

House of Commons
Committee of Public Accounts

**COLLECTION OF FINES
AND OTHER FINANCIAL
PENALTIES IN THE
CRIMINAL JUSTICE
SYSTEM**

Sixty-eighth Report of Session 2001–02

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*Report, together with
Proceedings of the Committee,
Minutes of Evidence and Appendices*

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Committee of Public Accounts

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by ‘Q’ or ‘Qq’ followed by the question number; references to the written evidence are indicated by the page number as in ‘Ev’.

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SIXTY-EIGHTH REPORT

The Committee of Public Accounts has agreed to the following Report:

COLLECTION OF FINES AND OTHER FINANCIAL PENALTIES IN THE CRIMINAL JUSTICE SYSTEM

INTRODUCTION AND LIST OF CONCLUSIONS AND RECOMMENDATIONS

1. Financial penalties are the most common punishment imposed on offenders by Crown and magistrate's courts and account for 70% of all sentences. Such penalties include compensation for victims, confiscation orders, costs to prosecutors and fines. Magistrates' courts are responsible for enforcing the collection of all financial penalties imposed by the criminal justice system.

2. In 2001–02, financial penalties imposed totalled £387 million and collections amounted to £228 million, some of which related to impositions made in previous years. In the same year, penalties totalling £58 million were written off, largely because the offender could not be traced, and a further £90 million was cancelled because, for example, the defendant had successfully appealed against the imposition or because the offender's circumstances had changed to such an extent that there was no prospect of the penalty being collected. These figures suggest therefore that around 59% of impositions are collected.¹

3. Responsibility for collecting penalties, and for enforcing payment when the offender fails to pay by the due date, lies with 42 local magistrates' courts committees. Each committee comprises up to 12 members, primarily unpaid lay magistrates appointed by their peers. The committees are each supported by a Justice's Chief Executive who is responsible for the administration of the courts in their area. The Lord Chancellor's Department (the Department) has no direct control over local committees but it can give directions to committees to meet specified standards of performance and issue guidance, including guidance on the enforcement of financial penalties.

4. On the basis of a Report by the Comptroller and Auditor General,² we took evidence from the Department. We draw the following main conclusions from our examination:

- Fines account for some 70% of all sentences imposed by courts, and yet only some 60% of fines are paid. Payment of fines appears to be almost voluntary over much of the country, undermining the effectiveness of the criminal justice system.
- There is a lack of clarity and accountability in the responsibilities for managing the collection and enforcement of financial penalties. The Department has no direct control over magistrates' courts' committees in respect of their collection activities. Supporting management information systems are inadequate, being unable for example to provide basic data to match cash collected against fines imposed for a particular financial year. And magistrates may have insufficient information on existing outstanding fines when sentencing an offender.
- Since 1989 successive official reports have highlighted weaknesses in the systems for collecting financial penalties but the Department has not given them sufficient priority. The Department should now explore options to improve performance significantly by: looking at the scope to centralise some collection procedures regionally or nationally; implementing management information systems which facilitate proper debt management, and assist magistrates when sentencing;

¹ Lord Chancellor's Department, *Annual Report on National Performance Indicators 2001–02*

² C&AG's Report: *Collection of fines and other financial penalties in the criminal justice system* (HC 672, Session 2001–02)

establishing centres of excellence to promote good practice; delegating more enforcement responsibilities to administrative staff where appropriate; reviewing the scope to bring together the separate arrangements for enforcing criminal and civil penalties; reviewing the scope for incentives or penalties to encourage the prompt payment of fines; and widening the sentencing options available to courts when dealing with defaulters, for example sequestrating assets such as cars, or limiting a defaulters' ability to obtain credit by registering unpaid fines with the registry of judgement.

- Victims awarded compensation receive their award only when the offender pays the courts. Payment can therefore be delayed by months or years, or may never happen if the offender disappears. Such a process does little to restore victims' faith in the criminal justice system. The Department, together with the Home Office, should explore whether other options exist, for example, the introduction of a fund from which victims could be compensated immediately, and which would be reimbursed by the offender.

5. Our further conclusions and recommendations are:

On the Department's oversight of the performance of magistrates' courts committees:

- (i) The Department should investigate the reasons for poor collection performance by individual magistrates' court committees, and review the committees' plans to remedy any shortcomings. Good practice identified from committees performing well should be disseminated more widely.
- (ii) The Department should review the current range of performance measures for magistrates' courts committees collection activities, for example to include data on the speed with which fines are paid. Current measures, which include payment, cancellation and write off rates should be underpinned by a clear and consistent approach to their calculation across committees, for example accounting separately for criminal penalties and civil impositions.
- (iii) Information technology systems currently used by magistrates' courts committee are not capable of fully supporting the enforcement process, and the introduction of a new national system has been delayed. We plan to examine separately the circumstances surrounding the development and delivery of the new national system on the basis of a further report from the Comptroller and Auditor General.

On encouraging the prompt payment of financial penalties:

- (iv) Magistrates' courts committees should provide regular feedback to magistrates on the impact of their sentencing and enforcement decisions.
- (v) The Department should assist judges and magistrates in keeping up-to-date on the latest best practice in imposing and enforcing financial penalties by providing regular guidance and training.
- (vi) The Department and magistrates' courts committees should review the current arrangements for obtaining information on an offender's means to improve the quality and reliability of information available to the courts before sentence is passed.

On pursuing unpaid penalties:

- (vii) The Department should disseminate the results of the study commissioned by the Home Office into the effectiveness of different enforcement techniques to all magistrates and magistrates' court staff.
- (viii) The Department appeared to have little information on the characteristics of defaulters, leaving it poorly placed to develop effective policies on enforcement. It should therefore give high priority to reviewing the outcome of its recently commissioned study of defaulters, and the implications for financial penalties as an effective punishment.
- (ix) To assist in tracing defaulters quickly, the Department should reach agreement with other government agencies, including the Inland Revenue, and the Driver and Vehicle Licensing Agency, to allow courts to request information such as defaulters' addresses.
- (x) Magistrates' courts committees should be encouraged, where appropriate, to use all sources of potential information on the whereabouts of defaulters, including knowledge from within local communities.

THE DEPARTMENT'S OVERSIGHT OF COLLECTION PERFORMANCE

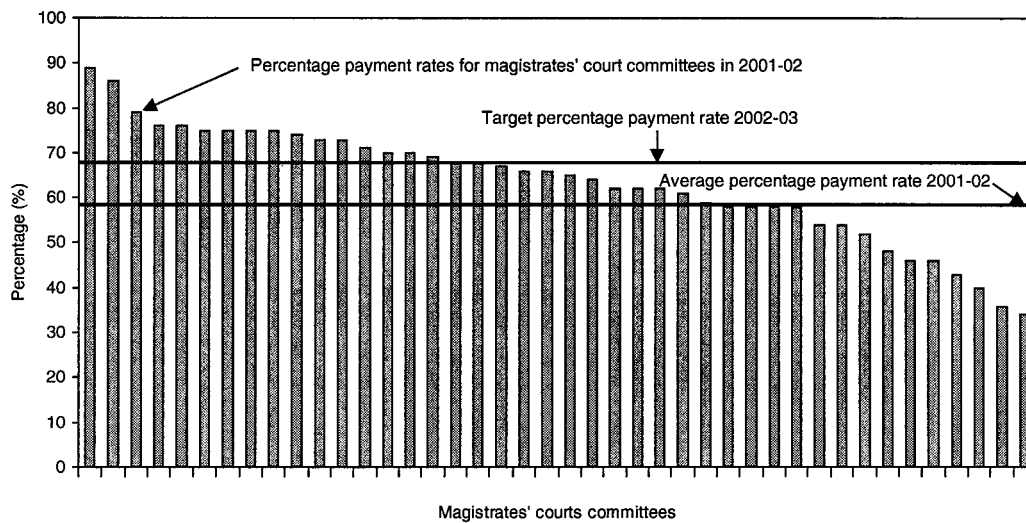
6. Successive official reports have highlighted weaknesses in the systems for collecting financial penalties. In 1989, an efficiency scrutiny identified lengthy and complex procedures and unclear responsibilities. In 1994, a review by the Internal Assurance Division of the Lord Chancellor's Department concluded that the standard of control at local level was unsatisfactory. A review by the Magistrates' Courts Service Inspectorate in 1996 identified similar weaknesses.³

7. Whilst the Department has no direct control over magistrates' courts, the Lord Chancellor can direct magistrates' courts' committees to meet specified standards of performance. A working group established by the Department issued two sets of guidance on enforcement issues in 1996 and 1997. However, payment rates at national level have remained static for some time and penalties collected in 2001–02 represented 59% of total impositions in England and Wales, unchanged from the previous year. Significant variations in payment rates exist at local level. In 2001–02, payment rates varied between 34% in Merseyside to 89% in Dorset (Figure 1 and Annex B).⁴

³ C&AG's Report, para 1.7, Appendix 2

⁴ Q 9

Figure 1: Comparison of 2001–02 payment rates with 2002–03 target



Note: The payment rate is calculated as the money collected during the year, divided by the penalties imposed during the year net of penalties transferred to or from other magistrates' courts committees.

Source: *Lord Chancellor's Department, Annual Report on National Performance Indicators 2001–02*

8. A range of factors can influence payment rates at local level, including:

- Differences in the characteristics of defaulters. Home Office research suggests that offenders from the poorest neighbourhoods are significantly less likely to pay their financial penalties than those from affluent areas;
- Differences in the type of offences for which fines are imposed in the first place. Fixed penalties or relatively small traffic fines, for example, are likely to be paid more quickly than other fines;
- The ease with which offenders can be traced. It can be more difficult to trace offenders in areas with a high proportion of temporary or bed and breakfast accommodation; and
- The proportion of persistent offenders, who accumulate large debts, and who often know how to play the system.⁵

9. The Department accepted that more could have been done to improve payment performance and that guidance on good practice had not been sufficiently effective. In April 2001, to speed up enforcement, the Department had transferred responsibility for executing warrants for the arrest of defaulters from the police to magistrates' courts' committees. An additional £10 million had also been made available for 2002-03 to help magistrates' courts strengthen procedures. A series of conferences for enforcement staff had been held in early 2001 and 2002 to discuss good practice, for example on tracing defaulters and placing information before the courts.⁶

⁵ Ev 30–31

⁶ Qq 1–2, 9

10. The Department calculates the payment rate for fines as the amount of money collected in a year as a proportion of financial penalties imposed in that year. Money collected can, however, relate to penalties imposed in earlier years. The Department's measure does not therefore match penalties collected in a year with impositions made in that year. A magistrates' courts committee's reported collection performance can therefore be distorted by, for example, receipt of a large fine imposed in an earlier year. The Department said that computer systems at local level could not currently extract information to report the true fine collection rate for a year.⁷

11. Assessment of local performance should take account of the level of write-offs and cancellations. In 2001–02, penalties totalling £57.9 million were written-off because they could not be enforced, and penalties of £90.4 million were cancelled. Large variations in write-offs and cancellation rates exist across the country (Annex B). Cancellations occur because, for example, the defendant may successfully appeal against the imposition; because the penalty has been satisfied by a term of imprisonment; or because the offender's circumstances have changed to such an extent that there is no prospect of the fine being paid. A continuously high write-off rate at local level could indicate poor enforcement. Similarly, high cancellation rates could potentially undermine the court's initial intentions. There is also a risk that areas cancel impositions rather than write them off to mask weaknesses in their enforcement processes. The Department considered, however, that there was no correlation between write-offs and cancellations and that cancellations were a judicial decision.⁸

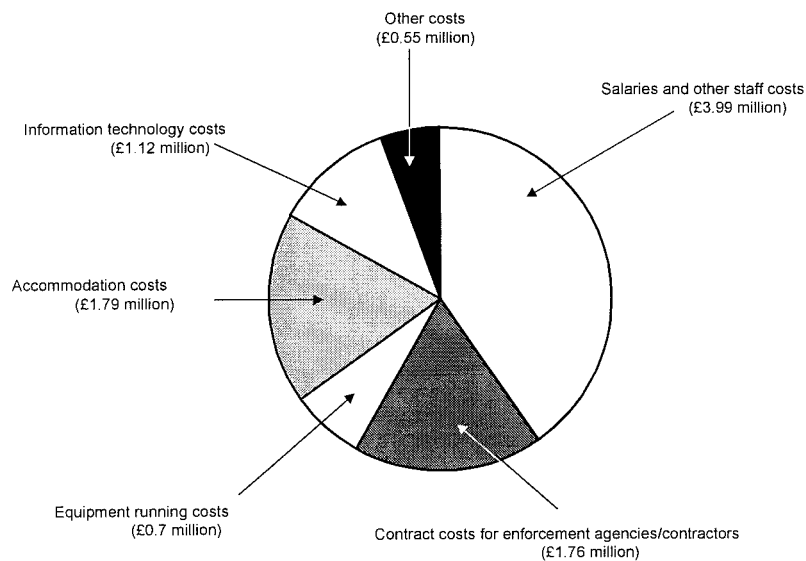
12. Most magistrates' courts committees use one of three different computer systems to maintain and generate data on the collection of financial penalties. The Department acknowledged that these IT systems were not capable of providing the support needed by an efficient fines enforcement system. A contract to deliver a new national computer system for magistrates' courts committees was signed by the Department in 1998. The new system, known as Libra, had been expected to provide infrastructure and core services to all committees by the end of 2003, but had been delayed and completion was not expected now until late 2004. In the meantime, the Department expected magistrates' courts committees to focus on improving performance by other means supported by the additional £10 million made available to them in 2002–03 (paragraph 9). Some committees, for example, were hiring extra civilian enforcement officers, and one was buying a stand-alone computer to help manage the execution of warrants (Figure 3).⁹ At present, magistrates' courts committees do not pool their resources when carrying out enforcement activities. The Department saw some merit in setting up centres of excellence to develop best enforcement practice.¹⁰

⁷ C&AG's Report, para 2.35

⁸ Qq 20–21

⁹ Qq 45, 48, 50–52, 121–122, 128

¹⁰ Q 148; C&AG's Report, para 20

Figure 2: How the additional £10 million for enforcement is being applied in 2002–03

Note: Other additional costs includes some £81,000 for advertising and recruitment costs

Source: Lord Chancellor's Department, Ev 33–34

13. In July 2002, the Government announced plans to integrate the management of the courts within a single courts agency to replace existing magistrates' courts committees and the Court Service.¹¹

ENCOURAGING PROMPT PAYMENT

14. The accuracy of information about the defendant, available to the Court at the time at which a financial penalty is imposed, is key to the effectiveness of this form of punishment. The Criminal Justice Act 1991 provides for magistrates' courts to take into account offenders' means when imposing fines but the information depends entirely on the court's enquiries of that person. Many people, however, are sentenced in their absence, and a penalty may be imposed without precise information on their means. None of the courts visited by the National Audit Office had systematic arrangements in place for obtaining information on defendants' means or for verifying any information obtained. No statutory requirement for defendants to provide this information exists currently. Further, magistrates were not always aware of outstanding unpaid penalties when passing sentence. The Department suggested that local courts found obtaining information on defendants a bureaucratic process, but accepted that the bureaucracy involved in chasing the two thirds of financial penalties not paid on time was probably greater.¹²

15. At courts visited by the National Audit Office the proportion of financial penalties paid on the day of imposition varied between 1.8 and 4.3%. Currently no financial incentives exist to encourage the early payment of financial penalties and late payment does

¹¹ Government White Paper, *Justice for All*, Cm 5563

¹² Qq 177, 239, 242–243

not attract interest or any other additional financial penalty. Local authorities are, however, able to apply additional penalties for late payment of parking fines. The Department said that the introduction of incentives or sanctions for fines more generally would require changes to legislation. Such arrangements should be considered, provided they did not unfairly penalise those who were genuinely in financial difficulty.¹³

16. Victims awarded compensation have to wait until the monies are paid to the court by the offender. In some cases, payment can take many years. Improved collection procedures would help victims receive compensation more quickly, but the Department believed that radical change was unlikely without changes to the system. One suggestion put to the Department in recent years was that of a fund, paid for by the taxpayer, which would pay compensation out to victims immediately, but which would be refunded by offenders.¹⁴

17. None of the courts visited by the National Audit Office provided regular feedback to magistrates about the consequences of their sentencing practice in terms of the collection of financial penalties. The Department accepted that further action could be taken to ensure that magistrates received better training, guidance and information about sentencing patterns.¹⁵

PURSUING UNPAID PENALTIES

18. Many defaulters either cannot pay, or will not pay. There are a number of methods open to magistrates' courts to enforce payment of financial penalties, including payment by instalments, distress warrants to seize assets and making direct deductions from income or benefit. The ultimate sanction for non-payment is imprisonment. In 1994, the Department's Internal Assurance Division concluded that it was unable to offer assurance that fine enforcement was working properly due to an unsatisfactory standard of control over enforcement processes. It was not until 1999, however, that the Home Office commissioned a study to examine the effectiveness of different enforcement strategies, the results of which are due to be published in 2002. The Department attributed the delay to lack of resources.¹⁶

19. Very little information exists at national level about the characteristics of defaulters. The Department could not indicate, for example, the proportion of unpaid fines due from offenders on benefit. Limited research commissioned by the Home Office in 1997 found that only one in five male defaulters was employed; and that typically female defaulters were in restricted financial circumstances, with only one in 10 in some form of employment and the majority (81%) with dependent children. The Department acknowledged that better information was needed for policy development purposes. It had recently commissioned a research project to examine the profile of defaulters.¹⁷

20. The National Audit Office found that the enforcement process often involved many stages and that courts took different approaches to delegating responsibility to court officials. In the Department's view, the current regulations governing the delegation of powers were clear, and it believed that these powers were being used to their maximum. The Department accepted that greater delegation was to be encouraged but primary legislation would be needed to transfer more responsibility to court officials.¹⁸

¹³ Qq 31–32; C&AG's Report, para 2.2

¹⁴ Q 3

¹⁵ Q 119; C&AG's Report, para 2.10

¹⁶ Qq 1, 167

¹⁷ Qq 73, 79, 83, 109; C&AG's Report, para 1.6

¹⁸ Qq; C&AG's Report, para 2.27

21. Some people may put other financial commitments ahead of their fine for fear of obtaining a county court judgement, which has a direct impact on their ability to obtain credit. At present, the enforcement systems for civil and criminal debt are not handled in the same way, although the Department said that the county courts faced very similar issues. The Department was looking at whether, as a result of repeated failure to pay, a person could be registered with the registry of judgements, which would have the same effect as a county court judgement by disabling the person from obtaining credit. It was also considering whether the enforcement systems for civil and criminal debt ought to be handled together.¹⁹

22. Many penalties remain unpaid because the offender cannot be traced. The first stage of the enforcement process is the issue of a summons by the court at which the defaulter is required to explain why payment has not been made. However, only a minority of offenders turn up for these hearings. Tracing offenders can be difficult because some are highly mobile and either deliberately or inadvertently fail to notify courts of their change of address. An analysis by the Department of a large proportion of the write-offs for the year ended 31 March 1998 suggested that 96% were due to inability to contact or trace defaulters.²⁰

23. Under the Access to Justice Act 1999, the Lord Chancellor can designate public authorities from whom courts can request information about defaulters including the defaulter's full name and address, date of birth and national insurance number. The Department for Work and Pensions was designated in April 2001, and in the first twelve months of this arrangement £465,000 had been recovered that would not otherwise have been collected. The new arrangement had paid for itself within seven months, although the money collected was still small compared to the £58 million written off in 2001–02. Similar access to the Police National Computer had recently been agreed by the Department, and agreements with the Inland Revenue, and the Driver and Vehicle Licensing Agency were being pursued.²¹

24. In some cases courts may overlook information on defaulters whereabouts held within the local community, including victims knowledge. In one case known to a member of this Committee, individuals had informed the court of the whereabouts of a defaulter but the court was seemingly reluctant to act on the information. The Department accepted that there might be the greater scope for magistrates' courts to seek the assistance of local communities in tracing defaulters.²²

25. In some instances, the defaulter may be a resident of another country and may leave the United Kingdom without paying a fine. A Committee member cited the case of a fine imposed upon a road haulier which had to be written off. The Department said that current arrangements enabled the Department for Transport to urge the defaulter's country of origin to take action to ensure that traffic penalties were paid. However, a draft Framework Decision proposed by the United Kingdom, France and Sweden within the European Union would, if adopted, provide for financial penalties imposed in one member state to be enforced by other member states. In the interim, the Government was exploring a system of fixed penalties or a graduated deposit system, whereby hauliers would pay a "deposit" as a guarantor of court attendance.²³

26. A person who fails to pay a court penalty can be sent to prison, although use of prisons as the ultimate sanction has declined in recent years partly because of case law and

¹⁹ Qq 80–81

²⁰ C&AG's Report, para 2.17

²¹ Q 151

²² Qq 149,151, 174

²³ Q 29; Ev 27

a concern not to send people to prison unnecessarily. In 2000, 2,476 people were imprisoned for non-payment of fines compared to 22,469 people in 1994. A review of the range of sentencing options currently available to the courts is needed, particularly where offenders are unlikely to pay a fine if imposed. The Crime (Sentences) Act 1997 provides additional sentencing options for dealing with fine defaulters and persistent petty offenders, including community punishment orders, curfew orders and disqualification from driving. The Department said that these sentencing powers had been piloted but not yet brought into force. Some sentence options might not always be appropriate, for example existing community sentences had a 30% breach rate. There may also be lessons to learn from abroad, however, for example experience in Australia and New Zealand. In July 2002, a Government White Paper, *Justice for All*, announced proposals to impose a range of sanctions for fine default, including registering the fine with the registry of judgements (which prevents defaulters obtaining credit); and ordering the clamping of a defaulter's vehicle.²⁴

²⁴ Qq 8, 102, 138

Annex A: Summary of collection statistics in England and Wales (2001–02) (£million)

Magistrates' courts committee²⁵	Payments £m	Write-offs £m	Cancellations £m	Closing arrears £m	Impositions £m	Closing balance £m
Dorset	2.8	0.4	0.7	1.5	3.1	2.9
West Yorkshire	11.3	1.6	6.9	6.2	13.2	9.0
Surrey	4.8	0.8	1.2	3.1	6.1	4.5
Cumbria	2.8	0.1	0.9	0.7	3.7	3.3
Lincolnshire	2.7	0.3	0.4	2.7	3.6	3.4
Thames Valley	9.6	2.0	0.4	12.0	12.8	20.8
Durham	3.0	0.4	0.6	1.9	4.1	4.6
North Yorkshire	2.5	0.1	0.5	1.7	3.4	2.7
Essex	7.9	2.9	1.6	8.7	10.6	12.1
Norfolk	2.9	0.6	0.8	2.1	3.9	3.2
Dyfed Powys	1.7	0.1	0.4	1.0	2.3	2.6
Staffordshire	4.6	0.3	1.0	2.7	6.3	5.5
Humberside	4.1	0.6	1.1	1.8	5.8	7.2
Suffolk	2.3	0.5	0.5	1.7	3.2	3.4
Devon & Cornwall	5.1	0.7	1.2	2.3	7.3	5.4
North Wales	2.5	1.2	0.5	3.2	3.7	4.4
Hampshire & Isle of Wight	6.4	1.2	2.0	13.6	9.3	17.6
Lancashire	7.2	1.3	2.8	5.7	10.7	10.4
Wiltshire	2.9	0.8	1.3	2.3	4.4	3.3
South Yorkshire	5.5	0.9	2.4	4.1	8.3	5.9
Gwent	2.6	0.4	0.7	2.0	3.9	3.6
Nottinghamshire	4.4	0.9	1.7	2.6	6.7	4.5
Kent	6.1	1.5	1.9	5.6	9.5	10.9
Northumbria	5.5	0.8	2.5	3.2	8.8	6.9
Leicestershire	5.2	1.6	0.9	1.7	8.4	5.1
Sussex	4.1	2.5 ²⁶	0.0	3.4	6.6	6.1
Greater Manchester	13.8	6.1	3.2	9.3	22.5	18.2
Hertfordshire	4.0	1.0	2.2	1.8	6.7	2.9
Bedfordshire	2.2	0.6	0.6	1.3	3.7	2.6
West Midlands	13.2	3.5	5.9	10.1	22.9	20.9
Cheshire	3.9	0.4	1.2	3.8	6.7	6.5
Derbyshire	4.5	0.1	1.3	7.9	7.7	15.1
Cleveland	1.8	0.5	0.7	3.8	3.4	5.5
Avon & Somerset	6.2	0.9	3.1	6.4	11.6	8.6
Northamptonshire	3.4	0.5	2.4	3.1	6.6	5.6
West Mercia	4.2	1.2	0.5	7.0	8.7	11.0
Warwickshire	2.1	0.3	1.1	1.9	4.5	4.0
Greater London	35.5	13.9	27.9	53.3	77.6	116.1
Gloucestershire	1.8	0.6	0.0 ²⁷	N/A ²⁸	4.3	N/A
South Wales	4.2	0.9	1.8	4.7	10.3	11.7
Cambridgeshire	3.1	1.0	1.0	11.8	8.7	15.3
Merseyside	3.8	2.0	2.3	23.0	11.3	25.8
All magistrates' courts committees	228.1	57.9	90.4	246.5	387.0	439.0

²⁵ Presented in reducing order of payment rate.²⁶ This figure may include cancellations.²⁷ Actual figure £24,457, disappears with rounding.²⁸ Not available because of computer problems.

Annex B: Summary of performance statistics (2001–02)

See Explanatory Notes at end

Magistrates' courts committee	Payment rate	Write-Off rate	Cancellation rate	Arrears rate
Dorset	89%	12%	22%	52%
West Yorkshire	86%	12%	52%	69%
Surrey	79%	13%	20%	69%
Cumbria	76%	3%	23%	20%
Lincolnshire	76%	9%	11%	79%
Thames Valley	75%	15%	3%	58%
Durham	75%	10%	14%	42%
North Yorkshire	75%	3%	15%	63%
Essex	75%	27%	15%	72%
Norfolk	74%	14%	19%	66%
Dyfed Powys	73%	3%	19%	39%
Staffordshire	73%	4%	17%	49%
Humberside	71%	11%	20%	24%
Suffolk	70%	14%	15%	48%
Devon & Cornwall	70%	9%	17%	42%
North Wales	69%	32%	14%	72%
Hampshire & Isle of Wight	68%	12%	21%	78%
Lancashire	68%	13%	26%	55%
Wiltshire	67%	19%	30%	68%
South Yorkshire	66%	11%	29%	68%
Gwent	66%	10%	18%	54%
Nottinghamshire	65%	13%	25%	57%
Kent	64%	16%	20%	51%
Northumbria	62%	9%	28%	46%
Leicestershire	62%	19%	10%	34%
Sussex	62%	37% ²⁹	0%	56%
Greater Manchester	61%	27%	14%	51%
Hertfordshire	59%	16%	33%	61%
Bedfordshire	58%	16%	17%	51%
West Midlands	58%	15%	26%	48%
Cheshire	58%	6%	18%	58%
Derbyshire	58%	1%	17%	52%
Cleveland	54%	15%	22%	70%
Avon & Somerset	54%	7%	27%	74%
Northamptonshire	52%	7%	36%	55%
West Mercia	48%	14%	6%	63%
Warwickshire	46%	7%	25%	47%
Greater London	46%	18%	36%	46%
Gloucestershire	43%	14%	1%	N/A ³⁰
South Wales	40%	9%	17%	40%
Cambridgeshire	36%	12%	12%	78%
Merseyside	34%	18%	20%	89%
All magistrates' courts committees	59%	15%	23%	56%

²⁹ This figure may include cancellations.

³⁰ Not available because of computer problems.

EXPLANATORY NOTES

Payment rate. The primary indicator is the amount paid into court as a percentage of new amounts owed (payment rate). A consistently high payment rate is desirable. The payment rate is calculated as the money collected during the year, divided by the penalties imposed during the year net of penalties transferred to or from other magistrates' courts committees. N.B: As money collected can relate to penalties imposed many years previously, sometimes sizeable penalties, the rate will not reflect performance in collecting penalties within a given timescale. The sum total of the payment, cancellation and write-off rates will not therefore be 100%.

Write-off rate. A continuously high write-off rate might indicate poor enforcement. Conversely, very low write-off rates might mask administrative inefficiency in reviewing outstanding cases. The write-off rate is calculated as the value of penalties written off as unenforceable, less any written back, divided by the penalties imposed during the year net of penalties transferred to or from other magistrates' courts committees.

Cancellation rate. A continuously high cancellation rate may mean that the courts' initial intentions are not being implemented. The cancellation rate is calculated as the value of penalties cancelled during the year, divided by the penalties imposed during the year net of penalties transferred to or from other magistrates' courts.

Arrears rate. The arrears rate – the percentage of the closing arrears over closing balances – gives an indication of the amount of money that was paid on time. A lower percentage arrears means that a greater proportion of money owed to the court is paid on time. A payment is deemed by the courts to be in arrears when it fails to be paid by the date specified by the courts. Some payments may be due in full within a specified period from the date of sentence (usually 14 to 28 days). In other cases payments may, with the agreement of the courts, be due in instalments.

All these figures include some non-criminal debt owed to magistrates' courts, for example, maintenance payments, because many courts' systems cannot break down the debt owed into criminal and civil.

MINUTES OF PROCEEDINGS OF
THE COMMITTEE OF PUBLIC ACCOUNTS

SESSION 2001–02

MONDAY 24 JUNE 2002

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon	Mr George Osborne
Geraint Davies	Mr David Rendel
Mr Frank Field	Mr Gerry Steinberg
Mr Nick Gibb	Jon Trickett
Mr George Howarth	Mr Alan Williams

Sir John Bourn KCB, Comptroller and Auditor General, was further examined.

The Committee deliberated.

Lorraine Constable, Assistant Treasury Officer of Accounts, was further examined.

The Comptroller and Auditor General's Report on The collection of fines and other financial penalties in the criminal justice system (HC 672), was considered.

Sir Hayden Phillips GCB, Permanent Secretary, Lord Chancellor's Department; and Mr Peter Gray, Account Director, National Audit Office, were examined (HC 999-i)

The Chairman declared an interest as having practised as a barrister.

The witnesses were further examined.

A division of the House being called, the Chairman suspended the meeting for ten minutes.

The Committee resumed.

The witnesses were further examined.

The witnesses withdrew.

The Committee further deliberated.

* * * * *

[Adjourned until Wednesday 26 June at Four o'clock.

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WEDNESDAY 6 NOVEMBER 2002

Members present:

Mr Edward Leigh, in the Chair

Angela Eagle
Mr Frank Field
Geraint Davies
Mr Brian Jenkins

Mr Nigel Jones
Mr David Rendel
Mr Gerry Steinberg
Mr Alan Williams

Sir John Bourn KCB, Comptroller and Auditor General, was further examined.

The Committee deliberated.

Mr Rob Molan, Second Treasury Officer of Accounts, was further examined.

* * * * *

Another draft Report (Collection of fines and other financial penalties in the criminal justice system), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 4 read and agreed to.

Paragraph 5 postponed.

Paragraphs 6 to 26 read and agreed to.

Postponed paragraph 5 read and agreed to.

Annexes A and B read and agreed to.

Explanatory notes read and agreed to.

Resolved, That the Report be the Sixty-eighth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (Reports)) be applied to the Report.

* * * * *

[Adjourned until Monday 18 November at Four o'clock.]

MINUTES OF EVIDENCE

TAKEN BEFORE THE COMMITTEE OF PUBLIC ACCOUNTS

MONDAY 24 JUNE 2002

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Geraint Davies
Mr Frank Field
Mr Nick Gibb
Mr George Howarth

Mr George Osborne
Mr David Rendel
Mr Gerry Steinberg
Jon Trickett
Mr Alan Williams

SIR JOHN BOURN KCB, Comptroller and Auditor General and MR PETER GRAY, Director, National Audit Office, further examined.

LORRAINE CONSTABLE, Assistant Treasury Officer of Accounts, HM Treasury, further examined.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL:

Collection of Fines and other financial penalties in the Criminal Justice System (HC 672)

Examination of Witness

SIR HAYDEN PHILLIPS GCB, Permanent Secretary, Lord Chancellor's Department, examined.

Chairman

1. Order, order. Good afternoon, ladies and gentlemen and welcome to the Committee, Sir Hayden. Thank you for coming today to speak to us about the Comptroller and Auditor General's Report on the Collection of fines and other penalties in the Criminal Justice System. For years I used to practise in the criminal courts as a barrister; I do not know whether I should declare that. I no longer practise but I do know a little bit about the problems you face in the collection of penalties and other fines. May I start by referring to Appendix 2 on page 28? You will see it refers to a very large number of reports into the efficiency and effectiveness of financial penalties over the last 13 years, yet in 2000–01 we learn that only 63% of financial penalties were collected, in 2001 the rate fell to 59%. It is a pretty poor record. Why does performance continue to be so poor?

(*Sir Hayden Phillips*) Despite the giving of all the guidance, much of it in quite some detail, the problems have remained really quite intractable. Essentially there is a number of reasons. First of all, until a year ago the system was very much a divided system with no-one really in charge. I hope we have made progress in changing that. Secondly, here is an area of great importance but of very hard work, often extremely difficult work, which has not been given the priority which it necessarily ought to be given for a variety of reasons, one of which is resources. We have done something now to change that. Thirdly, it is intractable for a lot of other reasons. A lot of the problems in enforcement are about tracing the people concerned: a lot of them cannot pay, many of them will not pay. You are dealing therefore, to put it crudely, with human nature as well as with bureaucracy and systems. I want to try to persuade the Committee if possible, that we are trying to

position ourselves now to be able to achieve more and better in a way which was not easily possible in the past, despite all the guidance which has been given out.

2. That is what I want to come onto straightaway. There are intractable problems with the whole system. You are often dealing with an underclass of people with no means anyway, no fixed employment, that is why they are in the courts, problems of means to pay, keeping track of defaulters, that on top of weaknesses in training, poor record keeping, incomplete management information. You might feel you could address those latter points but the former ones are far more difficult. Does all this add up to a fundamental weakness in the way that fines and other financial penalties are enforced or indeed a fundamental weakness in the whole system?

(*Sir Hayden Phillips*) There are and have been systemic problems. I actually believe—you might say optimistically—that we can put in place a range of measures administratively which can make a real difference. I have been encouraged by the way in which magistrates, their staff, other stakeholders in the system all across the country have this year come together in five regional conferences to share best practice, to talk about new standard setting, sharper timescales. We have for the first time a performance target for the payment rate. We are making funds available to each magistrates' courts committee to fund what they believe is necessary to improve their performance. I do accept that not enough has been done and not enough has been achieved, but we are positioning ourselves to do better. We will still have to deal—and this requires a lot of detailed and careful work by staff and magistrates on the ground—with a lot of people who are fined, who cannot pay or will not pay and whose social lives and backgrounds are such that it is going to be very

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SIR HAYDEN PHILLIPS GCB

[Continued

[Chairman Cont]

difficult to tackle that. We have an information exchange system this year for the first time with the Department for Work and Pensions and we can go to them, when we have tried every other means and we cannot find them. We have raised £465,000 this last year in fines which would otherwise have been uncollected as a result of better being able to trace defaulters. In those sorts of ways I do believe we can make progress.

3. I want to turn now to the victims. Case study 5 on page 23 is an interesting case. There you have a victim who is still waiting ten years after the event for compensation. That is a pretty sorry saga, is it not? There are other cases on that page which are perhaps not quite as serious as that. What are you doing to ensure that victims do get these awards paid to them as quickly as possible?

(*Sir Hayden Phillips*) I agree with you about that; I am not pretending that is a good story. The present arrangements are that victims who are waiting for compensation have to wait for compensation until the funds are brought in from the offender to enable that to be done. Suggestions have been made from time to time that what the Government ought to do was produce a compensation fund, funded by the taxpayer, which would then pay compensation out to the victims immediately and it would be refunded over time. That is probably the only way in which that situation can readily be changed radically, other than by what I hope will happen anyway, which is a progressive improvement in the speed of collection. Obviously a fund of that nature raises important issues of principle about whether the taxpayer should be asked to do this and raises issues of cost.

4. A lot of the problem with the courts is delays; a lot of the problem with enforcement is that it has to be referred back to the courts. Some courts are trying to delegate some responsibilities to administrative staff. Is there any scope for easing this process by reducing referrals back to court and delegating more work to staff?

(*Sir Hayden Phillips*) The current position on delegation, which is laid out in the statute and regulations is actually clear. I have no reason to think that courts do not use that delegation to the maximum. If you are going to transfer more responsibility to court officers, you do require primary legislation to enable that to be done so that officials can get on and deal more directly and regularly with the person who has been fined, try to find ways to get the fine in more quickly, without having to go back to court.

5. That is presumably a good process and we should encourage that process.

(*Sir Hayden Phillips*) We should encourage that process and this is something which will be on the list for legislation at some point.

6. Paragraph 2.17 notes that 90% of penalties which are written off, are written off simply because the offenders cannot be traced. What are you doing to try to help magistrates' courts keep better track of defaulters?

(*Sir Hayden Phillips*) I agree with you that the level of write-offs is important. Clearly the payment rate is the thing we have to try to improve. We also want to see the level of write-offs going down, because on the

whole they indicate that penalties are not simply unenforceable but have been too difficult to enforce. Last year the write-off rate went down from £74 million the year before to £57 million, which is an indicator of a degree of improvement there. The main way in which we want to speed up the process is by giving magistrates' courts committees the resources and the information to be able to put more people onto the case more frequently, to use new ways of trying to contact people. Simply by putting more effort into the process, which they can now do from 1 April this year, we can try to make real progress in that area. Some of the improvements you have touched on and implied by your questions, do require legislative action as well as administrative action.

7. May I ask you now about your performance data? If you look at paragraph 1.2, you will see that some courts cannot even distinguish between civil and criminal impositions. What are you doing to try to improve the reliability and consistency of data so that you and we know what is going on?

(*Sir Hayden Phillips*) This essentially means changing existing IT and manual systems into one which is in a standard form and which can be relied on to provide local management information and on a monthly, quarterly, annual basis can sensibly be aggregated nationally rather than the present range of differing systems which exists. We have a programme to put that in place. The infrastructure for the IT has been rolled out across 75% of magistrates' courts committees, but it will be a little while before we have consistent and reliable data for every area which can build up a clear national picture.

8. Can you just look to the further horizons? We discussed the fundamental weaknesses in the whole system of fines, in tracking offenders, in getting them to pay and all these other problems. I should like to ask you to ponder on what you are doing to look at the wider sentencing framework and whether there are other ways forward. If a penalty is unlikely to be paid and we all know that many of the people who come through the courts are unlikely to pay a penalty, cannot pay a penalty, will not pay a penalty, already have a large number of fines outstanding against them, all the other reasons we are all familiar with, do you think the courts have sufficient sentencing options available to them? Should we resort more to sequestration of treasured possessions such as cars, curfew orders, weekend prisons, all these other options and get out of this fixation on fines which you apparently have so little success in enforcing?

(*Sir Hayden Phillips*) There is a range of things we would want to look at. There are some in the Crime Sentences Act which may be brought into force, which is being able to impose community penalties where fines are found not to be right, indeed to impose a community penalty where otherwise someone might be sent to prison for default. Both in Australia and New Zealand they have found a battery of measures like that, together with other options such as registering people thereby ensuring they cannot get further credit facilities, clamping vehicles, taking away people's right to drive, looking at more fixed penalties if necessary. TV and vehicle licence evasion accounts for something like 27% of all

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[Continued

[Chairman Cont]

finer. Maybe they are suitable for fixed penalties. There is a range of measures which will require legislation which we can look at to broaden the range of penalties which is available to that progressively as well as improving the system we have, we actually have a more sensitive range of penalties which magistrates can reach for.

Jon Trickett

9. I am actually shocked by this report. I guess I knew intuitively that the situation was not very good but it is quite shocking how poor our collection rates are, is it not?

(*Sir Hayden Phillips*) The payment rate has hovered around 60% rather persistently for a while. We clearly want to get that up. We set a target that this year it should reach 68% and I hope that with the extra £10 million of resources we put into the enforcement budget, we will stand a chance of positioning ourselves to make a real breakthrough here.

10. Are you able to say whether you are going to achieve the 68%?

(*Sir Hayden Phillips*) We have been to every magistrates' courts committee in the country. They set out what they wanted to use new resources for. We have been able to meet every bid in full. They have their own targets and it is now down to them to deliver the results. I can go into great detail about the practical things which need to be done, but there is a chance here that this could work and we could gradually begin to see a change in the pattern. Having said that, one does actually have to take account also of the number of penalties which are cancelled. I am not talking about write-offs here, just having an overall look at performance on a rolling basis.

11. I am trying to understand the mathematics. It strikes me that there are two or three separate processes by which this money disappears from the accounts and I want to try to understand where the 60% and 68% derive from. I note in my own area, West Yorkshire, the figures we have show that £11.7 million of fines were paid but £7.6 million were either written off or cancelled. That is quite a shocking figure for the people of West Yorkshire. Could you explain briefly the difference between the write-offs and the cancellations? On what basis is something cancelled?

(*Sir Hayden Phillips*) There is a whole series of reasons why you can do it. If someone is committed to prison because they have defaulted on a fine, it is cancelled. If they are in prison for another offence, it is cancelled. If the penalty is remitted in whole or in part because of a chance in circumstances, when that is done that can be cancelled. If a conviction or sentence is set aside, it is cancelled.

12. How is a decision taken to cancel a debt?

(*Sir Hayden Phillips*) By the court. It is a judicial decision. It is not just unenforceability; this is a whole series of categories where cancellation is required.

13. Is the figure of 60%, going up to 68% we hope, calculated after the cancellations have been removed or is it a gross figure rather than a net figure?

(*Sir Hayden Phillips*) The statistics keep away the issue of cancellations and write-off from the 60% figure, which is simply the amount of money collected in any one year against the impositions made in that year. It is crude, but I am told it is the clearest and simplest thing we have been able to produce.

14. The figures in Appendix 1 do not make sense. They do not add up to anything like 100% on page 26 of the report. I imagine what is happening is that we are saying the 60% is a netted figure after we have written off and cancelled debts, is it?

(*Sir Hayden Phillips*) My understanding is that the payment rate is as I have described. It is not, as it were, infected with the cancellation or write-off rates. It is simply the collection in any one year of fines, set against the amount imposed in any one year.

15. Can the C&AG just confirm that is the case?

(*Sir John Bourn*) Yes.

(*Sir Hayden Phillips*) Taking one year with another, you are right to say that you have to take account also of the cancellation rate and also of the write-off rate. What you want to see is the payment rate going up and the write-off rate coming down and that is where we are beginning to be more successful.

16. Looking at West Yorkshire again as an illustration rather than taking a constituency issue, the cancellation rate is the second highest in the whole country at 35% of all fines. In some areas there is no cancellation of any kind and many of them are less than 10%. I accept that there are differences in culture and background and socio-economic status and all the rest of it, but a villain is a villain whether they are poor or not. I do not really accept any defence in terms of socio-economic status. Why should it be that the cancellation rate should be several hundred % higher in some areas than others? Why is West Yorkshire failing?

(*Sir Hayden Phillips*) I do not know the answer as far as West Yorkshire is concerned. What you can get in these figures is a relatively small number of relatively high flyers which then distort the position. That is made clear in the NAO report. I would have to go back and look at the West Yorkshire position in some detail and ask them why it was made up in the way it was.¹

17. Is it each magistrates' bench which does the cancellations or is it the magistrates' committee or the clerk to the magistrates. What is the actual mechanism for cancellation?

(*Sir Hayden Phillips*) The cancellation is done by the relevant court in any particular magistrates' courts area.

18. So in my case it might be Pontefract magistrates' bench.

(*Sir Hayden Phillips*) It might be.

19. Has anybody bothered to look whether beneath the sub-regional level, that is West Yorkshire, Nottinghamshire, there are big differences between one magistrates' bench practice and another?

¹ Ev 26-27

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SIR HAYDEN PHILLIPS GCB

[Continued

[Jon Trickett Cont]

(*Sir Hayden Phillips*) In terms of cancellation I am sure we could get those statistics and the West Yorkshire magistrates' courts committee can be asked to give you an analysis of that. We have not tended to concentrate on that so much as on write-offs because write-offs tend to be the area where enforcement is possible but has not occurred, whereas cancellations are automatic and they are required by law.

20. I would suggest something entirely different which is that if I want to have a good write-off rate in terms of my indices of management—presumably you require some performance-related indices of some kind—I would cancel quite a lot so that the write-off rate was not quite so high, indeed we discover in my own patch in West Yorkshire there is quite a low write-off rate but a very high cancellation rate. Going quickly through the figures, there does appear to be a correlation between the extent to which one writes off and the extent to which one cancels. Is there not a correlation? Has anybody bothered to look at that?

(*Sir Hayden Phillips*) I thought about that. I concluded that whatever the superficial look is, there is no such correlation. Cancellations are in a real sense obligatory on the court. When a person reaches a certain situation—

21. I think a judgement is being exercised, with all due respect.

(*Sir Hayden Phillips*) They are judicial decisions and I should be pretty careful as a member of the executive not to comment on that.

22. I am a member of the legislature and I will comment. It would certainly occur to me, and it has occurred to you as well, that it is possible to manipulate the figures in that way. I guess you would measure on write-off rates rather than on cancellation rates because the write-off rate is a measure of one's efficiency as a magistrates' court, whereas it could be argued the cancellation rate is not. I suspect that some manipulation is going on between the two. I want to ask about a case of which I am aware which illustrates some general points. I have a man who is a French citizen driving on a British road in my constituency and he kills somebody who was driving on the correct side of the road and the French driver was on the wrong side of the road from the English point of view and my constituent was killed. There is an argument about the kind of charge he faced but I do not want to go into that. He was fined £500, which you might think is cheap for a death and I certainly do think that. He then went back to France with three points on his licence, which do not count in France so he was able to continue with his business, but the court never bothered to chase the £500 because he had gone back to France. What should the court have done in a case like that?

(*Sir Hayden Phillips*) As far as I know, there is no means for an English court to enforce a fine on a foreign national who then returns home. I am not passing any judgement on that. As far as I know, subject to correction, that is the fact. The way we would have to deal with that would be within the context of the European Union or bilaterally or whatever, to have mutually agreed and understood

arrangements between any one country and another for the enforcement of financial penalties abroad on foreign nationals.

23. That is my understanding. I just wonder at the magistrates' bench, which was advised—I do admire the magistrates tremendously but they do rely to some extent upon advice which they receive—that a fine levied on a foreign national would not be paid if that person chooses not to pay. I just wonder about the guidance. He is presumably not the only person who lives abroad and has committed an offence who has been fined and failed to pay. I bet there are significant amounts of money uncollected from foreign nationals. Has that been looked at?

(*Sir Hayden Phillips*) My understanding is that we need a legal and agreed basis between ourselves and other countries to enable this to be enforced.

24. The way in which the fine is levied might be considered. Presumably one can insist the money is paid before he leaves the court?

(*Sir Hayden Phillips*) In that sort of case what the magistrates should do and would do—and I do not know whether they did—is precisely what you said, to try to make sure that the person did pay. The magistrates are entitled—I forget which section of which Act it is—to cause someone to be searched to see whether they have the money on them and the wherewithal to pay.

25. He had a wagon.

(*Sir Hayden Phillips*) They have to be very careful about how they handle that because in a vast array of cases people will not have the money and even if they did have some on them, the magistrates are required to make sure that taking the money away does not cause more injury to the person than getting it.

26. I am certainly not xenophobic in any way but I do think there is an issue about foreign nationals not paying fines. If it has happened in my constituency in the last year, I am sure it is happening elsewhere. Do we have any statistics at all on this particular matter?

(*Sir Hayden Phillips*) I do not have statistics.

27. Would these fines be subject to cancellation or write-off?

(*Sir Hayden Phillips*) They would be subject to write-off.

28. They would be written off rather than cancelled.

(*Sir Hayden Phillips*) Yes. The right way forward is to have an agreement and we are working on this in the European Union to get a framework agreement so that financial penalties in one state can be enforced in another.

29. In the meantime do you think it would be a good idea for somebody centrally, probably yourselves, to give some kind of guidance to magistrates' courts in such eventualities to avoid this kind of situation arising in the future.

(*Sir Hayden Phillips*) I see the point. It will take a couple of years, but pending clear-cut agreement in the European Union to indicate to them the steps

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[Continued

[Jon Trickett Cont]

they could take to minimise the risk of the fine not being paid is certainly something I will have a look at.²

30. I want to raise one final point, again about the same case but it does raise generic issues and that is why I am using it. It turns out this Frenchman was given free legal aid and advice. I am not talking about foreign nationals now, I am talking more generally. It occurs to me that many of these people now paying fines and the hundreds of millions of pounds not being paid in fines will be receiving free legal aid and advice. Presumably in order to obtain free legal aid and advice, all kinds of information is given by the alleged criminals. Surely that information could be used in some way to ensure that the court has data with which to pursue the fine which otherwise is written off. Is the data available, is it accessible and how is it used?

(*Sir Hayden Phillips*) You are raising a subject which has exercised the NAO and this Committee and myself and my predecessors over many years. In the old days—it has stopped now—we used to get means information at magistrates' courts for the purposes of legal aid payment. This was a system which was incredibly bureaucratic, often wrong and the accounting mechanisms were no good. We have changed that now. People are entitled when charged with a criminal offence to legal aid in their defence and we would be in difficulty with the Human Rights Act if we did not grant it. That is what happens. The information which is available now to a court about a person's means and ability to pay depends entirely on the court's enquiries of that person rather than them filling up any form about legal aid. We can come on to the issue possibly about whether there should be a more systematic way of finding out the financial position of a defendant, but I am afraid that is the position as it is now.

Jon Trickett: It does seem to me that it causes great offence when a victim, in this case a widow, discovers that not only was the fine not paid, that the court had imposed a fine which could not be levied because it was a foreign national living abroad, but that the man had received free legal aid and advice and the data which he gave to the court to get legal aid and advice was not then used in some way to try to ensure that the fine was paid. That is the point I was trying to make.

Mr Williams

31. We all accept that the collection of financial penalties is essential, as it says in the report, if the credibility of the system as a punishment is to be maintained. It is also important, as in the case the Chairman cited, if victims are to receive justice as well where compensation is involved, is it not? Why is no financial incentive offered to people who pay promptly? I can understand there being no penalty; since they are not paying in the first place a penalty would probably not deter them. Why is there no incentive to encourage people to pay quickly?

(*Sir Hayden Phillips*) The technical answer is that it would require legislation to put incentives and indeed sanctions into play.

32. Is it something you have looked at?

(*Sir Hayden Phillips*) It is something we are looking at. There is a general feeling now that arrangements like that really are worth looking at, provided they do not unfairly penalise those who genuinely are in financial difficulty.³

33. It has taken a long time to get around to it, has it not?

(*Sir Hayden Phillips*) Yes, it has.

34. It is a fairly obvious first step. Why do you think it has not been dealt with before?

(*Sir Hayden Phillips*) There has been a general consensus view over the years—and I would not pretend to be an expert on this—that you should treat everyone in exactly the same way and you should not try to get incentives into the system.

35. You are supposed to be the expert. That is why you are here today.

(*Sir Hayden Phillips*) I am talking about the history here.

36. As long as the incentive is available to everyone you are treating everyone in the same way.

(*Sir Hayden Phillips*) You are then; I accept that. The simplest answer I can give is that it has not been done, we are looking at it and it could be of value in the battery of measures we are looking at it.

37. Are you looking at it through the right end of a telescope or the wrong end of a telescope? Is it way, way in the distance, or is it something which is near your desk for consideration at the moment?

(*Sir Hayden Phillips*) The second; that it is near my desk and not a long, long way out there.

38. It is near your desk. Do drop us a note as soon as it happens. I am sure we would be overjoyed to hear from you.

(*Sir Hayden Phillips*) I shall try to keep up my track record of letting the Chairman and PAC know before something happens rather than afterwards.⁴

39. That is very good, as long as it then happens afterwards. It astonished me to find that magistrates may not have information on an offender's outstanding financial penalties at the time of the sentence. Magistrates can have someone sitting in front of them who is a gross and persistent non-payer and quite happily be imposing more financial penalties on him, not realising that he or she has not the slightest intention of paying in the first place. Why is that information not available?

(*Sir Hayden Phillips*) In some cases what you say is true; it is not generally true of all cases. Again it is a question of making sure you have information systems which are instantly available, which have the right records and information in them and frankly we do not have those yet, which is why we are setting up new IT systems in order to deliver them.

40. Courts can identify from their own records what they have imposed in the past in the situation but this information is not always provided to the magistrates. It seems weird, does it not? The information you have on the fines you yourself impose and their non-payment is not passed on to the

² Ev 27^{3 & 4} Ev 27

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SIR HAYDEN PHILLIPS GCB

[Continued

[Mr Williams Cont]

magistrates before they decide whether to impose another non-paid fine. How on earth can that be justified?

(Sir Hayden Phillips) I am not pretending it can be or should be justified.

41. What are you doing about it?

(Sir Hayden Phillips) You have to make sure that the magistrates' courts and the staff have the resources to get that information available as quickly as possible. In the past resources have not been available, but we have now made £10 million available out of a total spend on enforcement of £40 million, which is a very, very substantial increase, to try to tackle the sort of problems you are identifying.⁵

42. In that case your computer programme is well advanced, is it not? I understand from this that there are five different computers used by the magistrates' courts. Is that correct? They are not compatible with each other.

(Sir Hayden Phillips) Correct.

43. So they cannot necessarily communicate with each other—cannot possibly communicate with each other in most cases. So they are of very limited use to the system. Why?

(Sir Hayden Phillips) These are systems which have been built up over a number of years.

44. No, they were built up a long, long time ago.

(Sir Hayden Phillips) Yes.

45. They were designed in the late 1970s or early 1980s. They are the old BBC little computer you bought for your kids when they were first starting to learn to play with computers; 1970s early 1980s. They are getting a bit decrepit now, are they not?

(Sir Hayden Phillips) They are decrepit.

46. So where are the new ones?

(Sir Hayden Phillips) The situation is better. We have a new standard national information technology infrastructure.

47. Libra.

(Sir Hayden Phillips) This has now been rolled out across 75% of magistrates' courts and out of 11,000 staff 8,500 now have the equipment and that gives us a national network, backup and resilience and it gives e-mail interchange, electronic links between courts and so on. I hope that by the end of this year the linkages which you describe as not being there—and they have not been there in the past and I am not trying to defend that—should be changed.

48. That would be very nice, if only it were right. The latest advice we have in our update briefing from the NAO tells us that you entered into a PFI deal worth £200 million with ICL for this computer. The existing computer systems were due to be replaced by a single system:— Libra, but its introduction, originally planned for 2003 was put back to 2004 or 2005. That is a bit different from what you have just said. Are you saying the NAO have got it wrong?

(Sir Hayden Phillips) No, I am not saying that at all.

49. Oh, then you got it wrong.

(Sir Hayden Phillips) No, I am not saying that at all.

50. Why did you not get it right?

(Sir Hayden Phillips) There is a series of phases of this programme and I was trying to respond to your first question about basic IT links. They are going out and they are in place. You are quite right to imply that there has been a delay in the delivery of some of the standard software which has delayed the programme. What we are determined to try to achieve is that we hit the end of 2004 target, which is a revised target a year late.

51. The pity is that what you have done is give them a car but you have no engine in it. You have spoken about the hardware, but, as it says in the report, the second stage—you talked about the first stage—is the introduction of bespoke software for court business. That was due to start in July last year and be completed in July 2003. This is a report you have signed up to. However, software problems have resulted in delays and a completion is not expected now until 2004 or 2005. They have the tie, but it does not work and it will not work for a couple of years. Is that right?

(Sir Hayden Phillips) There is a year's delay. I accept that, that is correct.

52. But that is a year's delay on something some years ahead.

(Sir Hayden Phillips) It is a year's delay from end 2003 to end 2004.

53. That is a bit different from what you were trying to tell us a few minutes ago, that they have these computers there now and giving us the impression that they are working. They are not.

(Sir Hayden Phillips) If I have given that impression, I apologise. That was not what I was trying to do. I was trying to say that we are getting the basic interchange in place now and then the software which will provide standard information packages across the system will come in, but that will not be available to everybody until the end of 2004.

54. We are told that in May this year the Lord Chancellor's Department announced, but perhaps they did not tell you, that it was not proceeding with that part of the contract which would provide the software for court business. It is not now even going to be part of it. Is that true?

(Sir Hayden Phillips) No, that is not my understanding. My understanding is that we are in negotiation with the company ICL, now called Fujitsu Services, about the timescale of the cost of the software package because of the delay and we intend to bring that to a conclusion just as soon as we can so we know where we are.

55. The NAO says quite clearly here that in May the Lord Chancellor's Department announced that it was not proceeding with that part of the contract, that is the PFI contract, which would provide the software for court business and that it intends to select an alternative supplier to provide an application to cover the next few years. That is a bit of a mess, is it not?

(Sir Hayden Phillips) That is an option but we have not finished our negotiations with the company.

⁵ Note by witness: Total expenditure on enforcement in 2001–02 was £43.8 million. £10 million has been added in 2002–03

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[Continued

[Mr Williams Cont]

56. Would you like to come back next week and tell us, if you do not know what is going on in your own Department?

(*Sir Hayden Phillips*) I do not know whether the NAO want to comment on that.

(*Mr Gray*) We understand that certainly discussions are still occurring on some specific issues.

57. On alternatives. But the PFI contract is not going to cover it, is it?

(*Mr Gray*) I am not aware of the detail.

58. Right, well I shall ask Sir Hayden, not that I expect him to know. You had a PFI contract for £200 million. The company has not delivered because it cannot get the software right. What penalty has now been imposed on the company?

(*Sir Hayden Phillips*) The position is as described by the Comptroller and Auditor General's colleague. The position is that we are in discussion with the company about what they can do.

59. No, they have not delivered, they are not going to deliver, you have admitted yourself that it is going to be at least a year and you are not sure whether this part which we have been told is not going to be covered by it is in or out. They have defaulted on their deal. What penalty are they facing?

(*Sir Hayden Phillips*) First of all, you will appreciate that I am in difficulty. We are in the middle of a contractual negotiation.

60. What difficulty are you facing? You are not in the middle. Any penalties would be part of the contract you originally signed up to and that was signed up to a couple of years ago, so you are not in the middle of those negotiations. Are there or are there not penalties for the computer company failing to deliver and creating enormous embarrassment for you—I know it is not your personal fault—because it is not going to provide the software which is needed for the courts to begin to address the problem we are here to deal with today? What is the penalty?

(*Sir Hayden Phillips*) They have not delivered by the planned due date. We know it is delayed.

61. We have that agreed at last.

(*Sir Hayden Phillips*) We are in discussions with them about the delivery capacity. If we agree with them that delivery will occur through them, then the contract will be varied and then we shall see what the penalty position is.

62. I do not seem to be making myself clear. I keep repeating the same question but you do not seem to understand what I am saying.

(*Sir Hayden Phillips*) I do understand the question. My difficulty is—

63. Do you understand this question? What penalty has been triggered as a result of their non-delivery?

(*Sir Hayden Phillips*) As I say, I am in difficulty in answering that question because we are in the middle of a commercial contract negotiation.

64. That is nothing to do with the current contract.

(*Sir Hayden Phillips*) I cannot say now that we will or will not impose whatever contractual penalty is involved. There are penalties for default in the contract, yes.

65. The whole idea of PFI, we are assured time after time at this cynical Committee, is to transfer risk. You now have run into a fairly obvious risk that they could not get their software right. We have come across that before, so you would have anticipated it. In your PFI contract, do you or do you not have a clause entitling you to compensation if they fail to provide the software on time? What compensation do you stand to get for failure to give you what you require?

(*Sir Hayden Phillips*) The answer to the first part of your question is clearly yes.

66. Yes, what?

(*Sir Hayden Phillips*) Yes, there is a penalty clause.

67. There is a penalty and is it being imposed?

(*Sir Hayden Phillips*) Secondly, it is set at a proportion of the total value of the project. I shall have to check; I cannot give you an answer immediately as to what that precise proportion is.

68. Send us a note on that.

(*Sir Hayden Phillips*) I shall certainly do that. The reason I am not being drawn on it now—or trying not to be drawn on it now—is that we are in discussions with the company about future delivery and I do not want to get drawn into things which may affect that conversation.

69. Yes, but that is future delivery of a past contract. I am not asking you about that. I am not asking you to tell us what your arrangements are about the future. We are told here that it is now intended to select an alternative supplier to provide an application to cover the next few years. Will you pay for that or will ICL pay for that? You are only doing it because they have not delivered. Who is paying for it?

(*Sir Hayden Phillips*) That depends. If our current negotiations lead us to having to go to a new supplier, we shall then have to consider what proportion of that cost ought or ought not to be borne by the company which had failed to deliver it. Like any other negotiation I cannot predict now what the outcome of that will be.

Mr Williams: May I say that I am appalled? We are told that the whole essence of PFI is that risks are identified, systems are put in place to ensure that if the risk is appropriate to the supplier, as it is in this case, then if they do not deliver they are penalised. You have not been able to help us in any way in that respect and you cannot even tell us what is going to happen with the alternate. You had better put in a detailed written note within the next two weeks on exactly what is going on. You can put it in in confidence and the Committee then determines whether it stays in confidence.

Chairman

70. Could you do that, Sir Hayden? You may feel inhibited in answering these questions in public, but can you do what Mr Williams asks and answer his questions to his satisfaction in a detailed note, if necessary in confidence?

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[Continued

[Chairman Cont]

(*Sir Hayden Phillips*) Yes. If any difficulty arises, I shall give an explanation to you so you know where things stand. My objective will be to meet Mr Williams's request.⁶

Chairman: Thank you very much.

Mr Gibb

71. May I go back to your point about not imposing penalties and needing a change in the law to be able to impose penalties for late payment of fines? Why is it that local authorities can do that? Whenever I get a parking fine, if I do not pay within the next few days it is doubled. Why is that legal and applying that same principle to magistrates' fines is not legal?

(*Sir Hayden Phillips*) I recognise that system myself as well as you do and it is an incentive to pay very quickly, otherwise it is doubled. The reason is simply the legislative constraint. It was done for that particular fixed penalty system, it was not done more generally. I think we should look at that very seriously.⁷

72. In one of the paragraphs of the report it says that some defaulters cannot pay their financial penalties because, for example, they have other financial commitments. Why is it you think those other financial commitments take a priority in the minds of those who face a fine over the fine imposed by the magistrates' court?

(*Sir Hayden Phillips*) Two comments on that. First of all, you are dealing with human nature here and a court cannot force somebody instantly to change their priorities for their own expenditure. If people are choosing to spend money on other things and not pay their fines, we just have to grind away trying to enforce the fine in the ways the NAO report describes. There is another context however in which this is particularly acute, which is those who are not well off, who are meant to be on benefit and there it is possible to do an attachment and deduct from benefit, but you can only do it to a maximum of £2.70 a week and the person can only have obligatory deductions for three items of expenditure. A number of the people who are in this position are on benefit. Some of them will not be well off, they will already have deductions for water charges or electricity charges or other things. Once that happens, then you cannot add any more than three deductions, as I understand it.

73. What proportion of the 37% of fines which are not collected is represented by those people who are on benefit and have already had three attachments of benefit?

(*Sir Hayden Phillips*) I am afraid I cannot answer that.

74. Could you let us have a note on that?

(*Sir Hayden Phillips*) If we can get hold of the statistics, I will give them to you. I was not able to get them earlier.

75. With respect, you just gave that as a reason why you are not pursuing these liabilities, so you must know that it is a large proportion or small proportion. You must have a feel. You have just given it as a reason why you are not pursuing these people.

(*Sir Hayden Phillips*) No, not necessarily. I was giving an illustration of circumstances in which it is very difficult to get someone to give a priority to paying a fine if they are on benefit, as well as the generic run of people. If people will not pay and choose to spend on other things, we just have to grind away through the systems available to us at the moment to try to get them to pay.

76. What proportion of defaulters in the 37% are on benefit?

(*Sir Hayden Phillips*) I shall have to give you a note about that precisely. We would have to go out. We do not routinely collect that information.⁸

77. It would be very helpful if you did.

(*Sir Hayden Phillips*) I can see whether either on a sample basis or some other basis I could get some information about that.

78. Would you say it is less than half?

(*Sir Hayden Phillips*) I would not hazard a guess. I really prefer to give you the facts.

79. Do you not think you ought to know in terms of deciding policy what the problems are in terms of defaulting before you decide how you are going to solve it?

(*Sir Hayden Phillips*) Of course you are right. That is evidence-based policy formation. We do need to have that sort of information, it needs to be held above all locally so that magistrates' courts committees and enforcement officers can look at the different groups they are dealing with and use enforcement methods appropriate to those groups of people.

80. Can you use county court judgments to enforce fines?

(*Sir Hayden Phillips*) No, they are enforced through the magistrates' court system. I do believe that you face very similar problems in the county courts as you do in the magistrates' courts. You are often dealing in some areas with the same population who are in debt and owe money and have the county court judgments against them and they will have fines against them. One of the things we should do is to look to see whether the enforcement systems for civil debt and criminal debt ought not to be handled together in the same way.

81. That is my point. My understanding is that people are terrified of receiving a county court judgment against them; it absolutely wrecks their lives. They cannot get a bank loan, they cannot get a credit card, they cannot even get a bank account, they cannot get a car, they cannot get hire purchase. It is a disaster and people who suffer from these have their lives changed. It seems to me that using the

⁶ Ev 34-39

⁷ *Note by witness:* The relevant legislation stipulates that the non-payment of a fixed penalty notice within the time allowed results in the payment due being increased by 50% and the penalty being registered as a fine. [Ref Qq 31-32 and Ev 27]

⁸ Ev 28

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[Continued

[Mr Gibb Cont]

county court judgment would be a very effective method of collecting the fines. It would push the magistrates' court fines up the list of priorities. I suspect that these people with other financial commitments are putting ahead of their fine to society their payments to credit card companies and banks because the threat of a CCJ is far more serious than anything the magistrates' court can throw at them. Is that right?

(*Sir Hayden Phillips*) Yes, the principle is right. One of the things we are looking at is whether, as a result of repeated failure to pay, the person could not be registered, which has a similar effect as a county court judgment, in that it disables you from obtaining credit. We all recognise that at the moment it is far too easy for many people to get credit in circumstances where it ought not to be given. This would be an additional tool at our disposal, but we do not have it at the moment and it would require legislation.

82. It sound as though you are doing a lot of policy work on this issue. What proportion of defaulters have county court judgments against them already?

(*Sir Hayden Phillips*) I am afraid I cannot answer that question either.

83. It worries me when I hear Permanent Secretaries say that, if they are in charge of developing policy advice to Ministers and they do not really know some of these key questions which immediately spring to my mind I as a layman. Is there something wrong with policy development, policy making in the Civil Service? It is not the first time I have asked this question to a Permanent Secretary and I suspect it will not be the last.

(*Sir Hayden Phillips*) I am not pretending to you that it is perfect.

84. You do not seem to know the answers to some of these absolutely key questions which I would have asked on day one if I were trying to advise on how to increase the proportion of fines which are not paid. Why do you not know the answer to these?

(*Sir Hayden Phillips*) What we have concentrated on in this area is trying to find out the ways in which we can improve the system in order to deal with those who are in it now and are likely to be in it. I mentioned to you—and I agree with you—that we ought to look at the relationship between the way civil debts are enforced and the way criminal debts are enforced. I do not have the information at the moment about that. This is not an area which has been looked at hitherto at all.

85. Could you sent a note about the proportion of defaulters who have county court judgments against them?

(*Sir Hayden Phillips*) I will; absolutely.⁹

86. That will be very helpful. Thank you. May I move on to something to which you alluded in your opening answers to the Chairman? You said that you thought resources were now coming to help you, in

particular the fact that you are going to be getting a proportion of the fines collected from 1 April 2002; so you are presumably already receiving a proportion of fines. Is that correct?

(*Sir Hayden Phillips*) Yes.

87. Have you heard of the maxim of government that the body which levies the fine should not benefit from the proceeds of the fine? Have you ever heard of that maxim of government?

(*Sir Hayden Phillips*) No. There was a tradition which the Committee will be well aware of under all governments against the hypothecation of revenue, which is what that may represent.

88. No, it is something completely different.

(*Sir Hayden Phillips*) In targeted areas, there have been changes and this is one of those which the Treasury has enabled.

89. It alarms me that you have not heard of the maxim that the body which levies the fine should not benefit from the proceeds of the fine. Given that you do not know about that maxim, could you work out in your mind why you think there is such a maxim?

(*Sir Hayden Phillips*) I understand the point of it.

90. Which is what?

(*Sir Hayden Phillips*) Which is that you do not put into the position in which those who benefit from obtaining the receipts go out and simply do more of what they are doing in order to maximise receipts.

91. For example, they could impose higher fines than they would otherwise impose on a person found guilty because they know that they would benefit from the proceeds of those fines. Is that not the reason for the maxim?

(*Sir Hayden Phillips*) That it produces a perverse incentive?

92. Precisely.

(*Sir Hayden Phillips*) Our judgement is that this will not happen in this case. It would be most unlikely if magistrates' were to get it into their heads that they were in a money raising business in imposing fines on individuals. They take the fact that they have to deal with an individual case on its merits enormously seriously and one should make the judgement of trusting the court.

93. How do you know? Why do you think the magistrates will not take that view, given that if they impose higher fines, even given the same percentage collection rate, their court will benefit and they will be able to employ more staff in that court to pursue further collections. Why is there not an incentive there? Why is the human nature of magistrates not likely to be susceptible to that incentive, given that we have actually seen it in terms of local authorities collecting parking fines, why will it not happen in magistrates' courts? Why are you so sure, given that this maxim has evolved over hundreds of years of government? Why do you think in this particular case it will not apply? Judges will benefit, the offices of the judges, the magistrates, will benefit from more revenue into their offices as a result of this measure? Why do you think after centuries of applying this maxim, it suddenly will not apply to magistrates today?

⁹ Note by witness: As the Parliamentary Secretary, Lord Chancellor's Department told Mr Gibb in answer to his Parliamentary Question, this information is not collected centrally. (HC Deb, 12 July 2002, col 1225W-1226W). We will look to see if there is any way of linking data on civil and criminal defaulters

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[Continued

[Mr Gibb Cont]

(*Sir Hayden Phillips*) There are two reasons. One is that it is also true to say over many years that magistrates and judges have always concentrated on the case before them and not let extraneous considerations like that enter their heads.

94. Do you think judges in Crown Courts should also benefit from the proceeds of fines?

(*Sir Hayden Phillips*) No.

95. Why not?

(*Sir Hayden Phillips*) The second reason is that this is not a scheme by which any individual magistrates' court can actually raise money for itself because the amount of money which is available from a netting-off scheme goes to the centre and then is distributed by us in accordance with cases made out by individual magistrates' courts. If magistrates were to start to behave, in my view perversely, and increase the amount of fines in their area, thinking that would result in their getting more enforcement staff, that would be illogical because the whole thing is put together nationally and then is distributed on a national basis to individual magistrates' courts.

96. So this sentence in the NAO Report is wrong then, that they will be trialing new arrangements in which magistrates' courts committees will be allowed to use money collected to purchase additional staff resources. That is wrong, is it?

(*Sir Hayden Phillips*) It is not incorrect, but it does not tell you the fact that the way in which it works is that the money which will become additional flows to the centre and then distributed by the Department to individual magistrates' courts. So there is no direct connection between the amount any individual court raises and what it gets back. There is a connection between the amount raised nationally and what is then available to distribute to individual magistrates' courts.

97. I hope that is made clear, because it is not made clear from the report. Even so, collectively there is an incentive for magistrates as a whole to raise more money through fines, so their profession as a whole will have more money from enforcements. I think it is a very dangerous route to travel down and I am alarmed that you as the Permanent Secretary of the Lord Chancellor's Department are not aware of that maxim of government. May I suggest that you go away and look it up and then perhaps you might apply it to future policy areas? You are contravening a terribly important maxim. You said that you want to use other penalties where fines are not possible, where people just cannot afford to pay the fine. What proportion of community penalties are actually served today if you cease applying fines to individuals who cannot afford to pay the fines? If you apply community penalties, what proportion of those community penalties are being enforced and are served today?

(*Sir Hayden Phillips*) If you want the overall number of community penalties nationally which are being served, I shall have to send you that.

98. But of the ones which are passed, what proportion are actually served? Is it 100%?

(*Sir Hayden Phillips*) No.

99. Is it 50%?

(*Sir Hayden Phillips*) I should think it is somewhere in the order of 50%.

100. So it is even lower as a proportion than the proportion of fines you are collecting.

(*Sir Hayden Phillips*) No. Here is another area where breach of community penalties and warrants based on that need to be much better enforced than they have been in the past.

101. How will you do that?

(*Sir Hayden Phillips*) We will need to produce a mixture of measures of the sort we are trying now in relation to information, to more civilian enforcement officers, to trying to get better information about where people are, the fact that they have disappeared, that they have gone without trace and so on. We must work very hard on that area. We must set targets which have not been set before in order to enable that to happen.

102. It all sounds very weak to me. They just sound like words to me. You have already failed to collect more than 63% of fines imposed by magistrates. You are now proposing for those people you feel cannot afford it—and you have no idea about the financial backgrounds of those who are receiving these fines, you have just told me you do not know what proportion have county court judgments, you do not know what proportion of defaulters is receiving benefits so despite a lack of knowledge of those key areas—imposing community service orders where people do have financially straitened circumstances, yet that has a lower proportion of enforcement even than fines. Is your Department not in complete disarray?

(*Sir Hayden Phillips*) I have been given some facts about community sentencing. About 155,000 offenders were given community sentences in the year 2000 and I was overestimating the failure rate: the current breach rate is about 30%, so it is not as bad as I was implying.

103. How many people who have received community service orders have had their sentence written off and been told they do not need to serve it?

(*Sir Hayden Phillips*) I shall have to send you that.

104. Is it any? Have any been told they do not have to serve their community service sentence and had them written off?

(*Sir Hayden Phillips*) I do not think it works quite like that.

105. How does it work?

(*Sir Hayden Phillips*) What you will find here is that it is not just a question of writing off the community penalty.

106. I thought it happened. I thought I read somewhere that they had.

(*Sir Hayden Phillips*) In some way or another a person has to complete their sentence and if they are in breach of a community penalty on a regular basis, then the court will look at that and decide what further penalty should be imposed. It might be a prison sentence.

107. Could you do a note? I recall reading in the newspaper that actually several tens of thousands of these community service orders had been written off and that they were not required to serve them. Could

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[Continued

[Mr Gibb Cont]

you send a note to the Committee expanding on that? It alarms me that you are not up to speed on that particular issue. Is your Department in disarray in terms of enforcing penalties imposed by the judicial system?

(*Sir Hayden Phillips*) No, I would put it the other way round precisely.¹⁰

108. You think a 30% failure to enforce community service orders is good, a 37% failure rate to impose fines is good?

(*Sir Hayden Phillips*) No, I am not suggesting it is good, but I would not describe that as being in disarray. I would say that three major decisions have been taken over the last year: bringing together warrant execution in the responsibility of the magistrates' courts rather than it being divided with the police has given it a new priority; I would claim, although I think you think there are perverse incentives here, that providing additional resources for enforcement will make a real difference. We would also claim that we have set up an arrangement which brings together all those who are working on this on the ground across the country to talk about best practice and improvement. These things have not happened before and they are happening now. That is a positive statement and one to be welcomed by the Committee rather than one to be criticised.

Mr Gibb: We shall see whether you can get up to 100%, shall we, in the next few years? I shall monitor that with great interest.

Mr Howarth

109. It seems apparent from the answers given to Mr Gibb and others that basically you know absolutely nothing about the people who are defaulting. You cannot explain any of the circumstances properly, you do not quite know how it all comes about. All we know is that you have a computer system which is in the process of being introduced and it has slipped back by a year because of software problems. Could you make a stab at trying to describe the sort of people you think are defaulters?

(*Sir Hayden Phillips*) I suppose it could be summed up in the slogan "Some can't pay and some won't pay". Clearly a large number of people, the majority, do pay. Among those people who cannot pay are those who are less well off, have more chaotic lifestyles. Among those who will not pay are those who are just not prepared to respect the judgement of court; they may not respect the judgements of any authority. Given the mobility with which people move around these days, the difficulty of laying your hands on these people is very great. There has been no national research, no national data about the profile and the nature of these offenders, but we have now commissioned a research project into precisely the question you have asked, so that we do have for the future a profile of the people who are not paying as a basis for further developing policies.

110. Do you know anything about whether employment or unemployment is a factor?

(*Sir Hayden Phillips*) I would expect that unemployment was a factor for some of those who cannot pay.

111. Do you have any statistics on it?

(*Sir Hayden Phillips*) No, I just said that there has been no national research whatever. We have now commissioned that research, so we will have these profiles.

112. In the report, paragraph 1.6 on page 10, it says that only one in five male defaulters was employed, so presumably the rest are on benefit. Typically female defaulters were in restricted financial circumstances—only one in ten had any sort of job and so on. Were you not aware of those statistics, even though they were published in the report?

(*Sir Hayden Phillips*) They are in the report.

Mr Howarth: I know they are in the report, I have just referred to them. When I asked you the question a few moments ago, you did not have a clue as to whether that was a factor other than that in a general sense you thought it might be.

Chairman

113. You have agreed this report, have you not?

(*Sir Hayden Phillips*) Absolutely; on a number of occasions.

114. Have you read it?

(*Sir Hayden Phillips*) Yes and I marked up that particular passage twice. I have not been into the detail of that Home Office research but I do not think there has been a national research project until now on the profile of these offenders.

Mr Howarth

115. It would have been easier had you referred back to the paragraph when I asked the question. However, let us move on. I am not sure whether you realise the origin of the slogan "Can't pay, won't pay" but we will pass over that for the moment. You said that in a significant number of cases the problem is that people simply cannot pay, they have other commitments, they may be having their gas, electricity, rent paid directly by the benefits system and therefore they do not have any access to money. Mr Gibb made the point that in some senses it is a question of priorities. Do you not think if people felt something worse was likely to happen if they did not pay their fine, that magically they might be able to come up if not with all, with some of the money?

(*Sir Hayden Phillips*) Yes, that could be possible. The first thing to get right is to get before the magistrates at the time they are sentencing someone to a fine all the information about whether a person is capable of paying. That is the first and crucial step. Then, if someone continues to default, we have to look to see what other batteries of measures we can take. I have already mentioned the fact that we are looking at the issue of incentives for early payment and further sanctions for persistent default such as registration, which would undermine someone's credit worthiness, clamping vehicles, that sort of thing, a whole range of measures of that sort which would add further penalties and sanctions as well as

¹⁰ Ev 28

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[Continued

[Mr Howarth Cont]

providing incentives. I understand from our research that these have been very successful in New Zealand and Australia.

116. The legislation as currently before the House does not allow the fixed penalty option to be applied in the sort of circumstances you are referring to. Are you aware of that?

(Sir Hayden Phillips) Yes.

117. You are talking about fixed penalties then as a concept rather than as something in the current legislation before the House.

(Sir Hayden Phillips) I mentioned it in the context of TV licences and other things, which is a very large proportion, 27% of these, where fixed penalties might actually be a helpful way forward for some offenders.

118. Do you think the inconsistency in sentencing on the part of magistrates might be a factor in the reason why people do not pay the fines in a large number of cases?

(Sir Hayden Phillips) Do you mean inconsistency in the sense of inconsistent sentencing between similar individuals or between different parts of the country?

119. Either between different individuals or in an example which I can give you if it helps, with one person. Two weeks ago with my neighbouring colleague I met the Knowsley magistrates and we had with us some examples from Merseyside police. One example was of a young man who had five breaches of bail order and failed to complete a community sentence and was before the court for shop lifting and being drunk and disorderly. He also had a very long record of previous convictions. In those circumstances the court in their wisdom decided to fine him £30. You are suggesting that it ought to be the other way round. That in fact if he failed to pay the £30 he should have had a community sentence and so on. Do you not think that it might be the case that a lot of people are gambling on not paying the fine? It is a fairly safe bet in many cases that they will get away with it.

(Sir Hayden Phillips) From your case study and from the four case studies in the NAO Report, though it is difficult for me to comment on individual cases, it is undoubtedly the case that word gets around that if the system is not capable of tracing you and getting the fine, people know about that and they will buck the system. We have to make a series of changes in the system to make it much less easy for people to avoid their responsibilities here and if we do that and we also give the courts a suitable range of options for sentencing, we must do that. Through other ways, through the judicial studies board and other things, we can try to ensure that magistrates receive the sort of training, guidance, information about sentencing patterns which they do not regularly get now, about the impact of their sentences, so your point about consistency can gradually feed through into the system.

120. The point I am making is that your argument, as I understand it, was that the decision on defaulters should be subjectively made in each case, possibly to a community sentence in the event of defaulting. The example I have given and I suspect it is not an isolated example, shows that community sentences

for many people hold no fears whatsoever and fines are no deterrent because they know they will not pay them anyway and they know that if then sentenced to community service they will not finish that. Eventually somewhere along the line, maybe two or three years away when they have re-offended on numerous occasions, somebody might actually give them a custodial sentence. At that particular time the whole thing is irrelevant to them. Do you not think that is part of the problem?

(Sir Hayden Phillips) I have to say that it is rather beyond my brief to comment on the whole range of sentencing policy which is indeed really for the magistrates and the judges to conclude on. The structure is meant to be that fines are used for the least serious offences and then you are meant to work up through a hierarchy until you are dealing with the much more serious offences or repeated offenders where prison will be considered. That essentially remains the sentencing policy pattern and I would think that was the right pattern. That is what you are saying, I think.

121. It is very kind of you to interpret it. Earlier it became increasingly apparent that the computer system you are piloting now and rolling out will not really be effective until 2004. I have not misunderstood, have I?

(Sir Hayden Phillips) No, that is what I said. It is a year late.

122. We have a serious problem and you are taking some measures and you are hoping that it will come down. Do you think there is anything in the meantime which could be done? We are talking about 18 months away and I have to say that in areas like mine some of the problems we are experiencing might be dealt with better if we had an effective fine system, but at the moment we do not seem to have anything. We have community sentences which often do not work, fines which do not work. Is there any way in the meantime you can speed up that process without the computer system, make it more sensible and make it more of a penalty rather than what at the moment seems to be a licence not to do anything?

(Sir Hayden Phillips) Yes, there are things which can be done, but they have to be done on the basis of individual areas rather than big national schemes which take time to get off. The ways in which individual magistrates' court areas are going about using the new money is our best hope in this. The hiring of new civilian enforcement officers in some areas. Another area I know is spending money on a stand-alone until they get the IT system from us on a tracking project so they can track through where the warrants are and the speed with which they are pursued. A number of other courts are buying in additional administrative staff to support more frequent court sittings to hear these things. At the moment we really have put a very substantial proportion of these resources into the system with a series of defined projects and between now and the IT system we were talking about earlier coming on stream, that is the most practical way of trying to go forward.

123. To be honest, I am a bit more confused now than when I asked the question. I accept that it is put into areas where it can have some useful effect, but

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[Continued

[Mr Howarth Cont]

putting more money into anything can be a useful way of dealing with it. I can understand how a stand-alone system could be implemented which would enable them to track individual offenders more closely, but you implied that there was a lot more happening and yet I only understood those two things. Is more happening?

(*Sir Hayden Phillips*) In terms of attempting to speed up the system?

124. What exactly is going on with this additional money other than buying stand-alone systems, which is probably quite a waste of money because in 18 months' time a completely new system will be in place?

(*Sir Hayden Phillips*) Under current arrangements most of the money will be going—and I can give details of this for a whole range of parts of the country and I can send you information about that in detail—into additional staff for enforcement which will create the time for them to spend in tracing offenders, in tracking them down, in interviewing them and so on. Resources have not been there in the past. While you are still dependent on a new IT system coming on stream, that will make quite a difference, I hope, during the course of this year. It is a two-year scheme. We are funding them for two years while we evaluate the impact of that. I think that is the best practical way forward that I can suggest to the Committee.¹¹

Mr Osborne

125. May I pick up on the questions about this computer system? Would you tell us something about the memo which your Department sent to magistrates' courts about the problems you were having with distribution, the one which was in all the newspapers?

(*Sir Hayden Phillips*) We have explained to them that there were problems with the construction of the software in the standard package and that this was leading us to renegotiate or have discussions about the renegotiation of contracts to make sure this was delivered and that basically it was delayed. That is the position as I understand it now.

126. Your memo says that despite the best efforts of all those involved, you have been unable to reach an agreement with Fujitsu on a proposition for Libra which represents value for money and which you can afford. It is a bit more definite than what you have just said.

(*Sir Hayden Phillips*) We have been unable so far to reach that agreement, but our discussions are not at an end.

127. It also says that you are discussing a fallback position. What is the fallback position?

(*Sir Hayden Phillips*) If the discussions lead to a position where we cannot secure it through them, we will have to look to another supplier whom we would judge was capable of doing the task.

128. What implication would that have for people down on the ground who are waiting for this system?

(*Sir Hayden Phillips*) We have said to them that our plan is to make sure that not only all the infrastructure but also the standard software system is delivered by the end of 2004. That is our target. That would be no different a position than the one which they now have.

129. According to the General Secretary of the Association of Magisterial Officers, Ms Rosie Eagleson, if the core service is not delivered you are right back to square one except that enormous sums of public money will have been expended to deliver the sort of hardware and software that is available off-the-shelf at PC World. Do you agree with that?

(*Sir Hayden Phillips*) No.

130. You do not agree with the Association of Magisterial Officers.

(*Sir Hayden Phillips*) No.

131. All they will get is a load of computer terminals without the software which is going to enable you to allow magistrates' courts to speak to each other.

(*Sir Hayden Phillips*) If everyone went out and bought individual PCs in the way that implies, you would not have a national network, you would not have a national network of servers and security and you would not have backup and resilience across the board, which is why we have a national system. That would provide for every magistrates' court to be linked by e-mail and information would be exchanged electronically and the sort of thing which has been criticised before by members of the Committee, namely that we did have different systems all over the place, will mean that they can now be linked up. There is a difference between that and going down the road and buying something.

132. With the greatest of respect most computers you can buy at PC World enable you to communicate with each other by e-mail.

(*Sir Hayden Phillips*) No, what I said was that the main thing was to have a national infrastructure, national backup, so that you are assured that these services can consistently be maintained between courts right across the country.

133. What is the cost of the deal? Since you have been Permanent Secretary can you tell me something about how the cost of the deal has increased?

(*Sir Hayden Phillips*) When the contract was signed in 1998 it was £183 million and that was revised in 2000 to provide a range of additional services and a longer timescale to the order of £300 million. We are now in discussions, looking at what the contract should now be and what the price should be.

134. In other words the cost has virtually doubled and the timetable for delivery of the system has also virtually doubled.

(*Sir Hayden Phillips*) Yes.

135. That is not very good value for money, is it?

(*Sir Hayden Phillips*) The value for money judgement has to be made when we see what the actual results are and what the final cost is over what period.

¹¹ Ev 28 and 33-34

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[Continued

[Mr Osborne Cont]

136. According to these various newspaper reports, the answer you were not prepared to give Mr Williams, but if we were all readers of Computer Weekly we would know, is that Fujitsu is expected to receive more than half of the contract's value because it is now being paid to deliver the PCs and Microsoft Office support software anyway. So it is in line to get over half the money even if it does not actually deliver the core service you were looking for. Is that correct?

(Sir Hayden Phillips) We are looking to see the extent to which they can deliver the core service. They have already rolled out 75% of the basic infrastructure service and they are servicing that, so we are bound to pay them for that particular provision.

Chairman

137. Why could you not have said that earlier to Mr Williams in answer to his questions? Apparently it has all been published anyway.

(Sir Hayden Phillips) I thought I had explained this. As far as I know, we have made no announcement by the Department formally about the state of negotiations or our plans. This information is based on conversations which journalists have obviously had with people around the system. I am in some difficulty in commenting on stories of that nature.

Mr Osborne

138. If I might suggest, this may be an issue which the National Audit Office should look at as the basis for a report in itself on Libra the computer system but my time is limited so I shall move on. One of the things you have said is that you are looking at a whole range of further sanctions which can be applied to people who do not pay up. What about the sanction of imprisonment? It says in this report, which I found a most staggering figure, that in 1994 22,469 people were imprisoned because of non-payment of court fines. In the year 2000 only 2,500 people were imprisoned, just 10%. Why has there been such a dramatic fall in the number of people imprisoned for non-payment?

(Sir Hayden Phillips) Two basic reasons for that. The first is a general concern to try not to send to prison unnecessarily those people whom it would not in itself be the right sanction for given the size of the prison population. The most important cause of that was reported in the NAO Report and was a judgement in 1995 which laid down the conditions by which magistrates should decide whether or not someone should go to prison. The court has to be satisfied that a person's refusal to pay is wilful and the court has considered and tried all other means of enforcing payment and that they consider them to be inappropriate or unsuccessful. The defendant has to be examined in detail by the court on every single aspect and the warrant for committal to prison has to

specify the reasons why no other course of action is right. Basically that is the historical position as I understand it.¹²

139. Did you never make an attempt either with the previous Government or the current Government to introduce legislation which would get round that judgement which has obviously led to an absolutely catastrophic fall in the number of people imprisoned.

(Sir Hayden Phillips) Not so far as I know. I have no record that either the previous Government or this Government concluded that the court's decision, the criteria, should be changed by legislation. This is something which Ministers in this Government or the previous Government could have looked at. It is only right to say that the pressure on the prison population is such that it would be very difficult to contemplate trying to reverse this in a major way because you would end up with either lots of short-term prisoners in jail, precisely the people for whom it is not the right punishment, and the over-crowding is such that it is a very difficult thing to contemplate.

140. You have now got to the nub of the problem of course, that there is pressure on the prison population, that there are not enough prison places, really it is a capacity problem and that is why this fine system is breaking down. You cannot send people to prison because there are no places in prison for them. Do you agree with that?

(Sir Hayden Phillips) If you look back the fine enforcement figures are persistently at about the sort of level we are talking about. It is not necessarily self-evident from that that the impact of prison or the threat of prison was improving the rate of payment of fines.

141. But it was exacting a punishment in lieu of the fines. The whole point of a court issuing a fine is both to punish people and to deter them. You might be right in saying that it was not very good as a deterrent, but it was good as a punishment because there were 20,000 people who instead of having to pay a fine actually ended up in prison. Would you agree with that?

(Sir Hayden Phillips) They are the facts.

142. Do you see what I mean? It may not be very effective as a deterrent but it was a punishment. At least there were 20,000 people more who did get some kind of punishment for the offence they had committed as opposed to a punishment in terms of a fine which they never actually served.

(Sir Hayden Phillips) I accept that.

143. The problem I have with the answers you are giving is that you have done what Permanent Secretaries do not always do, which is to say yes, the whole system is a shambles, is it not? Yes and why is it a shambles. There seems to be no clear sign that it is going to improve. The second paragraph of the foreword of this report is absolutely shocking, "... there is an urgent need to improve the efficiency and effectiveness of collection. The process of enforcement is often over-complex and time

¹² Note by witness: The court has to be satisfied that the default is due the defaulters wilful refusal or culpable neglect and the court has considered or tried all the other means of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful

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[Continued

[Mr Osborne Cont]

consuming . . . delays . . . hampered by unreliable management information . . . difficult to compare performance". There is a computer system which does not work and a series of regional seminars for magistrates and the possibility that you might consider things like fixed payments at some undefined point in the future. You are not actually getting to grips with a problem which, I agree, has been a long-term problem. There is no evidence you are actually getting to grips with it now.

(*Sir Hayden Phillips*) First of all, I would not accept that by agreeing with members of the Committee, where they point to an acknowledged weakness in a report which has been agreed with the NAO, I am doing anything other than behave perfectly sensibly. I would not describe this as a shambles. I mentioned to you a whole range of administrative measures we are taking, further new resources, the bringing together of former responsibilities of the police for warrant execution in this area, to which they gave very little priority, so that this year for the first time, we are able to set targets and have some confidence in the fact that we can meet them and can improve the system. There is a whole range of measures of that sort. I have mentioned some of them and I do not want to bore the Committee by going over it again and again. Secondly, I have mentioned that there is a whole range of areas where we are looking at changing the law to strengthen the opportunity to provide a wider range of penalties and speed up the system. What I am trying to argue is that this has now been given a priority, which it was not previously given and that we now need to give it a year or two to see whether the measures we are taking have the effect that I believe they can actually have.

144. You mentioned New Zealand and interesting examples of things they were doing. Could you say something about other international comparisons, what they do in various states in the United States, what they do in Europe? Is this an endemic problem in all western criminal justice systems or have other countries found ways?

(*Sir Hayden Phillips*) My references to Australia and New Zealand were that when we did our work on international comparisons they had been the most successful in dealing with this. My own understanding of the position in continental Europe is that the delays in handling cases are much greater than they are in this country and that the results are less satisfactory than ours. If you are interested in the wider international research we did, I am very happy to let the Chairman and the Committee have that information if it would be useful.¹³

Mr Osborne: That would be very useful. Thank you.

Chairman

145. We are very happy for you to say a bit more about it now, if you wish to. You must be familiar with it. The wide international comparisons are very interesting. Just tell us a bit more about it now.

(*Sir Hayden Phillips*) The research we have done led us to the view that the most relevant comparisons were the ones I have mentioned. I do not have the detail of the position to hand.

Mr Field

146. Reading the report and particularly the appendix, it would appear that in some areas of the country we are fast approaching the situation where paying fines is voluntary. Would you agree with that?

(*Sir Hayden Phillips*) In some parts of the country for some types of offender, given the length of time it takes, you are taking fines from those who are prepared to respect the system and finding it very difficult to get fines back from those who do not respect the system. One does need to take account of the number of cancellations which have to take place under judicial authority obligatorily in looking at the overall picture as well as the write-offs.

147. Even taking that into account, and given what you said to Mr Howarth about the word going out, are we not viewing a situation where it is pretty late in the day to try to reinforce a culture that if you are fined you should pay?

(*Sir Hayden Phillips*) It has taken too long to get to the point at which we are able to give this the sort of priority to enable us to tackle that problem. We should tackle it and I am optimistic that we can make some inroads in that and try to get more of the 'voluntariness' out of the arrangement.

148. One of our tasks as a committee is to look at what is going wrong because it is taxpayer's money which is being used or lost. We also have a duty to try to encourage the entrepreneurial spirit in the public sector. If we are too tough on the first, we can obviously kill the second because the word goes round that it is better to play safe and take no risks and you do not get hauled up before the Committee of Public Accounts and done over by the members. I wonder whether we can spend a few minutes on the successes within the system. Whereas one can point to those areas where it looks as though it is becoming voluntary whether you pay fines, there are clearly areas where it is not so. Do you have in your mind's eye in the Department those centres which are the ten best centres for collecting fines?

(*Sir Hayden Phillips*) If you look at the overall statistical position, which is set out in the report in the Appendix, our best proxy for success is the payment rate. There will be areas there—it is difficult for me to single them out—which are doing better than others because they are better organised. On the other hand I should be very chary of identifying them because the socio-economic make-up of particular areas will vary enormously and the amount of fines handled in any one year will partly depend on what has happened in the past, it will not necessarily be a typical picture. If one area happens to receive a very large financial penalty in one year, that will improve its ratings enormously. I agree with the report which says that one of the things we should do is to look at the idea of setting up centres of excellence and make sure that we have systems by which the best practices of some are available to and known by a wide range of others. We have tried to do that through the series

¹³ Ev 28-29

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[Mr Field Cont]

of regional conferences we have just completed, bringing everyone together so that once we are in a position where priority is given to this in a way which did not occur in the past and it is clear that there are best practice lessons in terms of tracing defaulters and getting information before the court, we can breathe new life into the system.

149. My plea really is that the Permanent Secretaries ought to go on the offensive with the National Audit Office and that one should not allow them to determine the terms of reference exclusively and that one ought to be in a position as a Permanent Secretary to say, all right, you are looking at those courts, here are the ten best courts and it is from these that we are trying to spread best practice. It is more of a comment really than a question in that there is the dual function of this Committee and many of us are very anxious that the entrepreneurial spirit should be fostered in the public sector and not pushed away. With that in mind, may I say—I hope it does not break any Gibbsian laws of the constitution in suggesting this,—that on one specific incident I have of a constituent, whose daughter was assaulted to within an inch of her life, the thug undertaking this was fined, did not pay. The next the mother and daughter knew was when she was asked whether this fine could be a write-off. She said it should not be a write-off, in no way should it be a write-off. The court said they did not know where he lived. On a number of occasions she said she would tell them where he lived and she kept the court up to date on where he lived. She did everything in her power, bar chaining herself to the railing outside the court, to draw attention to where the person lived. The response was that they were writing it off and they just wanted her agreement. She continued to refuse to give her agreement and that of her daughter and finally it was written off; so it would appear in Appendix 1. Though they have all the problems which Mr Williams has talked about on computers speaking to one another, here was a constituent talking to the court, saying “I am helping you. I am telling you where that person is”. It makes me wonder, if in fact the courts were more open in asking those who feel aggrieved about fines not being collected, how much information is out there which would allow a court to trace some of these individuals and maybe get some of the fines. Is it not wrong that the balance was all towards the pressure on signing the form rather than “We hear what you are saying. Thanks for giving us this information, we shall be after him”? If that were so, might not we get more fines collected and greater interest in the fines being collected if the courts’ collecting staff had performance linked pay like Permanent Secretaries do?

(Sir Hayden Phillips) I should not comment on the individual case.

150. I am sure my constituent would be pleased if you did.

(Sir Hayden Phillips) If I might know some more about it, I should like to try to use that as an example to find out why the sort of priority which we do want to give to compensation orders in these circumstances, does not appear to have been given by the court and why they appear not to have wanted to take information which was being given to them

which would have enabled them to trace that. It would be very useful to know that. What is now being done in terms of trying genuinely to put some more energy and sense of priority into this whole area through the additional resources we are putting in and new people and giving people in the courts more time to deal with this work which has not been treated with the priority it should, I hope and believe that will be the case. I had better not go off on a dissertation about performance-related pay.

151. Before we are totally consumed with sadness over the failure of the software for the computers, may not the Department realise that there are large numbers of people out there who might be able to trace quite a few of the people who are not paying their fines and it is those people against whom the actions were taken which brought the case which came to court. Maybe the Department in the meantime, while waiting for its computers to talk to one another, might actually talk to people who feel aggrieved by the system.

(Sir Hayden Phillips) It is very important that people do that locally and I shall make sure that we say that and say that clearly. I mentioned earlier that the arrangement we have with the Department for Work and Pensions has been very successful in tracing offenders. We have raised money we would never have raised in the past and it paid for itself within seven months. We are now trying to get similar agreements under the law with the Inland Revenue, the Driver and Vehicle Licensing Agency and we have agreed access to the Police National Computer, all this in the last year. We are trying. That is a bit of a success story. I am not saying it should not have been done years before, but it has now been done. Using local information and local contacts is also very important and we have brought Citizens’ Advice Bureaux representatives onto our new criminal enforcement steering group so that in an informal way we can tap into voluntary organisations and others who will have good information on the ground. We are trying to create a sense of energy and purpose now which has not been there for a long time.

152. I am sure if you had a day in Birkenhead when you invited people to come and tell you where the defaulters were, you would have crowd control problems. May I put that as a suggestion? While we are asking for information, because we are anxious to reward the entrepreneurial spirit, could we ask you to give us a supplementary note at some stage of the ten starred courts who are the best at collecting money?

(Sir Hayden Phillips) Okay.¹⁴

Mr Bacon.

153. Could you say when the contract for the computer system with ICL was first let?

(Sir Hayden Phillips) In October 1998.

154. When in 1998?

(Sir Hayden Phillips) I think October 1998.

155. I thought I read December somewhere. Do you know which is correct, December or October?

¹⁴ Ev 29-31

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[Continued

[Mr Bacon. Cont]

(Sir Hayden Phillips) It was the late autumn of 1998. It just says here in 1998.

(Sir John Bourn) It is December 1998.

156. When were you appointed Permanent Secretary?

(Sir Hayden Phillips) April 1998. I signed the contract myself.

157. So the whole project has been your baby basically from inception.

(Sir Hayden Phillips) Since its signing. It had been 'in being' for something like 12 years before that as a project.

158. Have you ever bought a PC? Have you ever been down to PC World or a similar shop and bought a PC?

(Sir Hayden Phillips) I have done that for a laptop, yes.

159. In relation to this money, it is a PFI arrangement, is it not?

(Sir Hayden Phillips) Yes.

160. You said the contract was originally worth £183 million and it has now gone up to around £300 million. What is that £183 or £300 million? Is it the total of the cash payments which would be made under the contract or is it, as is the case with many of these PFI projects when a value is ascribed to them, the net present value of the contract?

(Sir Hayden Phillips) It is a series of cash payment for the delivery of services over a defined period.

161. Over a period of how many years?

(Sir Hayden Phillips) At the moment it is over a period of 12 years.

162. Is that a lump payment each year for 12 years?

(Sir Hayden Phillips) The structure of the payments at the moment, as the services come on stream, is that the level of payments rises to meet the level of services which have been contracted for.

163. How much has been paid already to the contractor?

(Sir Hayden Phillips) Something of the order of £8.5 million.

164. It says in the press that ICL will get half the value of the contract because of the supply of PCs and Microsoft Office. Is that correct?

(Sir Hayden Phillips) We are still discussing with the contractor what the future contract they are being asked to deliver should be.

165. What did it originally say? How many PCs and how many copies of Microsoft Office were originally to be delivered. Let us take the revised 2000 contract, never mind the 1998 one.

(Sir Hayden Phillips) I do not know off hand the precise number of PCs which were to be delivered. The total electronic system was to be delivered.

166. Would you write to the Committee saying what the original contract stated in terms of chapter and verse, numbers of PCs, numbers of copies of Microsoft Office what that changed to, how much has been paid so far, how much you expect to have to pay under any circumstances?

(Sir Hayden Phillips) Yes; absolutely. I committed myself to the Chairman to do this in a fortnight.¹⁵

167. Like the Chairman, I was struck by Appendix 2 where it says in paragraph 2, "In September 1994 the Department's Internal Assurance Division reported on the adequacy and effectiveness of controls in enforcement systems in 14 courts. It concluded that there was an unsatisfactory standard of control over enforcement processes and that it was unable to offer assurance that fine enforcement was working effectively". That was in 1994. We read in paragraph 2.22 on page 19 that there was a project as part of the Government's crime reduction programme launched in 1999, after you had become Permanent Secretary, which commissioned research to examine the enforcement of financial penalties. "The aim of this project, which is due to be completed in early 2002, is to identify best practice in enforcement strategies through a study of individual courts' approach to enforcement and identify the relative effectiveness and cost-effectiveness of different enforcement strategies". If this failure was identified in 1994, that basically one was unable to offer an assurance that fine enforcement was working effectively, why did it take five years to come up with the idea of having a research project to study the enforcement of financial penalties?

(Sir Hayden Phillips) There are two or three basic reasons for that. The first is that it was very difficult to give very much priority to this work amidst the range of other work that magistrates' courts were doing. There was a lack of resources for them to be able to do more. While some improvements were made it continued to remain a very intractable problem. Partly because of the difficulties of enforcement, partly because of the ease with which people move and the difficulty in finding addresses generally and genuinely people in the magistrates' courts found this extraordinarily difficult to get to grips with. We also had divided responsibility at that stage and indeed right up until last year it was the police who were responsible for warrant execution not the courts themselves. So no-one was in a position to look at the total system and say this is how we want to improve it. Those are the basic reasons why. I am not pretending that is a good story.

168. Has this project completed now?

(Sir Hayden Phillips) The results of the research project are going to be published later in the year.

169. Why does it take three years to do a research project on the enforcement of financial penalties? It is not rocket science, is it?

(Sir Hayden Phillips) They did 18 pilot projects during that time and they wanted to evaluate them right across the country

170. Do you mean they did them consecutively?

(Sir Hayden Phillips) No, several of them were running at the same time.

171. Why did it take three years and it is still not published?

(Sir Hayden Phillips) The reason is that it was intended that this should be a very thorough piece of work.

¹⁵ Ev 34-39

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[Continued

[Mr Bacon. Cont]

172. The NAO does extremely thorough pieces of work. These reports on average cost £180,000, but they usually, on average, take 12 months and sometimes quite a lot less than that. Why did this take three years and is still not finished?

(*Sir Hayden Phillips*) I do not know the answer to that question but I will find out why it has taken so long. That is the position. The results are that we now have best practice guidance about making initial decisions more effective.¹⁶

173. I should hope you do. I wrote down when you answered this point earlier. You said you have regional conferences, you are sharing best practice, you have performance targets, all the sorts of things which one would hope you as the executive head of this Department would be encouraging. I must admit that when you said you were sharing this information with Work and Pensions and that you have £465,000 so far, money which would otherwise not have been collected, I thought that sounded good until I looked back at the report and saw that the amount which is imposed every year is £385 million and collections are £242 million, leaving a deficit each year of £143 million. I know a bit of it is carried over, but £465,000 on £143 million does not really sound nearly as impressive, even if it is washing its own face. It is not a lot of money, is it?

(*Sir Hayden Phillips*) It is not a lot of money. We are, however, working in this area at trying to tackle getting fines back from those people who are the most difficult to trace, who are the most persistent at avoiding being caught and a small gain in this area is of considerable advantage in demonstrating to the system that if you have information about where people are, you can do something about it.

174. May I go back to Mr Field's point about people being difficult to trace? Do you, and if you have not done hitherto are you going to, start listening to information you get given about where people are? I find the same problem in surgery cases with child support. They know where the people are but when they tell the Agency, the system ignores it. Are you going to listen to people like Mr Field's constituent when they say where the person who is not paying lives?

(*Sir Hayden Phillips*) Yes.

175. Why have you not been hitherto?

(*Sir Hayden Phillips*) I am not suggesting that people have not been doing that locally. I was taking the case that Mr Field raised as one which we should pursue to see why it was that the court felt—and they clearly felt—they could not use that information to enforce it. They may feel under some obligation that I am not aware of that they should get information from other sources in other ways. It seems to me on the face of it that if they want to check that out, it can be checked out if they feel it cannot be taken at face value.

176. May I draw your attention to paragraph 2.18 on page 18? It says, “None of the five courts we visited, for example, had systematic arrangements in place to obtain offenders' national insurance numbers or verify their addresses”. Could you say why not?

(*Sir Hayden Phillips*) Because they had not put these arrangements into place.

177. A systematic arrangement for obtaining national insurance numbers or for verifying addresses is not rocket science. It is a fairly straightforward piece of administration, is it not?

(*Sir Hayden Phillips*) I imagine because of the amount of work involved, in some cases people have felt it was not necessary. It is quite clear that what you should do is get reliable information right at the start, up-to-date contact details, information of that sort. You would need legislation to require people to give that information and including their national insurance numbers, but our guidance is that best practice indicates that what you are describing should happen.

178. In paragraph 2.20 it says, “Magistrates' courts take enforcement action in around two thirds of all cases. There is no standard enforcement procedure”. It would not be difficult to have a standard enforcement procedure, would it?

(*Sir Hayden Phillips*) No, but it might not be right.

179. Do you mean the standard enforcement procedure which was chosen might not be the right one or that it might be wrong to have one at all?

(*Sir Hayden Phillips*) It might be wrong to have exactly the same process in every part of the country. The responsibility for the enforcement rests locally with magistrates' courts committees. They must make decisions about what they think the right approach in their area is. Our role has to be to give guidance about best practice and so on. If we had a national system of enforcement, then a standard approach is one which we would be willing to look at.

180. How does someone ignore a summons to appear before a court if the system does not have their address?

(*Sir Hayden Phillips*) You mean if they have never received the summons.

181. If you do not know where they are, how can they have ignored a summons to appear?

(*Sir Hayden Phillips*) People are summonsed on the basis of the last known address. They may not be there because people move on and often quite rapidly. This is as true in the problem of enforcing civil debt as it is in crime.

182. May I ask about these payment rates? There are several reasons for the variation and the report alludes to one or two of them. Were you basically saying that one of the underlying reasons is the socio-economic difference around the country?

(*Sir Hayden Phillips*) Yes; in some areas that is the case.

183. In that case can you explain why the payment rate in Staffordshire is 90%, whereas in Surrey it is only 58%? When one thinks Gin and Jag one does not think of Staffordshire, but one does think of Surrey. So the socio-economic conditions in Surrey, where you have a payment rate of 58% would appear to be a lot better than those in Staffordshire where you have a payment rate of 90%.

(*Sir Hayden Phillips*) It is very difficult to answer these things off the cuff. It depends on the mix of cases, the type of cases which have been flowing through the system over time. It is a fact that if a

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court's area has a large stretch of motorway going through it, it tends to have a high payment rate because of the number of fixed penalties for motoring offences. There are all these variations. On the face of it, it is very difficult to say that this must be a good result, this must be a bad result. What I have undertaken in response to Mr Field's question is to find the ten areas or courts which we think have overall, taking account of all the factors involved—and there are several of them—given us at the moment a very good performance compared with the rest.¹⁷

184. From that you will draw up a standard enforcement procedure, will you, which you will promulgate to all the others?

(*Sir Hayden Phillips*) It is difficult for me to do that or for the Lord Chancellor to do that because it is the responsibility of local magistrates' courts committees. We can give guidance but we cannot force them to do things unless we find that they have failed completely to follow best practice.

185. Presumably unless you legislate to change the situation.

(*Sir Hayden Phillips*) Absolutely.

186. You could advise Ministers that in light of this woeful record, it was time to legislate, could you not?

(*Sir Hayden Phillips*) Yes. I think they would want to take account of a number of other considerations apart from the report here.

187. But it is open to you to do that. I should like to ask about paragraph 2.27. It says, "In some courts the decisions to take specific actions have been delegated to administrative staff but in the courts we visited we found inconsistent views amongst staff on what authority they had". Presumably whatever authority they have, it is the same from court to court, is it not?

(*Sir Hayden Phillips*) Absolutely.

188. Why do they not know that? Why are they not aware of the authority they have?

(*Sir Hayden Phillips*) I imagine because in a particular court, with a turnover of staff, the precise details of the delegation, which are set out and which are enshrined in law, were not known to some of those staff to whom the NAO talked.

189. Whose responsibility is it to ensure that the courts and administrative staff in courts have a consistent view of the authority that they hold? Who is responsible for that?

(*Sir Hayden Phillips*) It will be the responsibility of either the magistrates' chief executive, the chairman of the bench or of the justices themselves collectively. The position is set out in statute. I do not want to take you through it. It is there and it is clear and it is set out and it has been circulated to every magistrates' courts committee. It is up to them to make sure their staff are aware.

190. It has been circulated by whom?

(*Sir Hayden Phillips*) When the rules are promulgated it will be circulated by my Department.

191. Do you think your Department has any responsibility for ensuring that courts do understand these things? Presumably that is why you issue guidance, is it not?

(*Sir Hayden Phillips*) We have a responsibility for making sure that people know what the rules are, but it is the responsibility of those on the ground to make sure that their staff know about it.

Mr Steinberg

192. I must say that I found this report very depressing indeed. I have to say that I found your answers even more depressing. When law and order has never been so high on the agenda, it seems to me that your Department is apparently very complacent about the whole situation. What would you say to that?

(*Sir Hayden Phillips*) No; I would say precisely the opposite. I would say that the actions we have taken in the last couple of years indicate that this is a priority in a way that it has not been before. New systems, new money, new approaches and a real determination to give this a priority among the whole of the magistrates' courts community which it has not been given for two decades.

193. The report does not seem to indicate that, does it? If you read the report you get a clear indication that the persistent offender is frankly getting away with it.

(*Sir Hayden Phillips*) The report is agreed. It has pointed to several weaknesses in the system which have persisted for a long time.

194. That is what I mean about complacency. It has been there for a long time and something should have been done about it many years ago.

(*Sir Hayden Phillips*) What I am saying to you is that far from being complacent about it, we have now taken action and we are taking action and I hope and believe the situation will improve. Indeed the NAO refer to a number of measures towards the end which we are taking.

195. I think that your Department is very complacent. I also think the courts are very complacent as well. If you look for example at paragraph 2.38 on page 24, my view is that if a court passes a punishment or a sentence on somebody, then they have the obligation to see that sentence or punishment is carried out. In paragraph 2.38 it says, "Some staff felt that enforcement was accorded a lower priority than other court work and it was, therefore, the first activity to get 'squeezed' when there was pressure elsewhere". What pressure elsewhere? What is more important than ensuring that the punishment they have given is carried out? What is more important than that?

(*Sir Hayden Phillips*) There is a range of activities in the courts which are very important, work in court as well as this work out of court. What I would say to you is that you are absolutely right and that is why we have taken action—

196. All afternoon you have said to every single member, "I think you are absolutely right". So why has something not been done about it? I read this report at the weekend. If we are absolutely right, presumably you and your Department have known

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this has been going on for decades. Why has it taken the NAO to bring out a report now for you to keep saying “You are absolutely right”? No questions have been answered. You have not been able to give us statistics. If I had been in your position this afternoon, it would have been obvious to me that I would be asked for some of the statistics which have been asked for, yet you sitting there cannot give them and your colleagues behind have not moved and given you any information. It is quite incredible. That is why I think you are complacent.

(*Sir Hayden Phillips*) No, we are not complacent; absolutely not. When I say that is right, it is because it is an agreed report between us and the NAO and if I said it was not right, then we would not have had that agreement. What I am saying to you is that we have taken two major steps to change the system in the last 18 months. The first is to bring together all responsibilities for enforcement, which were divided between the police and the courts on the one hand. That has made an enormous difference. It has taken a long time to achieve that and get agreement. Secondly, we have increased the resources available through enforcement by 20% beginning from this April. That gives the staff the time and the numbers to put much more effort into this work, but if you are saying to me, do I not wish this had been done sooner, of course I say that and I am not trying to be complacent in saying so either.

197. Those are all fine words again. What is the point of a court imposing a fine, which is after all a punishment, a deterrent so that offenders will not offend again, when they do not have to take it seriously because they know it is not going to be enforced. The hardened criminal knows that it is not going to be enforced. You made an amazing statement earlier on and I wrote it down. You said that the fines were not enforced because they may have other priorities. That is basically what you said. It is like saying that I am going to send you to prison but because you are going to Majorca for a fortnight I will not bother because that is a bigger priority. That is basically what you were saying. If a fine is given to an offender that fine should be paid over to the court. That is the priority.

(*Sir Hayden Phillips*) I was answering that in relation to the state of mind which I was asked about of people who did not pay. Of course I agree with you that we should pursue a system in which we progressively improve in the collection of fines. That is why we are trying to pursue the range of measures I have outlined today. In the majority of cases, 63% and we plan to increase it to 68% this year, fines are paid.

198. Let us move on slightly. One of the areas the National Audit Office looked at was my area, Durham and Durham seems to be quite good because the payment rate is 67%. That means that 33% of people in Durham who are fined do not pay that fine. It seems to me that for the 33% crime actually does pay.

(*Sir Hayden Phillips*) Of those 33% some will have had their fines cancelled automatically.

199. No, I do not think so. Unless I am totally wrong, and if I am I apologise, I think you are wrong. I think that 67% do pay, 30% do not pay. If you look

at the statistics in Appendix 1, clearly those who write-off and cancel cannot be included in the payment rate.

(*Sir Hayden Phillips*) No. It is wrong to add the numbers up as though they were all the same thing. What I am saying is that the amount which is cancelled is relevant to performance.

200. 67% pay, 33% do not pay.

(*Sir Hayden Phillips*) We are looking to improve that figure progressively year on year and I am not pretending to you that is a good situation.

201. It is a shocking situation. It is a shocking situation and that is why we have a position now where in many cases people are frightened to go out on the streets at night because they know they may get mugged and they know very well that if the person is caught they go to court, get smacked on the bottom and sent away and your Department is not doing enough to ensure that the punishments fit the crime. Let us have a look at where you have taken action or supposedly taken action. Page 17, paragraph 2.14. Apparently there were some pilot schemes in Norfolk and Greater Manchester where people who had not paid their fines were given community punishment orders, curfew orders and driving disqualification. How many were actually administered? For example in Norfolk and Greater Manchester how many community punishment orders were there and how many curfew orders were given and how many people were disqualified for driving?

(*Sir Hayden Phillips*) I do not know immediately what those numbers were.

202. If I were in your position and coming to this Committee I would have thought that would have been one of the most obvious questions to be asked to see whether it had been successful. Do your colleagues not know? How many people had curfew orders put on them?

Chairman: Can anybody help from behind you with these answers?

(*Sir Hayden Phillips*) No, we will have to send you that information.¹⁸

203. You do not know. I cannot follow my line of questioning if that is the case. I assumed that you would be able to tell me whether it had been successful or not and why other magistrates' courts had not adopted these solutions. I am absolutely staggered. I would have thought you would have known exactly whether these particular punishments, which were put in because people were not paying fines, had been successful or not and whether you should use them elsewhere or not.

(*Sir Hayden Phillips*) The NAO report, which we agreed, accurately summarises what the conclusions were. These things cannot be rolled out nationally without the implementation of national legislation and that is why we are waiting for the opportunity of the implementation of the Crime (Sentences) Act to be able to roll out these options across the country.

204. I cannot follow my line of questioning because you do not have the figures. It is pointless going on if you do not know what the figures are.

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[Mr Steinberg Cont]

This report also substantiates the view I have had for a long time now, that magistrates' courts are ineffective anyway and that we should have some other system. Is it the fact that the magistrates themselves are not prepared to hand out the punishments and follow them through or is it lack of guidance from your Department? Who is to blame?

(*Sir Hayden Phillips*) The magistrates' courts deal with 96% of all criminal business.

205. Are you happy with the standard of magistrates? It is your Department which appoints them, is it not?

(*Sir Hayden Phillips*) No, they are appointed by the Lord Chancellor. If you are talking here of lay magistrates, there are 30,000 of them. We try to make sure that they all meet the criteria, go through the interviews and so on.

206. I thought you were the Lord Chancellor's Department.

(*Sir Hayden Phillips*) Yes, we are. I said the Lord Chancellor appoints all the magistrates.

207. When I asked whether your Department appoints them you said the Lord Chancellor appoints them.

(*Sir Hayden Phillips*) There is a difference.

208. Are you satisfied with the standard of magistrates.

(*Sir Hayden Phillips*) Yes; it is very good.

209. Are you satisfied with the standard of the courts?

(*Sir Hayden Phillips*) It is an amazing example of voluntary service.

210. Are you satisfied with the way the courts work?

(*Sir Hayden Phillips*) We are never satisfied. We have indicated in the hearing this afternoon that we have a whole range of improvements to make in the way the administration is run.

211. Do you have a league table of the performance of courts?

(*Sir Hayden Phillips*) We have a whole series of information about the different performance of courts in different areas. We have them as shown in this report and in further information I sent to the Committee the other day about fine enforcement. We have similar information in league tables about delays and that is for the first time. This information has not generally been available to the Department.

212. How accountable are the courts?

(*Sir Hayden Phillips*) They are accountable locally to magistrates' courts committees. We are responsible for funding them and for giving guidance on the appointment of magistrates. Do not please think that we are complacent about this, neither about the efficiency of the courts nor about the range of penalties at our disposal nor about our determination to improve it.

213. Have you ever been in a magistrates' court?

(*Sir Hayden Phillips*) Yes.

214. Recently?

(*Sir Hayden Phillips*) About a year ago.

215. What did you think?

(*Sir Hayden Phillips*) I thought they did an amazing job with people coming forward.

216. Did you? I sat in a magistrates' court and watched what was going on and I was never so appalled in my life. There were people sitting at the back, shouting and swearing at the magistrates, cursing and nothing was done about it. There was absolutely no respect at all for the magistrates who were in the court. It was just an absolute shambles and they are supposed to be the custodians of law and order. For example paragraph 2.10 on page 17 says that the court officers did not tell the magistrates who had not paid their fines and who had paid their fines. I find that amazing. You do not need a computer to do that. How did they do it without computers? We have only had computers over the last 20 years. The computer gets the blame. How can it be condoned that the courts cannot tell the magistrates that Mr X who is coming in front of them has been fined four times in the last six months and has not paid his fine once.

(*Sir Hayden Phillips*) I do not condone it, nor do you condone it. The reality is that it happens in some of these cases.

217. The court is therefore complacent and inefficient.

(*Sir Hayden Phillips*) What we are trying to do is to make sure people do not have the opportunity to say they did not have time to collect that information, they did not have time to put that information together. We are trying to give people the resources so that sort of thing does not happen again.

218. The reports tell us that 2,000 people were sent to prison two years ago whereas 22,000 were sent to prison ten years ago for not paying their fines. So we have a situation where, if you do not pay your fine you do not now get sent to prison for defaulting. There is another amazing statistic as well. Not only are we not sending people to prison for not paying their fines, if you look at figure four on page 11, the number of fines being given now has gone down from 80% in 1987 to 70% in 1999. We are not sending people to prison, we are not fining them. What are we doing if they commit an offence?

(*Sir Hayden Phillips*) They will be receiving a range of other community penalties of one sort or another.

219. Have you ever visited a community service programme?

(*Sir Hayden Phillips*) No, I have not.

Mr Steinberg: May I suggest you do? I visited one and if that is punishment, then I will eat hay with a cuddly, as they say in Durham—eat hay with a donkey.

Mr Rendel

220. May I start by picking up on some points Gerry Steinberg was making? Do you think it is important, in order to maximise the amount of knowledge that magistrates have about some of the people before them and the conditions locally, that we maintain as many of our local magistrates' courts as we possibly can?

(*Sir Hayden Phillips*) Yes, I think exactly as you put it: as many as we possibly can.

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221. Do you expect that over the next few years you will be able to maintain the number of magistrates' courts we have at present or will the number diminish?

(*Sir Hayden Phillips*) I do not know the answer to that question and you know that I do not know the answer to that question. At the moment the responsibility for deciding on closures rests with magistrates' courts committees and the Lord Chancellor is brought into it if there is an appeal. What we are clear about is that we must make sure that we maintain an access to justice for people across a range of communities. This is often difficult, particularly in rural areas, but we have to keep an eye on that as well as on the issues of efficiency.

222. Are you saying to me that partly because of the need to maintain local knowledge it is the Department's view that we should if at all possible maintain every one of the magistrates' courts that we now have?

(*Sir Hayden Phillips*) No, I am not saying that because that entirely depends on the way things develop over the years ahead. There may be some of them where it is genuinely uneconomical to spend vast sums of money to bring them up to Health and Safety standards. We have always to look to make sure where there is a closure that people can still have reasonably easy access to court.

223. Would you accept that it is not just a question of access, it is also a question of the magistrates themselves being local people with local knowledge about local matters.

(*Sir Hayden Phillips*) Absolutely. We say and we mean it that local justice locally delivered is a great tradition we have and we should aim to sustain that. Part of that is local knowledge about the communities in which people are living. I totally accept that.

224. Can I turn now to Appendix 1 and ask you the question which you were possibly asked before but I gather it was not very clear what the answer was and I certainly am not clear what the answer is. In Appendix 1 you have the first three columns, payment rate, write-off rate and cancellation rate. I am not clear how they can add up to more than 100%.

(*Sir Hayden Phillips*) That is because we do not add them up for this purpose. What I explained earlier, and I hope it was understood as this is quite a complicated thing, is what we do is put the payment rate, which is the amount received in any one year, against the amount of fines imposed in any one year as the key indicator. Then you have a write-off rate which are those fines which people have been unable to enforce and then separately the cancellation rate relates to those fines which have to be cancelled under various rules which I did explain. The reason we do not aggregate those is because some of those sums of money will relate to different years. In any one year, if you tried to add them up and ask why it has come to this strange figure, it is because they relate to different years in many cases.

225. Can we just look at Dyfed Powys at the top where there is 100% payment rate, 12% write-off rate and 18% cancellation rate? Are you saying that in the year concerned, 2000 to 2001, although 12% of the fines applied in that year were written off and 18% of

the fines were cancelled, nevertheless the total amount of fines levied in that year was actually paid in that year because the equivalent of 30% of the fines which were imposed in that year were paid from fines which had been levied in previous years?

(*Sir Hayden Phillips*) No. I read this table to mean the following and I hope I have it right. In that year, of the fines imposed in that year, the amount received matched that imposition, that is 100%. Separately 12% of fines, which will not necessarily have occurred in that year, were written off and 18%, again which were not necessarily incurred in that year, were cancelled. Therefore I am deliberately not adding them together because that does produce a misleading picture. These are the best statistics we have been able to produce so far.

226. May I just check with the NAO that that is the NAO's understanding of that table?

(*Mr Gray*) That is a correct interpretation.

(*Sir Hayden Phillips*) We agreed on that.

(*Mr Gray*) Yes.

227. For some reason, in Dyfed Powys, an awful lot of work was done on previous years' fines and some 30% of previous years fines were either written off, cancelled or paid during that year.

(*Mr Gray*) And in some circumstances, if there are particularly large fines, they can distort a particular year's figures. If large fines are carried forward and that happens to be paid in this year, it can lead to a very high payment rate.

228. Is this an indication that in some of these places at the top of this particular table, suddenly in 2000-01, they decided they had really fallen rather badly behind and they had better do an awful lot of writing off suddenly or cancelling suddenly, otherwise they were going to get into a worse and worse position?

(*Mr Gray*) I do not know the circumstances between these individual cases. Clearly if people wish to place greater priority on this, that may lead to improved performance.

(*Sir Hayden Phillips*) As I have already indicated to Mr Field, I will look at the ten best courts. If it would be helpful for us to look at some of the examples at the extreme end of this table, both top and bottom, and see what information we can get, if we do not have it already about why this particular pattern emerges and what payments relate to different years, if that would be helpful I will do that.¹⁹

229. I should like to come onto the difference between write-offs and cancellations. There are some areas which seem to have more in the write-off column and some more in the cancellation column. It may be sheer chance, but I am interested in paragraphs 1.3 and 1.4 and the definition of what is a write-off and what is a cancellation. Suppose somebody is fined £200, does not pay, investigation then reveals that this person is living in a car and has no job and the decision is then taken that the fine is not going to be paid. Is it then a cancellation or is it a write-off?

(*Sir Hayden Phillips*) That is a write-off.

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230. Even though, according to paragraph 1.4 "... Cancellations can occur ... because ... the offenders' circumstances have changed to such an extent that there is no prospect of the penalty being collected".

(*Sir Hayden Phillips*) If he had been in the car all the time, that would be a write-off. What that means is that at the time the fine was imposed the circumstances known to the court were such that they could have expected it to have been paid. If in the course then of trying to enforce the fine, the person's position changes so dramatically that it would be made a cancellation, that is what that means.

231. I thought in most cases the court did not actually know the sort of circumstances people were in. That is one of the problems, is it not? We keep being told that the courts do not have much information about this.

(*Sir Hayden Phillips*) In some cases, possibly a large number of cases, but in other cases they will know.

232. It surprises me that this is a significant number of cases in which suddenly the circumstances have changed within, what, a fortnight or so? Are they given a fortnight to pay a fine?

(*Sir Hayden Phillips*) It depends what timetable is set. Ideal is on the day, a fortnight is best, but a lot of people pay by instalments so some time. If someone is not paying, it can sometimes take months or up to a year to try to enforce that payment before a decision is made to write off or if necessary cancel.

233. May I turn to paragraph 2.28 on page 21, where it is talking about cases which are moved between courts. The paragraph says, "The courts we visited told us that they received little information about cases transferred to them". Why do they not?

(*Sir Hayden Phillips*) In some cases it will be because of the lack of information about the individual that the originating court has. This should not arise. What should happen is that all the information available about an offender and the situation in one court should be transferred to the other.

234. Is that what your guidance says?

(*Sir Hayden Phillips*) Yes; that would be our recommendation.

235. That is not what I asked. Is that what your guidance says? Have you put out guidance to that effect?

(*Sir Hayden Phillips*) Yes, I think we have. I shall check that, but that is what we believe to be the case.

236. I should be grateful if you could just check that and let us know whether you do have guidance in place which says that and if you do not have guidance in place which says that I would suggest you should have guidance in place which says that.

(*Sir Hayden Phillips*) I agree.²⁰

237. We are told that there are three levels of punishment in our system: fines, community service, then imprisonment. They are expected to go up in proportion to the seriousness of the offence. It seems

to me just looking at it logically that fines are an attempt to punish somebody in a way and therefore to deter future criminality by removing some of their ability to spend money on themselves, the good things of life or whatever. Giving them community service is to some extent an attempt to restrict the amount of free time they might have to enjoy themselves in other ways, particularly getting people who are in jobs to work over the weekend, at times when they might otherwise be watching the World Cup. Imprisonment is to restrict them altogether in terms of their freedom to move around and enjoy themselves. If the point of a fine is to restrict their income and you have somebody who frankly does not have much income, does not have much to spend on the good things in life anyway, does it not in some ways make sense to say in that case their repayment to society should come through some form of community service so the job they do not have, which is not earning the money they can pay a fine from, is then a form of community service instead. Is that logical?

(*Sir Hayden Phillips*) That is logical and that could well become a proposal for legislation. That is one of the things we are looking at so that we have a greater range of penalties which fit more clearly the position in which individuals are found. I agree with you that there is no point piling more and more fines onto someone who is clearly not going to be able to pay.

238. Is there some sense in giving the magistrates power if they do not have it at present to ask when they impose a fine whether they are going to be able to pay it, whether they are going to be able to pay on the spot, if not should they be going for an attachment of earnings or a deduction from benefits straightaway?

(*Sir Hayden Phillips*) Yes, that would be fine, if they know the precise position of the person, if the person is willing to be dealt with in that way, because they would have to agree to that. There is a whole range of ways in which someone could pay their fine and we are trying to increase that range to make it easier for people to do so.

239. When magistrates are imposing a fine do they ask the person concerned how they expect to pay the fine?

(*Sir Hayden Phillips*) I think they often do. A lot of people are sentenced in their absence because they have not appeared in court and therefore the fine is imposed without precise knowledge. One of the clear things which should be done, which comes through from all the research and the work of the NAO, is that the first point is a key moment in the whole system and if we can get that better than it is now, in terms of the information about the offender's means, the amount of time being given to paying clear about it, where they live and how they are best able to pay, then a lot of the troubles further down the line will be removed.

240. If somebody who has been charged writes in to say they intend to plead guilty to the charge but they do not want to have to attend the court, they are quite happy just to plead guilty and accept whatever punishment is imposed, they will presumably in most

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cases normally be expecting a fine. Are they then asked how they will pay the fine before the court convenes?

(Sir Hayden Phillips) That I am not clear about in relation to guilty pleas. I will find out about that. If it is a guilty plea and non attendance.²¹

241. Would it not be a good idea?

(Sir Hayden Phillips) Yes.

242. If you are looking for ways of getting more information, if somebody is going to be fined—

(Sir Hayden Phillips) I think it would be a good way. With the resources we put in, it may be economical for the courts to do it. In a lot of these areas people have found that the amount of bureaucracy involved in a lot of these things is quite great and they felt they had not had the resources to deal with it. I hope we have now changed that position.

243. I would suggest that the bureaucracy involved in following up at least one third or two thirds of offenders who do not pay without being followed up, must be very considerable too. If you could reduce the bureaucracy in following up these cases by getting information in advance so you can tell where you should go straight for a deduction from earnings, it might save an awful lot of time and effort.

(Sir Hayden Phillips) I agree.

244. Is it important to get some money coming in quickly even if it is not the whole lot?

(Sir Hayden Phillips) Yes, it is very important to do that as early as possible. If it has to be done in instalments to try to get those as few as possible. That is very important, otherwise people feel they can drag it all out, then your chances of getting the money in are less as further time goes by.

245. You did say earlier that you wanted to give priority to compensation orders.

(Sir Hayden Phillips) Everyone would want to try to give priority to that. Under the current arrangement under the law we are dependent on the money coming in from the person fined to pay the compensation to the victim.

246. I understand that. If some of the money comes in, does that go to the compensation order before it goes to paying off the fine?

(Sir Hayden Phillips) The priority would be given to compensation in those circumstances, because it is in a sense what the fine is largely for.

247. If somebody is paying in instalments, the early instalments until the compensation is fully paid will go the victim and only after the victim is fully compensated, will the instalments start paying for the fine.

(Sir Hayden Phillips) I think that is correct. Yes, that is correct.

Geraint Davies

248. I notice in the London statistics that only 47% of people are meant to pay anything and the other half is written off. Then 67% of these are in arrears. We have a situation in London where one in two

people do not pay anything and two thirds of the others are in arrears. What sort of message do you think this sends to people who have been to court and who are habitual offenders and building up these fines? Does it not send a message that they can just keep on offending.

(Sir Hayden Phillips) It sends the message that if you are persistent and you refuse to pay and if it is very difficult to trace you then you are likely to get away with it and that is unacceptable.

249. Is this not a message which is being institutionally sent essentially by your Department? The fact is that people can get that message and the alternative to it is basically better enforcement or probably more sensibly identifying these people who should not be fined in the first place. There are enormous gaps in the system in terms of telling magistrates not to fine this person who is an habitual offender and does not have any money, but to impose a community order.

(Sir Hayden Phillips) Absolutely. Two comments. First of all, getting it right at the beginning is critically important for the whole of the rest of the system. Secondly, we are looking at giving a range of new choices to magistrates so they do not go on doing the same thing where it has proved ineffective in the past.

250. When can we expect to be in a situation where an habitual offender, in coming to court, can expect not to be given a fine that he will not pay, but to be given a community penalty or something else that we may be moving forward to, weekend prison, sequestration of treasured possessions or whatever it is? When is that going to happen in Britain?

(Sir Hayden Phillips) First of all when it is decided to implement the Crime (Sentences) Act and this is the Home Secretary and the Lord Chancellor discussing this. Secondly, when we next get the opportunity for criminal justice legislation, that is the time when we can put in a range of measures which I described earlier.

The Committee suspended from 18.35 to 18.40 for a division in the House

251. I assume that you have a situation here where a small percentage of the people represent quite a significant percentage of the fines due. Is that true? If you looked at the distribution is it the case that a number of people will have a series of fines accumulating or is it the case that these are simply written off?

(Sir Hayden Phillips) It is a changing population, but there will be a number of persistent defaulters and they either have to be written off because after all the efforts have been made they cannot find the people concerned or, eventually, after too long a period they do eventually pay.

252. Is there any evidence that you have a situation where a certain group of people think they do not have to pay and ultimately they prove to be right, then those people who do pay the fines find out about this and they later come back and offend and do not pay?

(Sir Hayden Phillips) It is difficult to say there is evidence of that because the rates of payment have remained very much the same for quite a period now.

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[Continued

[Geraint Davies Cont]

It is something one really wants to be concerned about. The more that is known and spread abroad about the system and where it might be weak, the more likely it is that people who might otherwise pay, will say they heard from so and so and they will try to avoid it too.

253. In so far as victims know that there is a chance of seasoned offenders not paying any penalty for their injustice, is a reason for victims not coming forward sometimes given as there being no point in coming forward because they will just have put a fine on them and they will not pay it? Is there any evidence of that?

(*Sir Hayden Phillips*) No. I think the reasons for victims and witnesses often not coming forward are usually about delays in courts proceedings, sometimes an unwillingness to appear anyway. I would only have anecdotal evidence at the moment of the number of cases there might be where somebody felt there was no point, it was not worth it because nothing would happen.

254. Is it possible to provide a note on that? I know there may not be evidence but I should be interested.

(*Sir Hayden Phillips*) I will see what information we have about the number of cases in which victims or witnesses failed to turn up and whether we have any information about the reasons for that failure in the magistrates' courts.²²

255. It will be one of many reasons, but I am interested to know whether it is perceived to be a growing reason. The fact is that people go to court and often have some glaring, arrogant, intimidating offender who knows that they are not going to face any real punishment. Over time that undermines confidence in the whole system and whole community.

(*Sir Hayden Phillips*) I agree with that and intimidation is something which is very difficult to tackle, but it needs to be tackled seriously, both in court and outside court.

256. What special reasons are there for Greater London having such a low payment rate? It is 47%.

(*Sir Hayden Phillips*) There will probably be at least two powerful reasons for that. First of all, the police up to a year ago were responsible in Greater London. This was not a priority for the police in London, given their other responsibilities. Secondly, we would find that in large parts of London where fines are imposed the population will be a very mobile one, who move around, who are difficult to trace and in some areas of London there will be a lot of people who just will not be able to pay.

257. You have said that things will get better when we have legislation, but one of the key problems identified in this report is that magistrates do not know the background of offenders going forward in terms of whether they have any money, whether they have paid at all. Magistrates do not know the impact of their sentences and once they fine someone, they do not know whether that fine is paid down the line. Would it be a good idea generally to send a note to magistrates simply alerting them to this report and the general difficulties and try to encourage them to

impose community service, graffiti clearance for instance, instead of fining people all the time? In London in particular there is so much graffiti, only about 47% of people are asked to pay and two thirds of those people are in arrears. That is not working. Would it not be better to tell magistrates that those are the facts and you suggest they get them clearing up all the mess people have created. Why do you not just do that?

(*Sir Hayden Phillips*) What we can do is to illustrate to magistrates the range of penalties which are available to them. What we cannot do as government is to tell magistrates what decisions they should take. We can indicate to them that obviously there is not much point in going on fining somebody who is not going to pay when there are alternatives available. We have to handle that relationship quite carefully.

258. I appreciate what you are saying, but when there is a community service sentence, do you know to what extent people actually do it? When they are sentenced to clean graffiti on Saturday do they normally turn up? I know they do in Croydon but do they normally?

(*Sir Hayden Phillips*) The figures I think I gave earlier were that in terms of breaches of community penalties the failure rate was about 30%. People on the whole do turn up, but there, as well as in relation to fines, we have to grind up the level of performance.

259. What I am suggesting is that you might send a note round showing the relative efficacy of different sorts of sentences in practice so that magistrates will suddenly realise that if they get some vandal in they are better off sending them to clean up their own mess.

(*Sir Hayden Phillips*) I agree with that. The information from the NAO report and the information we have gathered from current research projects about the importance of the initial decision, all that information will go before the new group we have created on criminal enforcement which includes magistrates, justices clerks, chief executives, staff and a whole range of other organisations.

260. My suggestion is in terms of a guidance note to magistrates. Could you do that?

(*Sir Hayden Phillips*) We will certainly send a guidance note, but my own experience of this whole area is that the important thing is to be able to talk to people directly. Guidance notes upon guidance notes will not be acted upon if people feel that they do not really have ownership of a particular way of solving the problem. I should like to do it through conferences and seminars as well as through paper messages, but we can certainly do that.

261. In your view, when would you predict we would have a situation in the magistrates' courts where victims are confident that the penalties imposed on their offenders were delivered and also that offenders were confident that they could not get away with it 90% of the time? When do you think that day will come?

(*Sir Hayden Phillips*) It would be very hazardous to give you a date. What we want to do is progressively push up the rate at which fines are seen to be effective. As far as victims and witnesses are concerned—and this goes beyond fines—we want to

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[Continued

[Geraint Davies Cont]

try to put in place arrangements both for security and looking after them which make them feel that it is not dangerous to turn up and that they are comfortable in turning up—a whole range of victim and witness support schemes are relevant here—over time, for people to begin to see that it is more and more difficult to get away with not paying the penalty.

262. What do you think about the practical possibilities of the suggestions that people should have their housing benefit or child benefit withdrawn if they offend?

(*Sir Hayden Phillips*) I think that is a pretty big area for me to stray into. We can at the moment have an opportunity for an attachment of benefits as a way of dealing with fines, but there are very strict rules about the amount you can take. It would be a bit hazardous for me to give an opinion on that difficult political issue.

Geraint Davies: Obviously I guess you could not do it to people who are poor.

Chairman

263. A couple of questions from colleagues. From Mr Rendel, page 19, paragraph 2.22. We are told there that research work was due to report in early 2002. Now you have told us this afternoon that it will be later this year. Can you explain why this delay is happening?

(*Sir Hayden Phillips*) I am told it is next month. I can give the Committee a very short note of the key points on that, if Mr Rendel would like that. It will be with you next month.²³

264. We have had some very interesting questions which started off with Mr Alan Williams which were based on paragraph 25 of the NAO brief to us. We are told there that in May 2002 the Lord Chancellor's Department announced that it was not proceeding with that part of the contract which would provide

the software for court business and that it intends to select an alternative supplier to provide an application to cover the next few years. We should like to know, though we appreciate you probably cannot answer this this afternoon, whether this was based on an announcement, on a press release from the Lord Chancellor's Department. Where did this information come from? May I just say that I am sure I speak for the Committee when I say that we are very concerned about this contract and we should like to have a further report from you on it. There do seem to be some question marks hanging over this particular PFI deal. Do you want to make a brief comment?

(*Sir John Bourn*) Simply to say that I shall be glad to give the Committee a report on it. It is clearly a contract which has a number of strange features. The most helpful way I can respond to the Committee's interest is to let you have a report on it.

265. Thank you very much. I am very grateful to Mr Williams and other colleagues who have highlighted that part of this report. Sir Hayden, may I thank you for coming to appear before us this afternoon. You will have gathered that we do feel strongly about this. I am looking now at the National Audit Office when I say that when the report comes to us, I am sure I speak again for members of the Committee when I say, I hope it will be a very strong report which will point to what one could almost say is a chaotic situation. My colleague, Mr Frank Field, put it quite well when he said, and it was almost no exaggeration, that paying fines has almost become voluntary. Clearly this is having a severe impact on people's freedom under the law in this country. We are not satisfied with the replies we have had this afternoon. We are very disturbed by what is written in the report and agreed between your office, Sir John, and the Lord Chancellor's Department. We look for a very hard-hitting report.

(*Sir John Bourn*) Yes, Chairman.

Chairman: Thank you, Sir John, and thank you Sir Hayden. Order, order.

²³ Ev 32

APPENDIX 1

**Supplementary memorandum submitted by Sir Hayden Phillips GCB, Permanent Secretary,
Lord Chancellor's Department**

Question 16: Why should it be that the cancellation rate should be several hundred % higher in some areas than others? Why is West Yorkshire failing?

The high cancellation rate in West Yorkshire is due to an initiative to bring to a conclusion old legal aid accounts, particularly in the Leeds district. The accounts have a significant impact on West Yorkshire's outstanding arrears figure. There has been much work undertaken to obtain from the Crown Court and the Law Society the documentation needed before the accounts can be enforced. Where it has not been possible to obtain documentation, the court has cancelled the accounts. The initiative is ongoing and will result in a high cancellation rate in West Yorkshire for some time to come.

West Yorkshire operate a centralised finance unit and so they are only able to provide a breakdown of cancellation rates on a district basis rather than by individual court sites.

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[Continued

%	Jun 2000	Sep 2000	Dec 2000	Mar 2001	Jun 2001	Sep 2001	Dec 2001	Mar 2002
Leeds	31.1	19	22	34.5	130.6	24.2	26.6	108.2
Bradford	35.8	24.6	45.2	30	30.8	34.6	68.5	35.8
Calderdale	10.1	19	24.8	32.5	20.8	24.1	33.9	27.4
Kirklees	33	33.3	29.7	33	30	39.1	26	28.5
Wakefield	37.3	33.7	37.3	44.1	26.1	66.9	37.1	41

Question 29: In the meantime do you think it would be a good idea for somebody centrally, probably yourselves, to give some kind of guidance to magistrates' courts in such eventualities [foreign nationals not paying fines] to avoid this kind of situation arising in the future?

Mr Trickett mentioned (Qq 22-29) a case that had arisen in his constituency where a £500 fine was imposed on a French lorry driver who subsequently returned to France without paying the fine. He asked what enforcement options were open to the court pending the conclusion of EU negotiations on a draft Framework Decision, which would provide for financial penalties in one Member State to be enforced in another Member State. He also asked that the Lord Chancellor's Department (LCD) issue interim guidance to the courts to prevent such a situation arising in the future.

As I explained at the hearing, there is at present no means for an English court to directly enforce a fine on a foreign national who then returns home. However, it is because of the comparative weakness of the current provisions on mutual co-operation that the UK, France and Sweden have proposed a draft Framework Decision based on Articles 31(a) and 34(2)(b) of the Treaty on European Union. This will provide for financial penalties imposed in one Member State to be enforced in another Member State. I understand that it was intended that this should be agreed this summer, but this now looks unlikely as a number of issues remain unresolved. UK implementation should occur up to two years after agreement is achieved.

In the interim, a Home Office working party (the Fixed Penalties Procedures Working Group) is currently exploring options such as the feasibility of introducing a system of fixed penalties, or a graduated deposit system, whereby the haulier would pay a "deposit" as a guarantor of court attendance (should the operator/driver fail to attend court, the deposit would automatically be forfeited to the Exchequer).

Finally, further enquiries have produced new information on which I had not been briefed at the time of the hearing. EU Regulations and Directives governing international road haulage operations contain a standard provision requiring mutual co-operation between member states in ensuring that hauliers comply with the road traffic legislation of countries in which they operate. In circumstances such as those described by Mr Trickett, the court, having been unable to enforce a fine against a foreign national, may write to the Department for Transport (DFT) giving details of the offence and the penalty imposed. The DFT then immediately passes this information to the transport department in the country of origin, urging the host nation to take all necessary steps to ensure that the fine is paid. About 18-20 such requests are processed by DFT each year.

I shall ensure that the courts are reminded of the availability of this option, and I shall ask the Criminal Enforcement Policy Advisory Group to consider (in liaison with DFT) what further advice might be offered to the courts.

Questions 31-32 and 38: Why is there no incentive to encourage people to pay quickly? Is it something you have looked at?

The White Paper *Justice for All*, which sets out proposals for reform of the Criminal Justice System, contains proposals for improving fine enforcement, including the introduction of a discount for prompt payment of fines in line with agreed terms and to increase the fine if the defendant fails to pay on time. There are also proposals to provide fines officers with statutory powers which will enable them to impose a range of sanctions for fine default including: registering the fine with the registry of judgements (which prevents defaulters obtaining credit); ordering the clamping of a defaulter's vehicle, which could be sold if the fine was not paid; authorising bailiffs to seize defaulter's goods; or ordering deductions to be made from defaulter's pay or benefits. There will be a right of appeal against fines officers' discretionary decisions and appropriate safeguards for those who are genuinely unable to pay.

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[Continued

Questions 73–76: What proportion of the 37% of fines which are not collected is represented by those people who are on benefit and have already had three attachments of benefit? What proportion of defaulters in the 37% cent are on benefit?

As was indicated in the parliamentary answers to Mr Gibb (HC Deb, 12 July 2002, col 1225W-1226W) this information is currently not collected centrally by LCD or the Department for Work and Pensions (DWP), but we are examining whether it would be possible by research or sampling to estimate the data requested. The table below, provided by DWP, shows numbers of Income Support/Job Seekers Allowance (Income Based) claimants at a point in time each year since 1994, with a deduction in force on their benefit for fines recovery.

<i>Year</i>	<i>IS Claimants (1000's)</i>	<i>JSA (IB) Claimants (1000's)</i>
May 1994	7	—
May 1995	9	—
May 1996	16	—
May 1997	14	8
May 1998	13	7
May 1999	13	6
May 2000	12	5
May 2001	13	4
Feb 2002	14	4

Questions 103–107: How many people who have received community service orders have had their sentence written off and been told that they do not need to serve it?

The number of community punishment orders (formerly community service orders) which terminated before completion of the order in each year since 1995 in England and Wales was as follows:

<i>Year</i>	<i>Number</i>
1995	14,700
1996	14,400
1997	13,400
1998	12,700
1999	12,300
2000*	13,500

* Latest year for which complete information is available.

It may be that the Committee was referring to breach warrants which have been withdrawn by the courts, in which case the only data available is from April 2001 (when MCCs took responsibility) to end February 2002. In that period 25,728 warrants were issued, of which 2,591 (or 10%) were withdrawn. Reasons for these being withdrawn include convictions for other offences, new information coming to light (the offender now in prison) or that the offender has disappeared without trace. The PAC transcript refers at Q 102 to a breach rate of 30%. That of course is not the same as a 30% failure to enforce such orders. Only a small proportion of breaches result in a warrant being issued and only a proportion of those end up being withdrawn.

Question 124: What exactly is going on with this additional money other than buying stand-alone systems, which is probably quite a waste of money because in 18 months' time a completely new system will be available?

The spreadsheet at **Annex A** indicates what the money available through the pilot netting-off scheme will be spent on.

Question 144: Could you say something about other international comparisons, what they do in various states in the United States, what they do in Europe? Is this an endemic problem in all western criminal justice systems or have other countries found ways?

We have looked for successful criminal enforcement models throughout the world and those which seemed to have the most potential are the recently reformed systems in New Zealand and the Australian States, especially as they were reforming systems which resembled our own. We therefore looked at the lessons which can be learned from those jurisdictions. Details of these systems can be found at:

<http://www.courts.govt.nz>
<http://www.lawlink.nsw.gov.au>

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<http://www.justice.wa.gov.au>
<http://www.courts.sa.gov.au>
<http://www.fru.nt.gov.aul>

The experience of reform of fines recovery in New Zealand is examined in more depth in two publications in a series of case studies about innovations in New Zealand's public sector by Victoria University of Wellington through Victoria Link Ltd. These are:

- Criminal or Customer? Creating New Ways of Collecting Court Imposed Fines (1998); and
- Anchoring Change. A case study of the Collections Unit, Department for Courts, illustrating why organisational change programmes can take several years to deliver results, and showing how one business managed to anchor the changes it set out to achieve (2000).

Copies of both publications can be obtained from the School of Business and Public Management, Victoria University of Wellington.

Question 152, 183 and 228: Could we ask you to give us a supplementary note of the ten starred courts who are the best at collecting money . . . can you explain why the payment rate in Staffordshire is 90%, whereas in Surrey it is only 58% . . . ?

THE 10 BEST PERFORMING MAGISTRATES COURTS COMMITTEES

Payment rate (defined as the amount paid into court as a percentage of new amounts owed) April 2001–March 2002

1	Dorset	89%
2	West Yorkshire	86%
3	Surrey	79%
4 =	Cumbria	76%
4 =	Lincolnshire	76%
6 =	Durham	75%
6 =	Essex	75%
6 =	North Yorkshire	75%
6 =	Thames Valley	75%
10	Norfolk	74%
	National Average	59%

THE 10 POOREST PERFORMING MAGISTRATES COURTS COMMITTEES

Payment rate (defined as the amount paid into court as a percentage of new amounts owed) April 2001–March 2002

42	Merseyside	34%
41	Cambridgeshire	36%
40	South Wales	40%
39	Gloucestershire	43%
37 =	Warwickshire	46%
37 =	Greater London	46%
36	West Mercia	48%
35	Northamptonshire	52%
33 =	Cleveland	54%
33 =	Avon & Somerset	54%
	National Average	59%

The payment rates quoted in Q 183 refer to the year 2000–01.

The ranges of debt analysis returns from MCC areas for 2001–2 were:

- Payment Rate: from 89% to 34%
- Cancellation Rate: from 3% to 52%
- Write-off Rate: from 1% to 32%

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COMMENTARY ON CURRENT PERFORMANCE

Lead responsibility for warrant execution was only transferred from the police to MCCs on 1 April 2001, thereby giving MCCs control over the whole enforcement process. A major factor that will have added to the range of results for their first year of responsibility for this work is the local position each MCC area inherited from the police. The transfer came about because of the continuing problems that the police had with this type of work. It is therefore early days for the MCCs and greater consistency should come about once the new system beds down.

Many MCC areas are still struggling with the backlogs inherited from the police (over 100,000 in total, ranging from none in Gloucestershire and Leicestershire to 25,000 in Greater London Magistrates' Courts Authority). Inevitably, the ability to be able to enforce those warrants, or the need eventually to deal with them by way of write-off or through an application and judicial cancellation will vary considerably. Responsibility has only been with the MCCs for just over one year.

There are also variations in the method of enforcement employed by each MCC ranging from in-house civilian enforcement officers to approved enforcement agencies and contracting the work back to the police. From analysis so far, no one of these approaches has proved more or less successful in increasing an individual MCC's payment rate. There is also no correlation between areas as both metropolitan and rural MCCs have both varying high and low levels of payment rates.

Other factors have also emerged. For example, the reason for the highest cancellation rate is in fact due to an initiative in West Yorkshire to bring to a conclusion old legal aid accounts, which are having a significant impact on their outstanding arrears figures.

It is also worth emphasising that the cancellation of a debt is a judicial function, and it appears that benches across the country vary in the frequency with which they employ this power to deal with unsatisfied debt which includes not only fines but also fees, compensation, confiscation orders, legal aid contributions and some maintenance orders.

The vast majority of write-offs occur because the offender has moved home and cannot be traced. The problem of tracing offenders can be compounded by the fact that some are highly mobile and either deliberately or inadvertently fail to notify the courts when they change address. To address this problem, the Government took powers in the Access to Justice Act 1999 to enable the courts to seek information from other Government agencies on the whereabouts of offenders. A national arrangement with the Department for Work and Pensions was implemented in April 2001 to coincide with the transfer of responsibility for warrant execution. The DWP database covers 100% of the population, and contains 83 million records. The initiative has been very successful; over 171,000 requests for information were processed by DWP during the first year of operation, and nearly £465,000 was recovered that would otherwise have been written off as unenforceable.

The Department is assisting MCCs to share good practice in enforcement through:

- (i) holding regional conferences in April 2002, which enabled delegates to share good practice, to discuss problems and find solutions. Researchers working on the Home Office research into fine enforcement made presentations on their findings at the conferences; and
- (ii) the establishment of the Criminal Enforcement Policy Advisory Group (CEPAG) which will be tasked with exploring and evaluating good practice initiatives, revising and updating guidance and taking forward other issues arising from the conferences to improve enforcement. The first meeting is planned for 24 July.

WHY THERE ARE SUCH LARGE VARIATIONS IN PAYMENT RATES

Establishing a reliable measure of payment of financial penalties is not straightforward—largely because many impositions are not settled in full at a fixed point, but instead are settled over a period due to payment by instalments. While at first sight it is simple enough to say “X owed Y a total of £Z, and only 50% was recovered”, in aggregate terms it is more complex. The convention is to use the payment rate, which provides a snapshot of the amount paid into court as a percentage of new amounts owed in a given period. While the payment rate is the best performance measure we have, a number of factors affect performance:

- differences in the characteristics of defaulters—a point made in paragraph 1.6 of the NAO Report. (HO research suggests that those offenders from the poorest neighbourhoods are significantly less likely to pay their financial penalties than those from more affluent areas. Courts with low recovery rates tend to have a higher proportion of their offenders living in poorer neighbourhoods, and needed to take more enforcement actions against a greater proportion of their offenders. Such courts had a significant proportion making no payment whatsoever);

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- differences in the type of offences for which fines are imposed in the first place eg if there is a high proportion of fixed penalties or relatively small traffic fines these are more likely to be paid off quicker than other fines. If an MCC is in an area with a busy motorway running through then this may be a factor compared to other areas;
- the ease with which offenders can be traced (it can be far more difficult to trace offenders in areas with a high proportion of temporary or bed and breakfast accommodation);
- the proportion of persistent offenders (who can rack up large debts, and who often know how to play the system);
- the effectiveness of local enforcement methods;
- transfers of fines. Small town or country courts are often able to transfer out large numbers of cases because defendants live outside their areas. Normal practice is to accept payment when it is made on receipt of a fines notice even if the offender resides outside the courts' jurisdiction. Fines are therefore transferred only if requiring enforcement. Net importers of fines will therefore have to perform more enforcement process than those areas which are net exporters. This will affect the cost of enforcement, arrears figures and the number of difficult cases the courts have to deal with;
- if the rate at which money is paid into the court remains stable at a time when fine impositions happen to fall, the proportion of debt to impositions will appear greater; and
- distortions created by large impositions, payments and large arrears.

VARIATIONS IN WRITE-OFFS

A number of factors may cause variations in write-off rates:

- the socio-economic make up of the population served by the court, which can affect the chances of successful recovery;
- the nature of the offences (defendants in some motoring cases appear to be more likely to pay);
- sentencing policy—magistrates using their discretion to set a fine at a lower level will see a higher proportion paid, and less written off, than those who set fines high, even if the amount of money collected is the same; and
- the policy of the MCC regarding the enforcement measures that must be attempted before write-off will be authorised.

While a continuously high write off rate might indicate poor enforcement, a very low write off rate might mask administrative inefficiencies in clearing unenforceable debts. An aberrant high rate may be indicative of distortions caused by writing off large impositions, or as a result of a 'purge' on unenforceable debts.

CANCELLATIONS

Accounts which are required to be closed by law or by a decision of the courts are generally referred to as 'cancellations'. These are not included in the write off figure. Neither do cancellations necessarily arise from a failure in enforcement.

Cancellations arise in the following situations:

- Committal of the offender to prison upon default;
- 'Lodgement'. (A defendant can apply to have his/her fines 'lodged' while already serving a term of imprisonment for another offence. The court must decide if the term/s are to be served concurrently or consecutively to the existing sentence. The effect of this is that upon release the defendant faces no further financial obligation to the court);
- Remission of the imposition. (The court may at any time remit the whole or any part of the fine, but only if it thinks it just to do so having regard to a change of circumstances which has occurred since the date of the conviction);
- Setting aside of conviction and sentence;
- Successful appeal against the imposition;
- Compensation being no longer payable following a review by the court; and
- Statutory declaration. Section 14 of the Magistrates' Courts Act 1980 enables the accused to make a statutory declaration, at any time during the life of a case, that they did not know of the summons or proceedings until a date specified. This has the effect of all the proceedings and any other order of the court (including any financial obligation to the court) being void. This procedure would be used, for example, if a fixed penalty notice was issued in error to the registered owner of a vehicle when that vehicle had in fact been sold on to the person who committed the offence.

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Question 169–172 and 263: Why does it take three years to do a research project on the enforcement of financial penalties? . . . that research work was due to report in early 2002. Now you have told us . . . it will be later this year. Can you explain why this delay is happening?

This project started in late 1999 (with funding from the government's Crime Reduction Programme). The researchers were appointed after a competitive tender. Their first task was to identify promising issues in fine enforcement to be pursued at the pilot stage. Once this was done, 20 courts were selected to take part in the research. The researchers carried out a pre-implementation data gathering exercise to get detailed baseline data on the use of financial penalties and enforcement practice at those courts.

The courts then bid for funding to run particular pilot schemes, the subjects of which mapped onto the areas identified initially by the researchers as potentially promising. The pilots themselves ran in the first 6–9 months of 2001.

The researchers then gathered the post-pilot data on the effects of those initiatives. They produced a first draft of their final report, to time, by November 2001. A second draft taking account of comments from the project's steering group was produced in January 2002. However, we then took the decision that the researchers should concentrate on producing a short summary report aimed specifically at practitioners in time for the LCD enforcement conferences in April. Both the researchers and the Home Office (HO) staff participated in the planning for these conference and the researchers gave a presentation on the research at each of the five conferences.

This took us to May this year. The researchers then re-started work on the final draft of the study's full report, which is due to be submitted in mid-July and published at the end of the month.

In the circumstances I hope you agree that two years (from issuing of the Invitation to Tender to receiving a first draft of the final report) to produce such a substantial piece of innovative research (which actually empirically tests the effects of various promising-looking enforcement strategies) is reasonable.

I also undertook to send Mr Rendel details of the key points in the research, and I enclose a copy of the Home office Development and Practice Report Fine Enforcement in Magistrates' Courts which was published in April and disseminated to MCCs at the regional enforcement conferences sponsored by LCD. The main lessons for magistrates and for enforcement and other administrative court staff are summarised on pages 4 and 5 of the booklet.

I shall, of course ensure that a copy of the full research report is placed in the libraries of both Houses on publication. As I explained at the hearing, this is expected to be later this month.

Questions 201–202: Apparently there were some pilot schemes . . . where people who had not paid their fines were given community punishment orders, curfew orders and driving disqualification. How many were actually administered? For example in Norfolk and Greater Manchester how many community punishment orders were there and how many curfew orders were given and how many people were disqualified for driving?

The new measures for fine defaulters, persistent petty offenders and others were fully evaluated in the Report of the Crime (Sentences) Act 1997 Pilots by Robin Elliot and Jennifer Airs of the Home Office Research, Development and Statistics Directorate, which was published in 2000 (ISBN 1 84082 415 8).

Copies of the Report may be obtained from the Home Office, Information and Publications Group, Research, Development and Statistics Directorate, Room 201, 50 Queen Anne's Gate, London SW1H 9AT. Telephone 020 7273 2084.

Question 236: I should be grateful if you could just check . . . whether you do have guidance in place which says that all the information available about an offender and the situation in court should be transferred to the other [transfer of cases between courts]?

The Enforcement of Financial Penalties Working Group issued guidance in 1996, which covered the transfer of fines between MCC areas. The guidance (which reiterated guidance previously issued by LCD in September 1992, recommended that:

“where a Transfer of Fine Order is made, a record of the enforcement action taken to date (if any), together with a note of any evidence recorded at a means enquiry and any responses from the offender, should be forwarded with the Order to the receiving court.”

The protocol agreed between MCCs and the Department for Work and Pensions in respect of the information sharing regime that was put in place on 1 April 2001 makes it clear (paragraph 31) that:

“if an MCC finds that the person for whom they have requested an up-to-date address has moved to an area served by a different MCC, the fine may be transferred to the MCC where the offender now resides. For this purpose, the original court can inform the new court of the defaulter's address, as disclosed by the DWP.”

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[Continued

Question 240: If somebody who has been charged writes in to say that they intend to plead guilty to the charge but they do not want to have to attend the court . . . they will presumably in most cases normally be expecting a fine. Are they then asked how they will pay the fine before the court convenes?

An inter-agency working group convened by a member of Her Majesty's Magistrates Courts Service Inspectorate is currently devising a recommended standard means enquiry form to be issued to defendants with their summonses. The form is for use by the court when considering the defendant's financial circumstances and ability to pay when the fine is set, and by defendants when requesting time to pay the fine. The group will consider the inclusion of a question on preferred payment method although methods available vary across MCC areas and the defendant would need to know what was available locally.

Questions 253–254: Is it possible to provide a note on [whether victims or witnesses fail to turn up because they felt there was no point as offenders might not pay any penalty]?

We do not have any evidence to support the assertion that the belief that an offender will only receive a fine, which might not then be paid is deterring witnesses and victims from coming forward. We have evidence, from the National Witness Satisfaction Survey, only of the views of victims and witnesses on the fairness of the verdict. Of those asked, 64% thought the verdict was fair but this survey takes samples only from those witnesses who do attend court.

The National Witness Satisfaction Survey 2002 is currently being carried out. The question on the fairness of the verdict has been supplemented by a question on the fairness of the sentence. The same caveats, however, will apply to the responses received.

Sir Hayden Phillips GCB
Permanent Secretary
Lord Chancellor's Department

Annex A

DETAILS OF THE EXPENDITURE OF ADDITIONAL MONEY

<i>MCCs</i>	<i>Totals of additional costs 2002–03</i>	<i>Salaries & other staff additional costs 2002–03</i>	<i>Contract additional costs for enforcement/agencies/contractors 2002–03</i>	<i>Equipment running additional cost 2002–03</i>	<i>Advertising & recruitment additional cost 2002–03</i>	<i>Accommodations additional cost 2002–03</i>	<i>Information technology additional cost 2002–03</i>	<i>Other additional costs 2002–03</i>
Avon and Somerset	£760,118	£130,778	£552,000	£48,940	£8,400		£20,000	
Bedfordshire	£90,715	£59,995		£6,420	£1,000	£1,300	£8,600	£13,400
Cambridgeshire	£479,863	£180,272	£226,675		£3,933		£63,975	£5,008
Cheshire	£87,747	£83,322		£2,425	£1,000		£1,000	
Cleveland	£282,664	£80,054	£68,200	£3,100	£7,400		£11,704	£112,206
Cumbria	£35,766	£23,262		£4,042	£250		£8,212	
Derbyshire	£0							
Devon & Cornwall	£72,000	£61,000		£5,000			£6,000	
Dorset	£42,750	£32,500		£250	£500	£5,000	£1,500	£3,000
Durham	£81,050		£15,000					£66,050
Dyfed Powys	£68,202	£41,517		£1,010	£1,000	£2,000	£14,675	£8,000
Essex	£16,500	£16,500						
GLMCA	£415,650	£204,650		£20,000	£5,000		£156,000	£30,000
Gloucestershire	£94,550			£76,550			£18,000	
Gwent	£133,514	£89,014		£26,100	£3,400	£10,000	£5,000	
Hampshire and Isle of Wight	£371,103	£320,803		£7,300	£1,000	£15,000	£27,000	
Hertfordshire	£156,177	£132,777		£4,400	£1,000		£15,000	£3,000
Humberside	£283,759	£200,359		£65,400	£12,000		£6,000	
Kent	£190,628	£87,254	£50,000	£12,449	£500		£40,425	
Lancashire	£285,235	£256,793		£14,192	£3,250	£10,000		£1,000
Leicestershire	£190,322	£128,062		£44,000	£1,000		£17,260	
Lincolnshire	£184,037	£42,687	£116,150	£6,700	£1,000			£17,500
Greater Manchester	£198,613	£172,863		£18,500	£1,000		£6,250	
Merseyside	£166,391	£62,390	£104,001					
Norfolk	£90,869	£87,119		£300	£1,050	£2,400		
Northamptonshire	£36,461	£26,461					£10,000	
North Yorkshire	£90,473	£67,873		£16,800	£1,300		£2,500	£2,000
Northumbria	£559,168	£85,368	£430,000	£26,800	£2,000		£15,000	

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[Continued

MCCs	Totals of additional costs 2002-03	Salaries & other staff additional costs 2002-03	Contract additional costs for enforcement agencies/contractors 2002-03	Equipment running additional cost 2002-03	Advertising & recruitment additional cost 2002-03	Accommodations additional cost 2002-03	Information technology additional cost 2002-03	Other additional costs 2002-03
North Wales	£84,755	£63,161		£10,594	£2,000		£9,000	
Nottinghamshire	£0							
South								
Yorkshire	£45,826	£28,258		£17,568				
South Wales	£343,239	£165,800		£110,765	£1,500		£40,174	£25,000
Staffordshire	£110,190	£82,790		£2,400			£25,000	
Suffolk	£76,871	£52,099		£9,520	£2,500		£12,752	
Surrey	£28,560	£25,360					£3,200	
Sussex	£238,019	£154,459		£11,660	£1,500	£8,000	£15,600	£46,800
Thames Valley	£893,834	£237,884		£4,200	£5,000	£625,000	£21,750	
Warwickshire	£120,076	£47,012	£37,440	£17,156	£1,872		£8,096	£8,500
West Mercia	£134,130	£11,607	£121,523		£400		£600	
West Midlands	£908,942	£320,042		£60,650	£7,000	£360,000	£58,000	£103,250
West Yorkshire	£1,343,659	£61,659		£45,000		£740,000	£470,000	£27,000
Wiltshire	£119,000	£64,000	£40,000		£2,000	£10,000	£3,000	
TOTALS	£9,911,426	£3,987,804	£1,760,989	£700,191	£80,755	£1,788,700	£1,121,273	£471,714

APPENDIX 2

**Supplementary memorandum submitted by Sir Hayden Phillips GCB, Permanent Secretary,
Lord Chancellor's Department**

PURPOSE OF LIBRA

1. A brief history of the Libra project is at **Annex A**. This note describes the reasons behind recent events and the current position. **Annex B** provides information on the technical infrastructure in response to the question about equipment installed in offices.

2. The contract with FS (Fujitsu Services, previously ICL) was a PFI service contract which included:

- a national IT infrastructure (a comprehensive set of office services including desktop PCs and printers; Local Area and Wide Area Networks, full online support; and other services including disaster recovery);
- office automation facilities (including standard office software such as e-mail, word processing, spreadsheets, diaries, etc);
- a standard national application and related services to support court work (principally case progression, reception of parties, fine accounting and enforcement, in-court computing, management information) to replace the existing three legacy systems currently in the MCCs;
- Direct electronic links with the criminal justice agencies and their strategic systems (police, CPS, Probation, Prisons, Crown Court, DVLA).

3. By late 2000 (following the contract renegotiation described in **Annex A**) the first two of these (including secure e-mail) were being satisfactorily installed and the last two were under development. The critical date for the application software was July 2001 when it was due to be installed and proved in Suffolk MCC.

4. It became apparent around that time that development of the core application was falling behind schedule. At first FS believed that this delay was containable and various options for postponing part of the software by a few months were discussed. Indeed FS delivered a substantial part of the software into their testing area in January 2001. Close examination of this software showed that its quality and completeness was such that the July 2001 date would not be achieved.

5. It was at this stage that FS completely changed their project management team and carried out a full internal investigation into every aspect of the contract and their ability to deliver. They reached the conclusion that, from their viewpoint, there were serious problems with the contract. They estimated that full delivery of the application software would take up to a further two years, that costs would be far higher than anticipated and that the whole process of requirements definition and development had to change.

6. In the spring of 2001 FS approached LCD and indicated that their estimated potential losses were so high (figures between £100 million and £200 million were indicated) that they could not progress with the contract unless it was substantially renegotiated. At this stage rollout of the infrastructure was well under way but the company had not yet reached the contractual delivery date for the software application so they had not yet formally defaulted on the contracted.

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[Continued

7. In these circumstances there were only two options possible for the department—

- Insist on full delivery of the service as contracted;
- Open discussions to see if an acceptable solution could be found.

8. FS made it clear that they would not proceed with the contract rather than accept the first option and, given the complexity of the situation which needed extensive analysis and discussion, there was no real alternative but to investigate the possibility of re-negotiation. Making full use of professional expertise both internal and external, the matter was considered throughout the summer and possible solutions were discussed with FS.

9. The outcome of this work was a framework for a possible way forward in which the scope of the software application would be reduced, the period of the contract reduced and the delivery date put back. FS estimated a price for a revised contract on this basis (around £283 million), which appeared to be justifiable.

10. However this framework would require months of work to drive down to the detailed level, fully consider the implications, obtain a price and negotiate. The main elements were therefore built into a Memorandum of Understanding (MOU). Following extensive internal discussion and approvals, this was signed on 5 October 2001. While legally binding, the MOU only represented a basis for negotiation—not an agreed solution. Part of the MOU was that:

- Work would continue on rolling out the infrastructure and developing the software application;
- No remedies or other actions would be initiated;
- LCD would share FS costs for the period of the MOU.

11. The first months of the MOU work concentrated on refining and agreeing the very detailed definition of requirements to ensure that every detail was complete, accurate and fully understood. At the same time the commercial aspects were progressively explored.

12. In parallel with these negotiations the Department commissioned and carried out a range of studies using independent experts including:

- FS technical capability and financial standing;
- An assessment of risks;
- Benchmarking of costs for similar work in other organisations;
- Development of contingency options in the event that agreement could not be reached.

13. As the negotiations progressed, it became evident that the cost of continuing with the development and implementation of the software application were rising steeply. The initial FS estimate for the revised scope and contract duration proved to have been based on incorrect assumptions and clarification of the requirements brought in additional costs. By February 2002 the requirements definition and clarifications had reached the stage where FS were able to quote a firmer price. This was in the region of £400 million, and there were additional costs and risks, which had been transferred back to the Department.

14. Continuing work of development and testing of the software application had also confirmed that delivery was unlikely to start before May 2003 and there were measurable risks of further delays, technical problems and cost increase.

15. Given this situation it was decided that to go ahead with the development of the full Libra was just not acceptable in either value for money or risk terms. FS were therefore advised that we would not go ahead on this basis.

16. This decision was strongly opposed by FS who had sunk costs on developing software in excess of £50 million. They proposed a number of alternative pricing and delivery mechanisms but these did not materially affect the position as decreases in FS charges were often cancelled out by increases in LCD costs.

17. The work that had been done on the contingency options had identified an alternative way forward in the event of FS not delivering the Libra software application. Over recent years, one of the current legacy system suppliers has updated and enhanced their system to the point where, with extra development, it could deliver similar functionality to that which the Libra application would have provided. This application is already in use across a third of the country and is thus tried and tested. This would represent a much lower cost and lower risk alternative to delivering through FS.

18. Once the negotiations with FS reached the point that their total price for Libra was known, there were three options. The **estimated total costs for each option are shown in bold:**

- Accept the new price for the total Libra system despite the fact that it had been assessed as being neither value for money nor affordable. Allow FS to continue to develop the software application despite the continuing risk that it could be yet further delayed, could lead to further cost increases and that there were technical issues yet to be resolved. **Estimated total cost £457 million;**

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[Continued

- Terminate the Libra contract completely. This would have left the MCCs with a partly rolled out infrastructure, with minimal support and no opportunity to develop it until a procurement had secured a new supplier, placing MCC business at risk. It would inevitably have led to claims for damages from both parties with a high probability of this leading to litigation. Work on the application would cease. Because of the costs of procurement and contract termination, this option would almost certainly cost more than the third option and risks were high. **Estimated total cost £405 million;**
- Negotiate a value for money deal with FS for the infrastructure only and procure the software application by building on the best of the legacy systems. **Estimated total cost £392 million.**

19. It became clear that the third option represented the lowest cost and the lowest risk while providing MCCs with the services they required within an acceptable timeframe. The subsequent negotiation with FS has been on this basis.

20. This conclusion has been subject to extensive review by independent experts. As part of normal government procedures it has also been reviewed by a government review team and they have confirmed that the best decision has been made in the circumstances. The business case has been approved by the Treasury, and Office of Government Contracts (OGC) approval was received following resolution of concerns about Parent Company Guarantees and the use of the FS Flexible Finance arrangements. It is clearly acknowledged that this is a considerably higher cost than that in the original contract. But FS will not deliver the original contract and the choice has to be made from the available options.

21. The FS part of the option selected is to continue to deliver, enhance and support the infrastructure. Their total cost for this is £232 million. This price has been benchmarked against infrastructure of similar size and type across a number of public and private organisations and shown to be within, but at the top end of the expected cost range. The additional costs are for enhancing, delivering and supporting the new software application.

CURRENT STATUS

22. We completed the negotiations with FS on the variation to the original contract and the revised agreement was signed on 23 July. An announcement was made by Yvette Cooper, Parliamentary Secretary, Lord Chancellor's Department on 24 July.

23. Negotiations have begun with the chosen legacy supplier, STL, to licence their software for national use and to agree the necessary enhancements.

24. An advertisement was placed in the *European Journal* on 30 August 2002 to begin the process of selecting a Systems Integrator to host the new services and manage the migration of MCCs onto the new services. Seventeen bidders have completed the Questionnaire, which will allow a shortlist to be chosen.

PENALTIES AND TERMINATION PROVISIONS

25. Technically, penalty clauses (clauses which penalise a party in breach of contract rather than looking to recompense the innocent party for loss suffered by it as a result of the breach) are not enforceable under English law, and as such the current Libra contract does not contain any penalty clauses.

26. There are, however, a number of remedies in the contract in the event of failure, including liquidated damages and termination, depending on the default. In the case of the core software application the liquidated damages could have been applied from the date of failure to deliver at a rate of £2,000 per day up to a maximum of 100 days. The Department can, of course, sue for damages over and above this amount in court. The real penalty for the supplier in failure to deliver the application on time is the loss of revenue caused by the delay and the extra costs of completing the work. Since this is a PFI service contract, FS were not due to receive any significant payment for their software development work until it was delivered. FS have intimated that their costs of the software development to date are in excess of £50 million.

27. The contract also made provision for the Department to terminate the contract following a major breach. Failure to deliver the core application did give the Department the right to terminate. In that event, the Department could sue for damages up to the Limits of Liability set in the contract at £40 million. Equally, the company could counter-claim.

28. In agreeing to enter into negotiations with Fujitsu, the Department suspended these provisions pending the outcome of those negotiations. Failure to reach an agreed variation to the existing contract would automatically bring these provisions back into force.

29. It is part of the negotiated settlement that the revised contract the Department has signed with FS waives those provisions. Fujitsu will bear the sunk costs on the development of the application, save for the £6.8 million already paid for which we have free and unfettered use of the documentation.

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Annex A

CHRONOLOGY OF THE LIBRA PROJECT

The history below covers the early stages of the project.

Procurement (October 1996—December 1998)

30. The decision to seek a single supplier to deliver IT services to the magistrates' courts was taken in 1996. The services were to be delivered under the Private Finance Initiative (PFI). The objectives of the project were:

- To develop a new, bespoke, software application to replace the three existing legacy systems, with additional functionality;
- To provide links between the system and those elsewhere in the CJS organisations;
- To provide a new infrastructure and associated equipment;
- To provide office automation products.

31. The procurement was advertised in the *Official Journal of the European Communities* in October 1996. We received three expressions of interest. They were from FS and Unisys acting as a single bidding consortium; EDS with STL Technologies; and TRW/Bull. The latter dropped out early in the initial discussions, leaving two potential bidders.

32. The final version of the Statement of Business Requirement (SBR) was issued to the two bidders in the summer of 1997, following extensive consultation with MCCs and the bidders. The bidders were asked to provide detailed proposals showing how they intended to meet the requirements. Both sets of proposals were deficient—principally on the level of detail. They were both asked to provide more detailed proposals as to how they intended to meet each of the requirements, their plans, development approach, team organisation and numbers and technical solution. These were worked up in discussion with the procurement team and finally delivered as part of the tender. In parallel with this process draft contracts were negotiated with each supplier. In the case of the FS/Unisys consortium, it was agreed between the two companies that FS would be the prime contractor.

33. The advisors on the project were Bird and Bird (legal) and Hambros Bank (financial). Also, the Treasury PFI Taskforce were involved throughout—advising on PFI aspects.

34. In April 1998 the two bidders were invited to submit tenders. During the three week tender period, EDS withdrew.

35. Following post-tender negotiations, the final deal was agreed in December 1998 at a contract value of £1 84 million. The contract was awarded on 21 December 1998. The proposals from FS were taken through the full evaluation process following submission of their tender to ensure they were acceptable and value for money.

Award of Contract to First Renegotiation (January 1999—May 2000)

36. The first stage of the project involved FS carrying out a detailed analysis of the requirements.

37. In October 1999, FS approached the Department requesting a renegotiation of the contract. Their financial projections had assumed significant early revenues and the project was causing problems with their borrowing. Before agreeing to enter negotiations, we commissioned two studies. The first, carried out by independent consultants, was to assess whether the project should be saved and FS's capability of delivering. The answer was affirmative in both cases. The second study was carried out by Ernst and Young into their financial model. It concluded that the model contained major flaws and that the position was worse than FS had declared. It was agreed that a new financial model would be produced and jointly paid for and owned by the two parties to establish a proper baseline for any negotiations. That work was undertaken by Ernst and Young.

38. In March 2000 we concluded an agreement for a revised deal. The main changes were:

- An extension of the contract length by four years (this was provided for in the original contract);
- Implementation of the office automation service in all MCCs 9 months prior to the forecast date for them to take the new software application;
- Reprofiled payments to FS involving additional cash in the early stages in return for a reduction of the on-going service charges for the remainder of the contract;
- A profit sharing scheme.

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39. The overall effect was to increase the value of the contract from £184 million to £319 million. All of the increase was for early services for office automation and the extra four years of service at the end of the contract so there was no real increase in costs. The Treasury agreed to provide an additional £23 million in 2001–02 and 2002–03.

40. The revised contract was signed in May 2000.

41. The delivery of the first stage of the project, to rollout successfully the new IT infrastructure, started as planned in October 2000 and has continued to date broadly on schedule apart from a small number of MCCs where local circumstances such as new building plans had to be taken into account. Rollout has now been achieved in 86% of MCCs. This includes the delivery, operation and support of a network linking all magistrates' courts, with all staff working in the magistrates' courts being provided with desktop PCs, running standard office software, and providing access through these PCs to their main legacy systems. The new PCs replaced older ones as well as dumb terminals connected to legacy systems. To date, about 9,500 out of the total 11,000 staff in the magistrates' courts now have access to these facilities. All these staff have full internal e-mail across their own MCCs and the other MCCs as well as to external organisations. It also means that the platform for the delivery of new software and the benefits, which accrue from this, is in place ahead of a new application.

Annex B

TECHNICAL INFRASTRUCTURE

42. The original contract awarded in 1998 did not specify the number of PCs to be delivered. The supplier was given the information needed to construct the bid, including the number of users and locations. It became evident during the re-negotiations leading to the revised contract in 2000 that the supplier had underestimated the number. The 2000 version of the contract did include the number of PCs to be delivered. This was 10,300. This figure is now 11,000, plus or minus 5%, and includes additional laptops for remote access to the service. The contract did not specify the specific office software set, only the facilities required. Fujitsu selected Microsoft Office to meet those requirements. The contract includes the training of all staff.

43. Modern office infrastructure used in any corporation or department is far more than the desktop PCs. It consists of a secure, resilient and supported network of servers, workstations and communications equipment, which is centrally managed and supported. The Libra Office Automation service comprises such an infrastructure and office support products. In addition to the 11,000 PCs (including laptops), it also includes just over 5000 printers to be delivered to the desktop, an increase of just over 200 from the 2000 contract.

44. The PCs and printers are connected to Local Area Networks that have been installed in each of the 400 sites, and each of these is connected to the data centres by a Wide Area Network. The cabling, servers and communications equipment are included in the service.

45. The servers are housed off-site at Fujitsu's data centres. One data centre provides the service to all MCCs, and a second data centre provides disaster recovery. All data is backed-up by Fujitsu who handle such aspects as security and disaster recovery.

46. The price also includes a full technology refresh of the desktop equipment and upgrades of Microsoft products in 2005.

47. Each PC has Microsoft Office and other products installed, running under the Microsoft Windows 2000 operating system. Each terminal is also connected to the existing main legacy application allowing staff to process cases through the PC. A number of enhancements have been included in the new deal, including Internet Browsing for all staff, and integration with the police fixed penalty system. Separately we are working on connection to the Government Secure Intranet to provide secure e-mail facilities. Delivery of these enhancements will enable the Department to meet a key Government target to provide secure e-mail across the all criminal justice organisations by the end of 2003.

48. The network is monitored by Fujitsu to enable faults to be diagnosed quickly.

49. The key feature of the service is the support provided by the supplier to MCCs in their day-to-day running of the systems. The support includes the Help Desk, on-line diagnosis of faults, replacement of faulty equipment, management of filestore and network capacity, ensuring reliability and availability of the service against contractual service levels (with service credits accruing to MCCs where these levels have not been delivered).

50. The Office Automation service started at the first MCC in October 2000. The rollout programme is around 86% complete, and will be concluded in the spring of next year. The Department and MCCs have paid a total of £26 million for the service up to 31 March 2002. The charges for this service were agreed as part of the 2000 negotiations. They were set at a level to ensure the supplier had an incentive to deliver the core application and did not represent a commercially viable deal for FS for the office automation service

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alone. To complete the rollout of the Office Automation service, deliver the enhancements and run the service to 31 March 2007, the costs are estimated at £206 million, giving a total of £232 million. The charging regime has been changed from a caseload base to a workstation/user base.

51. An independent benchmarking exercise was carried out which confirmed that this price is comparable to that paid by other public and private sector organisations of similar size and complexity. We used an external specialist who builds a profile of the size and scope of the tasks and who then uses his database of companies and departments to identify similar installations and their costs. The FS costs (excluding items such as cost of capital and risks which are excluded from the comparison) were within the range of costs from the comparative organisations.

Sir Hayden Phillips GCB
Permanent Secretary
Lord Chancellor's Department

REPORTS BY THE COMMITTEE OF PUBLIC ACCOUNTS
SESSION 2001–02

		<i>Publication Date</i>
1	Managing Risk in Government Departments (HC 336)	23/11/01
	Government Reply (Cm 5393)	14/02/02
2	Improving Construction Performance (HC 337)	05/12/01
	Government Reply (Cm 5393)	14/02/02
3	The Cancellation of the Benefits Payment Card Project (HC 358)	06/12/01
	Government Reply (Cm 5393)	14/02/02
4	The Renegotiation of the PFI-type Deal for the Royal Armouries Museum in Leeds (HC 359)	12/12/01
	Government Reply (Cm 5450)	28/02/02
5	Ministry of Defence: Major Projects Report 2000 (HC 368)	28/11/01
	Government Reply (Cm 5450)	28/02/02
6	Ministry of Defence: Major Projects Report 2000—The Role of the Equipment Capability Customer (HC 369)	28/11/01
	Government Reply (Cm 5450)	28/02/02
7	Sale of Part of the UK Gold Reserves (HC 396)	19/12/01
	Government Reply (Cm 5470)	14/03/02
8	Office of Water Services (OFWAT): Leakage and Water Efficiency (HC 397)	04/01/02
	Government Reply (Cm 5470)	14/03/02
9	Tackling Obesity in England (HC 421)	16/01/02
	Government Reply (Cm 5477)	20/03/02
10	The Acquisition of German Parcel (HC 422)	11/01/02
	Government Reply (Cm 5477)	20/03/02
11	Office of Gas and Electricity Markets: Giving Domestic Customers a Choice of Electricity Supplier (HC 446)	17/01/02
	Government Reply (Cm 5481)	09/05/02
12	The Radiocommunications Agency's Joint Venture with CMG (HC 447)	23/01/02
	Government Reply (Cm 5470)	14/03/02
13	Regulating Housing Associations' Management of Financial Risk (HC 470) ..	09/01/02
	Government Reply (Cm 5470)	14/03/02
	Government Reply (Cm 5600) (Addendum)	03/10/02

14	The Millennium Dome (HC 516)	01/02/02
	Government Reply (Cm 5487)	25/04/02
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