

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 2012

Introduction

1. The Northern Ireland Courts and Tribunals Service (NICTS)¹ acts as an agent for the collection of financial penalties imposed by the Judiciary, the Police Service of Northern Ireland (PSNI) and the Driver and Vehicle Agency (DVA). Financial penalties include fixed penalty fines, court imposed monetary penalties and confiscation orders. The revenue collected is paid to the Northern Ireland Consolidated Fund after deduction of some allowable costs incurred in collecting the fines. Fines can be cleared in a number of ways including settlement in full, payment by instalments, clearance through an appeals process, serving a prison term, a decision of the court or by Supervised Activity Orders (SAOs)².
2. This is the first time the NICTS Trust Statement³ has been produced by NICTS and audited by me. The previous reporting arrangements within NICTS's financial statements are described in the Foreword to the accounts (page 9). These disclosures were audited as part of the NICTS audit. The main benefit of the new reporting requirements is that the accounts disclose the level of outstanding debts for the first time. I welcome this increased disclosure and accountability. Total debts were £19.3 million at 31 March 2012. This level of debt is extremely high when viewed against annual revenue income of some £13.8 million. The debt is broken down as follows:

	Debt £m	Impairment ⁴ £m	Revised Debt £m
Outstanding Warrants	8.4	5.4	3.0
Confiscation Orders	6.4	0.6	5.8
Court Fines	2.7	0.5	2.2
Instalment Orders	1.8	0.0	1.8
Total	19.3	*6.5	12.8

*£6.5 million of the £19.3 million debt in the Trust Statement is judged to be impaired and which NICTS do not anticipate will be recovered.

3. Similar accounts have been prepared since 2010-11 by HM Courts and Tribunals Service, an agency of the Ministry of Justice.

¹ The NICTS is an executive agency of the Department of Justice (DOJ) and its accounts are also consolidated into the Department of Justice's Resource Accounts.

² The use of Supervised Activity Orders (SAOs) has been piloted in Newry and Lisburn Court districts and is currently being evaluated. Under the proposed approach, SAOs give the courts the power to impose a community based alternative for non payment of a fine rather than a prison sentence.

³ The NICTS Trust Statement is prepared and audited under section 11 of the Government Resources and Accounts Act (Northern Ireland) 2001.

⁴ Impairment is a technical term defined by IFRS 36 and IFRS 39. In this case the impairment is the difference between the amount of fines or penalties imposed and amount of fines or penalties likely to be collected.

Purpose of the Report

4. As the appointed statutory auditor, I am required to examine, certify and report on the NICTS Trust Statement. The purpose of this report is to explain the background to my qualification on the NICTS Trust Statement for the year ended 31 March 2012.

Background

5. Producing the accounts in this format for the first time has proved challenging. I understand that data extractions and reconciliations needed to prepare the accounts were time consuming due to data being held in two separate systems, neither of which were designed for accounting purposes. For the purpose of the preparation of the accounts, a data extraction exercise and a reconciliation of the financial information in the two systems were needed which had not been prepared previously. The two systems are:
 - the PSNI's Vehicle Procedures/Fixed Penalty Office database for the issue of fines by PSNI and DVA; and
 - the NICTS ICOS system which records the receipts collected and the court imposed fines and confiscation orders.
6. The extraction and comparison of records in the two systems was an extensive exercise and highlighted discrepancies with records dating back to 1981. NI Prison Service (NIPS) records were also used in the reconciliation as a notification is sent from NIPS to NICTS when an offender has served a prison sentence and consequently the outstanding fines are then cleared⁵.
7. NICTS does not have full access to the PSNI's VP/FPO system and therefore relies on co-operation from PSNI to extract data to produce the Trust Statement. An assurance on the accuracy and completeness of the data provided by PSNI to NICTS was received from the PSNI Accounting Officer.
8. Fixed penalties issued by PSNI and DVA that remain unpaid after 45 days are recorded as court imposed fines and transferred to the NICTS's ICOS system. If these court imposed fines have not been cleared from ICOS after 28 days then a summons is sent to the debtor and the case is listed for a hearing to allow a warrant⁶ to issue. The ICOS system also records all financial penalties imposed in court including confiscation orders and provides management information on them.
9. Fines passing their due date are passed to the NICTS Fine Collection Scheme Office⁷. If the follow up process is unsuccessful then a warrant will be issued by the court which is then forwarded to PSNI for enforcement. Responsibility for enforcing warrants under Article 92 of the Magistrates' Courts (NI) Order 1981 currently falls to PSNI. At this point the fine can be cleared by either:
 - a cash payment to police officers serving the warrant;
 - serving a prison term; or
 - clearance by the court.

⁵ Some £ 1.6 million of debts were cleared in this way in 2011-12.

⁶ A warrant is a legal instrument issued by a court authorising an officer to carry a judgment into action.

⁷ The Fines Collection Scheme Office was established in May 2009 by NICTS and recommendations were made in the CJINI report to strengthen the effectiveness of the Scheme which have been implemented.

Clearance by the court requires the outstanding warrant to be brought back to court by PSNI as unexecuted and the court can then cancel the warrant and clear the debt or have it re-issued. The court must have evidence of any attempt or attempts at executing the warrant.

10. One of the main challenges in preparing these accounts was in identifying and valuing outstanding debt and, in particular, outstanding warrants of which there are a considerable number unpaid. Debts are valued net of impairments, that is, an estimate is made to reduce the amount outstanding to the amount that is likely to be collected. The level of impairment tends to increase the longer the debt is outstanding and the age depends on the ability or willingness to pay and the effectiveness of the collection process.
11. NICTS has debtors of £19.3 million at 31 March 2012, including outstanding warrants of £8.4 million. Against warrants is an impairment of £5.4 million, the amount of debtors which NICTS anticipate will not be recovered as a result of a number of factors, primarily the inability or unwillingness of an offender to pay or weaknesses in the systems for collection.

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

12. I have limited the scope of my regularity opinion⁸ as I am concerned that there is insufficient evidence to substantiate that material fraud has not occurred during 2011-12 in the collection of cash on outstanding warrants through cash being collected but not lodged.
13. This is the first time I have been able to audit the balance in outstanding warrants of £8.4 million, at 31 March 2012. My regularity opinion, however relates solely to the transactions in the year of account. Consequently, I do not consider that there is sufficient evidence over the regularity of the amount of debt that has been impaired in the period of £1.3 million, as I am unable to substantiate how much of this impairment could be due to fraud where cash is collected but not banked rather than issues with offenders settling their debts. If I had audited this balance in previous years, I would also have been unable to obtain sufficient evidence to substantiate that material fraud had not occurred in the cumulative balance to date of £5.4 million.
14. My audit examination found material weaknesses in controls over outstanding warrants issued by the courts and the safe-keeping of cash received on their collection. At 31 March 2012, there were 26,571 cases had outstanding warrants with a value of £8.4 million (at 31 March 2011, 26,218 cases totalled £6.7 million) recorded as unpaid, and of these warrants £6.0 million related to those outstanding balances which were imposed between one and five years, and £1.9 million related to those outstanding balances which were imposed over five years ago.
15. Due to the way the existing process is designed, PSNI can only collect payment for warrants in cash. PSNI hold the cash in a secure safe for a period before being lodged. Warrants collected are sent to NICTS and the ICOS system is updated once the matching receipt is received into NICTS's bank account. PSNI carry the risk of cash receipts not being properly recorded or lodged. There is an inherent risk in any cash collection system, which is difficult to eliminate. My concern is that warrants could be collected but the cash and details of the fines not recorded. I have been notified of a suspected fraud in this area and I have been advised that an investigation is on-going.

⁸ The legislation requires the C&AG 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.

16. I have not identified sufficient controls to give me assurance over the completeness of the systems used to match warrants served against cash collected. My staff have not been able to obtain sufficient assurance that material fraud or error has not occurred. I recognise the inherent difficulty in controlling the requirement to collect warrants in cash.
17. In conclusion, I have limited the scope of my opinion as I am concerned that the current system provides insufficient evidence to substantiate that material fraud has not occurred in the collection of cash on outstanding warrants. I do not consider that there is sufficient evidence over the regularity of the amount of debt that has been impaired in the period of £1.3 million, as I am unable to substantiate how much of this impairment is as a result of fraud rather than being unrecoverable due to an inability or unwillingness to pay. While the requirement to collect warrant debt in cash means that it is difficult for PSNI to provide me with sufficient evidence that all cash collected has been banked, I would recommend that the current control environment is reviewed in light of the risk of potential fraud.

Missing warrants

18. The position on outstanding warrants (see paragraph 15) was reviewed again at 31 August 2012. At this time £6.4 million of warrants were outstanding relating to 34,226 in number, owed by 20,807 offenders. Of the outstanding warrants, 6,682 warrants with a value of £1.2 million were identified by PSNI as missing paper warrants.
19. Outstanding warrants are made up of unserved warrants and missing warrants. Unserved warrants are those where a warrant has been issued but has either not been actioned by PSNI or where PSNI officers have not been able to “serve” the warrant on the offender, often after several attempts. The DOJ told me that the serving of warrants needs to be considered in conjunction with other operational requirements and priorities of the PSNI on an on-going basis. The DOJ noted that it will take forward with PSNI any matters relevant to this issue. As noted in paragraph 10 above, outstanding warrants cannot be cleared without being put before a judge. A judge will decide whether or not to pursue the offender further after consideration of evidence of attempt(s) at executing the warrant.
20. Missing warrants totalling £1.2 million are in the main older paper warrants which I understand cannot be reissued. These mainly date from 6 April 1981 to 21 October 2009. There are no agreed protocols in place with PSNI regarding the enforcement of warrants. For example, I would normally expect to see agreed monthly targets on serving of warrants, and a prioritisation protocol that responds to the age of the warrant, the number of warrants outstanding against a single offender, and the monetary value of warrants.
21. Although not a matter requiring me to qualify my opinion on the Trust Statement due to the amount having occurred in prior years, I am concerned there is insufficient evidence to support the value of £1.2 million attributed to the significant number of paper warrants missing.

Judicial Review Challenges to Imprisonment as a result of Warrant Default

22. There were recently five separate judicial review challenges relating to arrangements for imposing and enforcing fines and other monetary penalties in Northern Ireland. The main grounds of challenge related to:
 - whether a person should be sentenced to imprisonment for an unpaid monetary fine without first appearing in court before a judge;

- the application of discretion from a judge on the length of sentence to be served for a fine default;
 - the pronouncement of the fine in open court; and
 - the length of time appropriate to execute a warrant before it is returned to court for further judicial consideration.
23. Judgments were delivered on 22 March 2013 and a further hearing on 3 May decided that the five cases will be put before the Queen's Bench Division. The judgments delivered in March found the current processes to be flawed in the following 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 a court issues a fine default 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 reissued or cancelled.
24. There are a number of implications from this judgment, including:
- A new 'default hearing' will have significant resource implications for the courts in terms of administration and judicial time. It also has implications for legal aid costs in representing persons being heard in court.
 - Consideration must now be given on how to deal with monetary penalties currently outstanding. At the time of the judgment (March 2013) there were 36,000 warrants with a value of £7.6m and 22,000 monetary penalties with a value of £10.5m that had not yet reached the default/warrant stage. The validity of these fines is not disputed however enforcement action, if needed, cannot be taken without the cases being taken before a court.
 - There is also an implication that some sentences applied in lieu of fine default could now be unlawful. As a result, damages may be due if it can be demonstrated that the process was flawed.
25. It is currently anticipated that a Queen's Bench Judge will consider these cases and conclude on these issues by the autumn of 2013.

The Enforcement of Fines

26. The Criminal Justice Inspector of the Criminal Justice Inspection Northern Ireland (CJI) reviewed the enforcement of fines in March 2010 and made ten recommendations. These included the need to reduce the number of warrants issued, the need for PSNI to continue to deal with persistent defaulters and a new stricter regime for the payment of fines which would maximise compliance and reduce recourse regarding police enforcement and imprisonment. The original report noted that;

"There is some confusion in the management of the enforcement process. The different agencies do not keep their records in a compatible way, their

computers do not talk to one another and there are paper receipts swirling around the system, which often go astray”.

27. A follow up Review was carried out in July 2012 and concluded that;

“The original inspection report highlighted the need to have a robust and effective enforcement process in place to deal with people who default on the terms of a court order. It also focused attention on the current system which was an inappropriate and expensive use of police and prison resources, and that there was a need for substantial changes to the enforcement process, and a stricter regime for the payment of fines to maximise compliance and minimise recourse to police enforcement and imprisonment.

So, despite the work which has been undertaken and a number of the recommendations being achieved or partially achieved, the statistics relating to the number of warrants and the number of fine defaulters being committed to prison remains significant.”

“The current situation remains inappropriate and ‘unsustainable’. Work needs to be urgently taken forward to introduce the stricter regime, as envisaged in the original inspection report, which will produce a system of enforcement which addresses the current issues of public confidence in the justice system, the social and financial cost of short-term sentences for fine defaulters, and the operational impact on the NICTS, the PSNI and the Northern Ireland prisons.”

28. The NICTS Fine Collection Scheme⁹ has been successful in improving the collection of fines, however the number of warrants requiring to be issued remains significant and this has cost implications in terms of police involvement in their enforcement and also in prison costs for those who will not or cannot pay their fine.

29. There are no formal targets set for the enforcement of warrants in terms of time or value collected, nor is there a formal Service Level Agreement in place between NICTS and PSNI to monitor warrant enforcement. PSNI’s procedures for collecting warrants require two officers to visit the recipient of the warrant, and on some occasions more officers are required. This is very resource intensive for PSNI especially at a time when police resources are already stretched. The CJI March 2010 report noted that:

“... this approach to enforcement is widely seen as outdated. The PSNI regard it as a poor use of a police officer’s time to be collecting small fines.”

30. The Department of Justice is seeking to reform the system that deals with fine defaulters. In February 2012, the Department announced that it intended to:

- develop a civilianised enforcement service based on a “Fines Officer” model largely removing police from fines enforcement;

⁹The Fine Collection Scheme was introduced in May 2009 in an effort to increase the amount of fine monies received and to reduce the number of fine warrants issued to the PSNI for execution. See page 16 of the Foreword to the Trust Statement for performance information.

- provide Fines Officers with statutory powers under court authority to manage and collect fines;
 - expand the ways in which people can pay and manage their fines including taking monies directly from income (from both earnings and benefits);
 - increased opportunities for community-based penalties instead of imprisonment including:
 - expanding the use of Supervised Activity Order; and
 - providing the Supervised Activity Order as an immediate option for the court as opposed to only being available when default occurs.
31. The Department of Justice has established a Programme, sponsored by the Criminal Justice Board, to take forward fine enforcement reforms. The Fine Collection and Enforcement Programme Board (the Board) membership includes representatives from DOJ, NICTS, PSNI, NIPS and PBNI. The Board has developed a governance and delivery framework to connect three main projects:
- Fine Default and Warrant Enforcement Project responsible for tackling the outstanding warrants position and developing new arrangements for default in consultation with the judiciary;
 - Fine Collection and Enforcement Service Project responsible for establishing a new Civilian Enforcement Service similar to that operating in England, Wales and Scotland; and
 - Community Based Alternative Activity Project responsible for rolling out Supervised Activity Orders as an alternative to imprisonment.
32. This is a challenging work programme and its success depends upon close co-operation and harmonised working between several justice partners. I welcome the work the Board has set out to achieve and the joint working initiatives proposed.
33. DOJ told me that the Fine Collection and Enforcement Programme consists of three interrelated projects and is being sponsored by the Criminal Justice Board. The Programme has been designed to maintain confidence in the use of fines as a credible deterrent to crime by substantially improving collection and enforcement arrangements for unpaid criminal court imposed fines, bringing them to a comparable standard to those already operated within jurisdictions in the remainder of the United Kingdom. Subject to availability of funding and the introduction of new legislative powers, the Programme is designed to introduce a new Fines Collection and Enforcement Service and implement Supervised Activity Orders as an alternative to prison by April 2015. The Programme Vision and Mandate were approved by the Criminal Justice Board in May 2013 and the first project - to tackle current fine default and warrant enforcement - was initiated in June 2013.
34. I am concerned that funds of over £8 million are at risk of not being collected and there is a loss to the Northern Ireland exchequer as a result. The cash based systems of warrant collection are out of date and there are insufficient prevention and detection controls. The fallout from the recent judicial reviews will mean a further loss to the public purse both in terms of fines collectable and the potential compensation costs for unlawful imprisonment. Along with the Criminal Justice Inspector, I too am concerned that there is additional cost to the Exchequer from an inefficient process that ties up precious justice resources in PSNI pursuing warrants and in NIPS housing offenders that do not pay.

35. I welcome the promotion of joint working between partners within the Department of Justice family, and I look forward to DOJ implementing the Criminal Justice Inspection's recommendations in full over the next few years.

36. I expect that the issues I have outlined will continue in these financial statements until a new regime is operated and the outstanding warrant position resolved.

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

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