

Report of the Comptroller and Auditor General to the Assembly on the Northern Ireland Courts and Tribunals Service (NICTS) Trust Statement for the year ended 31 March 2013

Introduction

1. The Northern Ireland Courts and Tribunals Service (NICTS), an Executive agency of the Department of Justice (DOJ) of Northern Ireland, acts as an agent responsible for the collection of financial penalties which have been imposed by the Judiciary, the Police Service of Northern Ireland (PSNI) and the Driver and Vehicle Agency (DVA). These impositions include fixed penalty notices (FPNs), court imposed monetary penalties (namely fines, extra costs, other party costs, compensation for victims of crime and fixed penalty enforcement fines), and confiscation orders.
2. Since 2011-12, NICTS has produced a Trust Statement which shows income from fines and penalties, collection and administration costs and provisions for uncollectible amounts. It also reflects the complex inter-dependencies between the NICTS and a number of other Departments and Agencies involved in the enforcement process, including the PSNI. I have qualified my audit opinion on the 2011-12 and 2012-13 Statements and I expect to qualify my opinion on the 2013-14 Statement.
3. Financial penalties can be imposed by the Courts, the Police Service of Northern Ireland (PSNI) and the Driver and Vehicle Agency (DVA) for a wide range of reasons, from traffic violations to compensation awarded to victims of crime (see Appendix 1). While most are paid promptly, dealing effectively with those who default on payment is an ongoing challenge for the justice system. The revenue collected is paid to the Northern Ireland Consolidated Fund after deduction of some allowable costs incurred in collecting the fines.
4. At 31 March 2013, the total amount of debt outstanding from non-payment of financial penalties was around £19 million. Approximately £5.0 million relates to amounts outstanding for less than one year, with £11.5 million outstanding between one and five years and with £2.5 million outstanding for more than five years. The total debt has been impaired by £6.5 million. This figure is based on NICTS estimates of fines expected to be cleared by serving a prison term, fines cleared by the judiciary and fines relating to missing warrants. Outstanding warrants have been impaired by £5.1 million, this impairment is made up of missing paper warrants (£1.1 million), warrants which NICTS estimate will not be executed (£1.5 million) and warrants which NICTS estimate will be executed notionally through a prison sentence or remitted by the judiciary (£2.5 million).

5. The purpose of this report is to explain the background to my qualification on the Trust Statement for the year ended 31 March 2013 and to highlight my concerns about the system for dealing with fine defaulters.

Limitation in scope arising from insufficient evidence to satisfy myself that material error does not exist within the estimate of the impairment and collectability of overdue debt

The level of irrecoverable debt is likely to be understated

6. The Trust Statement records the total debt outstanding at the end of the financial year and also shows the impaired debt which takes account of an estimate of the amount that is unlikely to be recovered, (see Figure 1). As the revised processes around default hearings were still in their infancy there was no reliable evidence available to NICTS to assess the impact of the new processes on the recoverability of debt.

Figure 1: Around a third of the debt outstanding at 31 March 2013 is unlikely to be recovered

	Total Debt	Impairment	Impaired
	£m	£m	Debt
			£m
Outstanding Warrants	8.2	5.1	3.1
Confiscation Orders ¹	6.5	1.1	5.4
Court Fines	4.0	0.3	3.7
Fixed Penalty Notices	0.3	0.0	0.3
Total	19.0	6.5	12.5

Source NICTS

7. Between May 2009 and March 2013, fines not paid by their due date were passed to the NICTS Fine Collection Scheme Office and if the follow up process was unsuccessful, a warrant of commitment would issue by the Court to the PSNI for enforcement. At this stage the fine could have been cleared by the defaulter making a payment in cash to the police officer serving the

¹ Confiscation orders are imposed under the Proceeds of Crime Act 2002 or the Proceeds of Crime (NI) Order 1996. A confiscation order is an order directing the payment of money obtained by a defendant as a result of his/her criminal conduct, to the Crown. In Northern Ireland only the Crown Court has the jurisdiction to make a confiscation order. Confiscation orders are generally larger in value than other monetary penalties but smaller in volume.

warrant, or serving a prison sentence².

8. Two judgments were given by the Divisional Court on 22 March 2013 in relation to five judicial review applications that had been lodged challenging the arrangements for imposing and enforcing fines and confiscation orders. The Divisional Court found that a number of long established processes failed to comply fully with the legislative provisions in a number of respects:
 - the court should not consider how to deal with default at the point of sentence but should only do so after the default has occurred;
 - the defendant should be given notice of the date of the 'default hearing' and should be given the opportunity to attend and make representations;
 - when using the imprisonment option, the court must correctly apply its discretion to determine the appropriate period and should not automatically select the band maximum. It must also articulate this period in court for the sentence to be valid; and
 - where the court issues a fine default warrant it should specify a period of time (of up to 12 months) within which the warrant must be executed. If this period expires the police should return the warrant to the court to allow a Judge to determine if the warrant should be renewed or cancelled.
9. As a result the Fine Collection Scheme Office, while continuing to deal with defaulters in line with normal operating procedures, suspended the issue of warrants. Outstanding warrants were recalled and are currently being reviewed by NICTS and the Judiciary to consider further appropriate enforcement action. At 31 March 2013, there were outstanding warrants with a value of £8.2 million, and financial penalties with a value of £10.8 million that had not yet reached the default stage.
10. In response to the judicial reviews the NICTS worked with the Office of the Lord Chief Justice (OLCJ) to develop more detailed arrangements which reflect the process outlined in paragraph 8.
11. The new processes are interim arrangements until reforms in relation to the collection and enforcement of fines are introduced through the Fines and Enforcement Bill which will include the establishment of a new fine collection and enforcement service. The new service will have

² In some cases there was also the option of the Court cancelling the fine.

an enhanced range of powers to collect and enforce fines and other monetary penalties, and will reduce the number of cases requiring a default hearing. Subject to having the necessary primary and secondary legislation in place, it is anticipated that the new fine collection and enforcement service will be operational by the end of 2016.

12. The interim arrangements substantially change the enforcement and collection process and raise doubts about the accuracy of the impairment in the 2012-13 Trust Statement. Consequently, the impairment figure is likely to be understated and, given the volumes involved, (approximately 1,800 fine warrants issued a month relating to 1,200 defendants), the introduction of a default hearing will have significant resource implications for the courts, both in terms of administration and judicial time until a new civilian enforcement service is legislated for.
13. I have limited the scope of my audit opinion as I am concerned that there is insufficient evidence to substantiate the completeness and accuracy of the impairment and the collectability of outstanding debt at the 31 March 2013.

Limitation in scope arising from insufficient evidence to satisfy myself that material fraud and error did not exist within receivables (outstanding debt)

Payment for warrants could only be made in cash

14. The collection and enforcement process in place during 2012-13 meant that the PSNI received payment for warrants in cash which was then held for a time before being lodged. The cash collected by PSNI was not recorded in the PSNI's accounts and was not, therefore, subject to audit. When a warrant is collected by PSNI, information is sent from the PSNI's Niche system to the Integrated Court Operations System (ICOS) indicating that the warrant has been executed by payment. The updated warrant status is held on ICOS until the payment is physically received by NICTS. At that point ICOS is updated to reflect receipt of the payment.
15. Our review found that there were insufficient controls over the cash collection process, with:
 - no monitoring of warrant execution performance;
 - not all warrant receipts transferred to NICTS on a timely basis;
 - limited reconciliation between warrants executed by payment and monies received;
 - warrant notification forms not signed by both the Police Officer and defendant when warrants were executed by payment; and
 - warrants executed by individual officers.

16. In March 2012 a formal investigation commenced into irregularities noted as consequence of a reconciliation process between PSNI and NICTS which identified a number of outstanding receipts for warrants which had been recorded as executed by payment to PSNI on ICOS but no payment received. As part of this process discrepancies were reconciled by PSNI apart from approximately £60,000. PSNI was able to trace the amount to warrants associated with one distinct area of PSNI operations. PSNI notified me of this suspected fraud and I have been advised that the Public Prosecution Service (PPS) has directed prosecution for the theft of cash to the value of £52,789.

17. In response to the discrepancies identified, PSNI commissioned Internal Audit to undertake a review of the reconciliation process between PSNI and NICTS. While Internal Audit provided a limited assurance rating, PSNI has subsequently taken steps to address the risks and control weaknesses identified. PSNI's business services reconcile reports detailing warrants executed with cash collected on a weekly basis and are working with NICTS to put in place more robust payment processes.

18. PSNI has recently reviewed the process of cash handling and a number of controls have been identified which aim to mitigate the risks associated with cash handling. I welcome this development however, while there are no known, suspected or alleged incidents where cash has been collected and not recorded, apart case referred to in paragraph 15, there is an inherent risk in any cash collection system which is difficult to eliminate completely and for this reason PSNI cannot provide sufficient evidence to substantiate that material fraud has not occurred. On this basis, I have limited the scope of my regularity opinion³.

The current framework for fine collection creates tension between accountability and responsibility

19. The imposition of a fine is widely used to dispose of a range of offences. However, the current framework for fine collection has created tension between accountability and responsibility. While the NICTS is accountable for the income received from financial penalties and responsible for generating a warrant of commitment for fine defaulters, the PSNI has statutory

³ The legislation requires the Comptroller & Auditor General to provide an explicit and separate opinion on whether the expenditure and income have been applied in accordance with the Assembly's intentions and governing authorities.

responsibility for serving the warrant and collecting the associated fine. There are no formal targets set for the enforcement of warrants in terms of time or value collected, and there is no Service Level Agreement in place between the NICTS and the PSNI to monitor warrant enforcement. The PSNI considers the enforcement of warrants and collection of fines to be a poor use of officer time when resources are already stretched. PSNI has estimated that it costs £3 million of Police Officer time per annum enforcing warrants and collecting fines based on the systems in place prior to the introduction of default hearings.

20. The Department's Fine Collection and Enforcement Programme Board has acknowledged that fine warrant enforcement is not a good use of policing resources and is committed to reducing significantly the level of police-led enforcement required. The introduction of default hearings has already reduced the number of warrants issuing to police and this number will reduce further following the introduction of the fine collection and enforcement service.
21. Many defaulters have gone to prison as a way of having their fines paid off, putting increasing pressure on the Northern Ireland Prison Service (NIPS). While sentences were generally short (only three to four days), in 2008 it was estimated⁴ that they accounted for 30 per cent of receptions into prison, resulting in further significant public costs of around £150,000 per year. Figures provided by NIPS indicate that the additional costs have now reduced to £65,000 per year.
22. As a result of the judgments of the five judicial reviews, defaulters who served prison sentences under the warrant system in place prior to March 2013 are now considered to have been unlawfully imprisoned. There is a risk that defaulters may seek compensation for unlawful imprisonment. The value of any compensation likely to be awarded is unknown however there would be significant costs associated with such cases in terms of court time and legal fees. The issue of liability is still to be determined and the Departmental position is that any finding of liability will be robustly defended.

⁴ Fine default in Northern Ireland: a consultation, Northern Ireland Office, 2008

The Department's reform of the system for dealing with fine defaulters programme began over two years ago

23. The existing cash based system of warrant collection is out of date and there are insufficient controls in place to prevent and detect fraud. I agree with the Criminal Justice Inspector⁵ that the current system is inappropriate and an expensive use of police and prison resources. In my Report on the 2011-12 Trust Statement I referred to the Department's plans to reform the system dealing with fine defaulters by:

- developing a new civilianised enforcement service similar to that operating in England, Wales and Scotland;
- tackling outstanding warrants and developing new arrangements for dealing with defaulters; and
- rolling out a community based alternative for non payment of fines as an alternative to imprisonment.

A proposed new collection and enforcement service should largely remove the PSNI from the fine collection process

24. In 2013, the Department established a Programme to introduce a Fine Collection and Enforcement Service to replace police-led enforcement. The intention is that the court will continue to set the fine but the new service will collect fines, agree payment periods and the collection method, under court authority. If the person fails to make the payment the case would be returned for a default hearing at which the court will decide how to enforce the order. This should largely remove the PSNI from the fine collection process.

25. The Department is currently drafting legislation which should be introduced into the NI Assembly in early 2015. This legislation and related secondary legislation is required to enable the commencement of the new service to become operational by the end of 2016. This will allow deductions to be taken from an offender's salary or wages or social security benefits and also allow seizure of vehicles and access to bank accounts within regulated frameworks where payment can be made.

⁵ Criminal Justice Inspection Northern Ireland reported on the enforcement of fines in March 2010 and published a follow up review in July 2012.

Following changes to the legislation fine default hearings commenced in June 2014

26. Although the enforcement process was suspended as the practice for dealing with non-payment failed to comply fully with the existing legislative provisions there is no question as to the validity of the fines themselves. As a result, amendments have been made to the Magistrates' Courts Rules and default hearings commenced in late June 2014. As at 8 September 2014 NICTS had issued 5,391 fine default hearing notices in respect of cases where court records show that a fine imposed has not been paid.

Supervised Activity Orders have been piloted as a community based alternative to prison

27. Supervised Activity Orders give Courts the power to impose a community based alternative to prison for the non payment of fines. They are only available for adults in respect of fines of up to £500, and require community activity of between 10 and 100 hours. In an attempt to reduce the number of fine defaulters sent to prison the Department has piloted the use of Supervised Activity Orders in two Court districts⁶. The pilot, which ran during 2012 and 2013, was administered by the Probation Board for Northern Ireland, working with community partners to provide placements. The Department provided £135,000 to the Probation Board to fund the pilot schemes and an additional £35,000 to update ICOS to facilitate their operation. The Department recently consulted on the option to use Supervised Activity Orders as the default option for fines of £500 or less. This was supported in the consultation responses and is being taken forward in the Fines and Enforcement Bill.

Conclusion

28. The problem of fine default is not a new one. Despite the fact that consultations in 2008, 2011 and 2014 have provided opportunities for reform, the current system is neither effective nor efficient and is vulnerable to fraud and error. I am concerned that there is a risk that fines may not be collected resulting in a significant loss to the Northern Ireland public purse. In addition, the fallout from the recent judicial reviews will mean a further substantial loss to public funds both in terms of the amount of fines collectable and potential compensation costs for unlawful imprisonment in lieu of fine payment.

29. I note the Department's proposals to support those who find it difficult to clear a fine and welcome the pilot schemes to use community based options to prevent such people ending up in prison for non-payment. However, the Department needs to take urgent steps to address

⁶Pilot schemes were run in Newry and Mourne, and in Lisburn.

those who refuse to pay and in particular offenders who regard a short prison sentence as an attractive alternative to payment.

30. The Department must ensure that any new fine collection and enforcement service has clear accountability and that all roles and responsibilities are well-defined from the outset.

KJ Donnelly
Comptroller and Auditor General
Northern Ireland Audit Office
106 University Street
Belfast
BT7 1EU

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APPENDIX 1

FINANCIAL PENALTIES

(source: NICTS)

FIXED PENALTY NOTICES (FPNs)

FPNs are imposed by PSNI and DVA. FPNs are issued for traffic rule violations and other vehicle rule violations. FPNs that remain unpaid for 45 days are uplifted by 50% and registered as court imposed fines that are sent to the court to be enforced by the NICTS.

PENALTY NOTICES for Disorder (PNDs)

Since 6 June 2012 Sections 59 – 70 and Schedule 4 of the Justice Act (NI) 2011 gave PSNI the power to issue a defendant with PNDs for specified offences. These notices are issued as an alternative to a court prosecution. If a penalty notice remains unpaid after 28 days the value will be uplifted by 50% and imposed as a court fine (similar to FPNs).

COURT IMPOSED MONETARY PENALTIES

Include fines; extra costs and other party costs awarded in court to cover prosecution costs such as summons server fees and court appearance fees; other party compensation which is awarded in court to victims of crime or maybe awarded in relation to injury or damage to property etc.; and fixed penalty enforcement fines and unpaid PNDs which are FPNs and PNDs that have remained unpaid after 45 days and 28 days respectively and have been registered as a court imposed fine. These penalty notices are uplifted by 50% of the value of the original penalty notice when registered as a court imposed fine on ICOS.

CONFISCATION ORDERS

This is an order directing the payment of money obtained by a defendant as a result of his/her criminal conduct, to the Crown. Confiscation orders are generally larger in value than other monetary penalties but smaller in volume. Interest accrues at a rate of 8 per cent per annum on those confiscation orders that have a balance remaining unpaid after the payment date has expired.

OFFENDER LEVY

From 6 June 2012, an offender levy has been imposed on fines and immediate custodial sentences for offences committed on or after that date. The receipts obtained from the

collection of these levies are collected by the NICTS and transferred to the Department of Justice Victims of Crime Fund. These will then be used to pay for projects that support victims and witnesses in the criminal justice system as well as local initiatives taken forward by groups working with victims in the community.