REPORT TO: **POLICY AND RESOURCES COMMITTEE - 14TH JUNE 2004**

REPORT ON: **CONSULTATION ON THE REPORT OF THE SUMMARY JUSTICE REVIEW COMMITTEE**

REPORT BY: **DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)**

REPORT NO: **468-2004**

1.0 PURPOSE OF REPORT

1.1 To respond to a consultation on the Report of the Summary Justice Review Committee.

1.2 A copy of the consultation paper has been issued to Group Secretaries and a copy is also available for inspection in the Councillors' Lounge.

2.0 RECOMMENDATIONS

2.1 It is recommended that this report be passed to the Scottish Executive Summary Justice Review Team as this Council's comments on the Report of the Summary Justice Review Committee.

3.0 FINANCIAL IMPLICATIONS

3.1 None.

4.0 LOCAL AGENDA 21 IMPLICATIONS

4.1 None.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 None.

6.0 BACKGROUND

Introduction

Dundee City Council, in formulating this response, welcomes the concept of a comprehensive and wide-ranging review of summary justice in its present form. The focus of the review as detailed by Mr Wallace (at para 1.2) to "...promote a criminal justice system which is prompt and efficient..." is commendable in view of the findings of the Committee (at para 2.20) which concedes that the present system "...had become slow and congested...".

It is disappointing, however, that the Review Committee has failed to grasp this unique opportunity to reform a system stretched to its limits. There is, for instance, no suggestion of the introduction of basic legislative reform to replace the voluminous and complex array of case law and legislation which has been amassed over the years the existence of which militates against a prompt and efficient SUMMARY system.

This topic will be discussed in fuller detail hereafter (under the heading "Speeding up Court Procedures") together with the following recommendations made by the Committee namely the abolition of lay justice, unification of the summary court system, alternatives to prosecution, and fine enforcement. Whilst each of these topics are not mutually exclusive, for ease of reference they will be dealt with seperately.

Abolition of lay justice

This recommendation to abolish the role of lay justice within a reformed criminal justice system appears to be based on the cumulative effect of a number of concerns expressed by professionals who "...were typically in favour of a fully professional judiciary..." (para 7.5) .It is worth noting at this stage that, whilst the focus of the Report is the reform of the summary criminal justice system, not only those who operate within it but also the general public were consulted on their views as to the attributes of the lay justiciary.

The feelings of the general public are clear - (see para 7.9) " Sixty per cent...favoured the continuation of lay justice with 24% preferring a wholly professional summary system". Indeed, the view of the stakeholders was also unambiguous (para 7.5). In response to the consultation on first order issues it is reported "...62% of responses were in favour of retaining lay justice". On the basis of these irrefutable statistics the recommendation to abolish lay justice is based on the minority view whose " concerns" will now be examined.

The first of these appears to be based on the issue of lack of uniformity of practice throughout the country in relation to issues such as training and the format of the bench. However nowhere in the Report does the Committee identify the precise nature of its concerns. Indeed, statistics provided to the Justice Department annually by district courts in relation to a number of areas including the frequency of training of lay justices indicate that they are, on the whole, offered the opportunity to undertake development training at least once every six weeks. Furthermore, the District Courts Association has self- funded national training events for both justices and their legal advisers to ensure a uniformity of competence in decision-making . This is in contrast to the position of Sheriffs who preside over largely cases of a summary nature. Despite the proliferation of legislation and case law in recent years affecting the basis of sentencing and the decision-making process Sheriffs do not receive any training to develop their skills on the bench.

Dundee City Council would welcome the division of a national training programme of competence-based training for justices and their legal advisers to meet any gap in training needs that have been identified as the result of the Committee's research. In addition any programme devised to provide training on the implications of proposed reforms within the system would be implemented immediately.

The second area of "concern" is the perception of the inability of lay judges to deal with complex cases which, it is envisaged, would attract significant sentences in the reformed system (para 7.29). One specific piece of evidence cited for this proposition comes from the statistic provided at para 7.35 (in only 1% of cases where a charge has been proved has a custodial sentence resulted). The conclusion drawn is that despite possessing the power to impose custodial sentences justices do so so infrequently so as to demonstrate a lack of competence in this area.

However on closer examination of the basis for this statistic it is rendered meaningless. Case marking guidelines issued to Procurators Fiscal dictate that cases where it is likely a custodial sentence will result are not to be prosecuted in district courts. This, coupled with the exclusive impact to district courts of the recent introduction of the policy by the Scottish Legal Aid Board to refuse the grant of legal aid in cases where a custodial sentence is unlikely to result, points to the fact that justices do not impose custodial sentences more frequently than they do because to do so would be wholly excessive given the nature of the business before them.

This apparent lack of the appropriate use of sentencing powers is then compared by the Committee to the situation in England and Wales where lay Magistrates preside and exercise considerable sentencing powers which are shortly to be increased (para 7.32 - to enable them to impose a sentence of up to 12 months' imprisonment).

Dundee City Council contends that the apparent success of lay magistry in that jurisdiction is an important indicator to refute the conclusion reached that lay justices are unable to deal with the complex cases. Furthermore, the Review of Criminal Justice in Northern Ireland, though stopping short of recommending the re-introduction of full lay magistracy, in the light of the situation in Northern Ireland, nevertheless made recommendations embedding lay magistrates in the criminal justice system (recommendation 116.117). These recommendations found legislative expression in sections 9-11 of the Justice (Northern Ireland) Act, 2002.

The Committee's recommendation seems, therefore, to depart from the trend in neighbouring legal jurisdictions to entrench the principle of lay justice within their respective criminal justice systems.

The third area is the perception that delays in reaching a conclusion in cases are more likely to occur in cases which proceed before lay justices. Para 7.54 of the Report quotes figures from English courts- "45% of appearances before stipendiary magistrates led to adjournments compared to 52% of appearances before lay magistrates. This is both because stipendiaries were less likely to be asked for an adjournment and because they were more likely to refuse a request." The Committee accordingly concludes, " This...would become significant if a step change in the level of case management is required form the bench..."(referring to proposals for reform to the Scottish system). The Committee however is unable to produce statistics to justify the implication that the same picture exists in our legal system. In fact statistics quoted by it elsewhere in the Report tend to suggest that delays are more a disease of the sheriff courts than the district courts! At para 2.29 it is stated "...that in 2003 significant numbers of cases- 24% in the sheriff court and 16% in the district court- had not been disposed of 50 weeks after the offender had committed the offence." This statistic exists despite two disadvantages compared to their professional counterparts lay justices face in bringing cases to a conclusion. The first is the number of adjournments sought by defence agents as a direct result of the aforementioned Scottish Legal Aid Board policy which exclusively affects district court cases. The second is the number of adjournments of sentencing diets to secure information from DVLA as to the details of driver records of offenders. These are available via electronic transfer to Sheriff courts but not to district courts due to policy decisions of DVLA (currently being addressed at ministerial level).

Dundee City Council welcomes a valid statistical analysis being carried out to compare the time taken in the respective courts to reach a conclusion in cases but until the results of any such analysis are available no conclusions can properly be drawn least of all as a basis for a recommendation such as the abolition of lay justice.

The fourth area appears to be cited as the higher running costs of district courts as compared with the sheriff courts. The statistics relied upon (paras 5.39 and 7.64-7.71) have now been accepted as being fundamentally flawed (correspondence from the Scottish Executive dated May, 2004 confirms this).

Dundee City Council wishes to express its concern that these figures were cited as a basis for inferred criticism of the operation of district courts. Indeed, their inclusion is at odds with the expressed aims of the Review. In inviting responses through correspondence and in attending workshops attendees were specifically requested to put aside any cost implications in suggestions made or points of view expressed.

The final area of "concern" is the nature of lay justice itself. The Committee concludes (at paras 7.10 and 7.11) "...that the issue of lay versus professional justice was not one which could be resolved in the abstract." The Committee failed to explore the obvious benefits of community participation. This awareness of local issues and community make-up and demographics not only permits the lay justice to make decisions on the basis of legal training but also in the knowledge of the views of the community offended against. The complex decision-making process involved in determining sentence is made frequently after the sentencer has had regard to input from reports to assist understanding the context of the crime and the circumstances of the offender. The local lay judge enjoys the advantage of local knowledge to gauge the success or otherwise of suggested case disposals. This approach is in line with Scottish Executive policy of social inclusion.

Lay justices are comprised of a small, but significant, number of dedicated individuals whose motivation is one of community responsibility. Indeed the Committee narrates that the general public share this view (para 7.8)- " ...this...does appear to reflect the view that lay justice would be more likely to be aware of local sensitivities...". The Committee does not appear to share this view. In paras 7.58-7.62 it implies criticism of the social structure of bench-serving justices. It quotes a figure of 38.6% of justices as being aged 70 and above- this figure is wholly misleading since bench-serving justices cannot undertake these duties beyond the age of 70. Furthermore the Report fails to acknowledge that such justices are only appointed following approval of the Secretary of Commissions. In making such appointments the Secretary must have regard to the demographics of the commission area in which that appointee is to preside in order to ensure the bench reflects the ethnicity and gender balance of the community it serves.

Dundee City Council urges the Committee to re-evaluate the value of community participation in the delivery of justice.

Unification of the summary court system

The Committee's recommendation to unify the administration of the summary courts under the Scottish Courts Service is a proposal both radical and, it is contended, ill-conceived. The Committee itself acknowledges (para 5.2) that the majority of the responses to the consultation on first order issues by stakeholders were opposed to a single level of court. Nevertheless the Committee has made the recommendation based on a number of factors which will be examined hereinafter. Its approach, in determining its stance on this issue, is appropriate - ".. the Committee focussed on achieving the right fit between its recommended strategy for the summary criminal justice system and the structure and systems needed to support it…regards to the key principles …of effectiveness, simplicity and consistency" (para 5.4).

Its "fit" is recommended to be the Scottish Courts Service which currently is responsible for the running of sheriff courts. The reasons for the Report's decision to select this body are unclear. It currently presides over a system that, applying the key principles above, is less cost-effective, less consistent in its approach to training, and less effective in providing fast and efficient justice than district courts!

The reasons for the recommendation appear to be based on the comparison between administration by local authorities and the Scottish Courts Service in relation to a number of key areas. The first is entitled " Support To The Bench" (paras 5.7-5.12). The Report details the support to sheriffs provided by the Sheriff Principal, which is mainly administrative in nature. It then details the support to lay justices via the provision of services by the local authority. Its statutory responsibility is said to be interpreted with " considerable local latitude" when it comes to the provision of clerks and premises. This astonishing and damning assertion is not justified or evidenced in any way! Indeed the Scottish Courts Service performance in the provision of adequately trained staff and furnished accommodation is not explored at all. The Report does concede that the District Courts Association have arranged "…regular training courses of good quality.." (para 5.11) but is silent on the fact sheriffs receive no such training.

In short this section serves little purpose in shedding light on the assertion that the Scottish Court Service is better placed to facilitate the running of a faster and more efficient service.

The second key area is entitled "Investment In Estate" and affirms the Scottish Courts Service's commitment to ensuring ECHR, Health and Safety legislation as well as other legislation such as that ensuring the provision of disabled access to courts is met. The position of local authorities is identical but their position is not explored. It is simply stated that figures are unavailable to show the extent of investment in estate by local authorities.

This section does not bring us any nearer to discovering the factual basis for this recommendation. Indeed nowhere in the Report on this issue does any discussion focus on the possibility of local authority control coupled with the ring-fencing of funding to ensure national initiatives in relation to witness support services, accommodation, training and technological advance.

That latter issue forms the focus for discussion under the sections headed " Investment In Technology". Despite the fact that, "The Committee applauded the commitment of local authorities to the importance of data flow in relation to district court business." (para 5.17). It concluded that a national unified body is required to ensure uniformity of practice. At present over 75% of criminal court business dealt with by district courts is dealt with by electronic exchange. Despite the massive financial and staffing input involved local authorities have embraced technological enhancement of court processes and of the principle of 'e-government'. There is no evidence or suggestion this progress would have been achieved in a different manner if centralisation had been effected. In fact this progress has been made in spite of geographical challenges facing authorities who are responsible for running multiple courts with cases which transfer between them. These challenges have been overcome as a result of the commitment by local authorities to the accurate and expeditious administration of justice.

This is in contrast to the concentration of the report on the remaining areas of discussion ("Better Deal For Court Users", Greater Flexibility", "…Responsiveness To Change" and "Costs"). The ethos in relation to these issues is that the number of court buildings will be fewer and one agency would be better placed to implement change rather that 30 or so local authorities. This may well be true in some senses, but one fundamental principle is ignored. Justice to all - not justice to the majority based on geographical considerations, costs, and rationalisation.

Dundee City Council contends that reform of the manner of administration of district courts is welcomed. However to focus the discussion on two questions- whether to maintain the status quo or defer to the authority of the Scottish Court service- is too limited on such an important issue. The Council urges the Committee to consider other possibilities: for instance, the formulation of national policies for implementation in relation to standards of accommodation, levels of investment for district courts which may then allow local authorities to retain control: the ring -fencing of centralised funding to ensure justices work within a fully funded, effective, efficient and fair court system etc.

Alternatives To Prosecution

The Committee, in addressing this issue , clearly recognises the need to tackle the increasing burden placed on the summary court system by the ever-higher numbers of court proceedings initiated each year (para 11.3). At para 11.9 it outlines its strategy to deal with this complex issue: "Our strategy is therefore to enable the courts to focus on more rapid handling of the more serious crimes and offences and those cases in which court ordered disposals are likely to have a beneficial effect on offending behaviour, while giving police and procurator fiscals the range of powers they need to respond quickly and appropriately to more minor offences, helping to forestall their escalation."

There are, however two very major assumptions based within this strategy, both of which are capable of challenge. The first is the notion that cases are identifiable in which court ordered disposals "are likely to have a beneficial effect on offending behaviour..". What are they? How are they so easily identified? There are no examples quoted by the Report therefore it seems astonishing to suggest this section of cases exist without identifying them. The second is the concept that minor offences can be addressed by actions of the police and /or procurators fiscal "..helping to forestall their escalation". What does the Committee propose to empower these agencies to do to produce such a desirable effect on offending behaviour?

The answer is the widening of the scope of the fiscal fine system presently in operation. The reasoning for this appears to be on the basis that the present system works and its expansion, with the introduction of some tightening up of procedures will serve to alleviate the burden on summary courts.

The evidence, however, that the system works is conspicuous in its absence from the Report. Indeed at para 11.18 it is narrated that of the 34,697 offered in the year 2002-2003 only 13, 985 were fully paid. This figure does not, of course, include the numbers which were the subject of attendance at means courts to effect payment. On basic calculations nearly 60% of those offered were either unpaid or rejected. Perhaps this figure would be more palatable if figures reflect a deterrent effect in offending behaviour. They do not. The focus of the Report, as previously detailed, cites the increasing numbers of police reports forwarded annually to the procurator fiscal service. This is reiterated at ch.2 - the aim of the Report being to produce a reformed system which is "...effective in deterring, punishing and helping to rehabilitate offenders...".

Indeed the proposal of reform includes the concept of increasing the levels offered to anywhere up to between £200 and £500. This is an extremely concerning concept. Of the fiscal fines offered on 2002-2003 (totalling 35,0353) only 4,021 were at level £75 or above! Applying basic common sense it would seem that if the present system is not being utilised to its full potential by those procurators fiscal the reasons for this should be examined before the scheme is widened.

These concerns are only some of many that can be levelled at the proposed expansion of the fixed penalty system. The others are perhaps more obvious and require little explanation : the ability of some to avoid a criminal record due to financial advantage ; the effective exclusion of non-earning 16-18 year-olds who are responsible for a disproportionate level of offending behaviour ; the inability of offenders to understand the consequences or otherwise of receiving the offer of a fiscal fine ; the accreditation to the prosecution service of the role of 'judge, jury and executioner' ; the lack of transparency to the public of the decision-making process in allocating cases for this type of disposal; the lack of up-to-date information regarding questions such as finances of accused persons in police reports which are the main decision-making tool of procurators fiscal; the lack of the ability of the accused person to offer mitigation which may otherwise render a different means of disposal; and the high degree of possibility that the proper identification of the vulnerable offenders within our society will not be possible (eg mentally ill).

Perhaps the notable exception to these criticisms is the proposal to include fiscal compensation orders within the existing scheme. One of the anomalies of the present state of affairs is that where the question of compensation may reasonably arise in the disposal of the case proceedings should be initiated. Clearly this does result in a disadvantage to some offenders and the proposals are workable if the standard of police reports dealing with offences which are potentially capable of inclusion in the scheme is improved to provide accurate and up-to-date information. At present the reporting culture within police forces is driven by time-limits for submission which is a disadvantage where investigations as to actual loss (as opposed to estimated loss) are required.

Dundee City Council welcomes the drive towards the diversion from prosecution schemes. However that presently being considered will not achieve the goals for which it is intended. The aim to tackle re-offending behaviour is one better served by the commissioning of fuller research into deterrent methods. The solution may well lie in addressing wider social and political issues and the narrow examination of it by a criminal review committee is unlikely to yield a definitive answer.

Fine Enforcement

The Committee's aim to reduce the resources of courts and the police force by removing the emphasis that exists in current enforcement mechanisms is broadly welcomed. The current powers of enforcement rely heavily on recourse to court decision if one enforcement mechanism fails in order that either another mechanism is tried or further sanction is applied. This process continues, broadly, until payment is made or imprisonment for default results. The proposals for reform introduce a recognised ' building block ' approach with identifiable steps in the fine recovery process that may be applied equally no matter its origin eg court fine, fiscal fine etc. This approach, coupled with reform to enable deductions from benefit to become a valuable tool in fine enforcement would result in greater levels of payment success.

The current system is criticised by the Committee for its lack of consistency. That, it is contended , is due to the different enforcement patterns which are evident between sheriff and district courts and indeed between individual courts. The conclusion of the Committee is that a single fine enforcement agency could address at least some of these difficulties no part in due to a uniformity of approach. It cites benefits such as cost effectiveness, a build-up of expertise, the use of a single dedicated court system for use, and -of course- the ease to the offender to have all fines housed under one collection authority .

In truth, the report fails to recognise that the disparity in collection patterns across the country is due, in no large part ,to the enforcement legislation available to courts. The age of the offender, his/her ability to pay, his/her willingness to pay, the opportunities given for payment and the proportionality of ultimate disposal are all considerations resulting from statutory provision to which courts should have regard. These areas could be addressed by comprehensive legislative provision applying equally to all sources of fine and would remove the need for recourse to the criminal court as a decision-making body. The move to centralised collection seems to have little additional benefit given the intended legislative reform. Indeed, at present many district courts already act as centralised local enforcement agencies collecting fines issued by many different agencies (police, procurators fiscal, local authority departments) and the disparity in fine collection patterns is, therefore, attributable to the current legislation governing enforcement. Local authorities have developed centralised fine enforcement systems and include facilities such as on-line payment and payment by switch/debit card. The only perceived advantage which could then be offered by a single agency is the housing under one umbrella of outstanding fines. However to actually put such a mechanism in place is to abbrogate responsibility from offenders for payment. Many have a large number of court cases and the reminder mechanism is simply attending at court in respect of ongoing cases and making payment then.

Dundee City Council accepts the proposals for legislative reform to effect a building-block approach to fine enforcement irrespective of the origin of the fine. The proposal to render many areas of enforcement as administrative is workable given a comprehensive enactment with the safeguard of recourse to court decision in the event of dispute. However the Council contends that the case for a single collection agency is not made out given the benefits which would be obtained by the legislative reform of the enforcement process.

Furthermore, and significantly, the Committee fails to address the collection of endorse able road traffic penalties, whether generated as a court disposal or a conditional offer by police and/or procurators fiscal. Legislation applicable to Great Britain as a whole provides that these matters can only be processed by courts due to the endorsement of driving licences and dictates the role of court clerks in this process. Any centralised administration agency could not, therefore, deal with these matters which generate an estimated £5 million in collected revenue by district courts. Indeed even Scottish Courts Administration would not be an option for the above-detailed reasons and therefore legislative reform of road traffic legislation would be required to proceed via Westminster.

<u>Speeding Up Court Procedures</u>

The Council applauds the Committee's far-reaching and thought-provoking proposals contained within chapters 13 to 29 inclusive which detail the tightening up of current procedures and legislative enactment to address the reasons for delay in the summary justice system. The suggested reforms aim to improve the situation from the point of reporting a case to the procurator fiscal's office up to and including final disposal at the sentencing stage. In particular the proposals for conducting trials in absence of accused persons where the presiding judge is satisfied as to citation of the accused is of obvious importance to the aim of speedy and efficient justice. At present, witnesses who attend court are often frustrated, and frequently more than once in the same case, due to the non-attendance of the accused. The proposals to combat this represent a logical extension to limited powers which already exist under the present system. However their merit is advanced by further proposals to introduce easily-accessed appeal procedures where evidence subsequently comes to light which dictates that a trial in absence should not have proceeded.

However, perhaps the most radical of these proposals are those aimed at ensuring cases are fully prepared at intermediate diet stage, the encouragement of early pleas and the increased use of undertakings to appear.

In relation to the latter it is proposed that more accused persons are liberated from custody to appear at a court diet within 3 to 4 weeks of said liberation. At present this system is very rarely used and the vast majority of offenders are released to be cited to appear at diets often within 10 to 12 weeks of liberation. The Report's conclusions to extend this scheme and its suggestions for mechanisms and procedures to improve communication between the police force, the procurator fiscal service and courts to enable this practically to be possible are sensible and the resultant benefits obvious. However they are not, per se, as far reaching as they could be. By the Committee's own admission in England and Wales recent reforms to speed up their court processes has resulted in cases being heard a matter of weeks after the offence has been committed. The report, however does not examine the measures taken to effect such a dramatic result and merely states (at para 13.15): " We take the view that there is a danger that the defence and prosecution would not be adequately prepared if cases were brought to Court after such a short period in Scotland...". This would appear to admit defeat without expanding on the reasons for this conclusion. There is absolutely no clear reason why the situation in this country should differ to such a huge degree to that of our neighbours with the result that our system is intrinsically slower. If the Committee's conclusions are accurate then surely the resultant concern is obvious: has it truly addressed its remit to deliver an efficient and summary system of justice?

The radical proposals to reform the intermediate diet system are basically two-fold. The first is to reflect a best practice approach by all parties involved in the process by encouraging full disclosure of evidence by the crown, communication between both the crown and the defence, and reinforcement of the role of the bench (eg in encouraging early pleas). The second is legislative reform of one subsection of an existing statute to allow a more proactive role to be taken by the bench in questioning both the crown and defence as to matters which may be the subject of contention to focus minds on agreement of evidence. Both of these approaches are merit us but their practical effect will be of limited impact.

The reason for this is that the obligation on both the prosecution and the defence to agree evidence already exists but is rarely discharged at intermediate diet stage by both parties. The reasons for constraints on the defence are well-rehearsed in the Report and are not disconnected to a large extent with the Scottish Legal Aid Board's policy on payment of legal aid in summary criminal cases. The Committee recognises that , although possibly beyond its remit, reform of the legal aid system is advantageous. It concludes that a 'front-loaded' system of remuneration which is designed to reward defence agents for investigating the merits of the case is required and indeed includes this as a recommendation in chapter 14 (at page 143). However the shortcomings of the prosecution are not examined. It is a fact that cases which are marked by the crown upon receipt contain details as to the witnesses to be cited, productions to be obtained and the routine evidence to be agreed. These instructions are carried out by administration staff but rarely do follow-up procedures exist to examine the state of preparation of a case prior to the intermediate diet. Often the only opportunity to identify areas not fully prepared rests with the depute preparing the cases for intermediate diet the day before the diet itself. In fact this is sometimes a luxury and deputes are required to deal with intermediate diets without having first examined the papers. This practice is contrary to the service's own code of conduct, ' The Book Of Regulations '. Also in contravention to said code is the use of Advocate assistance for intermediate diet courts but it is, unfortunately, a fact of life. Equally is the situation where individual deputes are forced to familiarise themselves with a huge number of cases at intermediate diet stage due to the scheduling of court business. Unless these shortcomings are addressed then the proposals of the Committee would have little or no practical effect.

One way to facilitate good practice by both defence and crown is to address the main criticism of the present system, namely that no sanction exists where the court is of the view that one or both parties have not discharged their obligation. The question of sanction is not without controversy and it is problems are obvious eg forcing a defence agent to proceed to trial where he is not prepared is effectively punishing the accused. However until it is examined and its merit or otherwise is fully debated any proposals to reform the intermediate diet process - which is so crucial in the prevention of delay- are redundant.

Finally the proposed reform of section 196 of the Criminal Procedure (Scotland) Act, 1995 to impose an absolute obligation on the sentencer to acknowledge an early plea, legal aid reform proposals as above detailed and increased disclosure of information by the prosecution at the stage of service of the complaint are all effective measures which will go a long way to sending a message to accused persons that a plea of guilty on the day of the trial diet is of no advantage to him/her. However one possible shortcoming is the decision of the Committee not to identify clear discount tariffs. Much discussion in the Report focuses on the recent case of Duploy and ors. v HMA (2003 SCCR 640) where the High Court laid down guidelines for sentencers in the situation where a plea of guilty is tendered without a trial proceeding. These included the form of wording desired to provide transparency of the discounting process, the range of factors to be taken into account in deciding to what extent (if at all) a discount is to be applied, and the range of disposals available to the sentencer (eg not just the discount in tariff but the imposition of a lower level sentence). All of these guidelines have been adopted by the Report. However, as above detailed, it fails to follow the High Court's lead of recommending discount levels. The case itself suggests that the level of discount should not exceed a third of the sentence which would otherwise have been imposed. The benefits to an accused of knowing the mathematical benefits of an early plea are obvious. Indeed the criminal justice system already embraces this principle in relation to areas such as the length of imprisonment to be served for convicted prisoners.

Dundee City Council acknowledges the basic proposals for speeding up the court process to be meritous but urge the Committee to examine the above detailed proposals to strengthen their practical effect.

7.0 CONSULTATIONS

7.1 The Chief Executive and Depute Chief Executive (Finance) have been consulted in the preparation on this report.

8.0 BACKGROUND PAPERS

Report of the Summary Justice Review Committee.

9.0 Name Patricia McIlquham

Depute Chief Executive (Support Services)

Date: 3 June 2004