

REPORT TO: POLICY AND RESOURCES COMMITTEE - 15TH AUGUST, 2005
REPORT ON: REVIEW OF SUMMARY JUSTICE
REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)
REPORT NO: 419-2005

1.0 PURPOSE OF REPORT

To advise the Committee on the Review of Summary Justice.

2.0 RECOMMENDATIONS

It is recommended that the Committee:-

- (i) Remit to the Depute Chief Executive (Support Services) to forward a copy of this report to the Scottish Executive and COSLA as this Council's comments on the White Paper;
- (ii) Remit to the Depute Chief Executive (Support Services) and the Assistant Chief Executive (Management) to take steps to protect the interests of employees to be transferred to the Scottish Courts Service;
- (iii) Remit to the Director of Economic Development or his representative to accompany the Surveyor appointed by the Scottish Executive to fix market values for buildings, fixtures and fittings; and
- (iv) Remit to the Head of Information Technology to liaise, as necessary, with the Scottish Executive regarding Computer Systems etc.

3.0 FINANCIAL IMPLICATIONS

The financial implications of this change will not take effect until 2007/08 at the earliest and will be the subject of negotiation between COSLA and the Scottish Executive beforehand.

4.0 LOCAL AGENDA 21 IMPLICATIONS

There is no sustainability or Anti-Poverty implications.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

There is no Equal Opportunity implications.

6.0 MAIN TEXT

Reference is made to Article VI of the minute of meeting of the Policy and Resources Committee of 14th June, 2004.

In 2002, the Scottish Executive commissioned a review into the conduct of summary criminal court business by the McInnes Committee. It published its proposals for reform on 16th March, 2004 which included the abolition of the role of lay justice, the creation of a central fines enforcement agency to collect a plethora of fines, a radical increase in alternatives to prosecution, and the unification of District and Sheriff Courts under one agency. A consultation process followed during which opposition and concerns were expressed from a number of sources as to the conclusions reached by the Committee.

Consequently, a White Paper has now been issued detailing the Scottish Executive's proposals for reform entitled, "Smarter Justice, Safer Communities" - Summary Justice Reform Next Steps.

This report summarises the Scottish Executive's proposals on the reform of summary justice and advises members of the implications for the City Council.

At present, the City Council is responsible for the District Court. The Court sits Monday to Friday each week excluding Public Holidays. The type of offences which are referred by the Procurator Fiscal include road traffic offences, behaviour of an anti-social nature and offences involving violent conduct.

The District Court is part of the Support Services Department and comprises the undernoted staff:-

District Court Manager/Legal Adviser
Clerical Assistant/Bar Officer (6)
Administrative Assistant (1)

Proposals - Lay Justice

Despite the recommendation of the McInnes Committee to abolish lay justice, the White Paper confirms lay justices will be retained with their current powers intact. However, major changes are proposed in the way they will be recruited, appointed and trained. Bench serving Justices will be appointed for a fixed term of five years, said term being automatically renewed at five-yearly intervals until he/she attains the age of 70 unless certain criteria are not met regarding standards of performance and failure to meet minimum number of sitting requirements etc. Recruitment will be by public advertisement and appointment will only take place after formal interview by new appointment committees set up for each commission area (now to be in line with Sheriffdoms). These committees will be chaired by the Sheriff Principal and will include representatives from "active lay justices". Training will be managed nationally with the introduction of appraisal systems to ensure consistency and development. The proposals on training are, perhaps, deliberately vague, as the Scottish Executive recognise the need to consult with stakeholders on this crucial issue. They however are committed to reform of the recruitment and selection process.

It should be noted that the training provided by the District Court Manager/Legal Adviser follows a competence-based training module designed by the District Courts' Association which has been accepted by the McInnes Committee as a framework for training.

Court Administration

The District Court will be unified within the rest of the Summary Justice System and become the responsibility of the Scottish Courts Service (SCS). The Scottish Executive believe that this will improve efficiency and consistency and therefore to achieve this, legislation will be enacted within the lifetime of this Parliament.

Change will not be implemented until the 2007/2008 financial year at the earliest and will be phased in on a Sheriffdom by Sheriffdom basis. The SCS will take over all fine enforcement duties. It is envisaged the transition will only take place after planning in liaison with stakeholders. The Paper concedes it cannot at this stage disclose details of the funding package that will allow the transfer to take place. These figures will, it is conceded, be subject to the outcome of discussions with COSLA and local authorities. A detailed survey of District Court estate is now underway and the Paper details its recognition of the need to negotiate on staffing issues to ensure the interests of staff who transfer from local authorities are protected. The Paper also recognises the need to work on a unified IT system.

No separate fine enforcement agency will be established. There is a recognition that enhanced fine enforcement mechanisms will require to be developed in liaison with key stakeholders and legislation (where necessary) will be introduced to achieve this during the lifetime of the current Parliament. Pilot programmes will also be put in place to examine the effect of proposed reforms.

There may be difficulty arising from the costs associated with bringing District Court facilities up to a standard expected by SCS. Many of the current buildings used (including our own) will not meet the criteria.

Alternatives to Prosecution

The Paper proposes to extend the use of fixed penalty notices along the lines of the current system and this extension will be piloted first to measure success. One proposal is to increase Fiscal Fines that can be offered to £500 and this is based on Crown Office research into offences capable of being included in the scheme. There may be difficulty with this proposal. For instance, the average fine imposed at the Sheriff Court last year was £206 as judges are required to impose fines with regard to the means of the offender. Payment rates of Fiscal Fines are poor as it is and in the year 2002-2003 of the 35,000 offered, 31,000 of those were at a level of £50 or less. Only 60% of those were ever recovered despite rigorous attempts by District Courts.

In addition, the paper proposes the introduction of Fiscal Compensation Orders with an upper limit of £5,000. So, an offender who has committed an act of vandalism will be required to pay an arbitrary sum decided by the Crown. The Paper proposes these will be extended to cover situations not only where a financial loss is incurred but also where a victim has been subject to frightening, alarming, distressing or annoying behaviour or where nuisance or anxiety has resulted. Guidelines from the Lord Advocate are envisaged.

The Paper does attempt to tackle the thorny issue of fine enforcement. The system will be changed so that any non-court issued fine which is unpaid will become fine registered at its full value (indicating a discount is applicable for early payment). If the issue of the fine is in dispute the offender must request a Court hearing and the offence will be subject to a Court prosecution. If the offender simply takes no action at all and the fine remains unpaid after the registration process Courts will be allowed to use all Court disposals except imprisonment. Statistics show the threat of imprisonment is the most effective tool to ensure payment and the proposal is contrary to the Scottish Executive pilot scheme in Tayside whereby fines are issued by police officers for certain offences. If the offender takes no action and the fine remains unpaid after the registration process the Court is allowed to use all disposals including imprisonment.

Conclusion

It is the Depute Chief Executive's (Support Services) view that the case for change in the District Court has not been made indeed efficiencies made in the District Court, may be lost in the merged Summary Justice System. Over the last five years this local authority has been at the forefront of implementation of IT solutions to improve the efficiency and accuracy of data transfer between the criminal justice partners and to speed up court procedures and sittings. In addition performance indicators have been introduced to monitor and address the factors contributing to delays in reaching a conclusion of court business and software packages to increase the use of fixed penalties by a number of agencies including Council departments, the Police and the Procurator Fiscal service. Whilst there is limited evidence these measures may have been implemented to some extent by the Scottish Court Service, statistics quoted by the McInnes Committee show that in terms of efficiency those implemented by this authority are more effective. However, to enable the proposals to move forward and to achieve a seamless transfer it is proposed that the Committee approve the recommendations detailed in Paragraph 2.0.

7.0 CONSULTATIONS

The Chief Executive, Depute Chief Executive (Finance), Director of Economic Development, Assistant Chief Executive (Management) and Head of Information Technology have been consulted on this report.

8.0 BACKGROUND PAPERS

Scottish Executive document entitled "Smarter Justice, Safer Communities - Summary Justice Reform - Next Steps".