all been sent (see charts A and D above).

⁶¹ Corresponding figures for the samples of distress and bail warrants of 21 and 48 per cent respectively.

⁶² Corresponding figures for the samples of distress and bail warrants of 72 and 35 per cent (although in a further four per cent of cases the CEO left a verbal message). The bailiff would still leave correspondence in those cases in which the defaulter's residence was denied if it was thought that there was a chance that the defaulter would receive it.

⁶³ An *eta* value of 0.124. The average amount outstanding when correspondence was left was £321 (n=216), compared to £250 (n=132) when no action was taken.

Chart M: Outcome of Attendance at Property (All Warrants)



N=394

Four of the seven payments to the bailiffs in the Birmingham distress warrants sample were made to PRS bailiffs operating the van. Only five such calls were observed,⁶⁴ indicating that warrants progressing to this stage were much more likely to produce immediate payment.⁶⁵ These calls differed from the others in that a bailiff had already levied upon goods, and the bailiffs were now arriving equipped to remove

⁶⁴ No action was taken in the fifth case, as the defaulter's sister insisted that the defaulter did not reside at the property. After leaving the property, one of the bailiffs said that it was "a bit fifty-fifty".

⁶⁵ The warrants have been analysed together, irrespective of whether a bailiff had already attended the property, made contact with the defaulter or levied upon goods. Running a crosstabulation of outcome of call by whether or not a previous call had been made revealed no great difference between the observed and expected statistics, except for the number of full payments (expected count of three compared to actual count of seven) which can be explained by the van calls. Analysing the warrants together is therefore justified.

property. The defaulters were, in other words, being given their final opportunity to pay, prior to seizure, and, as is shown below, the bailiffs adopted a firm approach.⁶⁶

The remaining two outcomes related to the type of warrant. In the Manchester bail warrants sample, one in ten (10%) defaulters were bailed to court, but in the Birmingham distress warrants sample a levy was executed in just the two cases,⁶⁷ with no goods ever being seized.⁶⁸ The average time period allowed for payment by the bailiffs, whether through a verbal agreement or a levy, was 20 days, supporting Kruse's statement that "most private bailiffs employed by...magistrates' courts...will not offer very long timescales for repayment."⁶⁹

The rarity of a levy in the distress warrants sample is largely explained by the fact that the presence of sufficient household goods to meet the sum outstanding was confirmed in only eleven cases and a vehicle identified in just eight cases, representing 13 per cent (n=149) of those cases in which the defaulter's residence was not denied. As for the lack of seizures, a levy had been previously executed in just seven cases,⁷⁰ severely limiting the potential scope for such an outcome.⁷¹ During their interviews, four bailiffs identified insufficient goods, and poverty more generally, as one of the difficulties they encountered.⁷²

Bailiff 5: A lot of people just haven't got the money. Sometimes you go in and they've got absolutely nothing.

⁶⁶ See pp.141-144 below.

⁶⁷ Shaun Bletchley-Lewis claimed that bailiffs levy in about three or four per cent of cases.

⁶⁸ Although in one of the van calls, goods were removed from the property before being returned when payment was then made. See Warrant 108(D) below, at p.142.

⁶⁹ J. Kruse, *Dealing with Distraint: Bailiffs' Law for Advisers*, *op.cit.* p.33. The NCC has argued that "the bailiff should...be required, in the first instance, to secure sensible repayment schedules" (NCC, *Private Bailiffs: their Role in Debt Collection*, *op.cit.* p.18). See pp.116-118 above for the mixed views regarding part payments and the examples of limited negotiation.

⁷⁰ Five of which were PRS van calls.

⁷¹ Furthermore, as is noted at p.134 above, the courts preferred a soft approach.

⁷² Supporting Bathurst's comment that "the majority of defendants possess few assets" (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op. cit.* p.12).

Bailiff 6: Even if they do own goods, seizing them could devastate the family. What do you do?

The latter remark corresponds to Rock's statement that "a debtor may own enough to merit execution, but the sanction would constitute an 'unjust' hardship to him. It might involve removing all he owns; or selling vital objects which are unlikely to fetch much at a sale".⁷³ On the other hand, one bailiff was keen to emphasise that a lack of goods does not necessarily equate to an unsuccessful outcome:⁷⁴

Bailiff 10: From personal experience you don't often see a car worth removing. With 90 per cent of the warrants we have in Birmingham the defaulters don't have sufficient goods, but that doesn't mean they won't pay.

It is perhaps not surprising, given the number of problems outlined above, that eight bailiffs thought that the Birmingham court was insufficiently selective when issuing distress warrants. In its 1998 inspection report, the MCSI highlighted this lack of selectivity as a cause for concern, but the West Midlands MCC defended its policy, drawing attention to judicial support for the automated "fast-track" approach for issuing distress warrants.⁷⁵ Seemingly, however, the majority of the bailiffs shared the concern of the MCSI, and, bearing in mind that they are expected to make up to three calls at a property, the lack of selectivity was clearly the source of some annoyance.⁷⁶ Particularly irksome were those warrants issued either for addresses previously found to be wrong or for defaulters who had previously failed to pay or who had numerous other outstanding accounts.

⁷³ P. Rock, *Making People Pay*, *op.cit.* p.161.

⁷⁴ During one of the van calls, which concluded with a substantial payment, the bailiff admitted that the goods were totally insufficient (see Warrant 108(D) below, at p.142).

⁷⁵ See Chapter Four above, at pp.73-74.

⁷⁶ Casale and Hillsman recognise that "if a court is merely sloughing off all initial problem cases...one would expect fairly high rates of warrants returned without payment" (S.S.G. Casale and S.T. Hillsman, *The Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practice*, *op.cit.* p.36). Shaun Bletchley-Lewis acknowledged that better performance figures for Chippenham was due to greater filtering of the warrants.

Bailiff 3: We're consistently returning warrants when they're not at the address, and continually receiving warrants for defaulters that we know simply don't live there. It's somebody who hasn't done their job properly. Or perhaps it's just easier to shovel it out to the bailiff. But why, when warrants have been returned for 1997, 1998 and so on, are we sent another one? It begs the question, what am I doing here? ... I end up thinking to myself, who reads the reports and what are they doing with them?

Bailiff 9: They're not selective at all. It's a machine that churns out warrants. It probably costs them more to keep churning these things out than the £20 fine which was imposed in the first place ... I've got a guy here who has six warrants, a couple for theft and a couple for failing to attend court. If he's not attended court, he's not going to be too keen to pay me. It's a waste of mine and everyone's time.

Bailiff 5: I've had persistent offenders who tell you to piss off when you knock on the door. You know full well that they're not going to pay because they haven't in the past. It also annoys me when they send you to bail hostels. I've only ever found one person there.

The enforcement process at Birmingham has since been modified,⁷⁷ but the issuing of distress warrants has simply been delayed, without any increased emphasis upon selectivity. Unfortunately, a major consequence of the delay in issuing distress warrants could prove to be that even more defaulters are found no longer residing at the given addresses. Having said that, no significant association was found between confirming residence and the time since imposition.

4. Bailiff and CEO interactions with defaulters

The difficulty of contacting defaulters is even more of a concern when one considers that 17 of the 21 bailiffs and CEOs held that contacting and then communicating with defaulters was essential to obtaining payments.

Bailiff 7: I'll explain the situation to them and generally they do let me in. It's a matter of putting the point across that they're in the wrong. It's all done by words, not by actions. It's not a matter of intimidating or even manipulating them.

⁷⁷ See Chapter Four above, at pp.73-74.

For those visits resulting in contact, the Manchester CEOs, executing bail warrants, stated that they had to be firm but fair. Of paramount importance to the officers was the maintenance of their reputation, largely due to their recognition of potentially having to deal with the same people or their friends again. It was thus thought preferable to portray a pleasant, reasonable and polite image, and to treat defaulters with respect.

CEO 1: At the end of the day I'm after their money so there's no point going in with an attitude apart from a good one. I like them to leave the surgery thinking 'he's a nice bloke' so that they'll tell another person to go down.

CEO 2: I've learnt one thing, I show respect. Some of them are out to beat the system, but you have to be careful how you speak to them. I try and be fair with them, because at the end of the day you'll see them again.

CEO 5: If you're reasonable and fair with them, they appreciate it and they know that they can trust you ... There's no need to be any other way. If they then come back into the system at any time, they know you'll be alright with them.

CEO 11: We try to treat them with a bit of respect. You can be forceful, but it doesn't tend to do a lot of good. People then avoid you ... You have to build up a bit of trust. Once you've broken your word, it'll go round the estate and they won't want to know you.

The limited literature suggests that in their dealings with defaulters, bailiffs tread a thin line between promoting anxiety and avoiding hostility. In terms of the former, Casale and Hillsman state that "bailiffs are prepared to make their presence felt and do not shrink from work that succeeds chiefly by threat". My own observations support their view, with the Birmingham bailiffs clearly willing to stand their ground.⁷⁸

Warrant 134 (D): *The defaulter had been fined for a road traffic offence, and the distress warrant had been issued for an outstanding amount of £210. One previous call had been made at the property but no contact had been made and, notably, more than 200 days had since passed. £171.32 bailiff fees had been added, resulting in an amount due of £391.32.*

Bailiff gains entry through open door.

Bff: Do you feel that you will be able to pay that today?

Def: Not straight away, no.

⁷⁸ One bailiff stated, "I'm firm and make sure that they're aware that it's a serious matter".

Bff: Well, the warrant is now so old that we're only in a position to seize the goods today or to levy on your goods today which will give you five days to get the money.

Def: Whom can I contact for further time?

Bff: There is no one now. It's gone beyond that stage.

Def: But in five days I will be in absolutely the same position...

Bailiff takes inventory of household goods, including the dining room table and various electrical items...

Def: What if I don't sign it?

Bff: It doesn't make any real difference, because I've legally gained entry and levied distress on your goods. I've put the makes of the goods down to prove that I've gained entry. It would simply make me think that you'll cause trouble next time.

Def: It's not that. I just don't like signing that I've agreed to anything...

Defaulter signs after further conversation. On leaving the bailiff informed the defaulter that if she needed a little more time they could possibly come to some arrangement.

Warrant 58 (D): *The defaulter had been fined £310 for a road traffic offence nearly 300 days previously. Nothing had been paid and £116.41 bailiff fees had now been added, resulting in a total amount due of £426.41. No previous calls had been made to the property.*

Entry gained.

Wife: He's in prison.

Bff: When did he go there?

Wife: About 3 or 4 months ago.

Bff: Have you got a prison number.

Wife: No.

Bff: The problem is that if you haven't got a prison number then the fine needs to be paid.

Wife: What's it for?

Bff: No insurance.

Wife: That's why he's in prison.

Bff: Well, unless you can demonstrate to me that he's in prison, I'll have to levy distress.

Wife: No, this is my address.

Bff: But you're still married to him and this is the matrimonial home.

Prison number produced.

Bff: Now that you've given me his prison number, I'll send the information to the court, but if they're not satisfied I will be back.

The bailiffs operating the van for PRS were particularly firm, believing the warrants to have progressed to a point requiring immediate resolution.⁷⁹ As a result, the verbal exchanges became fairly heated at times.

⁷⁹ An individual bailiff having already levied upon goods. The firm approach was undoubtedly encouraged by the fact that two bailiffs were working together.

Warrant 108 (D): *The defaulter had been fined £375 for a road traffic offence. Nothing had been paid, and £126.16 bailiff fees had been added, producing a total amount due of £501.16. Three previous calls had been made to the property, and on the third occasion the bailiff had levied on various household goods. The defaulter had paid on a previous warrant Entry gained.*

Def: I've been in Pakistan. My mother has been ill. I can pay if you give me some time.

Bff: I'm afraid it's too late for that now Sir. The time has expired. You have to pay today or we will have to remove furniture.

Def: I can pay tomorrow.

Bff: I'm afraid that's too late Sir. It has to be today.

Def: How much is it?

Bff: At the moment it is £530.54 but we are paid to wait here,⁸⁰ so you will have to let me know how long it will take for you to get the money ... Is there not somebody you can ring?

Def: OK.

Defaulter departs and returns.

Def: I cannot wake my friend. It will have to be tomorrow.

Bff: In that case we will have to take the furniture and store it overnight.

Def: All of it?

Bff: No, I'll go through it now with you.

Goods loaded onto van (2 sofas, table, TV, VCR, microwave). Wife then returns and asks bailiffs to wait.⁸¹ She returns again with cash.

Bff: It's now £583.41, allowing for the time needed to bring the goods back into the house.

Def: I have £500.

Bff: It's either all the money or all the furniture. We can't do both... Loading and unloading the van has cost you another £17.63. Once we go a minute over the hour we go into the next fifteen minutes.

£583.41 paid.

Warrant 110 (D): *The defaulter had been fined £355 for a road traffic offence nearly 200 days previously. Nothing had been paid, and £123.16 bailiff fees had now been added, resulting in a total amount due of £478.16. Three previous calls had been made, and on the third occasion contact was made with the spouse and the bailiff had levied upon various household goods.*

Entry gained following some negotiation.

Def: I spoke to my solicitor. It's going to be dealt with at the court.

Bff: The problem is that the court has issued a distress warrant.

Def: Well, the only way I can pay it is bit by bit. I can't afford to pay it all at once.

Bff: It's beyond that stage Sir. It has to be paid in full or we have a warrant authorising us to remove property.

⁸⁰ For the fees' structure, see pp.122-123 above.

⁸¹ The bailiff informed me that this was most unusual and that he hadn't removed for about two months. He also noted that the furniture taken was totally insufficient, stating that "it will only reach about £100 at auction. But it's worth a lot more to them than to us".

Def: It's not my property. It belongs to my wife. I haven't got anything ... I had another fine which was returned to court and reduced. That needs to happen with this fine. It's all being taken care of by my solicitor.

Bff: Sir, if you can't pay the fine then I will have to remove goods.

Def: You can't.

Bff: Sir, we levied on your goods. If you disputed ownership you needed to contact us ... Let me explain the cost situation to you ...

Def: What are you telling me this for. I haven't got the money ...

Bff: It's 10.45 now. We'll give the solicitor ten minutes to phone back, then we'll make a start.

Def: Before you make a start, let me make a couple of phone calls to see if I can raise the money.

Bff: I would advise you to do that now Sir ... I could have been carrying the furniture out by now Sir, but if I can help you by waiting an hour then I am willing to do that ...

Def: The last two years, all I've been paying is debts, debts, debts. £595.66 eventually paid. The money was provided by the father-in-law, who at one point lost his temper, causing the bailiff to threaten to take goods immediately, including a computer not on the inventory.

Warrant 111 (D): *The defaulter was fined more than 100 days previously for a road traffic offence.*⁸²

Dad: He doesn't live here anymore. He's in London somewhere. He left about five or six years ago.

Bff: The problem I've got is the property. Your son is registered here and his car is registered here. We need to see receipts to prove ownership. We sent you a letter asking you to prove ownership and you haven't responded.

Dad: It's his problem, not mine.

Bff: We don't run round the country looking for your son. It's his responsibility to contact us.

Dad: I need to speak to my solicitor. Will you please step back.

Bff: No, I'm exercising my right to enter this property. I won't come in but you must leave the door open.
Calls made.

Dad: Would you like to speak to my solicitor?

Bff: By all means.
Various solicitors informed the defaulter's father that there was nothing they could do.

Dad: OK, I'll give you a cheque.

Bff: I'm afraid it has to be cash.

Dad: I'll have to go to the bank.

Bff: The problem with that is that you'll have to leave the front door open or we'll have to remove goods.
Calls down his son (possibly the defaulter!) who goes to the bank. £212.81 paid.

⁸² For further details, see p.123 above.

Warrant 112 (D): *The defaulter was fined £585 more than 100 days previously for a road traffic offence. Nothing had been paid, and £157.66 bailiff fees had now been added, resulting in a total amount due of £742.66. A previous call had been made two weeks earlier, during which the bailiff had levied on various farm vehicles and pieces of equipment.*

Bailiff contacted the defaulter on his mobile. The defaulter claimed that Royal Mail had admitted liability for failing to deliver the money to court on time.

Bff: The problem is that this warrant still has to be resolved now. It has to be paid and then you can claim any money back from the court.

Wife arrives.

Wife: He's loading the van. He won't be back by half three. You'll have to levy and come back tomorrow morning.

Bff: We can't Mrs B. It has to be dealt with today.

Wife: That's a load of crap. Any other bailiff would come back tomorrow. It's happened before.

Bff: Tell me who would come back tomorrow.

Wife: *Firm X.*

Bff: That's for council tax, which is a liability order. This is completely different. It's a warrant for a criminal offence.

Wife: What a load of crap. You three want your heads banging together.

Defaulter arrives. Wife gives him £860.16, telling him that it's the last time.

The danger of defaulters becoming volatile when confronted by bailiffs has been recognised previously,⁸³ and a couple of threats were issued during the observed interactions.⁸⁴

Warrant 86 (D): *The defaulter had been fined £250 for an offence against the person more than 300 days previously. £95 had been paid, but £99.91 bailiff fees had now been added, producing a total amount due of £254.91. No previous calls had been made to the property.*

Def: We lost the baby you see and didn't pay for a couple of weeks. We then tried to pay but they said it was too late.

Bff: It needs paying in full now.

Def: How much is it?

Bff: £254.91.

Def: That's daft. We can only pay £2 or £3 per week.

Bff: Well, I recommend that you seek legal advice.

Def: All I can say is that the bailiffs are not getting in here. I'll set the dog on them.

Notice left.

⁸³ Rock notes that "there are a great many encounters which *threaten* violence" (P. Rock, *Making People Pay*, *op.cit.* p.170).

⁸⁴ Threats were also made over the phone.

Warrant 58 (D):⁸⁵

Wife: Don't come again for this matter. I hear the judge. I'll give you a punch.

Bff: You don't want to fight me. I'm a lover, not a fighter.

The above response was indicative of the bailiffs' desire to avoid hostility. Rock has argued that as the "system does not have the resources to control large numbers of hostile debtors", bailiffs "parry potentially dangerous responses by adopting a cool, authoritative and paternalistic manner".⁸⁶ In a like vein, and similar to the Manchester CEOs,⁸⁷ the Birmingham bailiffs claimed that they attempted to portray a calm, friendly and professional image to defaulters, whom they treated with respect.

Bailiff 3: Only a professional one. To me, that's the only way it's going to work. There's no point coming across as a stereotypical bailiff as you'll get laughed out of the room. Also, if you can see that someone is pretty wound up or volatile then there's no point in pushing them. Even if you talk down to them, you're on a hiding to nothing.

Bailiff 5: I try not to invade them or take liberties. You have to stay clam and not get drawn into a slanging match. If they come forward at you, just take a step back. You might be trying to get their money, but you can still have a laugh with a lot of them.⁸⁸

Bailiff 7: You treat people as they treat you ... You certainly don't need to be a bully to do the job, although some certainly have that impression. I try to make them feel as though it's their fault.⁸⁹ I just try to discuss it with them in a nice manner

Bailiff 9: I just tell them as it is. I do try to give them the human touch ... The image they have is that we're all assholes, and some will be very aggressive and talk down to you. My idea is to try to get a little bit of respect out of them, rather than having them against you straight away.

The bailiffs' approach was successful in that matters never progressed beyond the limited verbal threats outlined above.⁹⁰ In an attempt to gauge how far their "friendly"

⁸⁵ For background facts and preceding conversation, see p.141 above.

⁸⁶ P. Rock, *Making People Pay*, *op.cit.* pp.295&172.

⁸⁷ See p.140 above.

⁸⁸ Rock notes that "a joking relationship... removes much of the tension latent in such a situation" (*ibid.* p.167).

⁸⁹ Rock refers to bailiffs promoting feelings of guilt, as well as anxiety (*ibid.* p.295).

⁹⁰ Rock found that assaults upon bailiffs "are not very common" (*ibid.* p170).

approach extended, both the bailiffs and CEOs were asked whether they thought it part of their role to advise defaulters. All eleven Manchester CEOs answered in the affirmative.

CEO 9: We're here to assist them. I think it's very important. It gives a positive image of the courts.

One officer responded that giving advice was far from uncommon, stating that "half of the time we act as social workers". There were observed instances of individual CEOs assuming the role of a counsellor.

Warrant 360 (B): *The defaulter had been fined £70 for metrolink fare evasion more than 100 days previously. Nothing had been paid, and at the previous call to the property no contact had been made.*

CEO: Are you rich?

Def: No, and this has got nothing to do with me. I've never used the metrolink in my life. I've had some kids staying here with me and they've used my name.

CEO: I'll bail you to go to court for the 19th of September. Go to the enforcement office before then and tell them that you're not the person concerned. Tell them that you want the person who took your name to confirm that it wasn't you. It's up to them to make a decision.

Def: I'll tell them that I'm prepared to stand in front of whoever they want.

Warrant 361 (B): *The defaulter had been fined £100 for metrolink fare evasion more than two months previously, of which £5 had been paid. No previous visits had been made to the property.*

Def: I made an agreement with the court to pay £5 per week. I've only missed one payment.

CEO: I'll have to give you a date to appear at the magistrates' court.

Def: Why do I have to go?

CEO: Because no-one's stipulated that you can pay £5 per week ... If you pay as much as you can before the court date and go to the enforcement office, they might let you carry on paying at £5 per week.

Def: If I go to court won't they charge me more?

CEO: No, they've given you the penalty already.

Warrant 367 (B): *The defaulter had been fined £250 for a road traffic offence 150 days previously. Nothing had been paid, and the CEO had attended the property on five previous occasions. On one such occasion, the CEO met the defaulter's mother who claimed that the defaulter was no longer residing at the address and that she had not seen him in a while.*

Mum: He's got himself into a bit more trouble. He'll be in court on Monday.

CEO: OK, I'll contact the court to let them know ... Has he got a solicitor?

Mum: Yes.

CEO: Well, make sure that he tells the solicitor that he's got outstanding fines.

Nine of the ten Birmingham bailiffs also believed it part of their remit to advise defaulters, but the extent of the advice they were willing to provide was typically more limited.⁹¹ For instance, four PRS bailiffs said that they would only instruct defaulters to seek legal advice. Such a stance was also evident during my observations

Bailiff 3: I am more than prepared to offer advice when I can offer it, and to assist the defaulter in any way that I can. But the only thing worth querying is the fine itself, and at the end of the day there is only so much advice you can give them. They've reached the end of the road really. If you've levied distress and they still claim that they can't pay, then all you can do is tell them to speak to a solicitor or to go to the citizens advice bureau for free advice.

5. Opinions concerning warrant execution

Two bailiffs in my sample were keen to emphasise the importance of their role: one saying that the execution of distress warrants by bailiffs was probably the most effective form of enforcement, in terms of getting defaulters to pay, and the other noting that they had additional uses, such as checking addresses. A number of Manchester CEOs were similarly eager to highlight their worth.

CEO 1: I see the enforcement officer's role as being the last hurdle in the justice process. If they don't pay us the system hasn't served justice, and it then becomes a laughing stock.

CEO 4: We're at the other end to the police, trying to collect the fine. If we were a company and the fine was not collected then we'd go bust ... If someone didn't do it what would all else before it be in aid of? If someone wasn't doing what I was doing then the whole thing would be a waste of time.

CEO 9: Unless we knock on the door the court is not in control of the situation. We've got to make sure, no matter how long it takes, that they actually pay, and to do that you've got to become part of their lives.

In keeping with the positive picture, the magistrates' opinions regarding CEOs and bail warrants were most commonly favourable.⁹² Four benches believed the officers were

⁹¹ Although Richard Keitch, the General Manager of TNC, stated that bailiffs could go overboard in trying to help as they were keen to dispel their poor image.

⁹² Although many of the magistrates' benches at the Birmingham court, which does not employ its own CEOs, admitted to knowing very little about them.

effective,⁹³ whilst three benches were attracted by the accountability and control retained by the court.⁹⁴

Bench 17: I think they're a very useful tool. They're really the first port of call for the individual. It's their wake up time. They need that extra knock.

Bench 13: If we're going to have bailiffs or the like then I'd much rather them to be employed by the court. If they're implementing the court's order then they should be accountable to the court.

The use of distress warrants and bailiffs was likewise viewed favourably by twelve magistrates' benches.

Bench 3: It's an effective tool and helps to concentrate the mind

Bench 4: They are essential to the process. If they won't pay voluntarily, then money has got to be paid one way or another. I believe it's not a pleasant experience, but it's a self-initiated wound.

Bench 10: I think we have to use bailiffs. There are people who have got the assets, and I'm sure that the bailiffs then get the money or goods to the value.

Bench 14: I think they're necessary. We know there are people who will not pay, and at the end of the day you have to have some way of enforcing it

Bench 17: I think it jolts them a little bit. Some leave it and hope that it will go away, but it demonstrates that the court is going to take positive action... It's just another system that the court has to get defaulters to pay their fines. Once a bailiff knocks on the door it really brings it home.

Bench 22: It doesn't waste any court time and brings it to a head much quicker.

It was also evident from the courtroom observations that magistrates and clerks were more than willing to highlight to defaulters, in an attempt to encourage payment, the possibility of a distress warrant being issued.

⁹³ Bathurst states that "the issue of a warrant, whether with or without bail, to forcibly bring a defendant before a means inquiry court, will, at last, bring officials in face to face contact with the defendant, and impress on him, more so than any preceding action, the seriousness of his situation" (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op. cit.* p.94).

⁹⁴ Contrasting to the perceived consequence of contracting with bailiff firms. The MCSI has previously noted that "the fact that the courts could control the performance and priorities of CEOs was seen by many as a significant advantage" (MCSI, *Magistrates' Courts and Fine Enforcement*, *op.cit.* p.10).

Court Case 193: *The defaulter had been fined, on two separate occasions, a total of £357.09 for road traffic offences. A rate of £8 per week had been set, but the full amount remained outstanding.*

Def: I thought I'd be able to pay it, but I've had quite a lot of debts. I'm living with my Mum right now. She didn't pay her telephone bill and got cut off. I'm having to pay that off.

Clerk: Who's car was it?

Def: Mine.

Clerk: What sort of car?

Def: It was a Lancia.

Clerk: What registration?

Def: A G reg.

Clerk: What's happened to that?

Def: It's sitting on the drive. I can't drive it.

Clerk: Why can't you drive it?

Def: I can't afford it.

Clerk: What efforts have you made to sell it?

Def: None at the moment.

Clerk: You do realise that if you don't pay these fines the magistrates have the power to send the bailiffs round to seize your goods.

Def: If you give me another chance I'll start paying.

Clerk: Have you brought any money with you today?

Def: No.

Clerk: What offer do you make?

Def: £3 per fortnight off each.

Clerk: £6 per fortnight in total?

Def: Yes.

Clerk: The magistrates have the power to order a deduction directly from your benefit.

Def: That would be alright.

Deduction from benefit ordered (£2.65 per week).

On the other hand, 14 magistrates' benches expressed reservations about bailiffs and distress warrants, and four benches stated their disapproval.⁹⁵ Reservations about bailiffs and distress warrants were even more common amongst the Manchester CEOs.⁹⁶ Similarly, whilst magistrates' opinions regarding CEOs and bail warrants were not

⁹⁵ Six benches were neither positive nor negative, often due to an admitted lack of knowledge regarding distress warrants and the use of bailiffs. These admissions support the "observations" of Casale and Hillsman that "courts tend to know relatively little about the details of private bailiffs' operations" (S.S.G. Casale and S.T. Hillsman, *The Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practice*, *op.cit.* p.37). One interviewed bailiff even stated that he didn't think that "the magistrates and clerks know what we really do".

⁹⁶ Negative responses outnumbering positive responses three to one, with seven CEOs expressing reservations.

uniformly positive, it was the bailiffs who were most disparaging. Being out in the field themselves, bailiffs and CEOs undoubtedly had greater knowledge than magistrates regarding each other's roles, suggesting that their opinions are the more accurate. However, their responses are likely to have been tainted by the fact that saw themselves as competing for the work of the court.

Bailiff 1: I don't want the courts to do it [employ CEOs]. I enjoy my job and don't want to make myself redundant. It would affect me immediately so I'm completely against it.

The prevalent criticism regarding both types of warrant was ineffectiveness. In relation to the distress warrant, it was thought that many defaulters lacked goods which the bailiffs could threaten to seize.⁹⁷ Interestingly, during the defaulter interviews conducted at the courts, several respondents emphasised that they had very few goods.

Bench 11: 60 per cent [of distress warrants] get returned. If the defaulters have got any sense then they'll claim that the property belongs to the wife, and if it's all on hire purchase then the bailiffs can't snatch it anyway.

CEO 3: A lot of the defaulters have got nothing to take. For instance, if I called at your parent's house, all the property would belong to your Mum and Dad.

Def. 235: The main valuable things, apart from the furniture, are on rent. They [the bailiffs] can't take them. It's daft really.

Bailiff 10: Personally I wouldn't have thought they [CEOs] were very effective. Over in Dudley you get debtors saying that it's normally Brian who calls. They know that if they don't pay the fine nothing much is going to happen and they'll be given another chance to go up before the court ... The main problem with enforcement officers is that they don't actually resolve the case. It would be interesting to see how many more debtors turned up at court simply because an enforcement officer had been round.

Bailiff 6: They [CEOs] are a complete waste of time and a drain on resources. I know people who laugh at them and take the mickey out of them. If that's the way the court is going to go then they might as well not fine anybody... What you tend to find is that they make the job impossible for the bailiffs. They won't do that much work and they'll just be nice to people. They won't try to get any

⁹⁷ It was noted above, at p.137, that four bailiffs identified insufficient goods as a problem they encountered.

money out of them. The result is that the defaulters want to deal with the enforcement officers. Everybody wants to be bailed as it means nothing to them.

Eight CEOs and magistrates' benches expressed concern about bailiffs' fees.⁹⁸ In one observed case, however, the CEO used the imposition of such fees to his advantage, highlighting them to the defaulter in an attempt to encourage a speedy resolution.⁹⁹

Warrant 389 (B): *The defaulter had been fined £310.84 nearly 100 days previously for a road traffic offence. The full amount remained outstanding.*

CEO: What can you do about it?

Def: Not a lot at the moment.

CEO: All I can do is give you a court date. Whatever you do, make sure you go. If you don't go, the bailiffs will be round. They put their fees on top. We're waged by the court; they're not. They'll charge for the first letter and for coming round to see you...

Def: I'd rather pay it than mess about.

CEO: I can give you six weeks to pay it.

Def: OK then.

The Birmingham bailiffs, in contrast, criticised the cost involved in employing CEOs to execute bail warrants.¹⁰⁰ One bailiff, for instance, was firmly of the opinion that it should be the defaulter and no one else who pays for their default.

Bailiff 7: I work hard and pay a lot of tax. I would resent it if it was going towards collecting a £30 fine. The debtor should have to pay as he's the one who hasn't paid his fine.

The Manchester court monitors the CEOs' performance against cost, with recent figures outlined in table 9. Now that the court is conducting comparative monitoring of CEOs and bailiffs,¹⁰¹ and bearing in mind the drive towards managerial efficiency,¹⁰² the CEOs are under pressure to improve these figures. Some strain was clearly being felt,

⁹⁸ See p.124 above. One magistrate held that "there should be a limitation upon the costs and how often they can call".

⁹⁹ Similar to the way in which the courts occasionally highlighted the potential for a distress warrant being issued (see pp.148-149 above).

¹⁰⁰ Appleby held fifteen years ago, in a study conducted at the Birmingham court, that "the main objection to the greater use of enforcement officers is one of cost" (Appleby, L.M., *An Examination of Fine Default and Enforcement at Birmingham Magistrates' Court* (1986), *Unpublished Thesis*, p.47).

¹⁰¹ See Chapter Four above, at p.75.

¹⁰² See Chapter One above, at pp.18-22, and Chapter Four, at pp.67-68.

with three Manchester CEOs suggesting that all warrants could eventually go to the bailiffs, with the lack of cost proving the decisive factor.¹⁰³ As NACAB has recognised, “magistrates’ courts have nothing to lose from instructing bailiffs”.¹⁰⁴

CEO 11: I think eventually this court will go all bailiff. It doesn’t cost the court anything and that’s the bottom line. Even if our figures are three times better than theirs, the court has to deduct what they pay us. That’s how the managers think now. If they’re running a business, that’s how it works.

Table 9: Manchester CEO Costs and Performance for 1999 and 2000

	Warrants concluded	Amount Collected	Total Cost	Cost / Warrant	Cost / £ collected
1999	34,317	£382,671.00	£167,387.00	£4.88	£0.44
2000	23,899 ¹⁰⁵	£320,315.00 ¹⁰⁶	£174,614.00	£7.31	£0.55

These views were expressed despite the further criticisms levelled at bailiffs. Six CEOs and magistrate benches believed there was a real danger of bailiffs adopting “bully-boy” tactics,¹⁰⁷ which contrasts strikingly to the bailiffs’ perceptions of themselves.¹⁰⁸

¹⁰³ Similarly, one magistrate stated that “in the days when they [the courts] are trying to cut back as much as they can, I can’t see anybody being employed to do it [execute warrants]”. Raine and Wilson clearly believe that the lack of cost is of paramount importance to magistrates’ clerks: “Which magistrates’ clerk, having negotiated a satisfactory arrangement with firms of bailiffs for undertaking fine enforcement work, would wish to re-employ staff and to bear the associated overheads and responsibilities, particularly if budgets are to remain severely constrained?” (Raine, J.W. and Wilson, M.J., “Beyond Managerialism in Criminal Justice”, *op.cit.* p.88).

¹⁰⁴ National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients’ experience of bailiffs*, *op.cit.* p.31. For proposals regarding the issuing and execution of warrants, see Chapter Eight below, at pp.234-240.

¹⁰⁵ The modification of the enforcement process in November 1999 (see Chapter Four above, at p.75) reduced the number of warrants issued to CEOs.

¹⁰⁶ The amount collected includes part payments accepted by the court, hence the greater figure for the year 2000 than found in table 8 above.

¹⁰⁷ Casale and Hillsman have held that concerns of this nature underpin much of the negativity: “Most arguments against distress center on the poverty of the fined offenders. But behind this concern lies a more profound discomfort arising from the uncivilised connotations of ‘distress’”. They continue, however, that the “courts’ apparent distaste for the sordid image of seizing property must be weighed against the alternative” (S.S.G. Casale and S.T. Hillsman, *The Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practice*, *op.cit.* p.37). NACAB criticises the courts

Bench 21 (M): During my work in welfare rights, I've met a lot of people who've had problems with bailiffs. In my experience, they're not pleasant people, and if anything they aggravate the situation further.

CEO 9: I'll be honest with you. They're not a reputable organisation. All these people who come and see me can't all be wrong about the threats that have been made.

Five CEOs and magistrates' benches believed selectivity to be a problem, with certain distress warrants being pursued more vigorously than others. Five bailiffs admitted to categorizing defaulters, providing a potential foundation for such selectivity,¹⁰⁹ and a number of the sampled warrants were clearly deemed worthy of less attention, either because of an apparent lack of goods or the existence of previous failed warrants.¹¹⁰

CEO 5: Some [bailiffs] are alright, but some just do the easy pickings and don't follow the awkward ones up. That's the problem with bailiffs, since they target the easy pickings.

CEO 4: The enforcement process has to be credible, but if they're just going to go for soft targets is that being maintained?

Warrant 57 (D): *The defaulter had been fined, on two occasions, a total of £975. The first of these penalties had been imposed more than 450 days previously. Nothing had been paid, and £286.07 bailiff fees had now been added, resulting in a total amount due of £1261.07. No previous calls had been made to the property.*

Bff: First of all I've got to give you the opportunity to pay.

Def: How much is it?

Bff: £363.

Def: I can't afford to pay that. It'll have to be returned to court.

Bff: Well, I'll give you seven days. I recommend that you seek legal advice.

Def: OK.

The bailiff decided to take no further action, and after leaving the property he gave the following explanation.

Bff: I know that he hasn't got sufficient goods. I know you shouldn't judge a book by the cover, but you get to know with experience. The best thing is for him to go back to court to set up a payment plan.

themselves for failing to regulate the activities of bailiffs (National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients' experience of bailiffs*, *op.cit.* p.42).

¹⁰⁸ See p.145 above.

¹⁰⁹ See Chapter Five above, at pp.110-111. It was noted above, at pp.138-139 that the bailiffs were highly critical of the courts' lack of selectivity in issuing distress warrants

¹¹⁰ But there was no significant association between the number of previous calls and the amount outstanding, indicating that bailiffs were no more likely to call back when a large amount was outstanding.

Warrant 84 (D): *The defaulter had been fined £201.67 for a road traffic offence nearly 150 days previously. Nothing had been paid, and £100.16 bailiff fees had now been added, resulting in a total amount due of £301.83. No previous calls had been made to the property.*

Def: Another warrant is it? I'm just waiting for them to pick me up.
The bailiff left a letter with the defaulter, but afterwards he suggested that there was little he could do.

Bff: That's the type of bloke they [the court] ought to hammer.

Warrant 103 (D): *The defaulter had been fined, on three occasions, a total of £285. The first of these penalties had been imposed over 200 days previously. £28 had been paid, but £299.73 bailiff fees had now been added, resulting in a total amount due of £556.73. No previous calls had been made to the property.*

Mum: I haven't seen her for two weeks.

Bff: She doesn't live here?

Mum: No.

Bff: Have you got a forwarding address?

Mum: No.

The bailiff left a letter with the mother, but afterwards he said that he wasn't hopeful.

Bff: I always come to this house. They know the score.

Finally, two magistrates' benches expressed concern that issuing distress warrants prevented defaulters from making payments to the court until the warrants were returned. Similar concern was raised by the NACAB, which reported that some defaulters had sent cheques to the court, only for them to be returned because distress warrants had been issued.¹¹¹ Bearing in mind the earlier finding regarding retention periods,¹¹² payments to the court can be prevented for considerable amounts of time

Bench 3: It can be a bit frustrating when defaulters suddenly decide to pay, because the distress warrant actually prevents some people trying to pay. There is a difficulty with the communication between the courts and the bailiffs.

¹¹¹ National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients' experience of bailiffs*, *op.cit.* p.43. See Chapter One above, at f.n.29, for the caselaw regarding the status of the court following the issuing of a distress warrant. NACAB believes that the court should have the power to suspend a distress warrant, and the LCD has recently considered the matter, stating as follows: "It is suggested that this [lack of power] has led to difficulties, particularly where a debtor's circumstances have changed since the warrant was issued. At the same time, allowing magistrates' courts to withdraw warrants could have implications for the person charged with executing the warrants...as he or she may have already incurred costs attempting to execute the warrant" (Lord Chancellor's Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement* (2001), The Stationery Office, p.35).

¹¹² See pp.121-122 above.

There were in fact clear instances, during the courtroom observations, of outstanding distress warrants hindering the magistrates in their efforts to resolve matters satisfactorily.¹¹³

Court Case 99: *The defaulter had been fined, on three separate occasions, a total of £672 for public order offences. The first of these fines had been imposed more than two years previously. £130 had now been paid, although no payments had been made for over 200 days, leaving an amount outstanding of £542.*

Clerk: How much are you offering to pay?

Def: £5 per week, but I've got one that's gone to the bailiffs.

Clerk: I can't deal with that one I'm afraid...

£100 was remitted and the defaulter was ordered to continue paying at £5 per week.

Court Case 208:¹¹⁴

Def: I've got two other fines, which I'm paying at £3 per week, so it's difficult. I can't really afford to pay any more.

Mag: So what offer do you make on this fine?

Def: Can you put it together with the other fines?

Clerk: We can't do that today because one of the other fines is with the bailiffs.

Def: Right. £1 per week.

£300 was remitted, £25 paid to the court and a rate of £2pw imposed. At this rate, it will take the defaulter nearly 1000 days to pay off the remaining amount.

Whilst the views of defaulters were not obtained directly, the bailiffs and CEOs were asked whether they thought defaulters understood their respective warrants and the extent of their powers. There was a clear difference in opinion amongst the Manchester CEOs, with six answering in the affirmative, and the other five disagreeing. The latter group said that some defaulters mistook them for police officers. One of the interviewed defaulters had clearly made such a mistake, referring to "the police officer" who had attended his property. Such misconceptions were outlined as a cause for concern by the MCSI in its 1998 inspection report for the Manchester court.¹¹⁵

¹¹³ The following cases contrast to the case 226 above, on p.134, in which the Manchester court recalled the warrants.

¹¹⁴ See Chapter Five above, at p.82, for the case facts and further dialogue.

¹¹⁵ The report concluded that "steps should be taken to ensure that CEOs are properly identified as officers of the court" (HM Magistrates' Courts Service Inspectorate, *Inspection Report: City of Manchester Magistrates' Courts Committee Area: 20 April – 1 May 1998, op.cit.* p.39).

The views of the Birmingham bailiffs were less diverse, with nine of the ten saying that defaulters lacked knowledge, thus supporting the conclusion of the NCC that “the existing laws, rules and regulations governing bailiffs are not well known”.¹¹⁶ Furthermore, the bailiffs believed that many defaulters were misinformed and held various misconceptions.

Bailiff 3: I don’t think anybody has explained it to them, and there’s not many occasions when you can. The only time when they find out what a bailiff can do is when the bailiff is there. Even then the information is often contradicted by the solicitor or the citizens advice bureau.

Bailiff 6: Some of them are misinformed by people like the citizens advice bureau. You’ll also find that different firms of solicitors will tell people different things about what you can and can’t do.

Bailiff 10: Very few understand the powers. A lot of them have a misconception from TV and so on that we go round in big vans taking peoples’ stuff but in 99.9 per cent of cases we’re not going to remove goods.

The responses of the bailiffs, and, to a lesser extent, the CEOs, suggest a need to heighten awareness regarding their roles in the enforcement process. On a positive note, it is likely that a widespread use of distress warrants will enhance awareness, with greater numbers of defaulters coming into contact with bailiffs. Similarly, increased appreciation as to the role and status of the CEO could result from the official transfer of responsibility for warrant execution.

Whether the work of bailiffs and CEOs will be aided by such developments is, however, questionable. On the one hand, Rock has stated that “widespread public ignorance about his [the bailiff’s] role cannot but complicate executions”.¹¹⁷ But, in contrast, NACAB believes that the bailiff system “thrives on the ignorance of those who

¹¹⁶ NCC, *Bailiffs and Sheriffs: Response to the Lord Chancellor’s Review of the Organisation and Management of Civil Enforcement Agents*, *op.cit.* p.5.

¹¹⁷ P. Rock, *Making People Pay*, *op.cit.* p.169.

come up against it”.¹¹⁸ Similarly, Evans believes that, following any increase in awareness, CEOs could find their job that little bit harder: “During the first one or two years of the new arrangements, people will become increasingly aware that civilians are enforcing the warrants, not the police. This will inevitably bring a change of attitude towards the arresting officer and a greater awareness of their powers, which will curtail the effectiveness of the transfer”.¹¹⁹

Interestingly, four bailiffs thought that they were assisted by defaulters’ lack of understanding.¹²⁰ Furthermore, they expressed concern that they would be prevented from employing various bluffs if defaulters learnt the limitations of their powers, thereby diminishing defaulter co-operation.¹²¹ Similarly, a number of CEOs felt that defaulter misconceptions could work to their advantage.

Bailiff 3: We have limited powers as it is, and whilst we are the only ones that know that, the more effective we can be.

Bailiff 10: We always tell them that we’re going to remove goods because ultimately it could happen. If people knew what we actually did then very few would pay.

CEO 1: I don’t think the defaulters are quite sure who we are. A lot of them think that we’re in the police. I can see a value in them thinking that. If they actually knew what powers we had, the whole thing would be a joke. You do get one or two who are really sharp. They are the ones who come and knock on the window and laugh at you.

CEO 3: They’ve not got a clue. They think we’re policemen. We don’t tell them that, but we don’t disillusion them. We tell them that the police van will be round for them, but the police don’t want to know really.

¹¹⁸ National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients’ experience of bailiffs*, *op.cit.* p.10.

¹¹⁹ Evans, P., “Transfer of Warrants”, *op.cit.* p.228.

¹²⁰ Adhering to Home Office guidance (Home Office, *The Use of Bailiffs*, *op.cit.* p.8), the contracts between the court and bailiff firms provide that “the bailiff shall provide every defaulter visited with a leaflet produced by the Magistrates’ Courts Committee giving information about the purpose of the Bailiffs visit, the power that they have and charges that they may levy. In addition the leaflet states where to seek advice and how to complain about the bailiff”. None of the defaulters visited were provided with such a leaflet.

¹²¹ Rock quotes an individual bailiff as follows: “if the debtors knew their rights, I could never carry on my job” (P. Rock, *Making People Pay*, *op.cit.* p.206).

There were clear instances, during the observational study, of individual CEOs attempting to bluff respondents by exploiting any misconceptions.¹²²

Warrant 227 (B): *The defaulter had been fined £125 for using an unlicensed fishing instrument nearly 150 days previously. The full amount remained outstanding, and two previous calls had been made to the property.*

Daughter: He's not in.

CEO: But he lives here?

Daughter: Yes.

CEO: Will you tell him that if he doesn't come to see me tonight there'll be a police van coming round to take him away.

Daughter: OK.

Warrant 380 (B): *The defaulter had been fined £15 for drugs possession more than 400 days previously. The CEO had made three previous visits to the property.*

CEO: Have you seen him?

Sister: About four weeks ago.

CEO: Can you give him this. Tell him if he doesn't respond, he'll be arrested next time he signs on.

6. Summary

Very few payments had been made to either bailiffs or CEOs since the sampled warrants had been issued. One of the bailiff firms was willing to accept part payments, but bailiffs working for this firm proved less willing than the CEOs, all of whom were authorised to accept part payments, to negotiate anything less than full payment. In the vast majority of cases the bailiff or CEO was attending the property for the first time. Despite the rarity of numerous previous calls in the distress warrants sample, the time periods since the first attendances were longer than in the bail warrants sample, suggesting that the bailiffs had the more burdensome workloads. Worryingly, a number of distress warrants had been retained for a longer period than that agreed with the court.

¹²² It is submitted that both the bailiffs and CEOs viewed employing bluffs as a valid tactic in response to their perceived lack of powers. The scope for such bluffs has caused NACAB much concern: "the vulnerability of many debtors combined with the complexity of the legal framework, and the lack of adequate regulation, provide ample opportunity for unscrupulous bailiffs to misrepresent and exaggerate their powers" (National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients' experience of bailiffs*, *op.cit.* p.10).

Bailiffs or CEOs made contact in nearly half the calls observed, but the respondent was usually not the defaulter, and, furthermore, the defaulter's residence at the property was often denied. The bailiffs and CEOs were asked what problems they faced when executing warrants. The most frequent answer was wrong addresses, with several suggesting that addresses were sometimes wrong at the outset of proceedings. Matters were further complicated, they said, by lies and evasiveness. There was a lack of consensus, however, as to whether additional powers were required.

Relatively few defaulters were thus contacted, and more than half of all calls concluded with correspondence being left at the property. In another third of calls the bailiff or CEO took no action whatsoever. Immediate progress with the warrants was, therefore, very limited. When contact was made, the bailiffs were willing to stand their ground, although they were naturally keen to avoid hostility, believing it preferable to portray a calm, friendly and professional image. Similarly, the CEOs aimed to portray a pleasant, reasonable and polite image, as they were particularly keen to maintain their reputations.

All the CEOs agreed that it was part of their role to advise defaulters, and whilst nine of the bailiffs thought likewise, the advice they were willing to provide tended to be more limited. Indicative of the need for such advice was the response of the bailiffs and a number of CEOs that defaulters lacked knowledge about the extent of their powers and the warrants they executed. Seemingly, however, there would be some resistance to the promotion of greater awareness, with a number of bailiffs and CEOs admitting that they exploited defaulter misconceptions through various bluffs in an attempt to encourage co-operation.

The magistrates' opinions of both types of warrant tended to be positive, most commonly on the ground of effectiveness, although the views regarding distress warrants were more mixed, with the issuing of such warrants preventing payments to the court highlighted as one concern. The bailiffs meanwhile criticised the court in a number of ways, complaining that it was (i) insufficiently selective in its issuing of warrants, (ii) sending out the message that non-compliance was an option for defaulters, (iii) too hasty in recalling warrants, and (iv) too insistent upon a soft approach.

The bailiffs and CEOs were particularly critical of each other, and in contrast to the magistrates' views, their most frequent complaint was ineffectiveness. Moreover, the bailiffs denounced the cost of employing CEOs, whilst the CEOs condemned the bailiffs' use of "bully-boy" tactics, their selective pursuing of warrants, and the fees they imposed upon defaulters. Indeed, substantial fees were imposed in my sample, outweighing the amounts owed to the court in four out of ten cases, sometimes significantly.

Finally, despite their criticisms, several CEOs believed that the use of bailiffs could become more widespread, with the lack of cost to the courts proving the decisive factor. Bearing in mind the drive towards managerial efficiency, there is clearly potential for CEOs being placed under increasing pressure to improve their performance.

CHAPTER SEVEN

THE FINES COURT

There are now many methods of enforcing financial penalties, a number of which are only available following a post-conviction means inquiry.¹ This chapter sets out the findings relating to the fines courts, and fine clinic, at Birmingham and Manchester. These findings are the result of (i) observing 238 fines court cases, 111 at Birmingham and 127 at Manchester, and 21 fines clinic cases, all at Birmingham; (ii) interviewing 205 defaulters, 103 at Birmingham and 102 at Manchester, following their appearances in court; and (iii) interviewing 22 magistrates' benches, 13 at Birmingham and nine at Manchester, at the conclusion of the fines court sessions.² Opinions regarding the fines court were also obtained from the bailiffs at Birmingham and CEOs at Manchester.³ The aim is to present a comprehensive evaluation of the practices of the two fines courts, assessing whether the findings of previous research are still valid or whether recent developments have brought about change.

1. Granting further time to pay

In eight out of ten (79%) observed cases the defaulter was granted further time to pay by the fines court.⁴ Furthermore, as illustrated by table 10, accompanying methods of enforcement were employed in only one out of ten (10%; n=188) of these cases. There

¹ For a discussion, see Chapter One.

² Twenty of the fines clinic cases were followed by an interview with the defaulter. For the purposes of the analysis in this chapter, the fines clinic cases are treated separately from the cases at the fines court, as a much more limited range of options was available to the enforcement staff manning the clinic (see Chapter Four above, at p.73). For further details regarding the samples, see Chapter Five above, at f.n.1.

³ See Chapter Three above, at pp.54-60, for the methodology and complete samples.

⁴ As authorised by ss.75 and 85(A) of the MCA 1980 (see Chapter One above, at p.5 and f.n.23).

was thus very little variety in approach, which contrasts strikingly with the prediction of one commentator that “an inevitable consequence of the *Cawley* case is that a greater variety of non-custodial enforcement measures will be utilized by courts”.⁵ This lack of diversity was particularly pronounced at Manchester where 88 per cent (n=127) of defaulters were granted further time to pay, compared to only 68 per cent (n=111) at Birmingham.⁶ It was even more pronounced at the Birmingham fines clinic, where all but one of the 21 defaulters were granted time to pay, which is not particularly surprising given the limited options available to the staff manning the clinic.⁷

Table 10: Order of Fines Court (Total Fines Court Sample)

Order	Frequency	Percentage
Further Time to Pay	188	79.0
Alone	170	71.4
&MPSO	10	4.2
& Postponed Imprisonment	4	1.7
& One Day's Detention	4	1.7
Deduction From Benefit	27	11.3
Alone	25	10.5
& One Day's Detention	1	0.4
& ACO	1	0.4
One Day's Detention	9	3.8
AOE	8	3.4
ACO	2	0.8
Remit Remaining Amounts	2	0.8
Concurrent Imprisonment	1	0.4
Continue with CSO	1	0.4
Total	238	100

⁵ P. Cooney, “Attendance Centre Orders in Fine Enforcement – A Straightforward Alternative to Custody”, *op.cit.* p.509 (see Chapter One above, at pp.16-17).

⁶ As is shown below, at pp.172&178, direct deductions, whether from benefits or earnings, were more commonly imposed at Birmingham.

⁷ A deduction from benefits order had already been imposed in the remaining case.

Magistrates' benches were asked for their opinions regarding each enforcement method. Fourteen of the 22 benches expressed support for allowing defaulters further time to pay, as demonstrated by table 11. The basis for their support was either the need to be fair or the need to maintain an emphasis upon obtaining payment.

Bench 2 (B): I agree with this method, especially if there is a change of circumstances.⁸ It can be effective, or rather it's never come down the pipeline that it's not effective. It's another part of being fair.

Bench 10 (B): What I try to keep in mind is that if the fine has been set and a rate of payment has been set, then the whole purpose is to try and get the money off them. Allowing further time, if the circumstances are such that you think that you are going to get the money, is a useful tool.

Table 11: Magistrates' Bench Opinions of Individual Enforcement Methods

Enforcement Method	For (with reservations)	Against	Neutral
Searching offender	8(2)	9	5
Further time to pay	14(6)	4	4
AOE	19(13)	0	3
MPSO	17(3)	2	3
Imprisonment / Detention	18(3)	0	4
Remissions	20(5)	0	2
Deduction from Benefit	18(10)	3	1
ACO	11(0)	4	7
CSO	20(6)	2	0
CO	16(6)	4	2
Disqualification from Driving	14(6)	5	3

But six of the 14 positive bench responses were qualified. These benches expressed the opinion that granting further time was inappropriate for some defaulters.

⁸ A "change of circumstances" is the statutory requirement for an amount to be remitted (see pp.187-191 below).

Bench 3 (B): It depends on whether the circumstances have changed. It's useful in the sense that it helps someone who is struggling. If it's a case of culpable refusal or neglect, however, it's not going to work.

Bench 11 (B): If allowing more time is realistic then we do it. We look to see if it's happened before and the reasons why. If we think that we're being conned then we might do it the first time, but not after that.

Bench 21 (M): You can't get blood out of a stone, and it allows you to take peoples' circumstances into consideration without being seen to be immediately retributive. The difficulty is that it prolongs the time of collection. It can be seen as softening the blow, and can be seen as weak by some defendants. They may think that it hasn't got any teeth.

Four benches expressed dissatisfaction with the granting of further time to pay.

There was a clear concern amongst these magistrates that this method of enforcement could operate as a soft option, and that its employment could send out the wrong message.⁹

Bench 4 (B): The defaulters are being let off the hook all the time, and nothing is being provided to concentrate the mind. We're making a rod for our own backs, but our hands are tied. When I first started we were much quicker to use alternatives.

Bench 7 (B): You find that they often come back again. I would give it two out of ten.

Bench 12 (B): The defaulters see allowing more time as a sign of weakness.

Bench 17 (M): Do they understand it? It's about their interpretation of what the courts can do. The problem is that they might go and tell their mates that they don't have to pay because it keeps getting deferred. In other words, it can send a bad message. At the end of the day, the magistrates have to say enough is enough.

There is a suggestion in the first of these statements that magistrates often feel they have little alternative to granting further time to pay. This issue will be considered shortly.¹⁰ On a more positive note, it was evident from the interviews with defaulters that very few were aware of magistrates' reliance upon this method of enforcement. A not

⁹ When asked what could be done to improve enforcement performance, two benches responded that greater use should be made of the alternatives.

¹⁰ See pp.201-202 below.

uncommon reaction, when further time was granted, was one of surprise, rather than expectancy. It seems unlikely, therefore, that these defaulters would encourage others not to pay.

Def. 52 (B):¹¹ I was lucky not to go down then. I've been expecting to go down since last year.

Def. 94 (B): I was expecting them to say that I had to pay the £100 today. If they did, I would have had the money up here in an hour to an hour and a half.

Def. 180 (M): There's been a lot of messing around on my part, but they've given me another chance. I did think I was going to jail. I even brought my book and my radio.

Def. 216 (M): There was a chance that I could have gone down. I'd been to court once before. Next time it will be jail definitely.

Nevertheless, one or two defaulters had become aware of the courts' tendency to allow further time to pay, and it is arguable that continuing with the one-dimensional approach could lead to a growing belief in the ability to avoid payment on a long-term basis.

Where further time to pay was granted, the defaulters were ordered to pay at a specific rate. The average rate imposed was £6.20 per week (n=188),¹² only slightly lower than the previous average payment rate of £6.48 (n=150). There was a higher average at Birmingham, £7.68 (n=76) compared with £5.19 (n=112) at Manchester.¹³ As table 12 demonstrates, Birmingham was seemingly more willing to impose higher rates of payment when deemed appropriate.

¹¹ See p.211 below for case facts, courtroom exchange and court order.

¹² A third (33%) of defaulters were ordered to pay at the slightly lower rate of £5 per week. Weekly rates of payment have been calculated, but in some cases defaulters were ordered to pay fortnightly or monthly.

¹³ Resulting in a significant, although fairly weak, association between the rate imposed and court identity, with an *eta* value of 0.197. The average earlier rate of payment was also higher at Birmingham (see Chapter Five above, at f.n.36). The average rate imposed at the Birmingham fines clinic was £7.78 (n=19), with the enforcement staff stating on several occasions that they needed to restrict payments to a 12-month period.

Table 12: Payment Rates Imposed (when Further Time Granted) by Court

	Birmingham Fines Court (n=76)	Manchester Fines Court (n=112)
£0 - £2.50	24%	18%
£2.51 - £5	42%	64%
£5.01 - £10	17%	13%
£10.01 - £15	8%	3%
£15.01 - £20	6%	3%
Over £20	4%	0%

Prior to magistrates imposing a rate of payment, it was standard practice for the magistrates' clerk to ask the defaulter to make an offer to the court. In nearly a quarter (24%) of these cases no exact offer was made,¹⁴ but in the remainder an offer was made. The vast majority (84%: n=143) of these offers were deemed acceptable by the magistrates.¹⁵

Case 40 (B): *The defaulter had been fined on two occasions for having no TV licence. £310 remained outstanding, and it emerged that the defaulter was employed with an income of £130 per week.*

Clerk: What can you offer the court?

Def: Put down £10 per week.

Clerk: Are you sure you can afford that?

Def: Yes.

A rate of £10 per week was imposed.

Case 106 (B): *The defaulter had been fined twice for road traffic offences, on the first occasion more than a year previously. The total amount imposed was £455 and nothing had been paid, despite a payment rate of £20 per week having been set. It emerged that the defaulter was employed, but had a very low income of £45 per week.*

Mag: We take a very dim view of the fact that the fines have been outstanding for a year, but we will accept your offer of £5 per week.

The resulting time for full payment exceeded 600 days.

¹⁴ Corresponding figures for Birmingham and Manchester of 23 and 24 per cent.

¹⁵ Corresponding figures for Birmingham and Manchester of 90 per cent (n=76) and 80 per cent (n=84).

The amount offered by the defaulter was deemed too low in just 10 per cent of the cases in which an offer was made.¹⁶ There appeared to be three reasons for magistrates imposing a higher rate: first, the defaulter's means;¹⁷ second, the length of time for which the financial penalty had been outstanding; and, third, a need for the remaining amounts to be cleared within a year.¹⁸ But even the imposition of a higher rate did not always ensure that the sums were cleared within a year, as the first case below illustrates.¹⁹

Case 222 (M): *The defaulter had been fined on four occasions for road traffic offences. The first penalty had been imposed nearly 200 days previously and the full amount of £817.50 remained outstanding. He was employed as a joiner, earning £300 per week, and was married with five children.*

Mag: The bottom line is to try to dispose of this. Could you make a reasonable offer?

Def: Would £10 a month be alright?

Mag: There's £800, so that's not going to get us very far is it.

Def: If I was to say £10 per week, I know that I wouldn't be able to do £10 per week.

Mag: The sooner it's off your back the better.

Def: So what are you looking at?

Mag: A reasonable offer to the court?

Def: £5 per week?

Rate of £5 per week imposed, producing a time for full payment of more than 1,000 days.

Case 198 (M): *The defaulter had been fined £185 nearly 100 days previously for a road traffic offence. A rate of £5 per week had been imposed, and £10 had been paid. His income was £87 per week.*

Mag: How much can you afford to pay?

Def: I can afford £5 a fortnight.

Mag: That's too little. The fine needs to be paid within 12 months. You need to pay £10 per fortnight.

Def: I can't afford that. I've got various loans.

Clerk: How much are you paying out on your loans?

Def: £25 per week.

¹⁶ Corresponding figures for Birmingham and Manchester of seven and 12 per cent.

¹⁷ Although the average income of those defaulters whose offers were deemed too low was greater than those whose offers were deemed too high, there was no significant association.

¹⁸ Bearing in mind that financial penalties should usually be capable of being paid within 12 months (see Chapter One above, at p.16). The fines clinic staff stuck rigidly to the 12-month limit, and, largely as a result, the amount offered by the defaulter was deemed too low in 35 per cent of the cases in which an offer was made. The amount was deemed acceptable in 59 per cent of cases.

¹⁹ The association between the amount left to pay and the rate imposed, although significant, was weak, with a Pearson's *r* correlation coefficient of 0.193 (significant at the 0.01 level). The association was much stronger for the small fines court sample, with a Pearson's *r* correlation coefficient of 0.676 (significant at the 0.01 level).

Mag: Advice is available for your loans. This no insurance has to be paid.
A rate of £7 per fortnight was imposed, producing a time for full payment of 350 days.

Magistrates decided to impose a rate lower than that offered in six per cent of cases.²⁰ There appeared to be several reasons why a defaulter might have offered a higher rate: first, a lack of realism in assessing an affordable sum; second, uncertainty as to what amounted to an “acceptable offer”;²¹ and, third, a desire to avoid making an offer which others might perceive as meagre. It is also possible that some defaulters did not fully disclose their earnings.

Case 143 (M): *The defaulter had been fined twice, a total of £399.15, for having no TV licence. The first financial penalty had been imposed more than 100 days previously.*

Clerk: Have you got any money today?

Def: I’ve got £15 today.

Clerk: How are you going to pay the rest of it?

Def: Can I continue paying at £4 per week?

Mag: We want to be realistic about the amount you can pay. Does it help you to pay fortnightly?

Def: Yes, that’s fine.

Mag: The normal rule is to get it paid off within a year, but you are not going to be able to do that. We order that you pay £6 per fortnight, which will take you the best part of two years. If you do come back again, we could consider custody.

£90 was also remitted.

Case 185 (M): *The defaulter had been fined £250 for a road traffic offence more than 100 days previously. A rate of £3 per week had been imposed, and £50 had been paid. It emerged that the defaulter was unemployed and in receipt of child benefit.*

Mag: How much can you afford per month?

Def: £50.

Mag: Can you afford £50 per month?

Def: I’d rather just get it paid.

Mag: Would £25 per month be better?

Def: Yes, OK.

Case 225 (M): *The defaulter had been fined £125 more than 250 days previously for a road traffic offence. A payment rate of £2 per week had been set, and £10 had been paid. The defaulter was unemployed.*

²⁰ Corresponding figures for Birmingham and Manchester of three and eight per cent. In a number of these cases the resulting time for full payment exceeded a year (see, for example, case 143 below).

²¹ Such uncertainty was also evident in many of those cases in which no exact offer was made.

Clerk: Have you got a sensible offer as to how you pay the £115?
 Def: Well, I had to get a crisis loan over the Christmas period. That's just finished now, so I reckon I can pay it all off in the next six weeks... It'll be like £35 per fortnight.
 Mag: You think you can afford that?
 Def: Yes.
 Mag: Shall we be more realistic and say £20 per fortnight?
Rate of £20 per fortnight imposed.
 Clerk: We are talking about minimum payments here. You can pay more.

Case 255 (M): *The defaulter had been fined, on two occasions, a total of £159 for having no TV licence. The first penalty had been imposed nearly 450 days previously. A payment rate of £5 per week had been set, and £35 had been paid.*

Sol: The defendant has made every effort to pay but has fallen into arrears. She is a single mother, with a two-year-old, living on state benefit. £5 per week is the very maximum that she can afford to pay.
 Mag: What is the reason for falling into arrears?
 Sol: Everyday financial pressures ... £5 per week is a little higher than I'd normally offer.
 Mag: Well we don't want to set it at £5 per week if she is going to fall into arrears again.
Rate of £3 per week imposed.
 Mag: If you can afford to pay £5 per week please do so, because obviously the fine will disappear more quickly.

The correspondence between payment rate and defaulters' means was clearly at the forefront of magistrates' thinking in these cases, and there was a significant and fairly strong association between the rates imposed and defaulters' incomes.²² This contrasts with the pre-court position, where there was no significant association between earlier rates of payment and defaulters' current incomes. Comparing the two courts' figures, there was a much stronger association at the Birmingham fines court than at the Manchester fines court.²³

When the magistrates' benches were asked what they believed were the major factors behind successful enforcement, 18 of the 22 benches emphasised that there was a

²² A Pearson's *r* correlation coefficient of 0.543 (significant at the 0.01 level). The average rate imposed for the employed defaulters was £10.41 (n=36), compared to £5.18 (n=123) for those who were unemployed.

²³ A Pearson's *r* value of 0.613 for Birmingham (significant at the 0.01 level), compared to 0.313 for Manchester (significant at the 0.05 level).

need for the full amount and payment rate imposed to correspond to the defaulter's ability to pay.²⁴

Bench 8 (B): We have to try and set an amount which the defendants can actually pay. If we set the rate too high, they tend to sit back and say 'I can't pay that'.

Bench 20 (M): You have to be realistic. The levels are important. You have to look at the ability to pay and set it so that they are able to pay.

The vast majority of defaulters were apparently content with the magistrates' efforts at establishing a rate of payment appropriate to both offence and offender, with nine out of ten (91%: n=185) viewing the order of the fines court as fair.²⁵ But of the small group who thought it unfair, eight (47%: n=17) complained that the rate imposed was too high.²⁶ It needs to be emphasised, of course, that the concern of magistrates is not to satisfy defaulters themselves, bearing in mind that the fine is imposed as a punishment. Doubts have already been raised, however, as to whether the defaulters had been caused "extreme economy" rather than "actual hardship".²⁷

Def. 137 (B): £3.50 [to pay weekly] out of £39 [weekly earnings]. I have to pay out £30 which leaves me £9 to live on. That's a third of my benefit. That's a load of rubbish. If they had someone with £150, they wouldn't take £50 of that.

Def. 154 (M):²⁸ The amounts are beyond my means. Because of that, each further time I'm fined it's going to be beyond my means. It's like a vicious circle. £20 [per fortnight] out of your benefit is significant, although I won't die from starvation. Today I was trying to get the payments cut down, but it didn't work that way.

Def. 173 (M): I'm on my own, a divorcee with custody of two kids. I had been paying the fines religiously for two years, but I got in a mess. It's just poverty. I

²⁴ Section 128(3) of the POCC(S)A 2000 requires the court to ensure that the fine reflects the offender's financial circumstances (see Chapter One above, at p.14 and f.n.63).

²⁵ Corresponding figures for Birmingham and Manchester of 92 per cent (95/103) and 89 per cent (91/102).

²⁶ Three defaulters were unhappy that the money was going to be deducted directly from source (but most defaulters were happy with the deduction from benefits order (see pp.173-175 below)), two defaulters thought that their court appearance was unnecessary, one defaulter was unhappy that a postponed period of custody had been imposed, one thought that the magistrates had failed to understand his circumstances, one said that he needed some breathing space to organise his finances, and one maintained his innocence.

²⁷ See Chapter Five above, at pp.103-105.

²⁸ See p.209 below for the case facts, courtroom exchange and court order.

got my money yesterday. I had £20 in my pocket and I've given them a fiver now. Say it's a Wednesday. You've got £30 in your pocket. One of your kids needs shoes and the other needs a jumper. What are you supposed to do? They should take it in its entirety. £10 to me is a packet of cigs to you. Your circumstances are absolute.

Def. 175 (M): I'm on income support and I've got to pay £800 on four different fines. It's caused my kids hardship because anything I have spare goes to them. You put it to them what you can pay, and they double it up. If I could afford to pay them, I wouldn't have been here in the first place.

Def. 234 (M):²⁹ £24 [per month] is a lot of money, but they didn't really want to listen. There's not a night that goes by without me thinking about it.

That only ten of the defaulters granted further time to pay were given a MPSO seems a small number considering the statutory encouragement to employ such orders for those aged under 21.³⁰ Nine of these ten defaulters were unemployed and seven had children to support.³¹ Perhaps more significantly, nine of the orders were imposed at Manchester, which was perhaps due to the differing supervisory responsibility for the orders. At Birmingham, responsibility remained with the probation service, and earlier research has referred to the resource implications of MPSOs and the fact that "they are considered as otiose by most probation officers".³² At Manchester, however, this responsibility had shifted to the senior CEO, whose role is confined to enforcement, in contrast to the core work of the probation service which lies elsewhere

When magistrates' benches were asked for their opinions regarding the use of MPSOs, 17 of the 22 benches expressed their support,³³ typified by the following responses.

Bench 4 (B): It's useful, because of the number of people who need help. Particularly the younger ones who have got themselves into debt.

²⁹ See p.91 above for the case facts and courtroom exchange.

³⁰ See Chapter One above, at p.6 and f.n.25.

³¹ It was unknown in one of the remaining three cases whether the defaulter had children to support.

³² S. Shaw, "Monetary penalties and imprisonment: the realistic alternatives", *op.cit.* p.34.

³³ One Birmingham bench and two Manchester benches remained neutral.

Bench 6 (B): I have used it quite often. When one is trying to ensure that the court is getting the money in, it is a way of concentrating the mind. We are going through all the hoops to try to get the payment, and even if they see the probation officer only a few times, as far as the court is concerned, we have gone through that hoop.

Bench 20 (M): If they conveniently forget, as soon as they're out of the court, then it's the end of the exercise. The supervision order reminds them that the court has jurisdiction, and it gives them someone to talk to if they're in difficulty.

Bench 21 (M): I think they're good. With the majority of people the problem is a lack of financial management on their behalf.

But three of the ten positive Birmingham responses were qualified by concerns regarding the time and resource implications for probation officers. Somewhat regrettably, despite the West Midlands MCC now employing its own CEOs, the supervisory role for MPSOs remains with the probation service. The study's findings clearly suggest that to encourage greater numbers of MPSOs, consideration should be given to following the Manchester lead, shifting responsibility to the recently appointed senior CEO. Unfortunately, such a shift is unlikely to do much to address the concern of two of the Birmingham benches that MPSOs are ineffective.

2. Direct deductions

In 27 cases the court imposed a deduction from benefits order,³⁴ representing 17 per cent of the 160 known cases in which the defaulter was unemployed.³⁵ Such orders were more commonly employed at Birmingham, with only four cases at Manchester. Nevertheless, magistrates' benches from both courts expressed support for this method of enforcement, with 18 of the 22 benches in favour.³⁶

³⁴ Authorised by s.24 of the CJA 1991, and explained in the Fines (Deductions from Income Support) Regulations 1992 (see Chapter One above, at pp.10-12).

³⁵ Forty-six defaulters were known to have been employed, leaving 32 cases in which the defaulters' employment status was unknown. See Chapter Five above, at pp.95-97, for further analysis regarding defaulters' financial circumstances.

³⁶ One bench remained neutral.

Bench 4 (B): It's a guaranteed way of getting the fine paid in a way which is quite user friendly for the defaulters.

Bench 9 (B): I am very much in favour of deductions when they can be done. It benefits both the defendant and the court.

Bench 11 (B): When a defendant is on benefit, it is much better to make this order because we know we are going to get the money. Some defendants actually prefer it because then they won't forget to pay.

One magistrate went as far as to state that such deductions were a major factor behind successful enforcement, whilst another was of the opinion that the bench should have the power to order deductions at the point of imposition.³⁷ There does in fact seem little, if any, reason for the anomaly that allows the court to make an AOE order at the point of imposition, with the offender's consent,³⁸ but not a deduction from benefits order. After all, the latter was introduced as an extension of the principle of "attachment of earnings" to the unemployed.

Bench 6 (B): If we fine somebody and they're on benefits, we cannot make an Attachment of Benefits Order until they appear at the fine enforcement court. If we could make such an order at the initial stage then maybe we would get more of our fines in.

The court's inability to make an order for direct deductions at the outset had clearly caused one defaulter much frustration.

Def. 108 (B): It's alright giving people these fines but they don't make it very easy for people to pay them. From day one I've tried to get them to take it from my benefit. It's taken for me not to come to court, for them to send bailiffs out, for me to tell them to get stuffed, and for probation to complete a means inquiry report. If they told me to pay so much a week, I wouldn't do it. If I pay at the post office it costs £5 for a £10 fine. I have to fill in a slip for each fine and it's a pound for each slip. If I have to come into court it costs £4 on bus fares. They'll either have to do it from my benefit or I'll do the days.³⁹

³⁷ Reg. 2 (2) of the Fines (Deductions from Income Support) Regulations 1992 provides that the court has to have inquired into the offender's averages. It is noted below, at pp.177-178, that magistrates became more willing to employ direct deductions as the financial penalties aged.

³⁸ As enabled by the amendment to section 3 of the Attachment of Earnings Act 1971 made by the Criminal Procedure and Investigations Act 1996 (see Chapter One above, at f.n.18). A further argument is that the offender's consent should not be required.

³⁹ See p.192 below for the defaulter's further views regarding custody.

This defaulter was not alone in his support for the deduction from benefits order. It emerged from both the defaulter interviews and courtroom observations that the vast majority were happy for such an order to be employed.⁴⁰

Def. 1 (B): What I don't have, I don't miss. What I don't have in my pocket I can't spend.

Def. 21 (B): It saves the hassle.

Def. 68 (B): I don't have to worry about it then.

Case 59 (B): *The defaulter, a single mother with a young baby, had been fined £175 for having no TV licence. The full amount remained outstanding.*

Clerk: Are you in receipt of benefit?

Def: Yes.

Clerk: What type of benefit?

Def: Income Support.

Clerk: Would it be helpful to deduct the money straight from your benefit?

Def: Yes.

The resulting time for full payment was nearly 500 days.

Case 193 (M): *The defaulter had been fined twice for road traffic offences. A payment rate of £8 per week had been imposed but the full amount of £357.09 remained outstanding. It emerged that the defaulter was single with three children.*

Def: I thought I'd be able to pay it, but I've had quite a lot of debts. I'm living with my Mum right now, she didn't pay her telephone bill and got cut off. I'm having to pay that off ... If you give me another chance I'll start paying.

Clerk: Have you brought any money with you today?

Def: No.

Clerk: What offer do you make?

Def: £3 per fortnight off each.

Clerk: £6 per fortnight in total?

Def: Yes.

Clerk: The magistrates have the power to order a deduction directly from your benefit.

Def: That would be alright that.⁴¹

The resulting time for full payment was close to 1,000 days.

⁴⁰ Only two defaulters, against whom a deduction from benefits order was imposed, were unhappy with the order of the court.

⁴¹ When asked about the order in the following interview, the defaulter stated "it saves me coming down here".

Furthermore, the acceptability of a deduction from benefits order was clearly apparent in a number of cases as it was the defaulter, or his or her solicitor, who requested its consideration.

Case 36 (B): *The defaulter had been fined £720 for a road traffic offence more than 800 days previously. A payment rate of £5 per week had been imposed, and £15 had been paid.*

Def: I would prefer it to come from my benefits so I don't have to come into town.

A deduction from benefits order was made, leaving a time for full payment of more than 1,900 days.

Case 69 (B): *The defaulter had been fined £565 for a road traffic offence some 261 days previously. A payment rate of £10 per week had been imposed, and £360 had been paid.*

Clerk: You haven't put anything down for food. How much do you spend?

Def: As much as I've got.

Clerk: You haven't put down an offer. What could you afford?

Def: If you could take it straight out of my giro, like the other one, that would be good.

It was found that no more direct deductions could be made, and the defaulter was ordered to continue paying at the rate of £5 per month, resulting in a time for full payment of more than 1,100 days.

Case 83 (B): *The defaulter had been fined, on seven occasions, a total of £1,339 for road traffic offences. The first of these penalties had been imposed more than 4,000 days previously, and £395.04 had since been paid, leaving an outstanding sum of £943.96.*

Sol: I was wondering if these fines could be deducted from his benefit?

Clerk: The problem is the amount. At £2.60 per week this is going to go on for goodness knows how long.

£654.80 remitted.

Mag: We do appreciate that we have to be realistic. It is now a manageable sum. With the remaining amount we think that it will be advantageous to have an attachment of benefits order. It's still going to take a long time, but at least it ensures that we will get the money.

The resulting time for full payment was just short of 800 days.

Given the positive picture so far been painted regarding the deduction from benefits order, the question raised is why it was not employed more commonly. Interestingly, whilst magistrates' views were generally favourable, ten of the 18 positive bench responses were qualified. There were various perceived problems: first, the restriction upon the number of deductions for any one defaulter; second, the requirement for the

defaulter to remain unemployed and in receipt of benefits; and, third, the need for the benefits to be of the appropriate form.⁴²

A fourth difficulty, viewed as particularly troublesome, was the strict limit upon the amount that could be deducted.⁴³ During the period of the fieldwork, this amount was fixed at £2.60 and then £2.65 per week,⁴⁴ substantially less than the average rate of £6.20 per week imposed for those cases where further time to pay was granted. In consequence, the remaining time for full payment exceeded a year in all but five cases, with an average time of 888 days, not far short of two-and-a-half years.⁴⁵ Recognising the potential for such long time periods, one of the 22 magistrates' benches declared its disapproval for deduction from benefit orders. Two other benches were also negative, but on bureaucratic grounds.

Bench 3 (B): I'm all for deductions, but the drawback is that it takes a longer time for full payment. If it's a large amount, it's going to take years. You can also only have three deductions, and I don't know why we can't deduct from disability allowance.

Bench 6 (B): Deductions are very helpful in ensuring that the court gets the money, provided that the defaulter remains on income support. The problem is that for a normal fine it should be paid off within 12 months. The most you can go is two years but that should be regarded as a rarity.

There was a handful of observed cases in which the deduction from benefits order was actively considered but deemed inappropriate. In the first case below, the bench decided that the defaulter could still afford to pay at a higher rate, and it was, therefore,

⁴² See Chapter One above, at p.11, for the precise requirements.

⁴³ The limited amount has been identified as a weakness previously (see, for example, P. Cooney, "Deduction of Fines from Income Support – A Practical Guide", *op.cit.* p.782).

⁴⁴ The amount has since been raised to £2.70 (April 2001).

⁴⁵ See the cases above, at pp.174-175. The association between the court order (further time or deductions from benefits) and the remaining time for full payment was significant, although fairly weak, with an *eta* value of 0.239. For further analysis regarding the periods for full payment, see pp.187-188 below.

hindered by lack of flexibility in the amount that could be deducted. In the second and third cases, the defaulters' benefits were already subject to deductions.

Case 151 (M): *The defaulter had been fined £250 for a property offence some 132 days previously. A payment rate of £5 per week had been imposed, but nothing had been paid.*

Sol: Mr D. has been physically unable to pay the fine. He was diagnosed with thrombosis and has spent a couple of weeks in the Manchester infirmary. He's asking for the fine to be deducted directly from his benefits to save him having to come to court.

Clerk: The problem is that the maximum that can be deducted from his benefits is £2.60. Last time he was in court he was adjudged to be able to pay £10 per fortnight and there has been no change in his circumstances financially.

The defaulter was ordered to commence payments of the rate of £10 per fortnight.

Case 157 (M): *The defaulter had been fined £80 for having no TV licence some 122 days previously. A payment rate of £2 per week had been imposed, but nothing had been paid. It emerged that the defaulter was unemployed with a young daughter.*

Def: Can't you take any money out of my benefit, because it would be easier.

Clerk: No, because you're already having £12 being deducted from your benefit. *The defaulter was ordered to begin payments of £2 per week, and a MPSO was employed.*

Case 196 (M): *The defaulter had been fined £80 for having no TV licence some 121 days previously. A payment rate of £3 per week had been imposed, and £10 had been paid.*

Clerk: Are you having anything taken out of your benefit at the moment?

Def: Yes, they're paying my water, my gas and something else.

Clerk: You're in a bit of debt at the moment are you?

Def: Yes.

Clerk: And you're disabled?

Def: Yes. I've got osteo-arthritis and I had a stroke.

The defaulter was given one day's detention in the courthouse.

In eight of the observed cases, five at Birmingham and three at Manchester, the magistrates made an AOE order,⁴⁶ representing 17 per cent of the 46 known cases in which the defaulter was employed.⁴⁷ Combining AOE orders with deduction from benefits orders, direct deductions were employed in just 15 per cent of cases. The cases

⁴⁶ As authorised by the Attachment of Earnings Act 1971 (see Chapter One above, at p.4).

⁴⁷ Deduction from benefits orders were employed against the same percentage of unemployed defaulters (see p.172 above).

where they were employed tended to involve long-standing financial penalties.⁴⁸ Seemingly, therefore the magistrates became less willing to simply grant further time to pay as the financial penalties aged.

Twenty-eight of the 35 direct deduction orders (80%) were imposed at Birmingham.⁴⁹ Whether magistrates at Manchester paid sufficient attention to the possibility of employing direct deductions is, therefore, questionable. Nevertheless, almost all (86%: n=22) magistrates' benches expressed support for the AOE order,⁵⁰ although perhaps the accompanying reservations, expressed by 13 benches, helps to explain their limited employment in Manchester.⁵¹ There were several concerns: first, the administration costs placed upon the employer; second, the possibility that the offender might discontinue his or her employment; and, third, the effect upon the offender's job security if the employer learnt of his or her criminal record.⁵²

Bench 2 (B): It is effective for defaulters who have employment, but it costs the employer quite a lot. The administration is expensive, and employers find it a nuisance.

Bench 3 (B): It's fine, but we don't seem to get that many before us who are in work. Even if they are in employment, they're often not likely to hold the job down. Tracking if they move is very difficult.

Bench 11 (B): Always very good, but we rarely get someone who is actually employed. If the employer is then looking for someone to be made redundant, then the defendant's name can go to the top of the list. Also, I think the employer is entitled to charge the employee for having it done.

Bench 14 (M): From the court's point of view it's good, but from an employer's point of view it's an abysmal thing to administer. It must be a terrible bind for them, and some employers, particularly small employers, drag their heels because

⁴⁸ A significant, although fairly weak, association between the court order (further time or direct deductions) and the time outstanding: an *eta* value of 0.162. The average times outstanding when further time to pay was granted and when direct deductions were employed were 361 and 584 days respectively.

⁴⁹ Producing a significant, although fairly weak, association between the court order (direct deductions or further time to pay) and the court identity (Birmingham or Manchester), with a *phi* coefficient of 0.289.

⁵⁰ The other three benches remained neutral.

⁵¹ But nine of the 13 reservations were expressed by Birmingham benches.

⁵² The latter concern has been discussed above (see Chapter Two above, at p.40).

they're not very keen on it. That causes more delay. I would have thought that it would be far easier to record their tax code number.

Bench 20(M): If they're earning at all then they've got the money, and it's a good way of getting the money regularly. But sometimes they don't like it because the employer gets to know.

Courtroom dialogue illustrated that some defaulters shared the magistrates' concern about the knowledge gained by employers.

Case 63 (B): *The defaulter had been fined £3,510 for a property offence more than 400 days previously. A payment rate of £25 per week had been set, and £1,150 had been paid, leaving £2,360 outstanding. The last payment had been made nearly 150 days ago.*

Clerk: Are you in full-time employment?

Def: Yes.

Clerk: One of the options available to the court is to deduct the money directly from your earnings. Your employer will not know what it is for.

Def: If that is possible I would prefer it, instead of coming back here ... It is confidential? They won't know what it's about?

Clerk: Yes, the letter simply states that you owe a sum of money.

An AOE order was made at the rate of £50 per month, with a payment of £50 also being made at the end of the defaulter's court appearance. The resulting time for full payment was more than 1,300 days.

Case 158 (M): *The defaulter had been fined £156.67 for a road traffic offence more than 100 days previously. The full amount remained outstanding.*

Clerk: One of the options open to the courts is to have the money deducted directly from your earnings. What do you think about that?

Def: I'd prefer to go to the police station myself.

Clerk: Why's that?

Def: Because the firm don't know I'm here.

Mag: Frankly, in view of the fact that you have not made the payments on the other fine, the court has no alternative but to make an attachment of earnings order. We are not prepared to let this fine go the way of the last fine and end up with the bailiffs.

AOE order made at the rate of £40 per month.

The average attachment was £8.50 per week, not surprisingly higher than the average rate imposed when further time to pay was allowed,⁵³ given that a large proportion of the latter group were unemployed.⁵⁴

⁵³ See p.165 above.

⁵⁴ There was a significant, although fairly weak, association, between the rate imposed and the court order (further time to pay, deductions from benefits or AOE), with an *eta* value of 0.217.

3. Immediate payments

Combining the cases in which the magistrates granted further time with those where direct deductions, whether from benefits or earnings, were ordered, further payments were expected in 223 cases (94%). Nearly a quarter (24%) of defaulters also made a one-off payment on the day, or agreed to make such a payment within seven days.⁵⁵ When magistrates' benches were asked what they believed could be done to improve enforcement performance, two benches said that a greater emphasis needed to be placed upon payments on the spot.

Bench 4 (B): When we fine, we don't tend to ask whether they have the money to pay now. Maybe that would help. We often assume that defendants are going to take forever and a day.

It is doubtful, however, that there was much scope for increasing the number of immediate payments. The HO Advisory Group has emphasised that "payment forthwith should be the normal expectation of the court",⁵⁶ but, as this study has shown,⁵⁷ defaulters tend to be of limited means with various financial problems. Furthermore, the clerk and/or magistrates actively sought immediate payment in numerous cases, often with little or no success.

Case 144 (M): *The defaulter had been fined £70 for criminal damage nearly 200 days previously. A payment rate of £4 per week had been imposed, and £8 had been paid.*

Clerk: Have you brought any money with you today?

Def: No.

Clerk: How long have you been aware of today's hearing?

Def: Two weeks.

Clerk: And you haven't brought anything with you today?

Def: No, because I've had a custodial sentence.

The defaulter was given further time to pay, continuing at the rate of £4 per week.

⁵⁵ Corresponding values for Birmingham and Manchester of 22 per cent (n=111) and 26 per cent (n=127). There was no association between the making of such a payment and the defaulter's employment status or income. Only two payments were to be made within seven days, and following references to payments on the spot incorporate these two payments.

⁵⁶ Home Office, *Fine Enforcement – Part II* (1992), HMSO, p.6.

⁵⁷ See Chapter Five above, at pp.95-97.

Case 172 (M): *The defaulter had been fined £864 for a road traffic offence more than 100 days previously. The full amount remained outstanding.*

Def: I've got a little girl. She's eleven years old and never been away in her life. She had the chance for a little holiday, and I've been saving for that out of my child benefit...

Clerk: You've paid £100 for a holiday for your girl when you owe the court £864. Is that right?

Def: Yes.

Clerk: And you haven't got any money on you?

Def: No.

Clerk: How did you come to court today?

Def: My nephew paid the bus fare.

£300 was remitted, and the defaulter ordered to commence payments at £20 per week.

Case 174 (M): *The defaulter had been fined £85 for a property offence nearly 100 days previously. The full amount remained outstanding.*

Def: I wrote to the court, but when I phoned them up they said they hadn't received it.

Clerk: Did you not think to make further inquiries?

Def: I thought I would be contacted back.

Clerk: The problem is that the court is not in a position to continually chase you ... Have you got any money with you today?

Def: I can pay £5.

Clerk: That's all you have got?

Def: That's all I can pay.

£5 was paid to the court, and the defaulter ordered to commence payments at £4 per week.

Case 227 (M): *The defaulter had been fined £185 for a road traffic offence more than 100 days previously. A payment rate of £5 per week had been imposed, but the full amount remained outstanding.*

Def: I'm on income support and I'm paying back a loan for a debt which is £20 per week coming out of my income support. And my wife is disabled.

Clerk: Has the loan nearly been paid off?

Def: We've got about another four weeks to go.

Clerk: Have you got a catalogue debt?

Def: Yes.

Clerk: How long have you had that debt?

Def: About three or four months.

Clerk: So you got the catalogue debt after the fine was imposed ... Have you brought any money with you today?

Def: No, only my bus fare.

Clerk: So despite the fact that the enforcement officer has been round to your house you've not brought a penny. That looks like you're refusing to pay.

Def: How can I bring something with me when I haven't got anything. I've got to pay the electric and gas, and my wife's a diabetic and suffers from rheumatoid arthritis.

Clerk: According to this form you have £18 per week left over.

Def: It's nothing, £18. You can't go to the fish shop with £18.

The magistrates made a deduction from benefits order, leaving a time for full payment in excess of 500 days.

When considering the potential for increasing the number of payments on the spot, one needs to take into account the magistrates' power to search offenders when in court.⁵⁸ Strikingly, no such searches took place. When asked about the power, the magistrates' benches expressed mixed opinions, with eight benches declaring their support, in two cases with reservations, but nine benches voicing disapproval.⁵⁹ The latter group harboured doubts about the power's effectiveness and expressed concerns regarding the Human Rights implications.

Bench 1 (B): A complete waste of time. The defendants often know far more than us. They simply give their money to their mates, or don't bring it with them.

Bench 5 (B): It used to be done on a reasonably regular basis, but it appears to have fallen by the wayside. After a period of time, the defaulters never came to the court with money on them. It might be worth resurrecting for a while, but there is an issue with the European Court of Human Rights.

Bench 11 (B): I've only ever done it once, and it was an utter failure. The defendant didn't have a penny on him. Experience shows that the defendants know about this power, and their ploy is to leave their money with a friend.

Bench 20 (M): Sometimes they try to evade payment and say they can't pay. But they know about it, and it's also a little bit degrading. I don't think under the new Human Rights we could do it. We would have to have evidence that they have got the money.

The average amount paid on the spot was £21. The value for Birmingham was £33 (n=24), much higher than the corresponding value for Manchester of £13 (n=33).⁶⁰ Furthermore, as illustrated by table 13, whilst under half (54%) of the Birmingham payments were of £10 or less, three-quarters (76%) of Manchester payments were at this lower end. There was no association between the amount paid and the defaulters'

⁵⁸ Authorised by s.80(1) of the MCA 1980.

⁵⁹ The other five benches remained neutral.

⁶⁰ In consequence, there was a significant, although not particularly strong, association between the amount paid and the court identity (Birmingham or Manchester), with an *eta* value of 0.375.

incomes or the amounts outstanding, so seemingly, therefore, the divergence can be seen as reflecting a greater ability at the West Midlands to extract larger sums.

Table 13: Amounts Paid on the Spot by Court

	Birmingham Fines Court (n=24)	Manchester Fines Court (n=33)
£0 - £10	46%	76%
£10.01 - £30	12%	18%
£30.01 - £50	30%	3%
Over £50	13%	3%

4. Remissions

In 19 per cent of the 238 observed cases the magistrates remitted part, or all, of the outstanding financial penalties.⁶¹ Such remissions were more common at Manchester, occurring in 24 per cent (n=127) of cases compared to 13 per cent (n=111) of cases at Birmingham.⁶² The greater proportion of remissions at Manchester is perhaps surprising, given that earlier remissions were less common at Birmingham,⁶³ and that the financial penalties tended to be older at the West Midlands court,⁶⁴ increasing the chances of intervening changes in defaulters' circumstances. Whether the Birmingham magistrates paid sufficient attention to the propriety of remitting is, therefore, questionable. Nevertheless, they were just as decisive as their Manchester counterparts in their support for remissions, with 20 of the 22 benches expressing approval.⁶⁵

⁶¹ As authorised by s.85(1) of the MCA 1980 and s.129 of the POCC(S)A 2000 (see Chapter One above, at pp.10&15.

⁶² There was a significant, although weak, association between the use of remissions and the identity of the court (Birmingham or Manchester), with a *phi* coefficient of 0.141.

⁶³ See Chapter Five above, at p.93 & f.n.41.

⁶⁴ *ibid*, at pp.90-91.

⁶⁵ Two Manchester benches remained neutral.

Bench 1 (B): The courts are trying to behave in a very fair and just way. We usually find that defaulters do respond and they do pay. They will often pay nothing rather than something if they feel that they can't pay.

Bench 4 (B): Remissions are good where there has obviously been a change of circumstances and where people were not in court when the fine was imposed. After the means inquiry you do hear about various financial problems and psychological problems. It is also amazingly useful when fines have been transferred in from other courts, as some district courts fine so unrealistically compared to what we're used to. Although it's a punishment, a fine cannot be so arduous that there is no hope of the defendant paying it. At least if you remit, you are giving them a realistic amount to pay.

Bench 7 (B): Remitting works with some defendants. It makes a fine more realistic so that the defendant can see the light at the end of the tunnel. We can then say 'look, we've done our bit, now you do yours'.

Bench 13 (B): You can get into all sorts of problems with non-payment, and remitting is a way of being fair. In some instances the magistrates clearly weren't aware of the defendants' circumstances.

Bench 17 (M): If they're not in court then the maximum is imposed. It's a way of bringing them into court and making sure that justice is done. Remitting shows that the magistrates are taking on board their cry for help.

But five of the 20 positive responses were qualified.⁶⁶ As the following comments demonstrate, these benches either emphasised that the financial penalty had to continue to reflect the offence or offences committed, or expressed concern that remitting could convey a weak message to other offenders.

Bench 11 (B): If the fine has been transferred in, we are more inclined to remit. We are only prepared to remit to a realistic fine. If it's no car insurance, for example, we are not willing to remit to £50.

Bench 22 (M): It's necessary because if someone doesn't appear we have no idea of their income. But sometimes they've committed so many offences it becomes a discount.

Bench 3 (B): I have no hesitation in remitting when I see what I consider to be way over the top fines. In terms of putting right a wrong and where the defaulters' circumstances have changed, remissions can be very useful. It has to be carefully done, however, when the court is full of defaulters. One needs to be careful not to send out the wrong signals, as it can start a real downward slope.

⁶⁶ Four Birmingham benches and one Manchester bench.

Bench 6 (B): If the fine has become unrealistic to the amount that the defendant is earning, then you stand a much larger chance of getting payment if you remit. The defendant can then see the light at the end of the tunnel. It can look to onlookers, however, that you're being soft and that the defendants are getting away with it.

On a positive note, there was no evidence of defaulters expecting that an amount would be remitted from their fine.⁶⁷ Indeed, three defaulters expressed surprise at the reduction in the amount due.

Def. 164 (M): I expected to be told a fiver a week. I didn't think they'd knock 150 quid off. That was alright.

Def. 188 (M): I didn't think they'd squash the £100. I was very surprised. I thought they'd just set the payments.

Def. 253 (M):⁶⁸ I didn't have the foggiest that they would reduce it. I thought they'd just accept my offer or increase it.

The HO Advisory Group has elaborated upon the meaning of "a change of circumstances",⁶⁹ stating that it may be found in three types of situation: first, where the defaulter's means have changed; second, where the necessary information was not available to the sentencing court; and, third, where arrears have accumulated due to the imposition of further fines.⁷⁰ There were instances of all three situations, with 39 per cent of cases fitting into the first category, 41 per cent into the second category, and 20 per cent into the third category. In relation to the latter, there was a significant, although weak, association between the court remitting an amount and the number of impositions.⁷¹ There was a similarly significant but weak association between the court

⁶⁷ Similarly, it was shown above, at pp.164-165, that very few defaulters were aware of the magistrates' reliance upon the granting of further time to pay.

⁶⁸ For the case facts and courtroom exchange, see p.186 below.

⁶⁹ As required for an amount to be remitted under section 85(1) of the MCA 1980.

⁷⁰ See Chapter One above, at p.10.

⁷¹ An *eta* value of 0.160. (A number of cases in the first and second categories involved more than one financial penalty). A Home Office consultation paper has stated that "it is not uncommon for offenders to have accumulated more outstanding fines than they can reasonably pay off" (Home Office, *Alternative*

remitting and the defaulter's employment status.⁷² The defaulter was unemployed in 94 per cent (n=35) of cases in which an amount was remitted. These defaulters could of course have been previously employed, or their employment status may have been previously unknown to the court.

Case 252 (M): *The defaulter had been fined £145 for a road traffic offence more than 400 days previously. £80 had been paid.*

Def: My husband had a nervous breakdown and I found out that he was £11,000 in debt. He is seeing a debt counselor and all our wages are going towards the debts. He owes everybody...

Remaining £65 remitted.

Def: It's one less worry, thank you.

Case 253 (M): *The defaulter had been fined £1,110 for a road traffic offence. The full amount remained outstanding.*

Def: At present I've got another fine which is being paid off at £5 per week. I'm now down to £15. Once that £15 is paid off, I can easily make £10 per week. But understandably the court said that it would take too long, being over £1,000.

Mag: Were you in attendance when this fine was imposed?

Def: No. I pleaded guilty by post...

£610 remitted.

Def: Marvelous, thank you.

The defaulter was ordered to commence payments at £10 per week.

Case 259 (M): *The defaulter had been fined a total of £665, having just been fined £225 in another court. Nothing had been paid.*

Sol: Mr F has just been fined £225 at the rate of £8 per fortnight. Can I ask you to consider remitting a substantial amount of this £440. He has just been fined £60 in respect of each no insurance offence. I submit that that might be an appropriate course of action to adopt...

£300 was remitted and the defaulter ordered to commence payments at the rate of £4.50 per week.

The average amount remitted was £275 (n=44),⁷³ indicating that there had often been a substantial "change of circumstances".⁷⁴ There was no significant association between the amount remitted and the defaulter's employment status or income, but a

Penalties for Fine Defaulters and Low Level Offenders (1996), HMSO, p4). The association between the amount outstanding and an amount being remitted was also significant, with an *eta* value of 0.294.

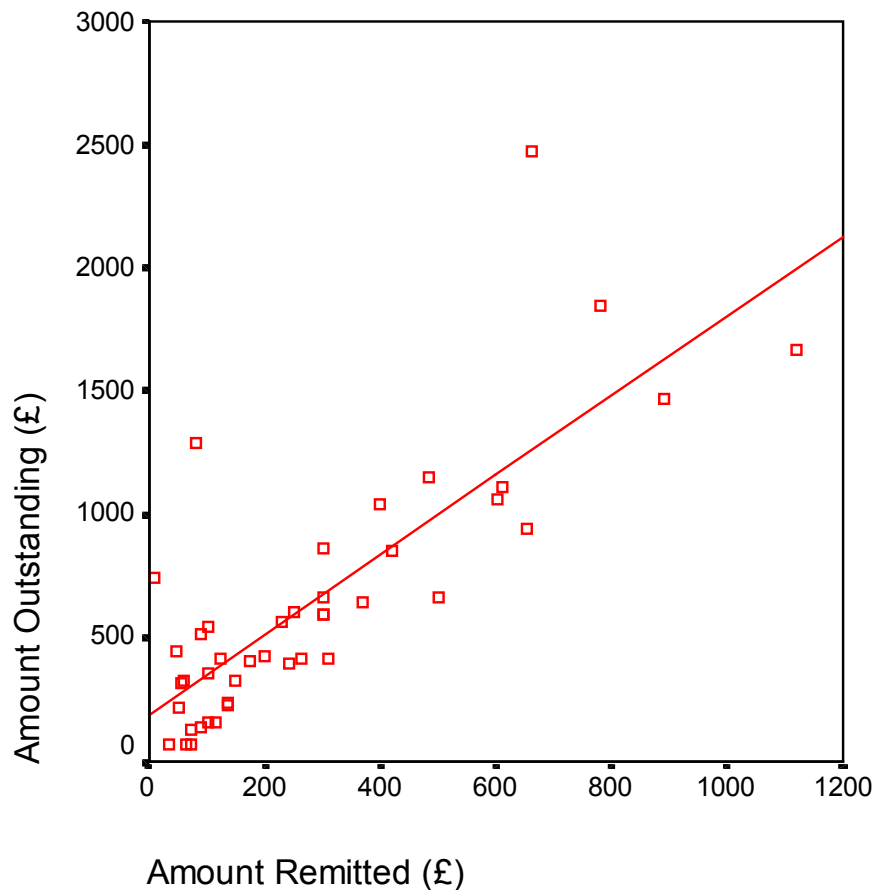
⁷² A *phi* coefficient of 0.181 (approximate significance of 0.010). There was no significant association between the employment of remissions and defaulters' incomes

⁷³ The average figure for the earlier remissions was £356 (see Chapter Five above, at p.93).

⁷⁴ There were similar averages for Birmingham and Manchester of £287 (n=14) and £270 (n=30).

significant and very strong association with the amount currently outstanding.⁷⁵ In other words, the greater the amounts originally imposed, the greater the amounts remitted, as demonstrated by chart N.

Chart N: Amount Remitted against Amount Outstanding (Total Fines Court Sample)⁷⁶



Deducting the amounts remitted from the previous sums outstanding, and taking into account the imposed rates of payment, the resulting average time for full payment,

⁷⁵ A Pearson's r correlation coefficient of 0.803 (significant at the 0.01 level).

⁷⁶ The linear regression equation for the chart is $Y = 191 + (1.6) X$, where Y is the amount outstanding and X is the amount remitted.

for those defaulters continuing with payments, was 514 days (n=220).⁷⁷ The HO Advisory Group has stated that “financial penalties should, in principle, generally be capable of being paid within a year, subject to exceptions in appropriate cases”.⁷⁸ Although the Advisory Group fails to explain what amounts to an appropriate exception, it can be assumed that it was contemplated as arising fairly rarely. In contrast, the average time for full payment was well in excess of 365 days, and, assuming that all defaulters adhered to the rates imposed, nearly half (48%) would be making payments more than one year later.⁷⁹

A clear finding, therefore, is that magistrates at both courts were failing to set amounts that could be cleared within the year. There are two possible reasons for this: first, a simple failure to pay sufficient attention to the periods of time for which defaulters are being ordered to pay; and/or, second, a more deliberate unwillingness to reduce the amounts according to defaulters’ means due to an overriding desire to reflect the offences committed.

In support of the latter theory, it has been noted already that some magistrates’ benches were keen to emphasise that the financial penalties imposed should continue to reflect the offence or offences committed.⁸⁰ Furthermore, the association between the remaining amounts and the defaulters’ incomes was significant but fairly weak.⁸¹ There

⁷⁷ The value for Birmingham was a little higher than that for Manchester, 562 days (n=102) compared to 474 days (n=118). The average time for those cases in which a deduction from benefits order was imposed was notably higher (see p.176 above).

⁷⁸ Home Office, *Fine Enforcement – Part II*, *op. cit.* p.6.

⁷⁹ Corresponding figures for Birmingham and Manchester of 56 (n=102) and 44 (n=117) per cent. All but five of the defaulters given a deduction from benefits order would be making payments more than a year later.

⁸⁰ See pp.184-185 above.

⁸¹ A Pearson’s *r* correlation coefficient of 0.276 (significant at the 0.01 level), representing only a slight increase in the association prior to the defaulters’ appearances (see Chapter Five above, at p.103 & f.n.71).

are good grounds for arguing, therefore, that the relevant statutory provisions in the POCCS(A) 2000 require amendment, so as to place greater emphasis upon offenders' means. There is in fact much scope for redressing the balance between offence and offender, as section 128(2) currently prioritises the seriousness of the offence, with section 128(3) referring to the offender's financial circumstances "among other things".⁸²

5. Other methods of enforcement

The methods of enforcement available to magistrates' courts can be ranked according to their severity, with imprisonment at the upper end. In stark contrast to the many cases in which further time was granted, none of the defaulters in the fines court sample were imprisoned and a postponed term was imposed on just the four occasions.⁸³ This is perhaps not surprising, as there are stringent restrictions upon the use of imprisonment, whether immediate or postponed.⁸⁴ Furthermore, official statistics illustrate that in recent years, following the judgment of Simon Brown LJ in *ex parte Cawley*, there has been a considerable fall in the number of imprisonments for default.⁸⁵

In each of the four cases in which a postponed committal was imposed there was clear evidence of "culpable neglect or wilful refusal", with the defaulter having used available funds for other purposes. The accounts had also been outstanding for some time, with an average time lapse since imposition of 562 days, compared to an average of 396 days for the rest of the sample (n=205).⁸⁶

Case 47 (B): *The defaulter had been fined £211.68 for a road traffic offence more than 100 days previously. Nothing had been paid.*

Clerk: What has happened to your car?

⁸² See Chapter One above, at f.n.63.

⁸³ A concurrent period of imprisonment was imposed in one other case.

⁸⁴ See Chapter One above, at pp.7-8&16-17.

⁸⁵ *ibid*, at pp.17-18.

⁸⁶ It was noted above, at pp.177-178, that magistrates were more willing to employ direct deductions, rather than simply allowing further time to pay, as the financial penalties aged.

Def: I sold it.
 Clerk: When did you sell it?
 Def: June.
 Clerk: And how much did you get for it?
 Def: I got £2,400.
 Clerk: So where is this money?
 Def: It was used to pay off arrears. I paid £1,300 in December for rent arrears.
 Mag: I suggest that with this money you can afford to pay £10 per week. What do you say about that?
 Def: I think it will be a bit hard.
 Mag: Well, I find that you have deliberately not paid this fine, and believe you can well afford £10 per week. I do find you guilty of wilful refusal to pay. I can send you to prison but I am not going to do so. The court will take action against you next time.
 Clerk: Are you fixing an alternative of 14 days sir?
 Mag: Yes, indeed.
The magistrates opted for a payment rate of £7 per week.

Case 176 (M): *The defaulter was fined £107.52 for a road traffic offence nearly 100 days previously. Nothing had been paid.*

Clerk: Could you explain to the magistrates why you haven't paid.
 Def: I was in Pakistan from February until March.
 Clerk: You've been back from some time, so why haven't you paid?
 Def: I spent my money in Pakistan, and then had to get work.
 Clerk: Looking at this means form, you have quite a bit of money spare, so why haven't you paid?
 Def: I've had bills, and furniture for my house.
 Clerk: On the 11th May, knowing that you had fines to pay, you went out and incurred a lot of debt, is that right?
 Def: Yes.
 Mag: You should not have taken out these debts, knowing that you had these fines to pay.
 Clerk: Are you sure you haven't got any money with you today?
 Def: Yes.
 Mag: You do realise how serious this is. You could go to prison.
 Clerk: Do you smoke?
 Def: Sometimes.
 Clerk: How much do you spend on cigarettes?
 Def: £2 or £3 per week.
 Clerk: And do you have a mobile phone?
 Def: I bought a phone last week.
 Clerk: How much was that?
 Def: It cost £30 ... I can pay.
 Clerk: But you haven't done so far... Do you want to consider committing and suspending your worships, it might concentrate his mind.

The magistrates ordered the defaulter to commence payments at the rate of £15 per week and imposed a seven days postponed committal.

The rarity of a postponed custodial sentence indicates that the courts' practices have changed since Whittaker and Mackie expressed their agreement "with the findings of numerous other studies that little use is made...of enforcement measures other than suspended committal and setting instalment terms".⁸⁷ Now the emphasis is upon the granting of further time alone. A number of magistrates' benches clearly regretted this development, with 18 of the 22 benches expressing their support for the use of imprisonment.⁸⁸ The following comments were fairly typical.

Bench 1 (B): It works. By the time the defendants had got down the steps they had found the money. It was amazing. You get so hardened, expecting them to have the money. You have to be intelligent enough to assess, but it would save everyone a lot of time if defendants were sent to prison once they said that they were not going to pay.

Bench 8 (B): We tend to use custody as a threat. Once it is set as an alternative, we generally find that the defendants pay. If they are sent to custody, the money then magically appears.

Bench 12 (B): I think that if we sent more defaulters to prison we would end up getting more money in. It was super when I first sat on the bench. We would say to a defaulter that he was to be sent down forthwith and the money would be produced.

The potential for raising collection rates has to be balanced, however, against the need for humanity,⁸⁹ and three benches qualified their support with the rider that imprisonment was wholly unsuitable for certain defaulters. They also noted that some defaulters could view custody as a preferable option.

Bench 3 (B): For appropriate circumstances imprisonment is right, but it depends on the circumstances. I certainly wouldn't send an 81-year-old lady to prison. If the defendant is defying the authority of the court, then imprisonment is the ultimate sanction, but it has to be used with common sense. Sometimes the defendant is going along the road with you, realising that they can get rid of the fine in a few weeks. It can be a way out.

⁸⁷ C. Whittaker and A. Mackie, *Enforcing Financial Penalties*, *op.cit.* p.37.

⁸⁸ The other four benches remained neutral.

⁸⁹ See Chapter Three above, at pp.63-64.

Bench 17 (M): It works best as a threat. For most people it's a real deterrent. But some might see it as though they've won because they've not paid.

Bench 20 (M): It is a threat, and they did cough up when we used to send them to prison for so many days. The difficulty is that we haven't always got their full circumstances. We can be taking them away from their family and their employment, or they might benefit from the fact that it's been remitted. It's costing society much more and you wonder whether you are gaining much.

The HO Advisory Group has stated that "courts should be alert to the possibility that some defaulters may actually wish to serve a period of imprisonment",⁹⁰ and a number of the defaulters interviewed were seriously considering custody as a preferable option.

Def. 12 (B): If you go to prison you don't need to worry about paying it.

Def. 64 (B): All they can do is threaten me with prison. If I didn't have family ties and a girlfriend, I wouldn't bother getting the money.

Def. 93 (B): To be honest, I would have rather gone inside. It would have been easier doing three months.

Def. 99 (B): I was going to ask them to bang me up, but I'd still have my rent arrears and my water arrears. I'd still be in the same boat. It's all one big roundabout.

Def. 108 (B): I'd rather do the days. Last time my fines were this high I refused to pay. I worked it out. I did two nights in custody for £1,200, which, of course, cost the taxpayer money.

Def. 184 (M): If you look back at my record you'll see that I've never paid the fine. I've always done the time. It's Thursday today, you can't get released Saturday or Sunday, so you should get released Friday morning.

Def. 227 (M):⁹¹ I will have to go to prison won't I. I don't know how many days, but it won't be long. I don't mind doing that. I would have gone today.

A further option available to magistrates, when dealing with defaulters under the age of 25, is the ACO,⁹² but it was employed in just three of the 238 observed cases. Once again, the low usage is perhaps not surprising, as the order is only available when

⁹⁰ Home Office, *Fine Enforcement – Part II*, *op. cit.* p.16 (see Chapter Two above, at pp.41-42).

⁹¹ See pp.181-182 above for the case facts, courtroom exchange and court order.

⁹² Authorised by section 60(1) of the POCC(S)A 2000 (see Chapter One above, at p.15).

the court has the power to commit. In other words, there needs to be evidence that the defaulter either has the money to pay forthwith or is guilty of “wilful refusal or culpable neglect” with all other methods having been unsuccessful or judged inappropriate.⁹³ But, in contrast to these statutory requirements, half the magistrates’ benches expressed their support for ACOs on the basis that they provide a useful alternative for young people who are genuinely struggling to pay.⁹⁴

Bench 10 (B): I have used the attendance centre order once, for somebody who was fairly young and hadn’t got any income. It was an option that was mentioned by the clerk. I suppose that such an order actually takes away the defaulter’s liberty and free time, and reinforces the fact that the fine was an order of the court. They cannot escape the consequences of it.

Bench 11 (B): I did one last week. The defaulter had a string of driving offences, and he said that there was no way he could afford to pay the fines. He actually asked to be given a number of hours at an attendance centre. My experience is that at least it gets them fit.

Bench 14 (M): It might deter someone who is on the threshold of crime. Perhaps it’s a little lifeline to such a person.

Bench 17 (M): It’s very good. It’s run by the prison service and it’s the first concept of prison regime that they come across. It’s based on discipline and they do what they’re told.

Bench 18 (M): It’s one of the few alternatives we have, and with that lad earlier he would have been paying it off for five or six years. It’s our duty to be seen to be punishing people, but to some outsiders it might seem that they’ve got away with it lightly. It’s whether the attendance centre will have an effect on the lad.

These views were put into practice, as in each of the cases in which an ACO was imposed the defaulter was clearly struggling to pay. Whilst ACOs are arguably suitable in such cases, it is clear that the legislature, bearing in mind the above restrictions upon the power, did not have these types of situation in mind. The accounts also tended to be long-standing, with an average time since imposition of 773 days.

⁹³ As required for a post-conviction ordering of committal (see Chapter One above, at pp.7-8).

⁹⁴ Seven benches remained neutral.

Case 102 (B): *The defaulter had been fined £1,518.08 over some 11 occasions. The first of the financial penalties had been imposed more than 1,000 days previously, and £290 had since been paid.*

Def: I've got a certificate about an Attendance Centre Order.

Clerk: You were given some Attendance Centre hours instead of paying the fine?

Def: I was yes, but these fines were out with the bailiff when I was given the order.

Clerk: The magistrates would have given you many more hours if these fines had been before them. You got away quite lightly ... Have you committed any further offences since the Attendance Centre Order?

Def: No, I have not.

Clerk: I am going to say to the magistrates that the Attendance Centre Order appears to have worked. It's a matter of how we are going to get rid of the rest. Have you any thoughts? The magistrates can make an attachment of earnings order or they can make another Attendance Centre Order.

Def: My concern is that the fines are going to take a very long time to be paid...

The magistrates made an ACO for 36 hours

Case 211 (M): *The defaulter had been fined £1,795 over some eight occasions. The first of the financial penalties had been imposed two days short of a year previously, and £65 had since been paid.*

Clerk: Are you still subject to a combination order?

Def: I've just started another combination order.

Clerk: You're attending your community service, are you?

Def: Yes.

Clerk: What do you do on Saturdays?

Def: Normally I go and do an extra day on my community service.

Clerk: Are you in good health?

Def: No, I'm on incapacity benefit due to a leg injury I sustained in a car accident when I was young.

Clerk: But you're well enough to do community service.

Def: I'm on painting and decorating, mainly clearing up after everyone else.

The magistrates made an ACO for 24hrs.

Clerk: It is constructive. The next step is a custodial sentence.

An ACO was actively considered in another of the observed cases but it was feared that it would be a little "top-heavy" as the defaulter already had many hours of community service. Interestingly, the perception that ACOs have a heavy impact upon

defaulters was shared by two of the three defaulters against whom an order was imposed.⁹⁵

Def. 102 (B): I can't work Saturdays now for God knows how many months. That means I'm going to earn even less. I thought they'd either send me to prison or make me do some sort of voluntary work in the time that I could do it.

Magistrates' views regarding the ACO were somewhat mixed, with four benches expressing disapproval. The grounds for their negativity was a belief that employing such orders detracted from the overriding objective of ensuring that offenders paid their financial penalties.

Bench 1 (B): I've never used this method, as I always use a Payment Supervision Order. If the original adjudication was not to send the defendant to an attendance centre and the fine was seen as the right disposal then it is our duty to get that money in.

Bench 2 (B): I have no experience of the Attendance Centre Order. We need to try and avoid sending defaulters to detention or custody, and I always try to waggle some money out of them.

In 14 cases (6%) the magistrates ordered that the defaulter serve one day's detention in the courthouse.⁹⁶ The attraction of such orders, from the courts' perspective, was their ability to clear outstanding amounts, which were sometimes long-standing,⁹⁷ where there appeared little chance of payment. Of the 12 defaulters in this sub-sample whose employment status was known, all were unemployed, whilst eight were known to have children to support, with only one known to have no dependants.

Bench 2 (B): A day's detention is very handy. It deals with the problem of a small fine that a defendant is unable to pay, and we are still able to extract some satisfaction.

⁹⁵ In contrast, another defaulter stated that he would prefer an ACO to paying. Similarly, as was shown above at p.192, a number of defaulters stated a preference for imprisonment.

⁹⁶ Authorised by s.135 of the MCA 1980. Eight cases were at Birmingham and the other six at Manchester.

⁹⁷ An average time since imposition of 475 days (n=11), compared to an average for all other cases of 396 days (n=207).

The degree of “satisfaction” extracted, employing the terminology of this bench, was unclear. The orders required the defaulters to sit at the back of the courtroom until the end of the court session, which never appeared to cause any great hardship. Unsurprisingly, therefore, the defaulters were universally happy with the outcome.⁹⁸ The following defaulter was typically content.

Def. 154 (M):⁹⁹ I could have been paying a lot more, but they let me sit down for an hour. You can’t beat that.

Another defaulter was clearly somewhat surprised by the order, and initially she was somewhat confused, unaware of its implications.

Case 152 (M): *The defaulter had been fined, on two occasions, a total of £238.77. The first financial penalty had been imposed more than 500 days previously, and only £4 had been paid. It emerged that the defaulter was unemployed and had a son.*

Def: I just can’t seem to be able to get on my feet at all. Sometimes I’m left with no money and I have to borrow. When I get my payment, I have to give the money back. It’s like a viscous circle. And I’m on medication for depression. Sometimes I just go and get drunk, and I know I can’t really afford it ... I’ve got £20 to last me until Monday.

Mag: How much can you afford to give to the court out of that £20?

Def: About £3.

Mag: In relation to the fine, if you stay in the courthouse until you are told to go then the fine will be dealt with.

Def: What does that mean? Is there not some form of payment plan?

Mag: If you stay within the confines of the courtroom until we tell you that you can go, then you won’t have to pay anything.

Def: Will I be out in time to pick up my son?

Mag: Don’t you worry. We’ll look after that.

The defaulter was ordered to pay the remaining £129.77 compensation at the rate of £6 per fortnight.

⁹⁸ Eight of the 14 defaulters given one day’s detention were interviewed. If more than one order was made in any one session then the defaulters subject to them would leave the court simultaneously, limiting the number that could be interviewed. Matters were further complicated by the need to interview magistrates at the end of the court sessions.

⁹⁹ See pp.208-209 below for the case facts, courtroom exchange and court order, and p.170 above for the impact of the financial penalty upon the defaulter.

6. The C(S)A 1997 options

One of the Manchester defaulters was ordered to continue with a CPO,¹⁰⁰ which had been imposed during the C(S)A 1997 pilot study.¹⁰¹ Magistrates' benches were asked for their opinions regarding the recently piloted methods of enforcement, and 20 of the 22 benches expressed their support for the CPO. Their reasoning was twofold: first, the availability of the order provided them with greater flexibility, and, second, it was preferable to imprisonment as the defaulter would still be paying something back to the community.¹⁰²

Bench 6 (B): Not before time. If we send someone to prison for non-payment it is completely uneconomic. It does nothing but cost the country money. For somebody who is coming up before the bench persistently, had I been able to impose community service then I would have considered that a good way of dealing with the whole thing. It would also be very useful for those who have very serious financial problems.

Bench 10 (B): It's been discussed by people in the court that if an offender does not pay his fine then there should be some other way of paying back to society. Community service is a useful way of dealing with people. In terms of these options, community service is the one that I would strongly be in favour of.

Bench 11 (B): We do get people who haven't got any hope of paying the fine. An alternative would be helpful, and it might be more realistic for some offenders to do 40 hours community service.

Bench 14 (M): Community service, tagging and disqualifying from driving were all good enforcers. The more options we have and the more we can tailor the penalty to the individual the better. I just wish we still had them. At the moment there is no in-between.

Bench 15 (M): They're far more useful. They're more practical, hitting the person immediately. They are still paying back to society something that they're not going to pay.

¹⁰⁰ Known at the time as a community service order.

¹⁰¹ See Chapters One and Two above, at pp.22-24&44-46.

¹⁰² Similarly, Elliot and Airs state that "magistrates say they prefer *community service* because it seems more positive than tagging or driving disqualification: the offender is seen to be putting something back into society" (R. Elliott and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots*, *op.cit.* p.26). The CPO did in fact prove to be "far and away the most popular" of the piloted options (*ibid*, p.19).

Bench 19 (M): They were quite useful. Some people don't want to pay the money basically and they go through any means to avoid paying. I don't think they thought we would take the new options up, but we did. They gave us more scope and more flexibility. We were also able to put logic to the seriousness of the offence.

Bench 21 (M): The pilot scheme was excellent. It gave us extra powers and solved a lot of problems, both from the statistical side and for the offender. If they can do some community work to put something back into the community then it's justice seen to be done. It was a good way out.

Unlike the Manchester court, Birmingham did not pilot the relevant C(S)A 1997 provisions, and five of the 11 positive bench responses from the latter court were accompanied by reservations. As demonstrated by the following comments, their concerns ranged from the need to enforce the CPOs to the possibility that certain defaulters might prefer the orders to paying their financial penalties.¹⁰³

Bench 2 (B): A super idea. I would like to experience what actually goes on. I do worry, however, about the expense of administering it, and the sentence would have to be enforced. The public has to see that it is carried out so that the right message goes around the community.

Bench 5 (B): Overall these would be useful tools. We would have to look at what the fine was imposed for, and perhaps, in the light of that, community service could be imposed. We could be overloading the system however.

Bench 13 (B): If the findings have shown that it's a great deterrent, then brilliant. It is possible that some people may prefer to serve a period of community service.

Two of the Birmingham benches were more hostile, believing CPOs inappropriate for fine defaulters. At Manchester, in contrast, where the magistrates had the benefit of experiencing the options in practice, there were no negative responses, and only one bench expressed a reservation.¹⁰⁴ Seemingly, therefore, having the CPO available as an option helped to alleviate concerns and drew attention to its value.

¹⁰³ A view supported by the defaulter interviews (see Chapter Five above, at pp.105-106).

¹⁰⁴ Two Manchester CEOs expressed doubts that fine defaulters would complete CSOs. One stated that "the only alternative to a financial penalty is sending them to custody or giving them community service. But many of them breach the community service. If they're not going to pay the fine, they're not going to do

The second recently piloted option was the curfew order. Sixteen of the 22 magistrates' benches expressed their support for this further alternative.

Bench 5 (B): A curfew order is most probably a restriction on a person's liberty, and if they haven't got the funds to pay then a restriction on their liberty may be appropriate.

But six of the positive responses were qualified. Some were uncertain as to what the CO actually achieved, whilst others believed its suitability was dependent upon the type of defaulter.

Bench 4 (B): Curfew orders would be useful to an extent, particularly for those who are in work. But if they're in work, why can't they pay the fine?

Bench 6 (B): There might be useful instances. For example, if the person is getting fine after fine for something after hours, it might be a useful tool. But I wouldn't put it in the same category as community service.

Bench 10 (B): A curfew order restricts a person's liberty, but I do not see that it serves any great purpose. I'd rather employ a curfew order than sending a person to custody, however, so in certain circumstances it could be useful.

Bench 13 (B): Curfew orders would be appropriate for fines imposed against public order offences. Then again, the curfew order has to be enforced. What happens then?

Once again, the views of the Birmingham magistrates, who lacked the experience of applying the C(S)A 1997 options, were less positive. Whilst all nine Manchester benches stated their support for the use of COs, four Birmingham benches expressed disapproval, with two others remaining neutral.

Bench 1 (B): A lot of guys would prefer to stay in. It's a soft option.

Bench 2 (B): I don't think I'm very happy with using curfew orders, but I'm prepared to be convinced. It's more of a control thing than a penalty.

The third, and final, of the recently piloted enforcement methods was the disqualification of defaulters from driving. The views of the Manchester magistrates were

the community service". The other CEO agreed that "there's no point giving some of them community service or probation as they just don't turn up".

again the more positive, with eight of the nine benches expressing their support.¹⁰⁵ Many of the Manchester benches believed that driving disqualifications encouraged defaulters to pay.¹⁰⁶

Bench 17 (M): Quite a good one because it brought it home to them immediately. More often than not you got the money at the end of the day.

Bench 20 (M): When you told them that they could be disqualified for a fine their eyes lit up. They'd rather pay up than lose the use of their car. It was short and sharp. You could deal with them there and then, and get the money out of them.

Of the three piloted methods, driving disqualifications caused the Birmingham magistrates most uncertainty. Although six of the 13 benches favoured the option, there were always accompanying reservations, and five other benches expressed disapproval.¹⁰⁷ The reasoning for their negativity was threefold: first, a concern that, once disqualified, defaulters would then commit the imprisonable offence of driving whilst disqualified; second, a belief that disqualifications were inappropriate for non-motoring offences; and, third, a view that disqualifications were unsuitable for those defaulters in employment.¹⁰⁸

Bench 3 (B): I'd be willing to disqualify a young offender but the problem is that they drive anyway. That offence is then imprisonable.

Bench 6 (B): I believe that disqualifying defaulters from driving would be quite wrong. My feeling is that if somebody is being fined fairly consistently for road traffic offences, then it's not going to be very long before they are disqualified in

¹⁰⁵ The other bench remained neutral.

¹⁰⁶ Corresponding to the pilot study finding that driving disqualifications were the most effective of the three methods in producing payments, although the numbers were limited (R. Elliott and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots*, op.cit. p.32).

¹⁰⁷ The other two benches remained neutral.

¹⁰⁸ The disqualification from driving option was the least used during the pilot study, and the latter two points were identified as possible causes. Elliot and Airs report that "many magistrates have yet to make the 'mental leap' of imposing driving disqualifications for non-motoring offences", and that "where offenders work, there are concerns about the effect on their ability to earn their living", and (R. Elliott and J. Airs, *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots*, op.cit. pp.viii & 70).

any event. If we add a further disqualification, very often they will drive anyway. I have very grave reservations.

Bench 8 (B): Disqualifications may be appropriate for defaulters convicted of road traffic offences. That could be quite useful, but the danger is that you are inviting them to commit further offences.

Bench 9 (B): It might be useful for repeat driving offences, but I don't see why a defaulter who didn't have a TV licence should be banned from driving. If the fine was the original sentence then it was the correct sentence. It is only in exceptional circumstances that we should impose an alternative sentence.

Bench 10 (B): I wouldn't go down this road for all offences. If the fine was for motoring offences then I suppose disqualification may be appropriate, but it doesn't seem logical for other offences.

Bench 11 (B): If all the offences are driving related then the sentencing court should have dealt with them in this way. But if someone commits an assault in a pub brawl, I don't see the connection. You're probably going to stop them earning a living so it could be quite counter-productive.

Bench 13 (B): Disqualifications would be problematical for persons who are working.

Nevertheless, the benches' views regarding the recently piloted options were generally positive, particularly at Manchester where magistrates had the advantage of practical experience.¹⁰⁹ In fact, when the magistrates' benches were asked what they believed could be done to improve enforcement performance, four of the nine Manchester benches referred to a need for the options.¹¹⁰

There is no clear sign that the additional options, found in the C(S)A 1997, are to be introduced in the near future.¹¹¹ The conclusion to be reached is that magistrates have been left with an inadequate box of tools at their disposal. As has been shown, the potential scope of the AOE order is limited as many offenders are unemployed,¹¹² there

¹⁰⁹ The pilot study report reaches the general conclusion that "the fine default measures have been popular with sentencers" (*ibid*, p.81).

¹¹⁰ For proposals regarding the methods of enforcement available to magistrates, see Chapter Eight below, at pp.240-247

¹¹¹ See Chapter One above, at p.24.

¹¹² See Chapter Five above, at p.95.

are various problems with the deduction from benefits order,¹¹³ and there are stringent restrictions upon the use of custody and the ACO.¹¹⁴ In many cases, therefore, the only realistic option is the granting of further time to pay. Whilst a number of defaulters are undoubtedly deserving of such time,¹¹⁵ widespread reliance upon this single method fails to deal with those who are unable to organise their finances and those who are playing the system. Furthermore, it is hardly likely to bring about any significant improvement in the courts' all-important performance figures.

The extensive granting of further time to pay also appears to be doing little to help the bailiffs and CEOs. Those interviewed stated that, in consequence, they were having to deal with defaulters who were continually playing the system and who believed in non-payment as a real possibility.¹¹⁶ The fines court was thus a source of great frustration, with an overriding feeling that it was toothless and weak.

CEO 1: The improvements have got to start in the courtroom. If they're not strong in the courtroom, the whole system is seen as weak. We go out and arrest them, but at the court 95 per cent of the time they're just told that they must pay the fine. But the magistrates' hands are tied in a lot of respects.

CEO 4: It's so difficult to get to the stage when you actually do something with them. A lot of these people are adept at working the system. You need to change the culture of the court and that in turn will change the culture of the fine defaulter.

CEO 9: Pressure was placed upon the clerks to finalise matters when the defaulters appeared in court, but that has tailed off again. It's back down at about 30 per cent. Once they've seen that there's a low priority on the fines they're not bothered. Some of them even tell me it was the best thing that I did, sending them back to the court. The key to it all is the clerk. If you have a weak clerk then it all falls down.

¹¹³ See pp.175-177 above. See also pp.178-179 above for problems regarding the AOE order.

¹¹⁴ See Chapter One above, at pp.7-8&15.

¹¹⁵ Bearing in mind the difficulties that certain defaulters had faced (see Chapter Five above, at pp.97-99).

¹¹⁶ Two bailiffs and three CEOs admitted that they knew little about the workings of the fines court, but all others, bar one CEO, responded negatively. It was noted above, at p.164, that some magistrates were concerned that the granting of further time to pay could send out the wrong message.

CEO 11: To be honest you do put yourself in a bit of danger, and when they get to court they don't do anything. You're banging your head against the wall a lot of the time. It makes you wonder why you're bothering.

Bailiff 4: Even though they've bucked the system and dodged the bailiff, the court lets them pay the original fine. They then think that they can dodge everybody.

Bailiff 6: The magistrates will normally give the person a further arrangement to pay. They'll then either pay over three years or it will be written off. A young lad may have 17 warrants outstanding. Eventually they're written off. What's to stop him carrying on driving with no insurance. If they were very unlucky they might go to prison, but it's very unlikely ... What's the point in an enforcement officer going round and bailing them back to court at yet further cost so that they can be given further time to pay. I go round and all they want is to be bailed ... The court should only fine people who can pay that fine. If they do not pay the fine then it should go to the bailiffs. If he owns no goods then in my opinion he should serve a period of custody ... The courts must know that half the time they're wasting their time.

Bailiff 8: It's a vicious circle. They get the fine, they don't keep to the payments, we're not successful and it's returned to the court. Then it starts all over again. Everyone's wasted time and it's cost the taxpayer money.

7. Magistrates' reasoning

Whilst the magistrates tended to allow further time to pay, and held differing levels of support for the various alternatives available to them, they were nevertheless expected to consider all options. The benches were thus asked what factors led them to prefer a particular method of enforcement, and their responses indicated that a range of factors could underpin their decisions.

The factor most commonly perceived as relevant, highlighted by 14 of the 22 magistrates' benches, was the reason behind the default, encompassing the defaulter's current ability to pay, his or her attitude, the attempts he or she had made to pay, and whether there had been a change in his or her circumstances. Consideration of this factor and its various limbs clearly adheres to the statutory restrictions upon the use of both committal, post-conviction, and of remissions: the former requiring either "wilful refusal

or culpable neglect” or the offender having “sufficient means to pay...forthwith”,¹¹⁷ and the latter requiring a “change of circumstances”.¹¹⁸

Bench 5 (B): Means to pay, the ability to pay has to be a serious consideration.

Bench 10 (B): The two sides of the coin are those who are in work and who have decided to use their money towards other things, and those who simply haven’t got the money.

Bench 14 (M): We look at the seriousness with which the persons themselves regard the issue. I don’t think we had anybody this morning who was totally arrogant.

Bench 15 (M): Just their circumstances and whether they’ve had the money and spent it: if they could have paid it, should have paid it and didn’t.

Bench 17 (M): The main factor is culpable neglect. I don’t think anyone this morning came across as that. We have the paperwork before us, and we listen to their explanations and the mitigation they are putting forward.

Bench 20 (M): The main thing is the ability to pay. If they’re on benefits there is no way that they can pay the full amount. You have to be realistic and pitch it at a level at which they can finish the fine.

Five benches identified the original offence and the type of financial penalty as relevant factors to preferring a particular method of enforcement. It has already been shown that the original offence was often a dominant consideration when magistrates assessed the appropriateness of remitting.¹¹⁹

Bench 8 (B): It rather varies. In my case I tend to look at the defaulter, their means, their demeanour and the type of fine they have been given, and take them all into account. There is a difference between a young lad who has been fined for no car insurance, who comes into court and is quite stropic, not understanding why he is here, and a lady who has three children and has been fined for no TV licence. What’s she supposed to do. I tend to take a rather more lenient view in the latter situation. It depends on the individual and all the circumstances put together.

Bench 11 (B): It all depends on the situation of the original imposition.

¹¹⁷ Section 82(4) of the MCA 1980. The first limb has an accompanying requirement that all alternatives must have been unsuccessful or be deemed inappropriate.

¹¹⁸ Required by s.85(1) of the MCA 1980.

¹¹⁹ See p.184 above.

Five benches expressed a general preference for direct deductions, corresponding to the support given for such deductions, whether from benefits or earnings, when magistrates' benches were questioned about these methods directly.¹²⁰ Notably, all five benches were at Birmingham, supporting the view that the West Midlands magistrates paid greater attention to their possible employment.¹²¹

Bench 1 (B): I prefer people simply to pay their fines. Attachment of Earnings if the defaulter is working, and Attachment of Benefit if he is not, is the sure way to successful payment, but it is sometimes not appropriate.

Bench 3 (B): An Attachment of Benefit Order is a very useful tool. The fine defaulter is not tempted to spend on other things. But with larger amounts, it takes longer to collect.

Bench 4 (B): I'm very keen on an attachment to their benefits. Although it's a small amount, quite often it's the sum that is offered anyway. In most cases, they are not very good at arranging their finances, and they often have various other debts.

Bench 10 (B): An awful lot of people who come before the court are on benefits. They are often not very able at arranging their own finances, and there are some who want to pay to get rid of the fine, so the attachment of benefits order is one that I favour.

The other factors viewed as relevant to preferring a particular method of employment were varied. Two benches referred to pragmatism,¹²² one bench mentioned the time for which the financial penalty had been outstanding,¹²³ one bench emphasised the need to maintain the defaulter's regard for the law, and another bench expressed a general preference for committal, originally postponed.¹²⁴

¹²⁰ See pp.172-173&178 above.

¹²¹ See p.178 above.

¹²² It was recognised above, at pp.201-202, that there are practical limitations to a number of the enforcement methods.

¹²³ Magistrates were found to be less willing to grant further time to pay as the financial penalties aged (see pp.177-178,189&13 above).

¹²⁴ When asked directly about the use of custody, 18 of the 22 magistrates' benches expressed their support, with the other four benches remaining neutral (see p.191 above).

8. The courtroom dialogue

When magistrates' benches were asked, first, what they believed were the major factors behind successful enforcement, and, second, what they thought could be done to improve enforcement performance, four benches highlighted the need to portray a clear and strong message to defaulters that payment was expected as soon as possible. Attempts to portray such a message were made in the courtroom, as a firm line was commonly adopted, limiting any sympathy that might have been felt for the defaulter's circumstances. The clerk was often at the forefront of this approach, which will be of concern to Darbyshire, as she has stated that "the dual role of the clerk as both prosecutor and justices' legal adviser makes enforcement proceedings unfair in both substance and appearance".¹²⁵

Case 82 (B): *The defaulter had been fined £380 for a road traffic offence nearly 300 days previously. A payment rate of £10 per week had been imposed, but nothing had been paid.*

Def: I've got no cash at the moment. I've lost my job and have had to contact the social.

Clerk: When did you lose your job?

Def: About a month and a half ago.

Clerk: Were you able at that time to pay the court?

Def: Yes.

Clerk: So why have you not paid anything?

Def: *Silence*

Clerk: Have you got any savings?

Def: Yes, about £100.

Clerk: Can you therefore pay £100 to the court?

Def: Yes.

The £100 was accepted, and a payment rate of £5 per week imposed.

Case 144 (M):¹²⁶

Clerk: You haven't brought anything with you today?

Def: No, because I've had a custodial sentence.

Mag: When were you released?

Def: 12th April.

¹²⁵ Darbyshire concludes that a declaration that the clerk's role breaches the European Convention is "long overdue" (P. Darbyshire, "A Comment on the Powers of Magistrates' Clerks" [1999] *Crim.L.R.* 377, at p.386).

¹²⁶ See p.180 above for the case facts, further dialogue and the court order.

Mag: And you still haven't paid anything?
 Def: I've only just started getting my benefits.
 Clerk: Why did you not pay when you had your liberty?
 Def: Because I had another fine.
 Clerk: How do you propose to pay today?
 Def: To start again.
 Clerk: Because you have defaulted, the whole amount is due. I take it you can't pay that?

Case 233 (M): *The defaulter had been fined £254.59 for a road traffic offence nearly 100 days previously. A payment rate of £5 per week had been imposed, and one such installment had been paid.*

Clerk: So why haven't you paid the court?
 Def: Because I've had other things to pay for: gas, electricity, food.
 Clerk: A lot of people who pay fines have to pay for gas, electricity and food.
 Def: But I am only receiving £77 per fortnight.
The defaulter was ordered to pay at the rate of £15 per fortnight, and he was made the subject of a MPSO.

Various tactics were adopted in the courtroom to encourage speedy payment. One such strategy was to emphasise to defaulters that the financial penalty should take priority over other monetary commitments. Little regard was thus paid to those arguments that claim it unrealistic to expect offenders to afford other debts less immediacy.¹²⁷

Case 42 (B): *The defaulter had been fined £520 for a road traffic offence more than 500 days previously. A rate of £5 per fortnight had been imposed, and £170 had been paid.*

Clerk: Paying this court fine comes before social events ... The money you have spent on social events should have gone to the fine. The fine comes first.
 The government gives you benefits and the fine is to be paid first.
£50 was paid to the court, and a payment rate of £5 per week was imposed.

Case 204 (M): *The defaulter had been fined £40 for a road traffic offence more than 100 days previously. £2.50 had been paid.*

Mag: None of these [TV, telephone, catalogue] can send you to prison. Your priority is to the court. If you phone either the TV, telephone or catalogue firm and explain your financial circumstances, you can have your payments reduced ... You see how serious we are looking at your situation this morning.

Def: Now I understand.
The defaulter was ordered to pay at the rate of £5 per week.

Case 231 (M): *The defaulter had been fined £200 for a property offence some 270 days previously. A payment rate of £5 per week had been imposed, and £35 had been paid.*

¹²⁷ See Chapter Two above, at p.43.

Clerk: The £60 is benefits?
 Def: Yes.
 Clerk: Do you have any loans?
 Def: I have two loans with the DSS.
 Clerk: When was the last loan taken out?
 Def: About six months ago?
 Clerk: And what was that for?
 Def: Furniture and redecorating. My son moved into his own room.
 Clerk: I don't want to sound rude Mrs H, but the fine should take priority. Yet you took out this loan after it was imposed. You do understand that you can go to prison for non-payment of this fine?
 Def: Yes.
The defaulter was ordered to continue paying at the rate of £5 per week, and she was made the subject of a MPSO.

The issuing of various threats was another common courtroom tactic aimed at encouraging payment. One such threat was to search the defaulter whilst he or she was in court. Whilst no such searches were executed,¹²⁸ the threat alone was sometimes productive.

Case 48 (B): *The defaulter had been fined, on two separate occasions, a total of £525, of which £75 has been paid.*

Mag: How much money have you got on you?
 Def: Nothing.
 Mag: So if we ordered you to be searched you wouldn't have any money?
 Def: It's not mine.
 Mag: How much have you got on you?
 Def: £80.
 Mag: And whom does it belong to?
 Def: My brother.
 Clerk: May I suggest that you make a sensible offer to the magistrates.
 Def: £15 per week.
 Clerk: And how much are you going to pay now? May I tell you that if you don't make a sensible offer, the magistrates can find culpable neglect and you will be sent to custody for 28 days. You will not walk out of this court.
 Def: £40.
The magistrates accepted the payment of £40 and ordered the defaulter to continue paying at the rate of £15 per week.

Case 154 (M): *The defaulter had been fined, on 16 separate occasions, a total of £1580.02. £500 had been remitted and £501 paid, leaving a total amount outstanding of £579.02.*

Clerk: Have you brought any money today?

¹²⁸ The threats were made despite concerns regarding effectiveness and the Human Rights implications (see p.182 above).

Def: No, I haven't.
 Clerk: Can you explain to the magistrates why?
 Def: Basically I haven't got any, once I break it down. It really doesn't go that far.
 Clerk: If the magistrates ordered you to be searched for money, are you saying that we wouldn't find any.
 Def: I'm not saying that. I'm saying that I haven't got any to give to the court.
 Clerk: OK, lets get down to the basics. How much money have you got on you today?
 Def: £10.
 Clerk: And how much of that are you willing to pay today?
 Def: £5.
The magistrates accepted the payment of £5 and ordered the defaulter to continue paying a number of the outstanding amounts at the rate of £10 per week. The other amounts were dealt with by one day's detention in the courthouse.

Case 170 (M): *The defaulter had been fined £100 for metrolink fare evasion more than 100 days previously. The full amount remained outstanding.*

Clerk: Have you brought any money with you today?
 Def: I'm out of work at the moment.
 Clerk: Have you brought any money with you today?
 Def: No.
 Clerk: Are you sure.
 Def: Yes.
 Clerk: If I went to get the officer to search you, he wouldn't find anything?
 Def: I've got a £5 note, but that's to get me home.
 Clerk: Well, the magistrates can send you to prison today. Are you going to offer to pay them £5?
 Def: OK then.
The £5 was paid to the court and the defaulter ordered to continue paying at £5 per week. A MPSO was also employed.

On occasion, the court threatened to send the defaulter to custody, and when magistrates' benches were asked what they believed were the major factors behind successful enforcement, three of the 22 benches pinpointed the threat that custody posed.¹²⁹ A common tactic was for the magistrates to ensure that the defaulter was fully aware that custody was a potential outcome, undoubtedly with the aim of demonstrating how seriously they viewed the matter. It was noted earlier that some magistrates' benches

¹²⁹ There was strong magistrate support for imprisonment, but none of the defaulters were actually imprisoned, and a postponed period of committal was imposed in just the four cases (see pp.189-191 above).

were concerned that granting further time to pay conveyed a weak message,¹³⁰ and references to custody were clearly intended to prevent any perceptions from developing that the court was a soft touch. As shown by the cases below, the strategy was occasionally productive.¹³¹

Case 44 (B): *The defaulter had been fined on two occasions, once for assaulting a police officer and once for her appeal costs. The first of these financial penalties had been imposed more than 150 days previously. A total of £222 had been imposed, and the defaulter had been ordered to pay at the rate of £6 per week. £16 had been paid.*

Clerk: At the moment you're spending more than you're getting in. Something's got to give. The best way would be to give up cigarettes.

Def: I can't give up.

Mag: What we're trying to get through to you is that you can go to prison for not paying your fines. You won't go to prison for not smoking cigarettes. *The magistrates ordered the outstanding amounts to be deducted from the defaulters' benefits.*

Case 51 (B): *The defaulter had three financial penalties, the first of which had been outstanding for more than 1,300 days. A total of £1121.31 had been imposed, and the defaulter had been ordered to pay at the rate of £100 per month. He had paid £247.*

Mag: Why did you not pay what you were ordered to pay?

Def: I had trouble getting the money together, and when I did it was too late. I then paid when I came to court.

Mag: The problem is that a large amount is still outstanding. Would you prefer to go to jail?

Def: No. I am wanting to pay them off. How much is a reasonable offer?

Mag: How much have you got with you today?

Def: £25

Mag: Well, that's not going to get us very far.

Clerk: We need to sort out these fines, and I don't think what you're offering [£20 per month] is acceptable to the bench.

Def: I can try to squeeze more. £50 perhaps.

Mag: You do realise that you can go to prison. That's not going to help anyone. Then you'll be in a real mess. Have you been to prison?

Def: Yes.

Mag: Then you know that it is not a pleasant prospect.

Def: Yes.

Mag: One of these fines goes back three years. We have no faith that you are going to pay. Do you understand our dilemma?

Def: Yes.

¹³⁰ See p.164 above.

¹³¹ Although it was shown above, at p.192, that some defaulters appeared content to serve a period of custody.

The magistrates accepted the payment of £25 and made an AOE order at the rate of £40 per month.

Case 52 (B): *The defaulter had been fined twice for road traffic offences. A total of £771.67 had been imposed, and the first of the financial penalties had been outstanding for more than 1,000 days. A payment rate of £3 per week had been set, and £138.50 had been paid. £335 had also been remitted.*

Mag: Why haven't you paid anything since August? You were in court in November.

Def: I'm sure I paid something.

Mag: There is no record. The onus is on you to provide the payment receipts ... You say the baby is due in June. You obviously want to be there.

Def: Yes.

Mag: The way you are going you won't be there.

The magistrates made a deduction from benefits' order.

Case 98 (B): *The defaulter had been fined £415 for a road traffic offence more than 450 days previously. Nothing had been paid, and it emerged that the defaulter was employed with an income of £165.*

Clerk: Do you understand what the powers of the court are this afternoon. You can be sent to prison for 14 days. Is there any reason why the magistrates shouldn't do that?

Def: No.

Clerk: Are you refusing to pay?

Def: No.

Clerk: Can you pay anything today?

Def: £150.

£150 was paid to the court, and a payment rate of £15 per week imposed.

Case 100 (B): *The defaulter had been fined £453.33 for a road traffic offence nearly 1,000 days previously. The full amount remained outstanding.*

Def: At the time it happened I was unemployed.

Clerk: How does that stop you paying?

Def: I forgot about it.

Clerk: £453.33. I couldn't forget about it. It's a nonsense to suggest that you forgot about it. The court can send you to prison today. Are you aware of that?

Def: No.

Clerk: If we were willing to give you an opportunity to pay, how much could you pay?

Def: £20 per week.

Clerk: You will have to do better than that. I advise you to go and see a duty solicitor, as you are in danger of going to prison today.

The case was stood down. When the defaulter returned he offered to pay at the rate of £50 per week, which the magistrates accepted.

Case 109 (B): *The defaulter had been fined £225 for a road traffic offence more than 800 days previously. A payment rate of £10 per fortnight had been imposed, and £100 had been paid.*

Clerk: Why have you not paid?

Def: Because I couldn't afford it.

Mag: Well, I tell you young man it's not whether you can afford it or not. Can you afford to go to prison?

Def: No.

Mag: Can you continue at £10 per fortnight?

Def: Yes.

Mag: This is almost a final warning. You will be in serious trouble if you do not maintain regular payments. We are the only people who can send you directly to prison for your debts.

The defaulter was ordered to continue paying at the rate of £10 per fortnight.

An alternative to custody for defaulters under the age of 25 is an ACO, and in another case the court threatened to employ such an order.¹³²

Case 194 (M): *The defaulter was fined £280 for a road traffic offence more than 100 days previously. A payment rate of £5 per week had been imposed, but the full amount remained outstanding. It emerged that the defaulter was unemployed.*

Clerk: What car was involved?

Def: A Honda.

Clerk: What registration?

Def: J.

Clerk: Did you sell it?

Def: Yes.

Clerk: How much did you get for it?

Def: £250.

Clerk: When did you sell it?

Def: April.

Clerk: And why did you not use that money to pay off the fine?

Def: My girlfriend was ill.

Clerk: You do realise that the courts could use an attendance centre order or a distress warrant ... How much are you willing to pay?

Def: £10 per fortnight...

The magistrates ordered the defaulter to commence payments at the rate of £5 per week.

Mag: If you don't pay, there is every chance that the court will send you to an attendance centre. This is your last chance.

Whilst no defaulters were searched or imprisoned, at least immediately,¹³³ an ACO was on the rare occasion imposed.¹³⁴ One argument is that without such cases the threats will eventually become empty and worthless. After all, a few defaulters were already

¹³² Half the magistrates' benches (11/22) expressed their support for ACOs (see p.193 above).

¹³³ Four postponed sentences were imposed.

¹³⁴ Three defaulters were made the subject of such an order.

aware of the courts' tendency to grant further time to pay.¹³⁵ Notably, two magistrates' benches expressed their concern at the courts' continuing failure to act upon its threats.

Bench 7 (B): If the defendants truly believe that it's going to happen, then it's reasonably effective. I think that if we're only threatening them then we're not being honourable.

9. Summary

In four of every five observed cases the defaulter was granted further time to pay, despite two-thirds having already failed to maintain an earlier rate of payment. The new average rate of payment was only slightly lower than the previous average payment rate, and an amount was remitted in less than one in five cases. Combining the cases in which further time to pay was granted with those in which the court ordered direct deductions, whether from benefits or earnings, the resulting average time for full payment was a striking 514 days. Assuming that all defaulters adhered to the rates imposed, nearly half would be making payments more than one year later. Clearly, therefore, insufficient attention was paid to the guidance that full payment should usually be possible within a year.

A further concern is the lack of variety in the courts' approach, and in particular its failure to deal with those defaulters who are unable to organise their finances or who are playing the system. The magistrates' benches said that there are boundaries to the suitability of granting further time to pay, with some stating that it can be perceived as a soft option. Unfortunately, however, there was a lack of real practical alternatives. The potential scope of the AOE order is limited as many offenders are unemployed, there are various problems with the deduction from benefits order, stringent restrictions have been

¹³⁵ See p.165 above.

placed upon the use of custody, and, therefore, the ACO, and there is no indication that the further options found in the C(S)A 1997 are to be introduced in the near future. Thus in many respects the magistrates' hands were tied.

In this context of limited options, the magistrates employed various tactics to encourage payment. They tended to adopt a firm line, emphasising that the financial penalty should take priority, and they issued various threats, the most extreme being to send the defaulter to custody. Whilst defaulters appeared to pay serious regard to these threats, the interviewed bailiffs and CEOs were less impressed, saying that the fines court was toothless and weak. A clear concern is that such views will eventually spread to defaulters, which could, in turn, further dent the courts' already fragile enforcement performance.

CHAPTER EIGHT: LOOKING FORWARD

The current performance figures for the Birmingham and Manchester city centre magistrates' courts leave much room for improvement. Collection rates remain below 50 per cent, and large amounts are in arrears and written-off.¹ This study found that many defendants appearing at the fines court had defaulted on fairly large, long-standing financial penalties,² whilst bailiffs and CEOs were struggling to contact other defaulters.³ It is thus questionable whether the credibility of the fine, and the prosecution process as a whole, is being maintained.⁴ The following analysis concentrates upon potential improvements, which, whilst paying attention to matters of economy, effectiveness and efficiency, have as their cornerstone the need to raise the quality of justice.

1. Summary of main findings

Two-hundred-and-thirty-eight fines court cases and 21 fines clinic cases were observed.⁵ More than three-quarters of defaulters appearing in these cases, for whom the information was obtained, were unemployed, with an average weekly income of £81.⁶ Eighty-nine were known to have children to support. Defaulters' means were thus limited, and approximately two-thirds gave financial problems as the reason for their default.⁷ Two-hundred-and-five defaulters were interviewed and, when asked about their financial penalties, nearly a third said that the amounts imposed were too steep.⁸

¹ See Chapter Four above, at pp.70-71

² See Chapter Five above, at pp.86&90.

³ See Chapter Six above, at pp.125-127.

⁴ Increasing attention has been paid to such credibility (see Chapter One above, at pp.21-22).

⁵ See Chapter Three above, at pp.59-60, for the complete sample sizes.

⁶ See Chapter Five above, at pp.95-97, for an overview of the defaulters' circumstances.

⁷ *ibid*, at pp.97-99.

⁸ *ibid*, at p.101.

Furthermore, of those who had made payments, nearly half stated that they had been caused a lot of hardship.⁹ Two-fifths also claimed to have been caused a lot of distress and anxiety,¹⁰ and strikingly, nearly a quarter stated their preference for the supposedly up-tariff CPO.¹¹

The average total amount imposed in the fines court sample was £465,¹² and the association with defaulters' incomes was weak.¹³ Setting fines with inadequate information about defaulters' circumstances was apparently common, often occurring when the fines were set in their absence.¹⁴ Twenty-two magistrates' benches were interviewed, and the majority admitted that they harboured doubts at the point of imposition that certain offenders would pay.¹⁵ A number of benches were clearly frustrated by the lack of alternatives available to them.

Many of the financial penalties had been outstanding for considerable periods of time, particularly at the Birmingham fines court where the average time since imposition was 488 days and exceeded a year in 44 per cent of cases.¹⁶ Despite such lengthy periods, the average amount outstanding for the total sample by the time they came back to court was £383, a reduction of only £82, less than 20 per cent, from the average sum originally imposed.¹⁷

The performance figures for warrant execution at Birmingham and Manchester were poor. More than four out of five Birmingham distress warrants were returned unpaid

⁹ *ibid*, at p.103-104.

¹⁰ *ibid*, at p.105.

¹¹ *ibid*, at pp.105-106.

¹² *ibid*, at p.86.

¹³ *ibid*, at p.103.

¹⁴ *ibid*, at pp.88-89.

¹⁵ *ibid*, at p.112.

¹⁶ *ibid*, at pp.90-91.

¹⁷ *ibid*, at p.93.

over a recent period, whilst at Manchester, nearly half of the financial penalties subject to a bail warrant were written off.¹⁸ Two-hundred-and-nine Birmingham distress warrant calls and 185 Manchester bail warrant calls were observed, and whilst contact was made in nearly half these calls, the respondent was usually not the defaulter, and, furthermore, the defaulter's residence at the property was often denied.¹⁹ The bailiffs and CEOs were asked what problems they faced when executing warrants, and the most frequent response was wrong addresses, with several suggesting that they were sometimes wrong at the outset of proceedings.²⁰ The observational study provided support for this view, with some defaulters having long since gone from the stated addresses, if they were ever there at all. A number of bailiffs and CEOs said that the problem of wrong addresses was complicated by lies and evasiveness,²¹ and some admitted exploiting any misconceptions held by defaulters in an attempt to encourage co-operation.²²

The bailiffs' frustrations were further increased by the fact that their earnings were dependent upon defaulters paying the bailiff fees imposed against them. Substantial fees were imposed in the distress warrants sample, outweighing the amounts owed to the court in four out of ten cases, sometimes significantly.²³ The bailiffs maximised the chances of payment in certain cases by retaining the warrants longer than the agreed upper limit of 90 days.²⁴ They clearly believed that there was insufficient selectivity in the issuing of distress warrants,²⁵ and felt that the court could be doing more to assist them.²⁶

¹⁸ See Chapter Six above, at pp.127-128.

¹⁹ *ibid*, at pp.125-127.

²⁰ *ibid*, at pp.129-130.

²¹ *ibid*, at p.130.

²² *ibid*, at pp.157-158.

²³ *ibid*, at pp.123-124.

²⁴ *ibid*, at pp.121-122.

²⁵ *ibid*, at pp.138-139.

In four out of every five observed cases at the fines court the defaulter was granted further time to pay,²⁷ despite the concern of some magistrates' benches that it could be perceived as a soft option,²⁸ and their general support for direct deductions.²⁹ A number of benches were frustrated by their lack of options, and they often resorted to issuing various threats.³⁰ There was strong support for the alternatives found in the C(S)A 1997, particularly at Manchester where the magistrates had the advantage of experiencing them in practice.³¹

An amount was remitted in approximately one out of every five observed cases.³² The average amount remitted was £275, indicating that there had often been a substantial "change of circumstances".³³ Yet, despite these large remissions, the average time remaining for full payment for those continuing with payments was a striking 514 days.³⁴ Assuming that all defaulters kept to the rates imposed, nearly half would be making payments more than one year later. Clearly, therefore, insufficient attention was being paid to the guidance that full payment within a year should be the norm.

2. Underlying principles

Before outlining recommendations for change, it is important to clarify the underlying principles. These principles can be divided into three tiers, corresponding to sentencing, the fine, and the enforcement process. Beginning with the first of these tiers, the lack of attention devoted to sentencing principles in the current system is startling.

²⁶ *ibid*, at pp.133-134.

²⁷ See Chapter Seven above, at pp.161-162.

²⁸ *ibid*, at p.164.

²⁹ *ibid*, at pp.172-173&178.

³⁰ *ibid*, at pp.208-212.

³¹ *ibid*, at pp.197-201.

³² *ibid*, at p.183.

³³ *ibid*, at p.186.

³⁴ *ibid*, at pp.187-188.

The recent review of the sentencing framework in England and Wales is to be commended therefore for expressly outlining such principles.³⁵ It states that the overriding principles are “justice and fairness”, requiring sentencing decisions to be proportionate, consistent, free from improper discrimination, compliant with human rights and transparent. In addition, the review states that there are practical principles of efficiency, effectiveness and economy.

Managerialism has had an increasing impact upon magistrates’ courts, and demands for greater effectiveness and efficiency have been pivotal in the recent development of the enforcement process.³⁶ It is submitted, however, that the sentencing review is right to conclude that the paramount principles are those of justice and fairness.³⁷ The role of the courts is to deliver justice, and by doing so they retain their credibility and maintain their authority. Thus, whilst the following analysis takes into account the practical considerations, the emphasis throughout is upon raising the quality of justice and each of its components. Support for such a stance is provided by the Howard League, which states that justice “demands attention to individual rights and responsibilities, to due process, fairness, certainty, and openness, even where this is costly and cumbersome to provide”.³⁸

The second tier of underlying principles relates specifically to the fine. In principle, the fine meets the traditional sentencing goals of punishment, general deterrence and individual deterrence.³⁹ But achieving these goals depends upon it having a detrimental

³⁵ J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.12.

³⁶ See Chapter One above, at pp.19-21.

³⁷ See Chapter Two above, at pp.50-51 for a consideration of managerialism versus justice.

³⁸ *The Dynamics of Justice* (1993), Howard League for Penal Reform, p.16.

³⁹ Compensation, in contrast, is more concerned with reparation.

impact upon offenders' means. In terms of the ideal impact, the Magistrates' Association draws a distinction between "extreme economy" and "actual hardship".⁴⁰ Whether this is a sufficient distinction is open to debate, as the terms are capable of differing overlapping interpretations. Nevertheless, whilst further legislative guidance would be useful, the need for the fine to have a detrimental impact short of actual financial hardship has been applied as an underlying principle. The impact is further affected by the time over which payments are required to be made, and a further principle is that the fine should be capable of payment within 12 months,⁴¹ enabling the offender to make a fresh start once a year has passed.

The third tier relates to enforcement. All the above principles apply with equal force to this part of the process, but one has to also consider the purpose of enforcement. Once again, there is lack of clarity, with the probation inspectorate concluding, in relation to fines courts, that "in making decisions on individual cases, it was not always clear that courts operated in a framework of a clear set of principles or guidelines".⁴² The underlying principle which needs to be applied, it is submitted, is that the purpose of enforcement is collection and not punishment.⁴³ But, as will be shown,⁴⁴ this principle has its limits.

3. Access to information

In order for the courts' decisions to be fair, just and proportionate, they need to be tailored to the offenders' individual circumstances. Developing an accurate picture of the

⁴⁰ See Chapter Three above, at p.64.

⁴¹ See Chapter One above, at p.16.

⁴² HM Inspectorate of Probation, *The Role of the Probation Service in Avoiding the Use of Custody for Fine Default: Report of a Thematic Inspection*, *op.cit.* p.18.

⁴³ See Chapter Three above, at p.64.

⁴⁴ See p.244 below.

offender, and, in particular, his or her financial circumstances, is thus essential. This requires the accessing and processing of accurate information. It is submitted that improvements can be made in three areas: (a) within individual courts, (b) between courts, and (c) with outside agencies.

Observations at the fine court demonstrated that some financial penalties only become apparent to magistrates when mentioned by the defaulters themselves.⁴⁵ Closer monitoring of court records by each court is thus required, and any relevant information should be recorded, including that relating to offenders' means and their payment histories. This information should then be made available to magistrates dealing with any further court appearances, whether in respect of the same or different offences. The Magistrates' Association has previously recognised such a need, stating that "greater assistance could be made available to courts at later means hearings if information given by the defendant during trial as to means were recorded and retained for use by the fine enforcement court".⁴⁶

These comments apply with equal force to the processing of information between magistrates' courts. The courts have the common goal of delivering justice, and they should be assisting each other to this end. Once again, however, as the observational part of this study demonstrated, in some instances the existence of outstanding financial penalties at other courts only becomes apparent when mentioned by the defaulters. This is particularly regrettable, as adjournments are then required to enable magistrates to

⁴⁵ See Chapter Five above, at p.82. Such cases support the MCSI statement that "adequate information about an offender's outstanding fines (or the enforcement history) is rarely provided to either sentencing or enforcing courts... Often the only information is that volunteered by the offender" (HM Magistrates' Courts Service Inspectorate, *Magistrates' Courts and Fine Enforcement*, *op.cit.* p.6).

⁴⁶ Magistrates' Association, "Fines and Fine Enforcement", *op.cit.* p.133.

consider all the outstanding financial penalties together.⁴⁷ Improved communication between courts would help to prevent such delay, and the sharing of information regarding offenders' means and their payment histories would further assist magistrates.

The value of processing information more efficiently and utilising it more effectively will be limited, however, when it is sketchy in its original form. The courts currently rely on offenders themselves for information as to their circumstances, but, unfortunately, ensuring attendance at the point of imposition has been deemed too costly and time consuming. As a result, many fines are imposed with little or no information regarding means.⁴⁸ Such was the position in a number of the observed cases,⁴⁹ demonstrating that the following criticism made by Gibson still applies.

One problem associated with fine setting is a general paucity of financial information. Courts have a duty to take means into account in fixing a fine 'so far as known'. Arguably, these four words have sometimes been used as an excuse for proceeding without information rather than as a reason for going out of the way to obtain it.⁵⁰

Even where offenders do attend court, the reliability of the information they provide is not guaranteed. Access to information held by outside agencies would thus be of considerable assistance.⁵¹ Such access is granted in various continental systems,⁵² but, as Rowe notes, agencies in this country have "always been cautious about such proposals,

⁴⁷ The financial penalties have to be transferred to the offender's local court. The alternative is for the magistrates to proceed in relation to the fines before them, but this is less likely to produce a satisfactory outcome.

⁴⁸ What information is available will depend upon whether the offender has previously appeared in court or has sent in information by post.

⁴⁹ Leading to remissions in some cases (see Chapter Seven above, at pp.185-186).

⁵⁰ Gibson, B., *Unit Fines*, *op.cit.* p.19.

⁵¹ The LCD has recognised the value of such access, stating that "the problems with the current situation highlight the need to introduce mechanisms to obtain controlled access to information direct from other sources, thereby cutting delay, and increasing the likelihood that the information is reliable" (Lord Chancellor's Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.40).

⁵² Gibson, B., *Unit Fines*, *op.cit.* p.108.

partly because of concern about unjustified breaches of confidentiality and partly because of fears about the workload implications for them”.⁵³ It needs to be emphasised, therefore, that access to outside information is fully justified when its purpose is to aid the administration of justice. Furthermore, outside agencies should see it as their duty to assist in this process.

Another argument against making outside information available is that there are practical restraints upon the amount of information which can be processed by the courts. This argument has been made by the Advisory Council on the Penal System:

We think that in this area we are at the mercy of what it is possible to achieve, and that it would be unrealistic to think that hard-pressed magistrates’ courts, in dealing with the very large numbers of offenders who are sentenced in their absence, could accurately differentiate between all of them according to their means, even if the relevant information were made available.⁵⁴

It remains clear, however, that greater accessing and processing of information would raise the quality of justice, which, as stated at the outset,⁵⁵ is the paramount concern. In any case, resulting increases in the demands upon resources at the point of imposition would be offset by a subsequent reduction in the need for enforcement.⁵⁶ Also, the resource implications are not as great as those that would result from ensuring offenders’ attendances, and the information gathered more reliable and accurate.

The first step towards accessing outside information has been taken in the form of section 94 of the ATJA 1999 and the consequent agreement with the DSS.⁵⁷ It is a limited step, however, as a warrant has to have been issued, and the accessible information is

⁵³ Rowe, J., “Can’t Pay, Won’t Pay”, *op.cit.* p.38.

⁵⁴ Home Office, Non-Custodial and Semi-Custodial Penalties: Report of the Advisory Council on the Penal System, *op.cit.* p.7.

⁵⁵ See p.219 above.

⁵⁶ Gibson, B., *Unit Fines*, *op.cit.* p.32.

⁵⁷ See Chapter One above, at pp.28-29.

confined to that allowing the defaulter's whereabouts to be traced. Furthermore, under the specific agreement with the DSS, the court has to have first pursued all other reasonable lines of enquiry.

Whilst this tentative step is clearly of value, bearing in mind the number of sampled warrants with incorrect addresses,⁵⁸ it is submitted that greater strides now need to be taken. Agreements with other agencies should be sought, and the accessible information extended to that relating to offenders' means. Interestingly, the LCD has recently proposed a Data Disclosure Order, which would enable courts to check employers' details and whether defaulters are in receipt of benefits.⁵⁹ Although of use, the proposed restriction of the orders to offenders guilty of wilful non-compliance would, it is submitted, be overly restrictive. Developing an accurate picture of the offender at the outset would be more beneficial, as this would help to prevent the need for any later enforcement.

4. The use of financial penalties

The next set of proposals concern the use of financial penalties. Re-emphasising that the quality of justice is paramount, and that for the courts' decisions to be fair, just and proportionate, they need to be tailored to both offence and offender, it is submitted that this study's findings support more selective use of the fine.⁶⁰ The need for fines to

⁵⁸ See Chapter Six above, at pp.125-130.

⁵⁹ Lord Chancellor's Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* pp.41-42.

⁶⁰ An argument outside the scope of this thesis is that certain offences should not proceed to the magistrates' court in the first place. Interestingly, the recently published *Auld Report* proposes the "introduction of a more general, formalised and conditional cautioning system", under which the CPS could decide not to prosecute "on condition, for example, that the offender submitted to some form of penalty or supervision of his conduct and/or offered some form of redress and/or submitted to medical or other treatment" (Auld, LJ, *A Review of the Criminal Courts of England and Wales* (2001), The Stationery Office, p.381).

have a detrimental impact upon offenders' means, but not cause significant financial hardship, has been treated as an underlying principle, but the defaulters in the fines court sample tended to be of limited means, and some had severe financial and personal problems.⁶¹ The conclusion reached is that imposing a fine was unsuitable in a number of these cases, particularly those where there were already outstanding fines, making payment within 12 months impossible.⁶²

Interestingly, a number of benches admitted to having doubts at the point of imposition that certain offenders would pay, and they were keen to emphasise that they lacked alternatives.⁶³ Sections 59 and 146 of the POCC(S)A 2000 are thus a step in the right direction, enabling CPOs and COs to be employed against "persistent petty offenders" and driving disqualifications against all offenders.⁶⁴

The accessing and processing of information is crucial here, as magistrates need to be able to assess whether offenders satisfy the "persistent petty offender" criteria.⁶⁵ All outstanding financial penalties need to be brought to light, and accurate pictures developed of the offenders' financial circumstances. Unfortunately, the set criteria are a little vague as to when an offender should be deemed unable to pay. Linking in with the proposals below regarding impositions,⁶⁶ financial penalties should not be imposed, it is submitted, when the offender is unable to either (i) pay at a set minimum rate of payment

⁶¹ See Chapter Five above, at pp.95-99, for an overview of the defaulters' circumstances and their financial problems.

⁶² Gibson similarly suggests that fining low-income defendants may be "inappropriate" and "counterproductive" (Gibson, B., *Unit Fines*, *op.cit.* p.60). See Chapter Five above, at pp.81-83&86, for an overview of the number of outstanding fines and the amounts imposed.

⁶³ See Chapter Five above, at pp.112-113. Smith and Gordon have stated that "in general, inadequate offenders tend to be fined because there appears to be no more satisfactory method of disposal" (A. Smith and J. Gordon, "The Collection of Fines in Scotland" [1973] *Crim.L.R.* 560).

⁶⁴ See Chapter One above, at pp.23-24.

⁶⁵ The pilot study found much room for improvement (see Chapter Two above, at p.46).

⁶⁶ See pp.228-231 below.

or (ii) complete payment within 12 months. The first of these two limbs will not require existing outstanding financial penalties, and the alternatives should not be restricted, therefore, to those who have already been fined.

Further support for the availability of alternatives is provided by the fact that 32 per cent of the interviewed defaulters stated their preference for a different type of penalty.⁶⁷ Many referred to community service, now CPOs, suggesting that compliance with these orders could be high.⁶⁸ On the basis that the sentence needs to be appropriate to both offence and offender, it is submitted that CPOs may be more appropriate for those with serious financial problems unaccompanied by serious personal problems. For those offenders who have such accompanying problems, a Community Rehabilitation Order [CRO] or a Community Punishment and Rehabilitation Order may be more suitable.⁶⁹ Such orders should also be available, therefore, as alternatives to the fine. Promisingly, support for a more flexible approach is provided by the recent review of the sentencing framework.

The current restriction of sentencing options for less serious offences presents the courts with an unsatisfactory choice to make between a financial penalty – which may seem unaffordable, particularly if the offenders already has a string of debts for previous offences – and a discharge, which can seem to give the wrong message – of condonement rather than punishment. There is a case for a more flexible sentencing framework at the lower end of the seriousness spectrum; in which it would be possible for sentencers to respond more easily to the circumstances of offenders with limited financial means, by routinely imposing a community penalty rather than a fine or where a history of failure to pay fines would justify using non-financial penalties of appropriate severity.⁷⁰

⁶⁷ See Chapter Five above, at pp.105-106.

⁶⁸ Some concerns have been expressed regarding the chances of completion (see Chapter Two above, at p.44 and f.n.63).

⁶⁹ Carlen believes that for some offenders the emphasis needs to be upon rehabilitation, stating that “it is likely that offenders too poor to pay a fine are also those suffering from other social disadvantage and under a system of state-obligated rehabilitation, the court would have a duty to make an order that was at least in part rehabilitative” (P. Carlen, “Crime, inequality and sentencing”, in: P.Carlen and D.Cook, *Paying For Crime* (1989, Open University Press), p.25.

⁷⁰ J. Halliday, C. French and C. Goodwin, *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, *op.cit.* p.39.

One commentator has proposed even greater flexibility by giving offenders the choice between financial and community penalties.⁷¹ Such an approach, however, fails to afford sufficient attention to the original offence. To ensure fairness, justice and proportionality, a fine should be imposed when it is the most suitable disposal for the offence, taking into account the offender's criminal history, unless the offender cannot pay at the set minimum rate of payment or complete the payments within 12 months. Thus, even an offender's refusal to pay previous financial penalties, when he or she had the means to pay, is no justification for employing an alternative to the fine.⁷² Efforts should instead be concentrated upon extracting payment.

An argument opposing the use of community penalties against offenders unable to afford fines is that they are being punished for their poverty, as they are being moved up the sentencing tariff.⁷³ It is clear, however, that for offenders of low means, the financial penalty can represent the more severe disposal. The sentencing tariff thus appears overly rigid in its placing of community penalties above financial penalties.

It is possible that the government would oppose any proposals advocating the extensive employment of alternatives to the fine. The fine is unique amongst the sentencing disposals in that it raises revenue, unlike the alternatives, such as CPOs and CROs, which incur various costs.⁷⁴ Greater use of alternatives would also place further

⁷¹ Block states that "I would go even further and give the offender the choice at the outset. Sentenced to a fine, he should be able to say that he is, for various reasons that need not be specified, unable to pay, but would be willing to work the equivalent number of hours of community service" (B.P. Block, 'A Fine Alternative' (1994) 158 *Justice of the Peace & Local Government Law* 556).

⁷² Although the offender's criminal history may lead to the magistrates deeming the fine unsuitable.

⁷³ Shaw, for example, states that "less desirable is the use by the courts of community service and other non-custodial penalties in place of the fine itself when facing unemployed or impoverished offenders. To do so simply ensures that the poor are moved more rapidly up the sentencing tariff and is another form of discrimination in favour of the well-to-do" (S. Shaw, "Monetary Penalties and imprisonment: the realistic alternatives", *op.cit.* p.43).

⁷⁴ See Chapter One above, at pp.18-19, for the perceived attractions of the fine.

demands on already stretched agencies such as the probation service. Nevertheless, the availability of alternatives to the fine would create a more efficient and effective enforcement process, by eliminating many of those cases in which the chances of payment are low. This, in turn, would help to maintain the fine's credibility. Even more importantly, the availability of alternatives would raise the quality of justice.

It is likely that the government would be particularly reluctant to countenance the use of alternatives against offenders at the upper end of the income scale, bearing in mind their clear ability to pay. A strong argument can be made, however, that fines are inappropriate for such offenders. On the basis that there needs to be an upper limit upon the amount imposed,⁷⁵ thus maintaining correspondence between the financial penalty and the offence, a wealthy offender may, as a consequence, feel no detrimental impact.⁷⁶ But perhaps, bearing in mind the ability of these offenders to pay large amounts, some compromise from the underlying principle, which requires such an impact, is acceptable.

5. Impositions

For the amounts imposed to be fair, just and proportionate, they also need to be tailored to both offence and offender. The underlying principle is that fines should have a detrimental impact upon offenders' means, short of actual financial hardship, but many of the amounts imposed against the sampled defaulters were unrealistic. The correlation between these amounts and defaulters' incomes was weak, and many defaulters had been caused significant hardship.⁷⁷ The conclusion reached, therefore, is that the courts are

⁷⁵ See p.230 & f.n.83 below.

⁷⁶ Carlen recognises that there are problems with those "too poor to pay a fine" and "those too rich to suffer deprivation" (P. Carlen, "Crime, inequality and sentencing", in: P. Carlen and D. Cook, *Paying For Crime* (1989, Open University Press), p.24).

⁷⁷ See Chapter Five above, at pp.103-104.

currently giving offenders' financial circumstances insufficient attention. Further criticism results from the fact that many of the fines were incapable of payment within 12 months.

It is submitted that the current deficiencies are such that a new statutory system is required.⁷⁸ Ideally, a version of the ill-treated unit fines system should be introduced. Such systems work well in other countries, and the failure of unit fines to find acceptance in this country at the beginning of the 1990s was largely due to the specifics of that particular system, and a lack of understanding, rather than its core principles.⁷⁹ Furthermore, bearing in mind the current deficiencies, there is a strong case for arguing that its abolition was over-hasty and ill judged.

The abolition of the unit fine was a fundamental error: the scheme had several faults, but the proper approach would have been to remedy the faults. By giving way to a press campaign and preferring political kudos to sound policy, the Home Secretary of the time squandered the opportunity to make financial penalties fairer... Fairness, equality and consistency of sentencing have all been set back by the abolition of unit fines.⁸⁰

The proposed system has two stages, maintaining a distinction between the offence and the offender's circumstances, helping to ensure that the latter receives sufficient consideration.⁸¹ First, the financial penalty would be imposed for a particular time period in line with the gravity of the offence.⁸² The offence thus rightly remains paramount, and fines are brought into line with other sentencing disposals through their imposition for a

⁷⁸ Ashworth states that "a general statutory exhortation to take account of the means of offenders has insufficient effect" (A. Ashworth, "Sentencing", *op.cit.* p.1122). See Chapter One above, at p.14, for the current statutory provisions.

⁷⁹ *ibid*, at pp.12-13.

⁸⁰ A. Ashworth, *Sentencing and Criminal Justice*, *op.cit.* p.290.

⁸¹ Gibson states that "conventional cash guidelines attempt too much in a single stage. They are 'too busy'. Whatever the cash guideline starting point, they try to say something about gravity and something about means in the same figure. The scope for cross-mixing of irrelevant considerations is obvious" (Gibson, B., *Unit Fines*, *op.cit.* p.28).

⁸² The proposed system is thus more in line with continental 'day fine' systems than the unit fine system introduced in the CJA 1991.

period of time. Second, the amount to be paid in each week, fortnight or month of the specified period would be set according to the offender's financial circumstances, subject to a fixed minimum and maximum so as to maintain a level of proportionality with the offence.⁸³ Developing an accurate picture of the offender is crucial at this second stage.

Setting the amount of the fine prior to imposing a rate of payment would thus no longer occur, as the total fine would be established only once the rate of payment had been decided. Arguably, magistrates at Birmingham and Manchester fell into the trap of imposing unrealistic fines, and then setting equally unrealistic rates of imposition in an attempt to limit the periods for payment.⁸⁴ The advantage of the proposed scheme, therefore, lies in its creation of both realistic fines and realistic rates of payment.

Notably, the total amount payable ceases to be of central importance, as the gravity of the offence is reflected by the time for which the offender is ordered to pay. The periods appropriate for the various offences, along with the maximum and minimum rates of payment, would have to be calculated carefully and set out in statute. To maintain correspondence with both offence and offender, financial penalties imposed on later dates would need to be set consecutively, unless the offender was judged able to afford concurrent maximum rates of payment. If, as a result, the financial penalty would remain outstanding more than 12 months later, then an alternative disposal would need to be

⁸³ Harding and Koffman note that "there must be limits as to how far a fine should be lowered or raised to take account of the offender's ability to pay, otherwise it might end up being disproportionate to the crime committed" (C. Harding and L. Koffman, *Sentencing and the Penal System: Text and Materials*, *op.cit.* p.337). Prior to the CJA 1993, Parliament considered a scheme requiring courts to impose a weekly amount that the offender could afford to pay, which was to be then multiplied by the number of weeks commensurate with the seriousness of the offence (Hansard, H.C., vol. 227, col. 915). There were concerns, however, that the scheme would lead to excessive fines, and the proposed maximum limit is intended to prevent such outcomes.

⁸⁴ There was no association between the rates previously imposed and the defaulters' current circumstances.

employed, bearing in mind the underlying principle that payments should be restricted to such a period.

Under the proposed scheme, there is no need for magistrates to calculate the total amount imposed. Such calculations could in fact detract from the emphasis in stage two upon offenders' financial circumstances. Announcing the total amount in court would certainly be undesirable, as it could create unnecessary confusion, and even lead to feelings of injustice in those unfamiliar with the system. Promoting awareness would be crucial to the success of the system. Unfamiliarity was a cause of the downfall of unit fines in the early 1990s, with the government failing to heed warnings that acceptance of the system was dependent upon a clear understanding of its principles.⁸⁵ Furthermore, there is now some cynicism to overcome due to this last experience.

More accurate tailoring of the amounts imposed to offenders' financial circumstances should reduce the number of cases in which later enforcement is required.⁸⁶ A further reduction would result from a greater use of direct deductions, from benefits and earnings, at the point of imposition.⁸⁷ Currently, AOE but not deduction from benefit orders can be made at the outset,⁸⁸ and it is proposed that this nonsensical position be remedied by enabling both to be employed.

⁸⁵ Bazell and Lomax noted at the time that "the Working Party felt very strongly that both the magistrates themselves and the public should be aware of the need to think in units rather than in cash terms when assessing the level of sentencing and that the practical effect of the unit fine system needed to be drawn to everybody's attention... Unless the public are made aware...the system could well fall into ridicule and not be generally accepted" (C. Bazell and I. Lomax, *Unit Fines*, *op.cit.* pp.46-47).

⁸⁶ The Home Office has stated that "those charged with enforcement of fines will readily recognise that if magistrates impose a fine which is ill-matched to an offender's means then the likelihood of default and the subsequent need for enforcement measures will be that much greater than if the financial penalty succeeds in combining affordability with a punitive element" (Home Office, *Fine Enforcement*, *op.cit.* pp.7-8).

⁸⁷ Moxon et al agree that "deductions would yield substantial savings in enforcement costs incurred by criminal justice agencies" (D. Moxon, C. Hedderman, and M. Sutton, *Deductions from Benefit for Fine Default*, *op.cit.* p.12).

⁸⁸ See Chapter One above, at f.n.18 and p.11.

The interviewed benches expressed their support for direct deductions,⁸⁹ but there are some drawbacks as the method involves various administrative costs, and it can be argued that they are overly intrusive, particularly for those in employment.⁹⁰ It is recommended, therefore, that direct deductions be reserved for two specific groups. First, those offenders who favour direct deductions,⁹¹ a potentially large group as a number of the sampled defaulters expressed their preference for them, with some requesting their employment when in court.⁹² Second, those offenders who have defaulted on earlier financial penalties. The removal of their right to choose is justified by their earlier default which indicates a greater chance of their failing to maintain payments again in the future. The checking of court records would be required to identify such offenders.

The deduction from benefits order is currently fixed at £2.70 per week, and is restricted to certain types of benefit.⁹³ Provided the above recommendations were adopted, it is submitted that these limitations could be removed.⁹⁴ The court will first of all consider whether a financial penalty is appropriate for the offender, assessing whether he or she can afford to pay at the minimum rate of payment. A financial penalty will not be imposed, therefore, if the offender has insufficient spare income, irrespective of whether he or she is in receipt of benefits or the type of benefit. If a financial penalty is

⁸⁹ See Chapter Seven above, at p.172-173&178.

⁹⁰ *ibid*, at pp.178-179. Morris and Gelsthorpe note that some small firms are “reluctant to administer the process” (A. Morris and L. Gelsthorpe, “Not Paying for Crime: issues in fine enforcement”, *op.cit.* p.845), but it is thought that they should see it as their duty to assist with the administration of justice.

⁹¹ At present, an AOE order can only be made at the point of imposition with the offender’s consent.

⁹² See Chapter Seven above, at pp.173-175.

⁹³ See Chapter One above, at p.11.

⁹⁴ The Justices’ Clerks Society has recommended that (i) higher priority be given to payment of financial penalties, (ii) the rate of deduction be increased to allow for larger sums to be deducted when no other deductions are being made, (iii) the power to apply for deduction should be extended to other benefits, and (iv) the power to apply for deduction should be exercisable at any time after imposition, even when the offender is not in default (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op.cit.* p.29).

appropriate, the court will set a time period for payment and then decide how much the offender can afford to pay during this period. There is clearly no justification for then altering the rate of payment simply because deductions are to be made from source.

A remaining problem is that direct deductions currently lack flexibility in dealing with those offenders whose employment status changes, whether in the sense of losing, changing or gaining employment.⁹⁵ Offenders should be encouraged to contact the court when there is any alteration in their financial standing, and improved sharing of information would again be helpful, enabling the court to react promptly. Further efficiency would result from the ability to shift the orders between employers and between an employer and the DSS. The latter is hindered by the existence of separate AOE and deduction from benefits orders, and their replacement by a single order is thus proposed. This would have the additional advantage of reducing complexity.

Finally, a greater use of MPSOs at the imposition stage for those offenders who are struggling to manage their finances,⁹⁶ and against whom direct deductions are not employed, would be likely to further reduce the need for later enforcement.⁹⁷ It would need to be ensured, however, that offenders were supervised sufficiently rigorously, and the establishment of agreed procedures would be beneficial. Such orders, it is submitted, should be the responsibility of the senior CEO, as the probation service is already

⁹⁵ Morris and Gelsthorpe state that “it seems to be general practice that courts do not make an attachment of earnings order without the consent of the defendant because of concerns that defendants might move jobs” (A. Morris and L. Gelsthorpe, “Not Paying for Crime: issues in fine enforcement”, *op.cit.* p.845).

⁹⁶ Bathurst similarly states that MPSOs should be employed against offenders “whose payment patterns are erratic and whose lifestyles are insufficiently organised to ensure regular payment without the presence of a supervisor” (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op.cit.* p.88).

⁹⁷ See Chapter One above, at p.6.

stretched and its priorities lie elsewhere. Such a setup at Manchester appeared to encourage their use.⁹⁸

6. The issuing and execution of warrants

Ensuring that the use of the financial penalty and the amount imposed is appropriate to both offence and offender will help to limit the need for any form of enforcement. But there will remain a number of offenders who, following imposition, decide not to pay, who forget to pay and whose circumstances change.⁹⁹ In considering the optimum way of dealing with these defaulters, the underlying principle is that the aim of enforcement is to collect and not punish. The earlier research finding that defaulters should be dealt with as quickly as possible has also been taken into account.¹⁰⁰

Defaulters should be issued, in the first instance, with reminder letters, giving them the opportunity to pay the amounts overdue. Issuing such letters has been found to be relatively effective,¹⁰¹ and beginning with a non-intrusive measure can be seen as a matter of due process.¹⁰² If payment is not received within the following set period, the offender should be summonsed to appear at the fines court on a forthcoming date. If the offender then fails to attend, a bail warrant should be issued. There is no statutory requirement for a summons to be issued first,¹⁰³ but, bearing in mind the warrant's more intrusive character and the greater cost involved, it can be seen as a matter of due process

⁹⁸ See Chapter Seven above, at p.171.

⁹⁹ See Chapter Five above, at pp.106-110, for the sampled magistrates, bailiffs and CEOs views as to the reasons for default.

¹⁰⁰ See Chapter Two above, at pp.38-39.

¹⁰¹ A Home Office research study found that reminder letters resulted in some payment in approximately 50 per cent of cases (P. Softley, *Fines in Magistrates' Courts* (1978), HMSO, p.23).

¹⁰² Bathurst states that the issuing of reminder letters "accords with the principles of natural justice and good practice" (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op.cit.* p84). The Manchester court currently issues "arrears notices", but Birmingham has ceased issuing reminders (see Charts A – D above).

¹⁰³ See Chapter One above, at pp.8-9.

and economic sensibility. If the defaulter still fails to pay or appear in court, a warrant without bail should be issued.

Ideally, court-employed CEOs should execute bail and no bail warrants. Employment by the court ensures the officers are privy to its most recent information, whilst the court is able to monitor closely their work.¹⁰⁴ Direct employment also gives the officers a certain standing. Nevertheless, the court still needs to ensure that CEOs have the necessary resources to deal with non-compliant defaulters.¹⁰⁵

CEOs have the authority to accept part payments, but their ability to do so is limited by restrictions upon the time for which warrants can be retained.¹⁰⁶ Such restrictions should be retained, as previous research has concluded that prompt action is vitally important, and adoption of the above recommendations would ensure that fines are tailored to both offence and offender. Returning defaulters to court should then be the priority, enabling magistrates to identify the reason for the default and to respond accordingly.¹⁰⁷

An alternative option for the courts is the distress warrant.¹⁰⁸ The automated fast-track approach to the issuing of such warrants has been discouraged by the advice of the Justices' Clerks' Society that such warrants should not be issued "without judicial consideration ... in the presence of the defaulter".¹⁰⁹ The findings of this study support such a restriction as many of the sampled defaulters were of low means and had suffered

¹⁰⁴ The interviewed benches were more comfortable with the use of CEOs than bailiffs, partly because of the accountability and control retained by the court (see Chapter Six above, at pp.147-148).

¹⁰⁵ See p.239 below.

¹⁰⁶ A restriction of ninety days at Manchester.

¹⁰⁷ See pp.240-247 below.

¹⁰⁸ See Chapter One above, at pp.6-7.

¹⁰⁹ Justices' Clerks' Society, "Human Rights Issues" (2000) 36 JCS News Sheet 1, at p.4. See Chapter One above, at pp.25-26.

financial hardship.¹¹⁰ Threatening to remove their goods, thereby worsening their plight, hardly seems appropriate, particularly as bailiff fees are added to the outstanding financial penalties.¹¹¹

Doubts have been expressed as to whether the distress warrant should be retained in any form. For instance, the levying of distress has been described as an “archaic and unduly harsh” form of enforcement.¹¹² On the other hand, it can be argued that a threat is required to encourage reluctant defaulters to pay, and a method needed for dealing with those who refuse to pay. Imprisonment used to fulfil such a role, but its use has been discouraged,¹¹³ suggesting that there is a void for the distress warrant to fill. The strength of this argument is severely limited, however, by the alternative of direct deductions. Such deductions are effective, less costly, and less intrusive, conforming more closely to the underlying principle that the aim of enforcement is to collect and not punish.¹¹⁴ If these deductions were employed more extensively, as has been recommended,¹¹⁵ the need for the distress warrant would appear minimal.

If the distress warrant is to be retained, then, bearing in mind its intrusive character, it should be restricted to those offenders who have deliberately ignored their payments and who have the means to pay. The bailiffs themselves were frustrated by the lack of selectivity in issuing, due to the consequence of having to chase perceived “lost

¹¹⁰ See Chapter Five above, at pp.95-99.

¹¹¹ A view shared by a number of the interviewed benches (see Chapter Six above, at pp.124&150-151).

¹¹² National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients' experience of bailiffs*, *op.cit.* p.47. See also Chapter Two above, at p.47.

¹¹³ See Chapter One above, at pp.16-18.

¹¹⁴ Bathurst believes that “to move straight to ‘strong arm’ tactics will not only be costly in terms of human and material resources; it may also antagonise payers against the ‘system’ and alienate them still further from the society that has punished them in the first place” (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op.cit.* p.83).

¹¹⁵ See pp.231-233 above. See also p.242 below.

causes”.¹¹⁶ Fortunately, if the above proposals were adopted,¹¹⁷ financial penalties would not have been imposed against offenders suffering financial hardship. The need for further judicial consideration, prior to issuing, would remain, however, as a defaulter’s circumstances could have deteriorated since the time of imposition. It can also be argued, bearing in mind the bailiff fees that are imposed, that distress warrants should be reserved for those of average means or above.

An overhaul of bailiff fees appears essential. The fees are currently imposed against defaulters in full, which sits uncomfortably with the underlying principle that the aim of enforcement is to collect and not punish. On the other hand, it can be argued that the cost of enforcement should not be subsidised from elsewhere and that it is only fair that defaulters pay for their own default.¹¹⁸ Whilst both arguments have merit, limiting distress warrants to those who have deliberately ignored their payments and who are of average means or above helps to give the latter greater weight.

The criticism remains, however, that the current arrangements lead to charges against defaulters that are out of all proportion to the amounts imposed by the courts.¹¹⁹ Such disproportionality, it is submitted, makes a mockery of the courts’ attempts to tailor impositions to both offence and offender. The fees imposed against defaulters should be limited, therefore, to a certain percentage of the outstanding amounts.¹²⁰ Any further

¹¹⁶ See Chapter Six above, at pp.138-139.

¹¹⁷ See pp.224-226 above.

¹¹⁸ An opinion held by a bailiff at Birmingham (see Chapter Six above, at p.151).

¹¹⁹ As proved to be the case in a number of the sampled distress warrants (see Chapter Six above, at pp.123-124).

¹²⁰ At Birmingham, only the initial administration fee was so restricted. The LCD Green Paper *Towards Effective Enforcement* raises a number of questions regarding bailiff fees, including whether they should be standard amounts or should reflect the amount of the debt (Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.38).

costs would have to be paid by the courts, which is not altogether unreasonable bearing in mind the costs incurred in employing the alternatives.

Continuing to bear in mind the severity of the distress warrant, defaulters should, as a matter of due process, be given the chance by bailiff firms to pay by instalments. Furthermore, provided that distress warrants were issued selectively, the current retention periods should be extended to maximise the chances of payment.¹²¹ Such payments should be made to the bailiff firm, as at present, but some problems have been caused by defaulters having to pay bailiffs and the courts simultaneously in respect of different accounts.¹²² Improved monitoring of court records would help to prevent this happening by ensuring that offenders' accounts are kept together. Nevertheless, as a fall back, the courts should be able to recall warrants when it is deemed to be in the interests of justice.¹²³

An ability to recall warrants recognises the need for courts and bailiff firms to work together as a team with the single goal of collecting the amounts due. Unfortunately, magistrates and CEOs were found to have certain reservations about bailiffs and vice-versa.¹²⁴ These reservations perhaps stemmed from ignorance, at least in part,¹²⁵ and it is submitted that greater clarity about each other's roles would be beneficial. Justice requires the courts' procedures to be clear and transparent, and consequently the defaulters themselves should not be excluded from this greater awareness. Defaulter ignorance can breed mistrust, and certain misapprehensions were detected during the

¹²¹ Current period of 90 days at Birmingham.

¹²² See Chapter Six above, at pp.154-155.

¹²³ See Chapter One above, at f.n.29, for the current position.

¹²⁴ See Chapter Six above, at pp.133-134&149-154.

¹²⁵ A number of benches admitted to having little knowledge about the bailiffs' role (see Chapter Six above, at f.n.92).

fieldwork.¹²⁶ Regrettably, both bailiffs and CEOs proved willing to employ various bluffs to exploit these misapprehensions.¹²⁷ Such tactics, it is submitted, fail to afford the defaulters sufficient respect and can only tarnish the reputation of the court.

The perceived need to resort to such tactics would be minimised by ensuring that bailiffs and CEOs have the necessary resources to execute their respective warrants.¹²⁸ In other words, when necessary, bailiffs executing distress warrants need to be able to remove goods, and CEOs executing arrest warrants without bail need to be able to arrest defaulters. An agreement with the police for back-up as and when required would be particularly valuable. A further issue is whether bailiffs and CEOs have the necessary statutory powers.¹²⁹ Particularly controversial is the issue of entry into a property.¹³⁰ Provided the warrants were issued as recommended,¹³¹ it is thought that a power to force entry to deal with uncooperative defaulters would be justifiable. Such a power, bearing in mind its intrusiveness and the potential for hostility, would have to be exercised with caution, and the LCD proposal for prior judicial authority is worthy of serious consideration.¹³²

¹²⁶ *ibid.*, at p.155.

¹²⁷ *ibid.*, at pp.157-158.

¹²⁸ Several of the Manchester CEOs criticised the current level of resources.

¹²⁹ The official transfer of responsibility was to be accompanied by “wider and clearer” powers of warrant execution (see Chapter One above, at pp.27-29), but little of practical significance was introduced (see Chapter Two above, at p.49).

¹³⁰ There was a lack of consensus amongst the sampled CEOs as to the powers that they should have at their disposal (see Chapter Six above, at pp.131-132).

¹³¹ See pp.234-236 above.

¹³² Lord Chancellor’s Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement*, *op.cit.* p.27. In his review of bailiff law, Beatson, summarising the points emerging from his consultation, states that forcible entry to domestic premises should be a response of last resort and only be permissible if access was not possible on the first visit. Furthermore, he continues, there should be evidence demonstrating a reasonable belief that the defaulters would refuse voluntary access and that reasonably valuable goods are “probably” on the premises. Finally, adequate notice to force entry should be given (J. Beatson, *Independent Review of Bailiff Law: A Report to the Lord Chancellor* (2000) LCD, pp.37-38).

Having the necessary powers and resources is immaterial if bailiffs and CEOs cannot locate defaulters. Unfortunately, many of the sampled warrants had incorrect addresses,¹³³ and, largely due to the difficulties of making contact, the performance figures for warrant execution at Birmingham and Manchester were disappointing.¹³⁴ The transfer of responsibility, the Government held, would create a “more effective and efficient” system,¹³⁵ and the accompanying section 94 of the ATJA 1999 is clearly a step in the right direction.¹³⁶

7. The fines court

For those defaulters appearing at the fines court, the underlying principle remains that the aim of enforcement is to collect and not punish. Furthermore, the principles of justice and fairness require the courts’ decisions to be tailored to both offence and offender, the latter helping to ensure that the methods adopted are effective.¹³⁷ But this study’s findings indicate that there is currently a great reliance upon granting defaulters further time to pay, with little utilisation of the alternatives.¹³⁸ The magistrates themselves expressed concern about this one-dimensional approach, saying that the granting of further time could be perceived as a weak option.¹³⁹ Many of the financial penalties had been outstanding for long periods,¹⁴⁰ and the danger is of a belief

¹³³ See Chapter Six above, at pp.125-127.

¹³⁴ *ibid*, at pp.127-128.

¹³⁵ See Chapter One above, at pp.27-29.

¹³⁶ But as stated above, at pp.223-224, further strides now need to be taken regarding the accessing and processing of information.

¹³⁷ The Home Office has emphasised the need for the methods adopted to be effective: “If magistrates, hearing an enquiry into a fine defaulter’s means, consistently select enforcement measures which are relatively ineffective, the problems of collection and enforcement may be exacerbated both in the individual case and more generally” (Home Office, *Fine Enforcement. op.cit.* pp.7-8).

¹³⁸ See Chapter Seven above, at pp.161-162.

¹³⁹ *ibid*, at p.164.

¹⁴⁰ See Chapter Five above, at pp.89-91.

developing amongst defaulters that avoiding payment is a real possibility, at least for a significant period of time.¹⁴¹

Greater attention, it is submitted, needs to be paid to the reasons for the default. If the defaulter's circumstances have changed, or further information has come to light since the time of imposition, then, on the grounds of fairness and proportionality, the amount payable needs altering accordingly.¹⁴² In the sampled cases, remissions were not extensively used,¹⁴³ and it was questionable whether magistrates at Birmingham paid sufficient attention to the appropriateness of remitting.¹⁴⁴ In the magistrates' defence, they were often hindered by the fines having been imposed with limited information about the defaulters' circumstances. Improved accessing and processing of information would remedy this problem, enabling magistrates to monitor any change.

Having evaluated the defaulter's current financial circumstances, the magistrates may conclude that he or she is unable to pay at the minimum allowable rate of payment. If so, the financial penalty should be deemed no longer appropriate, and an alternative disposal employed. CPOs and COs can now be used against "persistent petty offenders" and driving disqualifications against all offenders, but the provisions, in the C(S)A 1997, enabling their use against fine defaulters have not, as yet, been implemented.¹⁴⁵

¹⁴¹ Bathurst states that "to allow a defendant too much 'rope' is to encourage him, and others, to be too cavalier about their responsibilities" (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op.cit.* p.82).

¹⁴² An alteration at level two of the proposed "unit fines" system (see pp.229-230 above).

¹⁴³ See Chapter Seven above, at p.183.

¹⁴⁴ The probation inspectorate similarly found as follows: "In general, courts appeared to be reluctant to remit the whole or part of a fine. In order to remit, a significant change in circumstances had to be demonstrated... Changes of circumstances for the defaulter mostly resulted in a change in the rate of payment" (HM Inspectorate of Probation, *The Role of the Probation Service in Avoiding the Use of Custody for Fine Default: Report of a Thematic Inspection*, *op.cit.* p.19). One commentator has since stated that "it is the reluctance of many magistrates to remit fines that causes the greatest distress to claimants" (Payne, D.S., "Fines, Their Enforcement and Effect", *op.cit.* p.621).

¹⁴⁵ See Chapter One above, at pp.22-24.

Unfortunately, even if the provisions were implemented, they would be of little help to those defaulters unable but willing to pay, as the court needs to find that the default was due to wilful refusal or culpable neglect.

The targeting of the fine defaulter provisions in the C(S)A 1997 is, it is submitted, wrong. If the defaulter has the means to pay then the financial penalty remains the most appropriate disposal for both offence and offender, and the emphasis should be upon extracting payment. On the grounds of fairness, justice and proportionality, CPOs and COs should only be employed against those defaulters unable to pay. A subsidiary advantage of such targeting would be a greater likelihood of compliance.¹⁴⁶ CROs and Community Punishment and Rehabilitation Orders should also be made available, as they could be more suitable for those with accompanying personal problems.

For defaulters who have the necessary means but have decided not to pay or have forgotten to pay then ideally the remaining payments should be deducted from source. Such deductions are an effective way of obtaining payment whilst being less costly and less intrusive than various other methods of enforcement.¹⁴⁷ If direct deductions are not feasible, then the appropriate approach will depend upon whether it is a case of deliberately disregarding the payments or forgetfulness. If the latter, a MPSO should be employed to aid regular payments.¹⁴⁸ But if the former, the court needs to respond stringently.¹⁴⁹ The chances of compliance with a community sentence are questionable,

¹⁴⁶ The Magistrates' Association has stated that "in the case of those defendants 'unwilling to pay', community service is hardly likely to be accepted as an alternative to a fine" (Magistrates' Association, "Fines and Fine Enforcement", *op.cit.* p.132).

¹⁴⁷ See pp.231-233 above for further recommendations regarding direct deductions.

¹⁴⁸ See pp.233-234 above.

¹⁴⁹ The Magistrates' Association has stated that "obdurate defendants need to be identified as soon as possible and courts must be prepared to activate appropriate enforcement measures both promptly and firmly" (Magistrates' Association, "Fines and Fine Enforcement", *op.cit.* p.132).

bearing in mind that the defaulter has already deliberately disregarded a court order,¹⁵⁰ leaving the realistic options of a distress warrant,¹⁵¹ enforcement by the High Court or a county court,¹⁵² an ACO¹⁵³ and imprisonment, suspended or immediate.¹⁵⁴

Many of the benches who were interviewed said they knew nothing about their ability to authorise enforcement by the High Court or a county court. Bearing in mind the typical profile of the fine defaulter, the applicability of the power will be limited, but it is submitted that it should be retained to deal with any defaulter who is refusing to pay and who has no recognisable income but who does have various assets.¹⁵⁵ Improved accessing and processing of information would be vital in identifying any such defaulter.

There was strong support for imprisonment as a method of enforcement amongst the benches interviewed,¹⁵⁶ but its use has been discouraged in recent years, and, as a result, has fallen dramatically.¹⁵⁷ There are three reasons why it has been discouraged: first, custody is costly; second, its employment represents a failure in the sense that the court has failed to extract payment from the offender; and, third, it is seen as inappropriate for an offence which warranted a financial penalty.

¹⁵⁰ See Chapter Two above, at p.44 and f.n.63.

¹⁵¹ See pp.235-237 above.

¹⁵² See Chapter One above, at p.10.

¹⁵³ *ibid*, at p.15.

¹⁵⁴ *ibid*, at pp.7-8.

¹⁵⁵ Bathurst states that “proceedings under s.87(1) will be extremely rare. They have the dual disadvantage of being time-consuming and expensive. It is suggested that they will only be practicable or necessary when the defendant...has realisable assets but refuses to draw on them and a distress warrant is not practicable” (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op.cit.* p.143). He then notes that for these defaulters, imprisonment may yield the money “rather more efficiently and quickly”. The defaulter may prefer to serve a period of imprisonment, however, and it is submitted that when the financial penalty is the most pertinent disposal for the offence, the court should first employ those methods wholly aimed at obtaining payment.

¹⁵⁶ See Chapter Seven above, at p.191.

¹⁵⁷ See Chapter One above, at pp.17-18.

Each of these points, it is submitted, are far from decisive, and can be countered as follows: first, although economic considerations are important, the quality of justice is paramount;¹⁵⁸ second, there is no alternative to custody, besides remitting in full,¹⁵⁹ when the defaulter is refusing to pay and all other options are inappropriate;¹⁶⁰ and, third, the committal is not for the original offence, but for the default and the complete disregard for the court's order.

It has been emphasised many times that an underlying principle is that the aim of enforcement is to collect and not punish, but this can be qualified here by stating that when the former fails, the latter is all that remains. Imprisonment should, therefore, retain its position as a last resort for those refusing to pay. However, bearing in mind its severity, any custodial sentence should be suspended in the first instance as a matter of due process.¹⁶¹ On the grounds of openness and transparency, reasons should be given as to why all other methods of enforcement are inappropriate.

The ACO provides a final alternative to custody. It has the advantage of being less costly and a less severe restriction upon liberty, and is therefore more proportionate to the original offence. Arguably, it has the added advantage of being able to assist defaulters, with the Home Office stating that “the programmes can be structured to include financial

¹⁵⁸ See p.219 above.

¹⁵⁹ Which would be particularly unfair on those offenders who do pay their financial penalties.

¹⁶⁰ Whilst discouraging the use of imprisonment, the Home Office has recognised that in certain instances it may be justified: “The purpose of all enforcement measures is to compel payment, and commitment to prison is no exception. If a defaulter actually serves a period of imprisonment, enforcement in his case has failed. The only reasons for implementing the commitment are to clear the outstanding fine from the account and to encourage others to comply with the courts’ orders for payment by demonstrating the ultimate result of non-compliance” (Home Office, *Fine Enforcement – Part II*, *op.cit.* p.16).

¹⁶¹ Bathurst states that “the power to postpone is effectively an act of mercy” (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op.cit.* p.184).

management education which may assist some offenders to organise their financial affairs and possibly avoid default on subsequent occasions”.¹⁶²

The ACO should be retained, therefore, but, bearing in mind the need to extract payment whenever possible, its restriction to those refusing to pay and for whom all other options are inappropriate should be maintained.¹⁶³ It needs to be ensured that magistrates comply with this restriction, as a number of the interviewed benches expressed their support for the order on the grounds that it provided a useful alternative for those young offenders who were genuinely struggling to pay.¹⁶⁴ As set out above,¹⁶⁵ the best approach in such cases is for the outstanding amounts to be altered as appropriate or a lower-tariff community sentence employed.

ACOs and custodial sentences, suspended or not, were rarely employed in the fines court sample,¹⁶⁶ but the court threatened their employment on a number of occasions.¹⁶⁷ The issuing of such threats was seemingly intended to countenance any perceived weaknesses arising from reliance upon the granting of further time to pay.¹⁶⁸ Implementation of the above proposals, particularly the greater utilisation of direct deductions, would clearly reduce the need to make such threats. In any event, on the grounds of justice, fairness and proportionality, threats should be restricted to those defaulters who are refusing to pay, particularly due to the potential distress and anxiety

¹⁶² Home Office, *Alternative Penalties for Fine Defaulters and Low Level Offenders*, *op.cit.* p.13.

¹⁶³ The points regarding the use of custody apply to the ACO.

¹⁶⁴ See Chapter Seven above, at p.193.

¹⁶⁵ See pp.241-242 above.

¹⁶⁶ See Table 10 above.

¹⁶⁷ See Chapter Seven above, at pp.209-212.

¹⁶⁸ Davies states that “any method which threatens sanctions that are seen to be never, or hardly ever, used, has an inherent weakness within it” (Davies, M., *Financial Penalties and Probation*, *op.cit.* p.26). Bathurst meanwhile believes that an insistence upon “terror-inducing tactics” is indicative of an inexperienced bench (D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts*, *op.cit.* p.131).

that they can cause.¹⁶⁹ Magistrates then need to act upon their words when appropriate, as they are not entitled to expect offenders to be fully honest when they themselves are employing various bluffs.

Another commonly employed threat was to search the defaulter whilst he or she was in court.¹⁷⁰ No such searches were ever executed, and one can question whether the court was acting honourably, particularly as a number of benches admitted that they harboured doubts about the Human Rights implications.¹⁷¹ It is clearly an intrusive measure, and, without clear grounds for the search, it could be perceived as an invasion of privacy. It could also lead to feelings of resentment and hostility. Furthermore, simply having money in his or her possession does not imply that the defaulter can afford to pay that money to the court.¹⁷² For these reasons, the power should be removed.

A method occasionally employed in the fines court was to order the defaulter to serve one day's detention.¹⁷³ In practice, this required the offender to remain at the back of the courtroom until the end of the session, which was never the cause of any great inconvenience. Alas, not only do the orders sit uncomfortably with the underlying principle that the aim of enforcement is to collect, but it is questionable whether any of the traditional rationales of sentencing are satisfied. Nevertheless, the orders are of some value, as their employment can clear very small amounts which, in terms of the potential time, effort and expense involved, are not worth collecting. Their retention is, therefore, recommended.

¹⁶⁹ A large proportion of the sampled defaulters stated that their financial penalties had caused them distress and anxiety (see Chapter Five above, at p.105).

¹⁷⁰ See Chapter Seven above, at pp.208-209.

¹⁷¹ *ibid*, at p.182.

¹⁷² A point that has been made about payments more generally (see Chapter Two above, at p.42).

¹⁷³ See Chapter Seven above, at pp.195-196.

As a final point, reference can be made to the option of running a fines clinic.¹⁷⁴ Provided the above proposals were implemented, the need for such a clinic would be minimal. The use and imposition of fines would be tailored more appropriately to offenders' circumstances, and direct deductions employed more extensively. As a result, there would be a reduction in the number of defaulters, which would lighten the load upon the enforcement process. Those offenders who did default would be returned to the fines court promptly, which is preferable to attending the clinic since magistrates, rather than enforcement staff, would evaluate the reasons for the default, and would have the full range of enforcement options at their disposal.¹⁷⁵

8. Conclusion

The enforcement process has developed considerably in recent years, but, despite increasing emphasis upon its effectiveness, significant shortcomings have been identified. The proposals offered in this chapter are intended to raise not only the levels of effectiveness and efficiency but also the quality of justice. The latter is paramount, since it is only through adhering to the principles of justice and fairness that the court can retain its credibility and maintain its authority.

For the court's decision to be fair, just and proportionate, it needs to be tailored not only to the offence but also to the individual offender. Developing an accurate picture of the offender's circumstances is thus crucial, and the first set of proposals concern the improved accessing and processing of information, not only within the court and between courts but also with outside agencies. The first step has been taken in the form of section

¹⁷⁴ As Birmingham had opted to do at the time of the fieldwork (see Chapter Four above, at p.73).

¹⁷⁵ Enforcement staff operating the clinic cannot remit any amounts or authorise deductions from source. It was evident from the observational study that the propriety of remitting was often overlooked.

94 of the ATJA 1999 and the subsequent agreement with the DSS, but greater strides now need to be taken.

An underlying principle has been identified as the need for the fine to have a detrimental impact but not cause financial hardship. As a consequence, an alternative disposal should be employed whenever an offender is unable to pay at a set minimum rate of payment without suffering such hardship. The “persistent petty offender” measures in the POCC(S)A 2000 are thus also a step in the right direction, but the full range of community sentences should be available as options, and they should not be restricted to those offenders who already have outstanding financial penalties. For those who have such penalties, full payment within a 12-month period may be impossible, and, if so, an alternative disposal should again be employed.

For those offenders who are able to pay, the amount imposed, as well as the rate of payment, needs tailoring to their means. This study demonstrates that such tailoring is currently insufficient, and that, at least in Birmingham and Manchester, many of the financial penalties imposed are incapable of payment within 12 months. The introduction of a system of unit fines is thus recommended, which should reduce the need for later enforcement. A further reduction would also result from the use of direct deductions, at the point of imposition, against those offenders who have defaulted on previous financial penalties and those who favour such deductions. Greater use of MPSOs at the imposition stage would also be beneficial.

Those offenders who do default need to be returned to court promptly, and court-employed CEOs should be used to execute both bail and no bail warrants. Alternatively, the courts can issue distress warrants, but, applying the principle that the aim of

enforcement is to collect and not punish, more extensive use of the less costly and less intrusive option of direct deductions is preferable. If distress warrants are to be retained, then their issuing should be restricted to those defaulters who have the means to pay but who have decided not to do so. In addition, charges against defaulters should be capped at a certain percentage of the outstanding amounts, part payments should be accepted by bailiff firms, and retention periods should be extended.

On the grounds of openness and transparency, defaulters need to be more informed about the roles of both the bailiff and the CEO. This would prevent bailiffs and CEOs from attempting to bluff defaulters, which would, in turn, reinforce the need for them to have the necessary resources and powers to execute their warrants. It is submitted that forcible entry should be permissible in limited circumstances.

The current tendency of the fines court is to grant defaulters further time to pay, which is of limited effectiveness. Greater attention needs to be paid to the reasons for the default. If defaulters' circumstances have changed, the amount payable needs altering accordingly, and the full range of community sentences should be available for those no longer able to pay. For those defaulters who can pay, efforts should be concentrated upon obtaining payment. Direct deductions are particularly effective and should be employed against those who forgot to pay and those who decided not to do so. If such deductions are not feasible, MPSOs should be employed against the former group. For those who decided not to pay, firmer action is then justifiable, and both imprisonment and ACOs should be retained as last resorts.

Finally, the greatest improvements in justice, fairness, effectiveness and efficiency would result from the implementation of this chapter's proposals as a whole. They have

in fact been designed for such implementation, as account has been taken of the knock-on effects resulting from each of the suggested changes. Implementation together would also provide a coherent framework for the enforcement process, aiding both clarity and certainty. An unfortunate aspect of the development of the enforcement process has been its piecemeal nature. The time for codification is ripe.

APPENDIX A

Issuing Distress Warrants against Fine Defaulters: The Automated ‘Fast-track’ Approach

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Following the introduction of Management Introduction Statistics at the end of the 1980s, there has been increased pressure upon the magistrates’ courts to raise the collection rates of the financial penalties they impose.¹ This pressure is compounded by the need to maintain the credibility of the fine as a sentencing disposal, with the Home Office acknowledging that “the penalties imposed by the courts will only be taken seriously if they are effectively enforced”.² Various initiatives have been employed, one of these being an increase in the use of distress warrants.³ This was a recommendation of the Magistrates’ Association in 1988,⁴ and, some eight years later, 90 per cent of those Justices’ Clerks responding to a postal questionnaire indicated that private firms of

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¹ The statistics were accompanied by a cash limited formula, part of which measures the efficacy with which financial penalties are collected.

² Home Office, *Modernising Justice* (1998), The Stationery Office, para.5.12.

³ The issuing and execution of distress warrants has been described as “perhaps the most controversial of all the enforcement methods” (S. Shaw, “Monetary Penalties and Imprisonment: the realistic alternatives”, *op.cit.* p.34).

⁴ Magistrates’ Association, “Fines and Fine Enforcement” (1988) 44 *The Magistrate* 134.

bailiffs were being used to execute such warrants.⁵ More recently, certain statutory and judicial developments have encouraged the courts to adopt an automated ‘fast-track’ approach to the issuing of distress warrants. This approach is the focus of the analysis here and it will be argued that the developments are regrettable, the reasoning being that there is a clear need for the courts to be selective at the issuing stage, with the distress warrant being unsuited to certain types of defaulter.

The relevant statutory provision is section 45 of the Justices of the Peace Act 1997. This allows justices’ clerks, instead of justices themselves, to exercise the judicial discretion over whether or not to issue a distress warrant.⁶ In other words, the section enables a distress warrant to be issued without any ‘formal inquiry’ into the defaulter’s means.⁷ Turning to the recent case law, the pivotal judgment is that of Simon Brown LJ in *R v Hereford Magistrates’ Court, ex parte MacRae*;⁸ a case in which the High Court had to evaluate a policy of ‘automatically’ issuing distress warrants following an unsuccessful final demand.⁹ The applicant argued that although the decision to issue a distress warrant could now be delegated, there still had to be a judicial and fair exercising of discretion. Simon Brown LJ agreed, but his response was that such discretion had been exercised because certain manual checks were in place to ensure there were no “known

⁵ HM Magistrates’ Courts Service Inspectorate, *Magistrates’ Courts and Fine Enforcement* (1996), HMSO, p.8.

⁶ Darbyshire notes that “over the years, there has been a blurring of the advisory and judicial role in that more and more the magistrates’ functions have been delegated to the justices’ clerks” (P. Darbyshire, “A Comment on the Powers of Magistrates’ Clerks” [1999] *Crim.L.R.* 377). She believes that this “delegation of judicial functions to clerks is...an unprincipled, undesirable development of the clerk’s role” (*ibid*, p.380).

⁷ A ‘formal inquiry’ being one that is conducted by magistrates in a courtroom.

⁸ *The Times*, December 31, 1998.

⁹ A computerised system producing draft distress warrants against defaulters who failed to respond to a final demand within three weeks.

circumstances” making the issuing of the distress warrant inappropriate.¹⁰ Emphasis was then placed upon the fact that the final demand had warned the defaulter that failure to pay would “resolve in a distress warrant being issued”.

The applicant’s alternative argument was that evidence was required of the defaulter having the means to pay before a distress warrant could be issued. This submission was based upon earlier authorities, most notably *R v Birmingham Justices, ex parte Bennett*¹¹ and *R v Guildford Justices, ex parte Rich*.¹² In the first of these cases, Griffiths LJ considered how justices should exercise their discretion, under section 76 of the Magistrates’ Courts Act 1980, in deciding whether to issue a warrant of distress or a warrant of committal. His conclusion was as follows:

In order to exercise this discretion, the justices must, of course, inquire into the means of the defaulter. They do not however have to be satisfied at this stage that there is no doubt about the defaulter’s ability to pay. If the evidence reveals that there is a reasonable likelihood that the defaulter has assets available to satisfy the sum he owes, the justices should proceed by way of a warrant of distress rather than by way of a warrant committing the defaulter to prison.¹³

This judgment proved to be of no assistance to the applicant, however, as Simon Brown LJ held that it was no authority for the proposition that there had to be a means inquiry “in every case even if, as here, only a warrant for distress is under the court’s consideration”. Moving onto *ex parte Rich*, the contentious issue in this case was the need to notify the defaulter before issuing the warrant. Newman J was of the following opinion:

¹⁰ The following circumstances were mentioned: (i) the defendant residing at a bail hostel; (ii) the defendant being of no fixed abode; and (iii) the amount outstanding being less than £25. The Chief Finance Officer would perform a further check, and a warrant would not be issued if there was contact with the defaulter or if the file revealed a reason for not so issuing. On this basis, Simon Brown LJ held that there was a “plain policy...only to issue distress warrants against those who repeatedly fail to advance any basis whatsoever for not paying or being distrained against”.

¹¹ [1983] 1 W.L.R. 114

¹² (1996) 160 J.P. 645.

¹³ *op. cit.* p.118

A procedural aspect of procedural fairness which should be followed in a magistrates' court, where someone is unrepresented and the court has in mind to issue a warrant of distress so as to deprive someone of their property, is that sufficient notice should be given to that individual so that he understands that that is what he is in jeopardy of suffering. It is right that he should be given an opportunity to object and to show good cause, if he can, as to why such an order should not be made.¹⁴

Interpreting this judgment, one writer surmised that “debtors must receive notice of the intention to issue distress”,¹⁵ but a Deputy Clerk to the Justices disagreed, arguing that the case was only concerned with those situations where the defendant was present in court.¹⁶ Any confusion is now settled by *ex parte MacRae*, with Simon Brown LJ holding that the final demand constituted the “specific notice” that was missing in the earlier case.¹⁷ The result of so holding was that this authority also failed to assist the applicant, and Simon Brown LJ determined that he could “find no fault in the respondents’ procedure – automated though it is”. It is readily apparent, however, that in reaching this conclusion he was largely influenced by more general considerations concerning the enforcement process. The crux of his judgment is as follows:

Wherever possible offenders will be fined rather than imprisoned. Central to that policy is the need to have effective machinery for fines enforcement. If fines lose credibility, if, in other words, offenders so punished are regarded as “getting away with it” in every sense, then the balance will inevitably shift towards custodial disposals. It is, therefore, imperative that fines should be paid and that the system for enforcing them is efficient, expeditious and effective. But it is important too that the enforcement process, in turn, whenever possible, avoids custodial disposals. It should, in short, prefer distraint to committal.

The judgment of Simon Brown LJ has now been followed in *R v Hereford Magistrates’ Court, ex parte Wallwyn*,¹⁸ notwithstanding the fact that there was some

¹⁴ *op. cit.* p.648.

¹⁵ J. Kruse, “In Distress” (1997) 53 *The Magistrate* 185.

¹⁶ S. Jones, “Distress Warrants” (1997) 53 *The Magistrate* 267.

¹⁷ As has already been noted in the text above, the final demand warned the defaulter that non-payment would “resolve in a distress warrant being issued”.

¹⁸ *unreported*, April 14, 1999.

communication from the defaulter following the issuing of the final demand.¹⁹ The overriding concern of Mitchell J was to uphold the “principles” outlined above, and the references to the need for an effective and credible fine enforcement process and the need to avoid custodial disposals are indeed commendable. Nevertheless, this author maintains that the adoption of an automated ‘fast-track’ approach to the issuing of distress warrants is not the appropriate solution.

The major problem is that many defaulters are not only of limited income, so they are unable to meet the bailiffs’ demands for payment,²⁰ but they also possess few assets that are worthwhile or even capable of being seized.²¹ Unfortunately, under the ‘fast-track’ approach, little²² attempt is made to try to identify these defaulters, and it is submitted that this will have regrettable consequences for both magistrates’ courts and bailiffs. First, if these defaulters perceive the courts to be resorting to inappropriate methods, which then fail, there is a potential for them to view the whole enforcement process as inept. Alternatively, if they believe that they or their families have been subjected to undue anxiety and distress, they may become less co-operative and more

¹⁹ There was a written request from the applicant for a reduced rate of payment, and a payment of £21 was made, which temporarily brought the account up to date. The warrant was issued when no further payment was made in the following three weeks.

²⁰ The National Consumer Council has argued that “the bailiff should...be required, in the first instance, to secure sensible repayment schedules” (*Private Bailiffs: their Role in Debt Collection* (1990), National Consumer Council, p.18). In contrast, Kruse has found that “most private bailiffs employed by...magistrates’ courts...will not offer very long timescales for repayment” (J. Kruse, *Dealing with Distraint: Bailiffs’ Law for Advisers* (1994), National Money Advice Training Unit, p.33).

²¹ See, for example, D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates’ Courts* (1996), Barry Rose Law Publishers, p.12. Kruse notes that “the use of bailiffs is far more about scaring the debtor than the physical removal of goods” (J. Kruse, *Dealing with Distraint: Bailiffs’ Law for Advisers*, *op. cit.* p.8), but a lack of assets will obviously nullify any threat that is made.

²² The manual checks outlined in *ex parte MacRae* are clearly limited in nature (see n.10 above). The computerised fine enforcement system contained over 28,000 fine accounts, but, in the first six months of 1998, only 683 draft warrants were not issued.

hostile towards this process.²³ Perhaps more worrying for the magistrates' courts is the fact that unsuccessful warrants hold up²⁴ the enforcement process, and Softley and Moxon have found that "the key to effective enforcement" is "speed of action, both following default and in following up initial measures where these have failed".²⁵

As for the bailiffs, the regrettable consequence of the 'fast-track' approach is that much time will be wasted pursuing lost causes. During a small-scale pilot study conducted in the Birmingham area by the author between March and April 1999, it was found that several distress warrants had been issued despite earlier failures. The bailiffs, given the task of enforcing these warrants, believed the chances of progressing with them were slim, and they were critical of the fact that the warrants had been issued in the first place.²⁶ A further drawback is that the bailiffs' firms have to ensure that the successful warrants account for this non-productive time,²⁷ and the literature demonstrates that the charges, which are levied against the defaulters, are already considerable.²⁸

Understandably, bailiffs aim to minimize non-productive time by concentrating upon those warrants they deem more promising. This is attempted through their own

²³ After all, as Davies states, "the bailiff system of seizing or threatening to seize goods can cause great bitterness; enforcement with distress in every sense" (F.G. Davies, "Fine Enforcement" (1994) 158 *Justice of the Peace & Local Government Law* 476).

²⁴ Whittaker and Mackie, for example, state that "unsuccessful distress warrants add severe delays to the enforcement process" (C. Whittaker and A. Mackie, *Enforcing Financial Penalties* (1997), HMSO, p.33).

²⁵ P. Softley and D. Moxon, *Fine Enforcement: An Evaluation of the Practices of Individual Courts* (1982), HMSO, p.10.

²⁶ Another problem with 'repeat warrants' (and arguably with the widespread use of warrants) is that there is the potential for the defaulters to learn the limitations of the bailiffs' powers. The literature does suggest that the bailiffs are aided by the public's limited knowledge, and Rock quotes an individual bailiff as follows: "if the debtors knew their rights, I could never carry on my job" (P. Rock, *Making People Pay* (1973), Routledge & Kegan Paul, p.206).

²⁷ After all, the bailiffs' firms have a profit-making agenda.

²⁸ National Consumer Council, *Bailiffs and Sheriffs: Response to the Lord Chancellor's Review of the Organisation and Management of Civil Enforcement Agents* (1992), N.C.C., p.9; F.G. Davies, "Fine Enforcement", *op. cit.* p.476; D. Bathurst, *Financial Penalties: Collection and Enforcement in Magistrates' Courts*, *op. cit.* p.36.

defaulter categorizations.²⁹ Rock has found, however, that various features of bailiffs' work seriously curtail the categorisations that are employed; these features being the paucity of information, the speed of response, economy and scale.³⁰ Of particular relevance to the 'fast-track' approach is Rock's comment that "the greater the scale of the bureaucratic enterprise, the greater will be the dependence upon a simplifying paradigm".³¹ For this reason, it can be argued that the 'fast-track' approach will only encourage 'rough and ready' categorisations, with a resulting danger of defaulters being inappropriately labelled. In addition, there is a more fundamental argument that the employment of these categorisations represents a somewhat questionable shifting of judicial functions.³²

At present there is a need for greater information concerning the effectiveness of the distress warrant, but it is hoped that if the early indications³³ of poor performance are substantiated, the automated 'fast-track' approach will fall out of favor. As has been shown, greater selectivity at the issuing stage will benefit both magistrates' courts and bailiffs.³⁴ Whilst it needs to be kept in mind that from the courts' perspective the distress

²⁹ Rock outlines a "threefold scheme of classification" under which "defaulters are feckless or professional or unfortunate" (P. Rock, *Making People Pay*, *op. cit.* p.266). Similarly, during the author's pilot study, one bailiff divided defaulters into those who can't pay, those who won't pay and those who have simply 'buried their heads'.

³⁰ *ibid*, pp.267 & 270.

³¹ *ibid*, p.267.

³² Rock, for example, states that "bailiffs have...taken over a judicial function in deciding whether to impose sanctions and when this imposition should take place" (*ibid*, p.127).

³³ HM Magistrates' Courts Service Inspectorate found that nearly 60 per cent of the Justices' Clerks responding to their questionnaire rated bailiff performance as "ineffective" (HM Magistrates' Courts Service Inspectorate, *Magistrates' Courts and Fine Enforcement*, *op. cit.* p.8), whilst in the Whittaker and Mackie study, two Fine Enforcement Officers state that only 30-40 per cent and "as low as 20 per cent" of distress warrants are successful in their respective courts (C. Whittaker and A. Mackie, *Enforcing Financial Penalties*, *op. cit.* p.33). This can be contrasted to the statement of a 1989 scrutiny of Magistrates' Courts that "a success rate of 50-60 per cent should be expected" (quoted in National Consumer Council, *Private Bailiffs: their Role in Debt Collection*, *op. cit.* p. 9).

³⁴ Interestingly, HM Magistrates' Courts Service Inspectorate has now criticised one of the major court districts on the basis of there being "no attempt to identify cases in which a distress warrant is likely to be

warrant is economical, with even limited success being at no cost, it appears that further judicial and statutory developments could soon provide the impetus for change. First, leave to apply for judicial review of a “decision” to issue a distress warrant has been granted in the case of *R v Dorset Magistrates, ex parte Rayner*;³⁵ Brooke LJ stating that the application “may raise issues of general public importance in relation to fast track computerised fine enforcement”. Second, the Access to Justice Act 1999 contains provisions³⁶ giving “civilian enforcement officers [CEOs] and approved enforcement agencies employed by the courts wider and clearer powers to execute warrants [of arrest, commitment, detention or distress] issued against fine defaulters”.³⁷ Quite how this will impact upon the courts’ use of bailiffs for the execution of distress warrants is unclear, although HM Magistrates’ Courts Service Inspectorate has noted that the courts can “control” the “performance and priorities” of the CEOs, with this being perceived as a “significant advantage”.³⁸

effective” (HM Magistrates’ Courts Service Inspectorate, *Inspection Report: Birmingham District Magistrates’ Courts Committee Area* (1998), HMSO, p.42).

³⁵ *unreported*, January 29, 1999. In a letter dated January 4, 2000, this author was informed by Peter J. Monaghan, the Acting Director of Legal Services for Dorset Magistrates’ Court, that the case was still to reach a full hearing and remained sub judice.

³⁶ Sections 92 and 93, inserting a section 125A and a section 125B into the Magistrates’ Courts Act 1980, and a section 31A into the Justices of the Peace Act 1997.

³⁷ Mr Boateng (H.C. Deb., Vol. 333, Column 55, June 14, 1999), responding to Mr Peter Bradley’s inquiry regarding the plans to improve the enforcement process.

APPENDIX B
INTERVIEW WITH MAGISTRATE

Court:

Date:

Name:

A. The enforcement process

1. What do you believe are the major factors behind successful enforcement?

2. What factors lead you to prefer one enforcement method to another?

³⁸ HM Magistrates' Courts Service Inspectorate, *Magistrates' Courts and Fine Enforcement*, *op. cit.* p.10.

3. Various methods are available throughout the enforcement process. What do you believe are the major strengths and weaknesses of the following such methods? [*Show card*]

(a) Searching the defendant for money (when in court):

Strengths

Weaknesses

(b) The reminder letter:

(c) Allowing further time to pay:

(d) The Attachment of Earnings Order:

(e) The Money Payment Supervision Order:

(f) The Distress Warrant:

(g) Imprisonment / Detention:

4. Other methods for dealing with defaulters are only available following a means inquiry. What do you believe are the major strengths and weaknesses of the following such methods? *[Show card]*

(a) Remissions:

Strengths

Weaknesses

(b) Deduction from Income Support:

(c) Application to the High Court or County Court:

(d) Attendance Centre Orders:

(*Prompt*: Should attendance centre orders be extended to adults?)

5. The Crime (Sentences) Act 1997 provides three further alternative methods for dealing with defaulters, and these are currently being piloted at selected courts. What do you believe are the major strengths and weaknesses of the following such methods?

[*Show card*]

(*Prompt*: Are these methods useful additions?)

(a) Community Service Orders:

Strengths

Weaknesses

(b) Curfew Orders:

(c) Disqualification from Driving:

6. What are your views about the use of informal fine clinics in the enforcement process?

7. What are your views about the use of private bailiffs in the enforcement process?

8. What are your views about the use of court-based fine enforcement officers in the enforcement process?

9. Given that probation officers can be used to prepare Means Inquiry Reports and to supervise Money Payment Supervision Orders, what are your views about their use in the enforcement process?

10. Given that X per cent of the impositions at *Birmingham/Manchester* are collected, and the average number of debtor days is Y (during 1999), do you believe that anything can be done to improve the courts' performance? **Yes / No**

11. *If yes*, what can be done?

B. The defendants

1. What impact do you believe a financial penalty should have upon a defendant?

2. Given that, on average, defendants at *Birmingham/Manchester* are required to pay £ Z (during 1999), do you believe the current imposition levels are

Too high

About right

Too low

3. Could you explain further?

4. Why do you think that certain defendants pay and others do not?

5. Is there any information about the defendants that you believe would be helpful but you do not currently receive? **Yes / No**

If yes, go to Q6

If no, go to Q8

6. What type of information would be helpful, and why?

(Prompt: At what point in the process?)

7. Why do you believe that you are not receiving this information at present?

8. Do you ever come to the conclusion that a financial penalty is the most appropriate disposal, but are doubtful that the defendant will pay? **Yes / No**

If yes, go to Q9

If no, go to Section C

9. How often does this happen?

10. What do you do, and why?

C. Additional

1. Are there any other comments that you would like to make?

APPENDIX C
THE FINES COURT: OBSERVATION SCHEDULE

Court:

Date:

Case Ref. No:

Defendant's name:

Offence:

Date of imposition:

Amount of imposition:

Rate of payment:

Amount outstanding:

Date of last payment:

Enforcement measures employed:

Reasons given for failure to pay:

Employment: **Yes / No**

Income:

Expenses:

Marital status:

Dependants:

Order of court:

Details of any dialogue:

APPENDIX D
THE FINES CLINIC: OBSERVATION SCHEDULE

Court:

Date:

Case Ref. No:

Defendant's name:

Offence:

Date of imposition:

Amount of imposition:

Rate of payment:

Amount outstanding:

Date of last payment:

Distress warrant returned to court: **Yes / No**

Reasons given for failure to pay:

Employment: **Yes / No**

Income:

Expenses:

Decision reached:

The dialogue:

APPENDIX E
INTERVIEW WITH DEFENDANT
FOLLOWING APPEARANCE AT THE FINES COURT

Introduction

I am carrying out some independent research at Birmingham University regarding the enforcement of financial penalties, with a focus upon the impact felt by defendants such as yourself. I was wondering if you would mind answering a few brief questions. Your answers will of course be fully confidential, and be confined to this particular study. Nothing will be written which could identify you personally.

Court:

Date:

Case Ref. No.:

Questions

1. Do you believe that the original imposition of the financial penalty was fair?

Yes / No

2. Why / why not?

(Prompts: What do you think about the amount of the financial penalty, the instalment levels or the time given to pay?)

If part of the financial penalty has been paid, go to Q3. If not, go to Q7.

3. In regards to the payments that you have made, what degree of hardship have they caused you?

A lot Little None

(Prompt: Can you explain further?)

4. Have any other persons contributed to the payments?

Yes / No

If yes, go to Q5

If no, go to Q7

5. Who were they?

Spouse

Other family

Friend

Other

6. How much did they contribute?

7. Have you sought any advice about the payments?

Yes / No

If yes, go to Q8

If no, go to Q11

8. From whom did you seek this advice?

9. Have you found their advice helpful?

Yes / No

10. Why / Why not?

11. Do you believe the outcome of today's court appearance was fair?

Yes / No

12. Why / why not?

13. Is there any part of the court order with which you are unclear?

Yes / No

14. *If yes*, what part?

15. *If further time to pay granted*, what do you believe will happen if you fail to pay?

16. Overall, what degree of distress and anxiety has the financial penalty caused you?

A lot Little None

(Prompt: Can you explain further?)

17. With hindsight, would a different type of penalty have been more appropriate in your case?

Yes / No

18. *If yes*, what type of penalty would you have preferred, and why?

Community Service Order

Probation

Imprisonment

Other

19. Is there anything else you would like to add?

Thank you very much for your time.

Future contact

Finally, it would be of great help if I were able to follow the progress of your case.
Would it be possible to ask you a few more brief questions at a later date?

Yes / No

If yes, do you have a telephone number on which I could contact you?

Tel. No.:

Evening / day

APPENDIX F
INTERVIEW WITH DEFENDANT
FOLLOWING APPEARANCE AT THE FINES CLINIC

Introduction

I am carrying out some independent research at Birmingham University regarding the enforcement of financial penalties, with a focus upon the impact felt by defendants such as yourself. I was wondering if you would mind answering a few brief questions. Your answers will of course be fully confidential, and be confined to this particular study. Nothing will be written which could identify you personally.

Court:

Date:

Case Ref. No.:

Questions

1. Do you believe that the original imposition of the financial penalty was fair?

Yes / No

2. Why / why not?

(Prompts: What do you think about the amount of the financial penalty, the instalment levels or the time given to pay?)

If part of the financial penalty has been paid, go to Q3. If not, go to Q7.

3. In regards to the payments that you have made, what degree of hardship have they caused you?

A lot Little None

(Prompt: Can you explain further?)

4. Have any other persons contributed to the payments?

Yes / No

If yes, go to Q5

If no, go to Q7

5. Who were they?

Spouse

Other family

Friend

Other

6. How much did they contribute?

7. Have you sought any advice about the payments?

Yes / No

If yes, go to Q8

If no, go to Q11

8. From whom did you seek this advice?

9. Have you found their advice helpful?

Yes / No

10. Why / Why not?

11. Do you believe the outcome of today's appearance at the clinic was fair?

Yes / No

12. Why / why not?

13. Is there any part of the decision with which you are unclear?

Yes / No

14. *If yes*, what part?

15. What do you believe will happen if you fail to comply?

16. Overall, what degree of distress and anxiety has the financial penalty caused you?

A lot Little None

(Prompt: Can you explain further?)

17. With hindsight, would a different type of penalty have been more appropriate in your case?

Yes / No

18. *If yes*, what type of penalty would you have preferred, and why?

Community Service Order

Probation

Imprisonment

Other

19. Is there anything else you would like to add?

Thank you very much for your time.

Future contact

Finally, it would be of great help if I were able to follow the progress of your case.
Would it be possible to ask you a few more brief questions at a later date?

Yes / No

If yes, do you have a telephone number on which I could contact you?

Tel. No.:

Evening / Day

APPENDIX G
EXECUTION OF DISTRESS WARRANT (NON-VAN CALL):
OBSERVATION SCHEDULE

Bailiff:

Date:

Warrant Ref. No:

Defendant's name:

Offence:

Date of imposition:

Amount of imposition:

Amount outstanding when warrant issued:

Bailiff's fees:

Total amount owing:

No. previous calls: **0** / **1** / **2**

Date(s) of previous call(s):

Outcome(s) of previous call(s):

Type of property: **Detached** / **Semi** / **Terraced** / **Flat** /
 Other (*specify*)

Vehicle identified: **Yes** / **No**

Contact made: **Yes** / **No**
 If no, go to 'correspondence left'

Contacted: **Defaulter / Partner / Other family** (*specify*)
 Other (*specify*)

Correct address: **Yes / No / Unknown**

If no, forward address obtained: **Yes / No** *Go to 'correspondence left'*

Payment made: **Yes / No**

Entry gained: **Yes / No**

Sufficient goods: **Yes / No / Unknown**

Levied on goods: **Yes / No**

If yes, which goods:

Details of any dialogue:

Any details about defaulter:

Correspondence left: **Notice of attendance / Notice of distress /**
 Final demand prior to removal /
 Final demand prior to return of warrant

APPENDIX H
EXECUTION OF DISTRESS WARRANT (VAN CALL):
OBSERVATION SCHEDULE

Bailiffs:

Date:

Warrant Ref. No:

Defendant's name:

Offence:

Date of imposition:

Amount of imposition:

Amount outstanding when warrant issued:

Bailiff's fees:

Total amount owing:

No. previous calls: **0** / **1** / **2**

Date(s) of previous call(s):

Levied on which goods:

Type of property: **Detached** / **Semi** / **Terraced** / **Flat** /
 Other (*specify*)

Vehicle identified: **Yes** / **No**

Contact made: **Yes** / **No** *If yes, continue*

Contacted: **Defaulter / Partner / Other family** (*specify*)
 Other (*specify*)

Payment made: **Yes / No**

Entry gained: **Yes / No**

Goods seized: **Yes / No**

If yes, which goods:

Details of any dialogue:

Any details about defaulter:

APPENDIX I

INTERVIEW WITH BAILIFF

Name:

Firm:

Date:

A. The execution of distress warrants

1. What factors do you believe contribute to the success of a distress warrant?

2. What problems do you commonly face when executing a distress warrant?

3. Do you believe that your current powers are sufficient? **Yes / No**

4. *If no*, in what ways are they insufficient?

5. Do you believe that you are given sufficient time to pursue a warrant? **Yes / No**

6. *If no*, how much extra time would you like, and what would you do with this time?

7. How many calls do you make in an average week?

8. What image do you seek to portray to defaulters?

9. Do you believe that it is part of your role to advise defaulters?

10. Do you believe that the bailiff fees imposed by your firm are

Too high

About right

Too low

11. Could you explain further?

(Prompt: If too high or too low, what levels would be more appropriate and why?)

12. Do you believe that part payments are appropriate?

Yes / No

13. Why / Why not?

14. Do you believe that anything can be done to improve your firm's collection rates?

Yes / No

15. *If yes*, what can be done?

B. The defaulters

1. Why do you think that certain defaulters pay and others do not?

2. How many payments do you receive in an average week?

3. What responses do you commonly receive?

4. How do you assess whether these responses are truthful?

5. Do you believe that defaulters understand the extent of your powers? **Yes / No**

6. Could you explain further?

(Prompt: Do you ever exaggerate your powers?)

7. Do you categorise defaulters into different types?

Yes / No

If yes, go to Q8

If no, go to Q10

8. What categories do you employ, and how do you assess which category is appropriate?

9. Why do you categorise defaulters in this way?

10. Is there any information about the defaulters that you believe would be helpful but you do not currently receive? **Yes / No**

If yes, go to Q11

If no, go to Section C

11. What type of information would be helpful, and why?

12. Why do you believe that you are not receiving this information at present?

C. The magistrates' court

1. How would you define your role in the context of the enforcement process of a magistrates' court?

2. Does working on behalf of a magistrates' court affect your approach?

Yes / No

3. *If yes*, how is your approach affected?

4. Do you believe that the amounts of the financial penalties imposed by the magistrates' court are

Too high

About right

Too low

5. Could you explain further?

(Prompt: If too high or too low, what amounts would be more appropriate, and why?)

6. Do you believe that the magistrates' court is sufficiently selective regarding the issuing of distress warrants?

Yes / No

7. *If no*, why not?

(Prompt: Is the distress warrant suitable for all defaulters?)

8. What do you believe happens to a defaulter when a distress warrant is returned unsuccessfully?

9. What are your views about magistrates' courts employing their own enforcement officers?

D. Additional

1. Are there any other comments that you would like to make?

APPENDIX J
EXECUTION OF BAIL WARRANT:
OBSERVATION SCHEDULE

CEO:

Date:

Warrant Ref. No:

Defendant's name:

Offence(s):

Date of imposition(s):

Amount of imposition(s):

Amount outstanding when warrant issued:

Amount outstanding now:

No. previous calls: **0** / **1** / **2** / **3** / **4**

Date(s) of previous call(s):

Outcome(s) of previous call(s):

Type of property: **Detached** / **Semi** / **Terraced** / **Flat** /
 Other (*specify*)

Contact made: **Yes** / **No**
If no, go to page 2

Contacted: **Defaulter** / **Partner** / **Other family** (*specify*)
 Other (*specify*)

Correct address: **Yes / No / Unknown**

If no, forward address obtained: **Yes / No**

If yes or unknown, continue

Outcome: **Payment in full / Part payment / Bail to court /**
 Part payment & bail to court / Correspondence left /
 No action / Other (*specify*)

Details of any dialogue:

Any details about defaulter:

APPENDIX K

INTERVIEW WITH CEO

Name:

Area:

Date:

A. The execution of bail warrants

1. What factors do you believe contribute to successful payments?
2. What problems do you commonly face when executing a bail warrant?

3. Do you believe that your current powers are sufficient? **Yes / No**

4. *If no*, in what ways are they insufficient?

5. Do you believe that you are given sufficient time to pursue a warrant? **Yes / No**

6. *If no*, how much extra time would you like, and what would you do with this time?

7. How many calls do you make in an average week?

8. What image do you seek to portray to defaulters?

9. Do you believe that it is part of your role to advise defaulters?

Yes / No

10. Why / Why not?

11. Do you believe that part payments are appropriate?

Yes / No

12. Why / Why not?

13. Do you believe that anything can be done to improve the CEO collection rates?

Yes / No

14. *If yes*, what can be done?

B. The defaulters

1. Why do you think that certain defaulters pay and others do not?

2. How many payments do you receive in an average week?

3. What responses do you commonly receive?

4. How do you assess whether these responses are truthful?

5. Do you believe that defaulters understand the extent of your powers? **Yes / No**

6. Could you explain further?

(Prompt: Do you ever exaggerate your powers?)

7. Do you categorise defaulters into different types? **Yes / No**
If yes, go to Q8 *If no, go to Q10*
8. What categories do you employ, and how do you assess which category is appropriate?
9. Why do you categorise defaulters in this way?
10. Is there any information about the defaulters that you believe would be helpful but you do not currently receive? **Yes / No**
If yes, go to Q11 *If no, go to Section C*
11. What type of information would be helpful, and why?

12. Why do you believe that you are not receiving this information at present?

C. The magistrates' court

1. How would you define your role in the context of the enforcement process?

2. Do you believe that the amounts of the financial penalties imposed by the magistrates' court are

Too high

About right

Too low

3. Could you explain further?

(Prompt: If too high or too low, what amounts would be more appropriate, and why?)

4. Do you believe that defaulters are dealt with appropriately when they appear at the fines court? **Yes / No**

5. *If no*, why not?

6. What are your views about magistrates' courts using bailiffs to execute distress warrants?

D. Additional

1. Are there any other comments that you would like to make?

BIBLIOGRAPHY

Cited sources

- Appleby, L.M., *An Examination of Fine Default and Enforcement at Birmingham Magistrates' Court* (1986), *Unpublished thesis* (Birmingham University)
- Ashcroft, P., Barrie, F., Bazell, C., Damazer, A., Powell, R. and Tranter, G., *Human Rights and the Courts: Bringing Justice Home* (1999), Winchester: Waterside Press
- Ashworth, A., *Sentencing and Criminal Justice* (1995), London: Weidenfield and Nicolson
- Ashworth, A., "Sentencing", in: M.Maguire, R.Morgan and R.Reiner (eds), *The Oxford Handbook of Criminology* (1997), Oxford: Clarendon Press
- Auld, LJ, *A Review of the Criminal Courts of England and Wales* (2001), London: The Stationery Office
- Bamber, D., "Government writes off £72m in unpaid fines" [2000] July 9, *The Sunday Telegraph* 2
- Bathurst, D., *Financial Penalties: Collection and Enforcement in Magistrates' Courts* (1996), Chichester: Barry Rose Law Publishers Ltd
- Bazell, C. and Lomax, I., *Unit Fines* (1992), London: Fourmat Publishing
- Beatson, J., *Independent Review of Bailiff Law: A Report to the Lord Chancellor* (2000) London: LCD
- Beattie, J.M., *Crime and the Courts in England 1660 – 1800* (1986), Oxford: Clarendon Press
- Block, B.P. 'A Fine Alternative' (1994) 158 *Justice of the Peace & Local Government Law* 556
- Block, B.P., "Fine Sentiments" (1997) 161 *Justice of the Peace & Local Government Law* 61
- Brown, R., Lee, A., Holm, S., Dunn, G. and Tavassoli, H., *An Evaluation of Fines Enforcement* (1985), Wellington (N.Z.): Department of Justice
- Brown, T., Cook, A. and King, R., "Fines can ruin" (1982) 38 *The Magistrate* 55

- Burrell, I., "Probation staff rebel over plan to withdraw social security cash" [2001] April 2, *The Independent* 2
- Carlen, P., "Crime, inequality and sentencing", in: P.Carlen and D.Cook (eds) *Paying For Crime* (1989), Milton Keynes: Open University Press
- Casale, S.S.G. and Hillsman, S.T., *The Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practice* (1986), London & New York: Vera Institute of Justice
- Cavadino, M. and Dignan, J., *The Penal System: An Introduction* (1997), London: SAGE Publications
- Chandler, D., *Fine Enforcement Ideas from a Survey* (1987), Cambridge: University of Cambridge
- City of Manchester Magistrates' Courts Committee, *Strategy 2001: Taking the City of Manchester Magistrates' Courts Service Into The Next Millenium* (1996)
- City of Manchester Magistrates' Courts Committee, *1998-1999 Annual Report* (1999)
- City of Manchester Magistrates' Court Committee, *Business Plan Targets for 1999/2000* (1999)
- City of Manchester Magistrates' Court Committee, *Business Plan Targets for 2000/2001* (2000)
- Cooney, P., "Attendance Centre Orders in Fine Enforcement – A Straightforward Alternative to Custody?" (1996) 160 *Justice of the Peace & Local Government Law* 507
- Cooney, P., "Deduction of Fines from Income Support – A Practical Guide" (1996) 160 *Justice of the Peace & Local Government Law* 780
- Criminal Justice Joint Planning Unit, *Criminal Justice System Strategic Plan 1999-2002 and Business Plan 1999-2000* (1999), London: The Stationery Office
- Darbyshire, P., "A Comment on the Powers of Magistrates' Clerks" [1999] *Crim.L.R.* 377
- Davies, F.G., "Fine Enforcement" (1994) 158 *Justice of the Peace & Local Government Law* 476
- Davies, M., *Financial Penalties and Probation* (1970), London: HMSO

- Denney, D., Ellis, T. and Nee, C., "Community Penalties Warrants: A Gap in the Criminal Justice System?" (1999) 38 *The Howard Journal* 300
- Downes, R.E., "Fine Enforcement" (1996) 52 *The Magistrate* 89
- Drever, F., Fisher, K., Brown, J. and Clark J., *Social Inequalities 2000 edition* (2000), London: The Stationery Office
- Elliot, R. and Airs, J., *New measures for fine defaulters, persistent petty offenders and others: the report of the Crime (Sentences) Act 1997 pilots* (2000), London: The Stationery Office
- Evans, P., "Transfer of Warrants" (1999) 163 *Justice of the Peace* 227
- Faulkner, D., *Darkness and Light: Justice, Crime and Management for Today* (1996), London: The Howard League for Penal Reform
- Fielding, N., "Qualitative Interviewing", in: N.Gilbert (ed) *Researching Social Life* (1993), London: SAGE Publications
- Flood-Page, C. and Mackie, A., *Sentencing Practice: An Examination of Decisions in Magistrates' Courts and the Crown Court in the Mid-1990s* (1998), London: HMSO
- Gale, M., Gale, S. and Scanlan, G., *A Guide to the Crime (Sentences) Act 1997* (1997), London, Edinburgh and Dublin: Butterworths
- Gibson, B., *Unit Fines* (1990), Winchester: Waterside Press
- Gibson, B., Cavadino, P., Rutherford, A., Ashworth, A. and Harding, J., *Criminal Justice in Transition* (1994), Winchester: Waterside Press
- Grunhut, M., *Penal Reform: A Comparative Study* (1948), Oxford: Clarendon Press
- Halliday, J., French, C. and Goodwin, C., *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales* (2001), London: The Stationery Office
- Harding, C. and Koffman, L., *Sentencing and the Penal System: Text and Materials* (1995), London: Sweet & Maxwell
- Harrison, A. and Morgan, J., "Efficiency and Off-Loading in the Criminal Justice System", in: A.Harrison and J.Gretton (eds) *Crime UK 1988: An economic, social and policy audit* (1988), Newbury: Policy Journals

- Hawkins, K., *Environment and Enforcement: Regulation and the Social Definition of Pollution* (1984), Oxford: Clarendon Press
- HM Inspectorate of Probation, *The Role of the Probation Service in Avoiding the Use of Custody for Fine Default: Report of a Thematic Inspection* (1992), London: HMSO
- HM Magistrates' Courts Service Inspectorate, *Magistrates' Courts and Fine Enforcement* (1996), London: HMSO
- HM Magistrates' Courts Service Inspectorate, *The Fourth Annual Report of Her Majesty's Chief Inspector of the Magistrates' Courts Service 1996-1997* (1998), London: HMSO
- HM Magistrates' Courts Service Inspectorate, *Inspection Report: City of Manchester Magistrates' Courts Committee Area: 20 April – 1 May 1998* (1998), London: Stationery Office
- HM Magistrates' Courts Service Inspectorate, *Inspection Report: Birmingham District Magistrates' Courts Committee Area: 13-23 October 1998* (1999), London: Stationery Office
- HM Magistrates' Courts Service Inspectorate, *Information for Management: The Core Performance Measures (CPMs)* (1999), London: The Stationery Office
- HM Magistrates' Courts Service Inspectorate, *Annual Report of Her Majesty's Chief Inspector of the Magistrates' Courts Service 1999-2000* (2000), London: The Stationery Office
- HM Treasury, *Public Services for the Future: Modernisation, Reform, Accountability* (1998), London: The Stationery Office
- Home Office, *Non-Custodial and Semi-Custodial Penalties: Report of the Advisory Council on the Penal System* (1970), London: HMSO
- Home Office, *Crime, Justice and Protecting the Public* (1990), London: HMSO
- Home Office, *Fine Enforcement* (1990), London: HMSO
- Home Office, *The Use of Bailiffs* (1991), Cambridge: Chadwyck-Healey
- Home Office, *Fine Enforcement – Part II* (1992), London: HMSO
- Home Office, *Alternative Penalties for Fine Defaulters and Low Level Offenders* (1996), London: HMSO

- Home Office, *Prison Statistics, England and Wales 1996* (1997), London: HMSO
- Home Office, *Modernising Justice* (1998), London: The Stationery Office
- Home Office, *Criminal Statistics England and Wales 1998* (2000), London: The Stationery Office
- Home Office, *Criminal Justice: The Way Ahead* (2001), London: The Stationery Office
- Home Office, *Criminal Statistics England and Wales 1999* (2001), London: The Stationery Office
- Home Office, *Prison Statistics, England and Wales 2000* (2001), London: The Stationery Office
- Howard League for Penal Reform, *The Dynamics of Justice* (1993), London: Howard League for Penal Reform
- Howe Report, *Fine Default* (1981), London: NACRO
- Hutter, B.M., *The Reasonable Arm of the Law?: The Law Enforcement Procedures of Environmental Health Officers* (1988), Oxford: Clarendon Press
- Jones, C., "Auditing Criminal Justice" (1993) 33 *British Journal of Criminology* 187
- Jones, S., "Distress warrants" (1997) 53 *The Magistrate* 267
- Jupp, V., *Methods of Criminological Research* (1989), London and New York: Routledge
- Justice of the Peace editors, "Civilian Enforcement Officers" (1990) 154 *Justice of the Peace* 466
- Justices' Clerks' Society, "Human Rights Issues" (2000) 36 JCS News Sheet 1
- Kruse, J., *Dealing with Distraint: Bailiffs Law for Advisers* (1994), Birmingham: National Money Advice Training Unit
- Kruse, J., "In Distress" (1997) 53 *The Magistrate* 185
- Kruse, J., *Distress and Execution: A Guide to Bailiffs' Law and Practice* (1998), London: Association of Civil Enforcement Agencies
- Latham, C., "Enforcement of Fines" [1973] *Crim.L.R.* 552
- Lord Chancellor's Department, *Annual Report on National Performance Indicators for 1999/2000* (2000), London: LCD

- Lord Chancellor's Department, *Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for enforcement* (2001), London: The Stationery Office
- McKevitt, M., "Getting Fines Right" (1999) 55 *The Magistrate* 298
- Magistrates' Association, "Fines and Fine Enforcement" (1988) 44 *The Magistrate* 131
- Manchester, A.H., *Modern Legal History* (1980), London: Butterworths
- Mannheim, H., *The Dilemma of Penal Reform* (1939), London: Routledge and Kegan Paul
- May, T., *Social Research: Issues, methods and process* (1997), Buckingham and Philadelphia: Open University Press
- Moore, R., "Issuing Distress Warrants against Fine Defaulters: The Automated "Fast-track" Approach" [2000] *Crim.L.R.* 365
- Morris, A. and Gelsthorpe, L., "Not Paying for Crime: issues in fine enforcement" [1990] *Crim.L.R.* 839
- Morgan, R. and Bowles, R., "Fines: The Case For Review" [1981] *Crim.L.R.* 203
- Morgan, R. and Bowles, R., "Fines: Where Does Sentencing End and Enforcement Begin?" [1983] *Crim.L.R.* 78
- Moxon, D., Hedderman, C. and Sutton, M., *Deductions from Benefit for Fine Default*, (1990), London: HMSO
- Moxon, D., Sutton, M. and Hedderman, C., *Unit Fines: Experiments in Four Courts* (1990), London: HMSO
- National Association of Citizens Advice Bureaux, *Undue Distress: CAB clients' experience of bailiffs* (2000), London: NACAB
- National Consumer Council, *Private Bailiffs: Their Role in Debt Collection* (1990), London: NCC
- National Consumer Council, *Bailiffs and Sheriffs: Response to the Lord Chancellor's Review of the Organisation and Management of Civil Enforcement Agents* (1992), London: NCC
- Nicholson, L., *A Survey of Fine Defaulters in Scottish Courts* (1990), Edinburgh: Central Research Unit

- Nicholson, L., *Monetary Penalties in Scotland: A Research Based Review* (1994), Edinburgh: HMSO
- O'Connell Davidson, J. and Layder, D., *Methods, Sex and Madness* (1994), London and New York: Routledge
- Pawson, R. and Tilley, N., 'What Works in Evaluation Research?' (1994) 34 *British Journal of Criminology* 291
- Payne, D.S., "Fines, Their Enforcement and Effect" (1998) 163 *Justice of the Peace* 621
- Pennington, D.C. and Lloyd-Bostock, S., "Issues and problems in the psychology of sentencing", in: D.C.Pennington and S.Lloyd-Bostock (eds) *The Psychology of Sentencing: Approaches to Consistency and Disparity* (1987), Oxford: University of Oxford
- Radzinowicz, L. (Sir) and Hood, R., *A History of English Criminal Law and its Administration from 1750 (Volume 5: The Emergence of Penal Policy)* (1986), London: Stevens & Sons
- Raine, J.W. and Henshaw, L.G., *Resource Requirements and Value for Money in the Magistrates' Courts' Service* (1985), Birmingham: The University of Birmingham Press
- Raine, J.W. and Wilson, M.J., *Managing Criminal Justice* (1993), London: Harvester Wheatsheaf
- Raine, J.W. and Wilson, M.J., "Beyond Managerialism in Criminal Justice" (1997) 36 *The Howard Journal* 80
- Rock, P., *Making People Pay* (1973), London and Boston: Routledge & Kegan Paul
- Rowe, J., "Can't Pay, Won't Pay" (1996) 52 *The Magistrate* 38
- Ryan, D.M., "Criminal Fines: A Sentencing Alternative to Short-Term Incarceration" (1983) 68 *Iowa Law Review* 1285
- Schaefer, S., "No benefits for anyone who dodges court fines" [1999] October 23, *The Independent* 2
- Scottish Home Department, *Use of Short Sentences of Imprisonment by the Courts* (1960), Edinburgh: HMSO

- Shaw, S., "Monetary Penalties and imprisonment: the realistic alternatives", in: P.Carlen and D.Cook (eds) *Paying For Crime* (1989), Milton Keynes: Open University Press
- Skyrme, T. (Sir), *History of the Justices of the Peace* (1994), Chichester: Barry Rose Publishers
- Smith, A. and Gordon, J., "The Collection of Fines in Scotland" [1973] *Crim.L.R.* 560
- Softley, P., *Compensation Orders in Magistrates' Courts* (1978), London: HMSO
- Softley, P., *Fines in Magistrates' Courts* (1978), London: HMSO
- Softley, P. and Moxon, D., *Fine Enforcement: An Evaluation of the Practices of Individual Courts* (1982), London: HMSO
- Tarling, R. and Softley, P., "Compensation Orders in the Crown Court" [1976] *Crim.L.R.* 422
- The Magistrate, "Difficulties Over Execution of Warrants" (1995), 51 *The Magistrate* 228
- Travis, A., "Magistrates take Howard to High Court" [1994] December 4, *The Guardian* 6
- Verkaik, R., "Bailiffs will get powers of arrest to relieve burden on police" [2000] September 13, *The Independent* 5
- Walker, C. and Wall, D., "Imprisoning the Poor: Television Licence Evaders and the Criminal Justice System" [1997] *Crim.L.R.* 173
- Wasik, M., *Emmins on Sentencing* (2001), London: Blackstone Press
- West, J., "Community Service for Fine Defaulters" (1978) 142 *Justice of the Peace* 425
- West Midlands Magistrates' Courts Committee, *Strategy 2004: A Five Year Strategic Plan for the West Midlands Magistrates' Courts Committee* (1999)
- Whittaker, C. and Mackie, A., *Enforcing Financial Penalties* (1997), London: HMSO
- Whyte, W.F., *Learning from the Field: A Guide from Experience* (1984), London: SAGE Publications
- Windlesham (Lord), "Loss of Benefit: A Misplaced Sanction" [2000] *Crim.L.R.* 661

Working Group on the Enforcement of Financial Penalties, *Guidance on Enforcement of Financial Penalties* (1996), London: EFPWG.

Other sources

Allen, H., “Fines for women: paradoxes and paradigms”, in: P.Carlen and D.Cook (eds) *Paying For Crime* (1989), Milton Keynes: Open University Press

Bottoms, A.E., “The Efficacy of the Fine: The Case for Agnosticism” [1973] *Crim.L.R.* 543

Charman, E., Gibson, B., Honess, T. and Morgan, R., *Fine Impositions and Enforcement Following the Criminal Justice Act 1993* (1996), London: HMSO

Cook, D., *Poverty, crime and punishment* (1997), London: CPAG

Greene, J., “The Unit Fine: Monetary Sanctions Apportioned to Income”, in: A.von Hirsch and A.Ashworth (eds) *Principled Sentencing: Readings on Theory and Policy* (1998), Oxford: Hart Publishing

Kruse, J., *Distress & Execution: A Guide to Bailiffs’ Law & Practice* (1998), London: ACEA

Maher, G. and Docherty, C.J., *Compensation Orders in the Scottish Criminal Courts* (1988), Edinburgh: Scottish Office

Mair, G. and Lloyd, C., *Money Payment Supervision Orders: Probation Policy and Practice* (1989), London: HMSO

Miers, D.R., *Compensation for Criminal Injuries* (1990), London, Dublin and Edinburgh: Butterworths

Morris, A. and Gelsthorpe, L., “Not Paying for Crime: issues in fine enforcement” [1990] *Crim.L.R.* 839

Moxon, D., Corkery, J.M. and Hedderman, C., *Developments in the Use of Compensation Orders in Magistrates’ Courts since October 1988* (1992), London: HMSO

Moxon, D. and Whittaker, C., *Imprisonment for Fine Default* (1996), London: HMSO

Moynihan, J. and Coleman, C., “Unemployment and Crime” [1996] *New Law Journal* 1382

Murphy, P., *Blackstone’s Criminal Practice* (1997), London: Blackstone Press Ltd

Newburn, T., *The Use and Enforcement of Compensation Orders in Magistrates' Courts* (1988), London: HMSO

Ogden, M., "Compensation Orders in Cases of Violence" [1985] *Crim.L.R.* 500

Schaefer, S., "No benefits for anyone who dodges court fines" [1999] October 23, *The Independent*, 2

Scottish Office Home and Health Department, *Fine Enforcement and Supervised Attendance Orders* (1994), Cambridge: Chadwyck-Healey

Shapland, J., "Victims, the Criminal Justice System and Compensation" (1984) 24 *B.J.Crim.* 131

Softley, P., *A Survey of Fine Enforcement* (1973), London: HMSO

Softley, P., *Compensation Orders in Magistrates' Courts* (1978), London: HMSO

Vennard, J., "Magistrates' Assessments of Compensation for Injury" [1979] *Crim.L.R.* 510

Victim Support, *Compensating the Victim of Crime* (1993), London: Victim Support

Walker, N. and Padfield, N., *Sentencing: Theory, Law and Practice* (1996), London, Dublin and Edinburgh: Butterworths

Wasik, M., "The Place of Compensation in the Penal System" [1978] *Crim.L.R.* 599

Watson, R., "Chase on for cheats", *The Times*, December 1, 1998, p.1

Wilkins, G., *Making Them Pay: A Study of Some Fine-Defaulters, Civil Prisoners and Other Petty Offenders Received into a Local Prison* (1979), London: NACRO

Young, P., "Punishment, money and a sense of justice", in: P.Carlen and D.Cook (eds) *Paying For Crime* (1989), Milton Keynes: Open University Press

Cited cases

Bond [1983] 1 W.L.R. 40

Charambous (1984) 6 Cr. App. R.(S.) 389

Crossland v Crossland [1993] 1 F.L.R. 175

Knight (1980) 2 Cr. App. R. (S.) 82

Nunn (1983) 5 Cr. App. R. (S.) 203.

Olliver and Olliver (1989) 11 Cr. App. R.(S.) 10

R v Barnet Magistrates' Court, ex parte Cantor [1999] 1 W.L.R. 334

R v Corby Justices, ex parte Mort (Agnes), unreported, March 9, 1998.

R v Dorset Magistrates, ex parte Rayner, unreported, January 29, 1999

R v Guildford Justices, ex parte Rich [1996] 160 J.P. 645

R v Hereford Magistrates' Court, ex parte MacRae, The Times, December 31, 1998.

R v Hereford Magistrates' Court, ex parte Wallwyn, unreported, April 14, 1999.

R v Oldham Justices and another, ex parte Cawley [1996] 1 All E.R. 464

R v Stockport Justices, ex parte Conlan; R v Newark & Southwell Justices, ex parte Keenaghan, The Times, January 3, 1997.

Vivian [1979] 1 All E.R. 48