

THE MAGISTRATES' ASSOCIATION
SENTENCING POLICY AND PRACTICE COMMITTEE

The Use of Fines – Policy

Definition of a fine

A dictionary definition is given as '*a certain amount of money exacted as a penalty*'. A penalty is defined as '*1. A legal or official punishment such as a term of imprisonment; 2. some other form of punishment such as a fine or forfeit for not fulfilling a contract*'. Therefore clearly a fine does meet one of the purposes of sentencing - punishment of the offender.

Some issues relating to fines in Magistrates' Courts

For several years magistrates have been told that the use of fines has declined and more use should be made of them instead of Community Sentences which have increased.

This has been at a time when one of the stated aims of the Government has been '*tough on crime, tough on the causes of crime*'.

Has the introduction of the 2003 Criminal Justice Act which set out clearly the purposes of sentencing and the use of culpability and harm as the key factors resulted in a decline in the use of fines or has the increased use of out of court disposals such as fixed penalties and penalty notices for disorder been contributory factors?

The introduction since 1997 of 36 Acts of Parliament with significant implications for the criminal justice system and the creation of 3,600 new offences may have had an impact on sentencing and a reduction in the use of fines by the courts.

There is also the perception by some members of the public and offenders that fines imposed by courts are unimportant and do not have to be paid in full.

Some evidence regarding fines and sentencing

The latest statistical information on the use of sentences since 2003 provided by the Sentencing Guidelines Council (*the Sentence Issue 09 August 2009 Figure 1.2 and Table 1.1*) indicate that the use of fines for indictable offences sentenced in Magistrates' Courts has reduced from 33% (2003) to 24% (2007) whilst for summary offences it was 85% (2003) and dropped to 84% (2007).

However, the number sentenced at Magistrates' court for summary offences reduced from 1,097,535 (2003) to 1,044,443 (2007) as per the Table A below:-

Year	2003	2004	2005	2006	2007
Indictable Offences	33%	30%	28%	26%	24%
Total Indictable	216,755	199,071	188,202	183,707	186,363
Summary Only	85%	85%	85%	84%	84%
Total Summary Only	1,097,535	1,180,784	1,115,966	1,061,591	1,044,443

Looking at Table 1.4 of the SGC Newsletter (*Sentencing trends for indicator offences in magistrates' courts*) Theft from a shop - the fine rate reduced from 24% to 18% , the custody rate from 21% to 20%, community 26% to 27%, discharge 26% to 27%, SSO 1% (2005) to 5% (2007) and other disposals 3% to 4% as per the Table B below:-

Year	2003	2004	2005	2006	2007
Total Sentenced	65,765	60,120	54,444	49,673	52,686
Fine Rate	24%	22%	21%	18%	18%
Custody Rate	21%	21%	21%	21%	20%
Community Rate	26%	27%	27%	26%	27%
Discharge Rate	26%	27%	27%	26%	27%
SSO Rate	-	-	1%	5%	5%
Other Disposal Rate	3%	3%	3%	4%	4%

Clearly the more serious of the offences of shoplifting have appeared in magistrates' courts as many offenders have been dealt with by means of either cautions or PND's. This is clearly confirmed by Table 1.6 (Sentencing trends for Indicator Offences by number of previous convictions/cautions in magistrates' courts). Between 2003 and 2007 only 2% to 3% of those appearing in magistrates' court for shoplifting were First time offenders. Of those with 15 or more pre cons the figure of 40% in 2003 rose to 51% in 2007 as per the Table C below:-

Year	2003	2004	2005	2006	2007
First time offender	2%	2%	3%	3%	3%
1-2 pre cons/cautions	10%	10%	9%	9%	9%
3-6 pre cons/cautions	18%	17%	15%	15%	15%
7-10 pre cons/cautions	16%	14%	13%	12%	12%
11-14 pre cons/cautions	14%	13%	12%	12%	11%
15 or more pre cons	40%	44%	46%	49%	51%
All Offenders	59,705	54,645	49,065	43,625	45,281

Again looking at Table 1.8 (Sentencing trends for indicator offences with no previous convictions/cautions in magistrates' courts) Theft from a shop indicates that fines were imposed on 30% in 2003 and in 2007, the community sentence increased slightly from 9% to 12% and immediate custody from 1% to 3% as per the Table D below:-

Year	2003	2004	2005	2006	2007
Discharge	59%	57%	56%	53%	53%
Fine	30%	31%	32%	30%	30%
Community sentence	9%	9%	9%	12%	12%
SSO	0%	0%	0%	1%	0%
Immediate custody	1%	1%	2%	2%	3%
Other	1%	1%	1%	1%	1%
Total	1,454	1,291	1,401	1,267	1,184

It is therefore inevitable that courts will deal more harshly with the higher number of offenders with very high number of pre-cons and the greater use of custody – including SSO’s where appropriate.

Following the Criminal Justice Act 2003 courts were given the power to impose fines in two higher bands, Band D (where a fine is imposed as a direct alternative to a community order) can be up to 300% of relevant weekly income and Band E (as an alternative to a custodial sentence) which can be up to 500% of relevant weekly income. These fines differ from the normal fines imposed by the courts as they can be collected over a two year period; however, they remain uncommon despite the fact that courts must consider fining as an alternative to community and custodial penalties.

There may be several reasons why these high fines are not being imposed.

- It is certain that not all magistrates (*despite training, articles in the Magistrate, and the information contained in pages 151 and 152 of the Magistrates Courts Sentencing Guidelines (MCSG)*) are aware that these fines are available, or that they can be paid over as long as a two year period.
- There seems to be a strong feeling that by imposing a fine rather than a more obvious punitive sentence the system may be seen to be bringing in one law for the rich etc. which cannot generally be justified.
- With regard to the Band E fines the concern highlighted in the previous bullet point becomes acute. Furthermore there is a general feeling that while to come down one step of the sentencing ladder (*from a community penalty to a Band D fine*) may be justified upon occasion, to drop two steps – and the step between community penalties and custody is viewed by magistrates as being a very steep one – requires exceptional and compelling reasons, which will obviously not happen frequently.
- There are definite concerns that there will be problems in collecting these fines, as many people who appear before the magistrates courts are serial offenders, who come back to court every few months for a variety of minor offences and have rarely cleared one fine before the next is imposed.
- Short prison sentences are entirely punitive and are known to be statistically less effective than community orders. However, fines are also entirely punitive, and there will be many occasions when a bench may feel that the best way to stop someone offending would be to provide them with support from the Probation Service.

The number of offences dealt with through police disposals (out of court) has more than doubled in ten years, increasing each year even as recorded crime dropped from its 2003/4 peak to 1997 levels. The increase from 282,000 to 675,000, is accounted for as per the Tables E and F . below:-

Year	1997	1998	1999	2000	2001	2002
Total cautioned	282,093	287,894	266,132	238,987	229,860	225,358
Total Police Disposals	282,093	287,894	266,132	238,987	239,860	225,358

Year	2003	2004	2005	2006	2007
Penalty notices for disorder PND	-	63,639	146,481	201,197	207,544
Cannabis warnings	-	40,138	63,331	81,311	104,207
Total cautioned	241,806	255,768	298,945	349,977	362,898
Total Police Disposals	241,806	359,545	508,757	632,485	674,649

Statistics in Tables E & F above extracted from Ministry of Justice, 2009, Sentencing Statistics 2007 (England and Wales) (revised edition), MoJ, Table 1.1, p 21.)

These figures appear to support the argument that there has been a ‘net-widening’ whereby the police have been handing out cautions and penalty notices for ‘offences’ – not necessarily ‘disorder’ – that previously would have been dealt with at magistrates’ court with either a fine or for some first time offenders where appropriate a conditional discharge.

Currently less than 50% of fixed penalty notices and PND’s are paid resulting in approximately £300,000 unpaid in one year. This may be due to the fact that these ‘fines’ are not related to the offenders ability to pay in contrast to true fines imposed by courts where the collection rate is almost always above 50% and in some areas close to 80%. It is imperative that courts fines are collected immediately after they are imposed. The longer the time an offender is allowed to pay their fines the less likely are they to clear the balance and the public need to be educated of this.

There is, in addition, the payment by the offender of compensation to the victim which cannot take place when cautions, fixed penalty and penalty notices for disorder are issued by the police. Quite clearly when a compensation order is made by a court payment of that order will take priority over any fine imposed.

Recommendations

1. Magistrates must use the current Sentencing Guidelines for all offences and consider whether the offence(s) cross into the community band or whether the offender can be dealt with by the imposition of an appropriate financial penalty determined following receipt of completed means form from the offender.

2. All courts must ensure that a means enquiry form is completed by every defendant and appropriate sanctions taken against any defendant who refuses to complete a form. This will require the co-operation of both court and HMCS admin staff.
3. Every court Chairman must when announcing a fine state that the fine is due now – can it be paid today? If not how much can be paid today. Rigid enforcement is essential if fines are to gain the respect of the public.
4. Where offenders are given time to pay the fine(s) perhaps periodic court reviews could be instigated which would hopefully avoid offenders suddenly stopping their payments and subsequently finding themselves at a Fines Enforcement Court. Whilst we currently have Fines Enforcement Officers a better system might be to introduce regular review courts in much the same way as the currently piloted ‘Community Courts’.
5. The use of fixed penalty notices and penalty notices for disorder for more offences must cease and a thorough review of the current notices must result in some of those being abandoned and offenders summoned through the courts where they can be dealt with according to their personal circumstances. This will require Government decision and the Association must continue to press for this action at every opportunity.

Any other ideas?

In conclusion it has been said:

Fines are a mundane but effective penalty in appropriate cases, and can be usefully applied to offenders who will not ‘benefit’ from a community sentence.¹

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¹ Breakthrough Britain- Order in the Courts-Restoring trust through local justice. A Policy Report from the Courts and Sentencing Working Group – The Centre for Social Justice Nov 2009 (6.5 p101).