

REPORT TO: POLICY AND RESOURCES COMMITTEE – 8 DECEMBER 2003

REPORT ON: REVIEW OF SUMMARY JUSTICE

REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)

REPORT NO.: 824-2003

1. PURPOSE OF REPORT

1.1 The purpose of this Report is to seek the Committee's views on the Scottish Ministers' Review of Summary Justice.

2. RECOMMENDATIONS

2.1 It is recommended that the Committee agree to advise COSLA that, for the reasons given in paragraphs 6.2 and 6.3, Dundee City Council does not believe that the District and Sheriff Courts should be unified, that lay magistrates should be abolished or that there should be a new national agency dedicated to the enforcement of fines in default. For the reasons given in paragraph 6.4 it may however be helpful to consider special prosecution arrangements for offences reported by local authorities and that Dundee City Council would wish to take part in further consideration of this matter.

3. FINANCIAL IMPLICATIONS

3.1 There are no financial implications arising directly out of this Report.

4. LOCAL AGENDA 21 IMPLICATIONS

4.1 There are no Local Agenda 21 implications arising directly out of this Report.

5. EQUAL OPPORTUNITIES IMPLICATIONS

5.1 There are no equal opportunities implications arising directly out of this Report

6. BACKGROUND

6.1 COSLA wrote to all Councils on 17 November 2003 seeking their views on three questions which affect local government's interests in the administration of the summary justice system. They are as follows

- Whether, given protection of local authorities' financial and staff interests, the District Courts should be unified with the Sheriff Courts and managed by the Scottish Courts Service
- Whether a national fines enforcement agency should be established
- Whether there should be special prosecution arrangements for offences within local government's regulatory regimes

Responses are requested by 15 December.

6.2 Unification of the District Courts and Sheriff Courts

The Scottish Ministers set up a Summary Justice Review Committee in late 2001 to review the provision of summary justice in Scotland, including the structures and procedures of the Sheriff Courts and District Courts, and to make recommendations for the more efficient and effective delivery of summary justice in Scotland.

Summary criminal justice and the summary courts account for 96% of the criminal cases heard without a jury, by a Sheriff in the Sheriff Court or by one or more lay magistrates (JPs) in the District Court. 34% of these cases are heard in the District Courts, which each Council manages in its own way.

It is suggested that there may be benefits from unification of the summary courts and their being run as a single system by the Scottish Courts Service. The benefits are seen as possible efficiency savings and consistency of provision throughout Scotland.

The Review Committee wishes to be sure that its proposals have the understanding, and ideally the support, of local authorities before it makes its recommendations to Ministers before the New Year.

The Review Committee is also aware that local authorities' views will necessarily be strongly influenced by their financial responsibilities for their staff and courts premises. In considering their reaction to this proposal for unification the Review Committee has therefore asked that Councils assume that, if unification of the summary courts were to proceed, the interests of all affected local authority staff would be fully protected in accordance with existing legislation, UK Government guidance and any further guidance issued by Scottish Ministers.

The Review Committee has further asked that Councils should assume that, were any transfer of the District Courts to the Scottish Courts Service to be undertaken, this would not be detrimental to the financial interests of any local authority.

It has been suggested during the review that lay magistrates should be abolished, to be replaced by a professional bench. The Review Committee's consultations have already clearly established that most local authorities would be opposed to this suggestion, on a number of grounds, principally that their local knowledge enables lay magistrates to respond to community concerns.

The Depute Chief Executive (Support Services) is of the view that the unification of the District and Sheriff Courts would result in the loss of the unique advantages provided for by lay justice. These include the provision of justice by members of the community who are aware of local issues and problems and the speedy delivery of justice.

Whilst it is true some have expressed negative views as to the role of District Courts in the prosecution system, overwhelming support has been given to their invaluable work by the most senior judges in the land namely those presiding in the High Court of Justiciary. There therefore seems no good reason to change the status quo.

6.3

A National Fines Enforcement Agency

The Review Committee is considering proposing that there should be a new national agency dedicated to the enforcement of fines in default. This would not affect fines collection arrangements, unless a fine was in default (although it should be noted that local authorities would, in the event of a unified summary court, no longer be responsible for collecting court-imposed fines). The Review Committee wishes to know Councils' views on:

- whether the new agency should enforce the collection of parking fines that were in default
- whether the new agency could enforce other financial penalties on behalf of local authorities
- the implications for local authorities of the removal of their fines enforcement responsibilities

The Depute Chief Executive (Support Services) is of the view that to be effective and efficient in the collection of fines any such agency would have to have powers of sufficient weight to ensure payment. At present the threat of imprisonment in the event of default of payment has resulted in a large portion of fines being paid in full. If no equivalent power was given to any such agency it would result in a less effective collection system. In addition the District Courts enjoy the cooperation of the Police in tracing and citing offenders, a situation which has been built up due to the good working relationship between both agencies and one which would not be easily replaced, if at all.

It would seem likely that fine enforcement, therefore, would rely heavily on the principle of recovery by civil diligence. Its flaws are well documented but the problem with the ranking of creditors would be an obvious hurdle which might result in certain agencies recovering sums due to the detriment of others. Again, there therefore seems no good reason to change the status quo.

6.4 **Special Prosecution of Offences reported by Local Authorities**

The Review Committee is aware that local authorities are often not successful in obtaining prosecution of a range of offences within their regulatory regimes. Such offences can include dog fouling, littering, and breaches of food safety, licensing, trading standards and planning legislation. The Committee wish to know COSLA's views on the need for special prosecution arrangements for offences within local government regulatory regimes, and the form which these might take. If there is clear agreement on the need for special arrangements then COSLA will provide an opportunity for local government to develop its thinking on their scope and form in the New Year.

The Depute Chief Executive (Support Services) is of the view that it may be helpful to consider special prosecution arrangements and looks forward to taking part in further consideration of this matter in the New Year.

7. **CONSULTATION**

- 7.1 The Chief Executive and the Depute Chief Executive (Finance) have been consulted in the preparation of this Report.

8. **BACKGROUND PAPERS**

- 8.1 Letter of 17 November 2003 from Councillor Alison Hay, COSLA Environment, Sustainability and Community Safety Spokesperson.

Patricia McIlquham

Date 5 December 2003

Depute Chief Executive (Support Services)