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## Fine Payment Work Process Study

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The Courts Act 2003 made provision for people from whom their fines could not be recovered by any of the normal means to work off the outstanding financial penalty by undertaking unpaid work. This arrangement, called Fine Payment Work (FPW), was initially piloted in five court areas in 2004 (Cambridgeshire, Cheshire, Cumbria, Devon and Cornwall, and South Yorkshire), later extended to South Wales in 2007 and Cleveland in 2008. The aims of Fine Payment Work were to improve fine enforcement and the credibility of the use of the fine as a legitimate option.

FPW was a voluntary arrangement which required the consent of the offender. The court – in practice usually a specialist fines court which dealt with enforcement issues – made a work order which stated the amount of the fine and, using a statutory conversion rate (£6 per hour), the hours of work to be completed. Unlike other punishments involving unpaid work such as Community Payback, the aim was that the voluntary or community sector would provide the work opportunities for FPW, supervise the placements and report back to the court.

The FPW scheme piloted the use of this power across the seven pilot sites. This Research Summary highlights the key findings from the process evaluation of the pilots and provides evidence regarding the implementation of the scheme. The summary explores attitudes towards the scheme and makes recommendations regarding any potential roll-out.

The Order that gave the power to pilot FPW was renewed annually from 2004. No further Order was made from April 2009 and the pilot was discontinued.

### Key points

- FPW provided an alternative method to discharge a fine to a small number of people who were unable to pay their fine and had overall support from Her Majesty's Court Service (HMCS) and Probation Service staff including fines officers, magistrates and probation officers.
- Use of the orders varied considerably across the pilot areas. Take-up of the orders was improved by having a 'champion' in place either in HMCS or in the Probation Service to promote the use of the scheme, maintain momentum and ensure close working between HMCS and the Probation Service.
- Almost half (48%, n=109) of participants achieved satisfactory outcomes, either by paying their fine in kind through FPW (39%, n=88) or through making arrangements to pay (9%, n=21).

- Barriers to the implementation of FPW and potential roll-out included differences in the interpretation of eligibility criteria and risk factors across the areas. Some courts and fines officers had a much more restrictive interpretation of eligibility and risk factors than others, resulting in wide differences in numbers of cases considered eligible. Other barriers to the implementation of FPW included concerns over the probation resources needed to manage offenders.
- Attitudes towards FPW were generally positive amongst most practitioners and participants interviewed across all of the pilot areas.
- FPW was not seen as a 'soft option' by practitioners or offenders.
- The set-up costs in high uptake areas were around £6,000 per court and £3,000 in medium uptake areas.<sup>1</sup> Running costs fell mainly to the Probation Service and amounted to an average of £92 per referred case and £190 per completed case.

## Approach

The study had four overarching research questions.

1. Has FPW been implemented as expected across the pilot areas?
2. What factors have been identified as barriers/facilitators to implementing FPW? How might these be addressed in a national roll-out?
3. Who has been referred to FPW and what unpaid work schemes have they taken part in – who completes/fails to complete FPW? What implications does this have for a national roll-out?
4. How much would it cost to roll out the scheme nationally?

Table 1 presents the breakdown of interviewees.<sup>2</sup>

A total of 68 interviews were conducted with staff and offenders across the seven pilot sites to identify barriers and facilitators to the implementation of FPW. Fifty-two practitioners were interviewed including magistrates, fines officers, probation staff, legal advisers and work supervisors involved in the scheme. Sixteen interviews were conducted with offenders.

**Table 1 Breakdown of Interviewees**

Interviewee Group	Camb.	Cheshire	Cleveland	Cumbria	Devon and Cornwall	South Wales	South Yorks.	Target	Total Achieved
Magistrates	0	2	0	1	0	1	2	14	6
Fines officers	1	2	0	1	4	4	4	12	16
Probation staff	1	2	0	0	2	4	1	12	10
Legal advisers	0	3	0	1	2	3	0	8	9
Work supervisors	0	4	0	0	5	1	1	10	11
Participants	0	7	0	0	5	3	1	30	16
Total	2	20	0	3	18	16	9	86	68

<sup>1</sup> The reasons for higher set-up costs in high uptake areas were that staff involved in these pilot areas had provided specific training for magistrates, tailored sentencing guidelines and engaged the Probation Service in aspects of training.

<sup>2</sup> More interviews were undertaken in high take-up areas rather than low or medium take-up areas to reflect the level of take-up. It was intended that 86 interviews would be conducted: 56 with practitioners and 30 with offenders. However, difficulties arose in engaging interviewees in some areas, particularly those areas where take-up was low. Additional reasons for not reaching the target number were that there was a lack of contact details for past participants on the scheme and time constraints on magistrates which posed difficulties in arranging convenient times for interview.

Management information data were collated from the pilot areas and analysed to provide information on the characteristics of the participants and outcomes of the orders.

Detailed cost data were gathered from two areas and applied to all areas where the order had been used to give an indication of cost for low, medium and high take-up.

Care needs to be exercised in interpreting the resulting statistics, which should be viewed as indicative and not necessarily generalisable beyond this sample, as the number of participants in FPW is very small and the number of people who took part in the study even smaller.

In addition, a review of the literature on similar schemes internationally was conducted to provide evidence regarding the set-up for effective schemes and the potential barriers for implementation.

## Findings

### Review of the literature

The review of the literature (narrative literature review) on the experience in other jurisdictions demonstrated that FPW potentially has a variety of benefits for the Criminal Justice System and offenders, e.g. high completion rates; receipt of job offers (Weber, 1978; Jackson and Ekstedt, 1988; Heath, 1979; Levy and Mclvor, 2001a; Levy and Mclvor, 2001b) but the way in which it is implemented is of critical importance and needs to be carefully monitored to ensure that it is applied as intended (Fletcher, 1990; Levy and Mclvor, 2001a; Levy and Mclvor, 2001b).

Barriers experienced in other, not necessarily comparable,<sup>3</sup> jurisdictions identified through the review of the literature included: low referral rates; insufficient work placements; and poor

3 A summary of the reasons that the jurisdictions in the literature review were not necessarily comparable with FPW in England and Wales were: in England and Wales, the FPW scheme is one of a range of fine collection tools or enforcement mechanisms, whereas in other countries the scheme is explicitly an alternative to custody for those who have defaulted on their fines; in England and Wales, the scheme is for fines only, whereas some of the schemes in other jurisdictions apply to other unpaid financial penalties, such as compensation to victims and court costs; and the scheme here is only for those who cannot pay their fines, whereas other schemes also admit those whose choose not to pay.

communication between those authorising the offender to work off the fine and the department overseeing the work. There were mixed findings about the impact of unpaid work on the use of custodial sentences in the international literature review.

### Attitudes to Fine Payment Work

Interviews with HMCS and Probation Service staff, work placement supervisors and offenders were conducted to assess implementation of FPW across the pilot areas and to identify any barriers or facilitators to implementation.

- Attitudes towards FPW were generally positive amongst most interviewees across all of the pilot areas. Even in areas of low or no usage, the concept of FPW was recognised as a good alternative to non-payment or imprisonment for fine default in the majority of interviews with HMCS and Probation Service staff and work placement supervisors.
- FPW was not seen as a 'soft option' by practitioners or participants.
- The work placement supervisors welcomed the scheme for providing much needed extra resources and stated that they could accommodate more participants than currently provided. No concerns were raised regarding any perceived risk of supervising people on FPW orders. However, although the Probation Service work party supervisors, interviewed as part of this study, were in favour of the idea of FPW, they did not feel they had the resources to accommodate further participants.
- There were a number of cases where participants continued to volunteer after their order had finished. Interviews with participants found that the Order had enabled some of the participants to give something back to their community.

### Referrals

Management information was analysed to determine the number of referrals made to FPW as well as the number of orders completed or terminated. The numbers of referrals made were considered in terms of the potential implications for a national roll-out.

**Table 2 FPW take-up to June 2008<sup>a</sup>**

Processes	Cambs.	Cheshire	Cleveland <sup>b</sup>	Cumbria <sup>c</sup>	Devon & Cornwall	South Wales	South Yorkshire	Total
Orders considered	10	42	0	0	153	19	19	243
Refused orders <sup>d</sup>	2	4	0	0	7	6	7	26
Orders issued								217
Completed orders	7	4	0	0	74	12	4	101
Current orders	0	4	0	0	19	1	1	25
Incomplete orders <sup>e</sup>	1	30	0	0	53	0	7	91
Total orders issued	8	38	0	0	146	13	12	217

a This information was provided by pilot leads.

b The pilot in Cleveland commenced in April 2008. However, the pilots ended before any orders were made.

c Cumbria did not identify anyone suitable for the scheme.

d Refused orders included those cases turned down by the magistrates and those filtered out by HMCS staff before court as ineligible. Examples of reasons for refusal included not meeting the relevant eligibility criteria or because it was thought that the person would not comply with the order.

e Incomplete orders are where individuals have commenced an order but have failed to complete the required hours. In a number of cases, reasons for incompleteness may be attributed to participants gaining employment (and subsequently having their payment terms amended), or finding means to pay off their order in cash. However, often there would be no obvious reasons for not completing or breaching an order and the figures for incomplete orders therefore also contain those where the outcome was unknown.

Table 2 reflects the take-up of FPW to June 2008 (n=243 orders considered) across the seven pilot areas. Take-up of FPW differed greatly across the seven pilot areas. Closer analysis of court level data indicated that the implementation within areas also differed.

This low take-up of FPW needs to be considered in the light of the availability of a wider range of sanctions under the 2003 Courts Act, the earlier and more active use of means forms to assess ability to pay and the developments in enforcement strategy which has led to greatly improved collection rates. In low take-up areas, the wide range of sanctions already available was seen by magistrates and HMCS staff as sufficient to enable fine collection.

Interviews with HMCS and Probation Service identified that areas clearly needed a 'champion' to promote and explain FPW to the courts and other key players, and to help maintain momentum – without this, its profile remained low, misperceptions arose, and suitable cases were missed.

Some courts and fines officers had a much more restrictive interpretation of eligibility and risk factors than others, resulting in wide differences in numbers of cases considered eligible.

### Participants in the scheme

Management information was used to provide data on who participated in FPW in terms of their gender and offence information.<sup>4</sup> Only 136 cases (56% of cases to June 2008) had data available. The collection of management information was variable across the pilot areas, both within and between areas. It is therefore unlikely that the missing data had an impact on the reported data, although this cannot be ruled out. The management information reported here should therefore be treated with caution given the variability in its collection.

Where management information was available (n=136).

- Eighty-two per cent (n=112) of participants were male.<sup>5</sup>

4 It was intended that ethnicity data of participants would also be analysed; however, this was not possible given the small number of participants involved in the scheme and the variability of the recording of this data across the pilot sites.

5 This proportion of males is slightly higher than the proportion of males who received fines in 2008: 74% (n=652,141) of all persons who received a fine in 2008 were males; 24% (n=213,090) were females; and the remainder (2%, n=17,273) were unknown gender. (These figures were taken from the Excel Table 4.4 – 'Offenders sentenced to fines and 'other' disposals by sex, age, type of court and type of sentence, 1998-2008' at <http://www.justice.gov.uk/publications/sentencingannual.htm>).

- Forty-eighty per cent (n=65) had three or more offences associated with their fine, many of which arose from fixed penalties.
- Motoring offences were the largest category.
- Twenty-three per cent (n=32) of orders were for 101 hours or more.
- Sixty-two per cent (n=85) had two or more sanctions applied before the offer of FPW, indicating that courts were using FPW as a considered final option.
- Placements were available in a wide range of settings.

Of the 243 cases recorded by the pilot areas as participating in FPW, 226 cases were made available to the researchers for analysis. Whereas analysis of the take-up of FPW (Table 2) was conducted up to June 2008 (n=243), analysis of the case file data was only conducted to April 2008 (n=226 cases). There is, therefore, a difference of 17 cases which may be accounted for by the additional two months of data considered for Table 2.<sup>6</sup>

## Outcomes

Analysis of these 226 FPW cases considered between April 2006 and April 2008 identified that 39% (n=88) of participants assigned to FPW completed their order and a further 9% (n=21) achieved a satisfactory outcome in that they paid off their fine in cash. In a number of other cases the fine was collected through other enforcement means such as attachment of earnings if the participant had gained employment. In these cases the FPW order was subsequently revoked and the order recorded as incomplete.

## Management

Management and set-up arrangements for each of the pilot sites were established through interviews with HMCS and Probation Service staff and work placement supervisors.

Management approaches across the pilots had the following features.

- The majority of referrals to the scheme were made by fines officers.
- The Probation Service ran pre-placement sessions covering the details of the placement, what was expected of the participant, and other issues such as health and safety. The time and location of these sessions varied – some took place in the courthouse immediately after the order was issued; others took place in the local Probation Service office up to two weeks after the order was issued.
- In the majority of the areas, the Probation Service work supervisors were responsible for day-to-day monitoring of the FPW participant, checking that the participant had attended his/her work placement or work party. In one area participants worked in a dedicated FPW work party (that is, a group of participants on the FPW scheme) with a probation officer providing transport and supervision.
- Participants often worked alongside people subject to unpaid work (now known as Community Payback).
- Only one Probation Service area had a dedicated resource; the remainder subsumed the work into their existing workloads.
- Various systems for monitoring attendance were identified. These systems ranged from the probation officer in one area telephoning the work placement supervisor on most days to check whether the offender had attended the placement to 'exception reporting' in another area where the participant only informed the probation officer if they were unable to attend.

Other important issues for management that differentiate high and low take-up areas were the interpretation of eligibility rules and the style of working between HMCS and the Probation Service.

FPW enables adult offenders who have committed less serious offences to discharge outstanding fines

<sup>6</sup> Without knowing which cases were included in the analysis, the difference in the number of cases could be attributable to a different sample of cases. However, given the small difference in the number of cases (n=17), it is most likely that this is attributable to the difference in time periods. Furthermore, the missing data are unlikely to have an impact on the findings given the small difference.

(including fines registered as a result of unpaid fixed penalties, but not compensation to victims or court costs) when it appears that they cannot be collected in cash. It is targeted at those who genuinely cannot pay and where all other enforcement mechanisms have failed or are likely to fail. Distinguishing 'can't payers' from 'won't payers' was a central issue in the implementation of the scheme.

Some HMCS staff reported in interviews that court costs should also be included in FPW given that if defaulters have no ability to pay their fines then they would have no ability to pay their court costs either. In comparison with similar schemes in other jurisdictions reviewed as part of the review of the literature, FPW should therefore be applicable, as in other jurisdictions, to the costs imposed by the court. In contrast to other jurisdictions however, it is not recommended that compensation to victims is included in FPW calculations. While a court can decide what to do about recovering what is due to the court (i.e. any court costs incurred) by way of cash or FPW, compensation is due to the victim (not the court) and cannot therefore be set aside by the court.

### Facilitators to implementation

Interviews with HMCS and probation staff, work placement supervisors and offenders were combined with analysis of management information data to identify facilitators and barriers to implementation of the scheme.

Where good relations between HMCS and the Probation Service existed, there tended to be a greater take-up of FPW.

The personal enthusiasm of the staff involved in implementing FPW, in particular the fines officer, was a crucial factor in its implementation. In many of the low take-up areas there had been a turnover of staff and those originally involved in the initial 'championing' and launch of FPW had left their posts. Although often an administratively led scheme, interviews with HMCS, magistrates and the Probation Service highlighted that the support of magistrates and legal teams was also crucial in its implementation as they were ultimately responsible for recommending the use of and issuing of FPW orders.

### Barriers to implementation

In addition to the identified issues regarding interpretation of eligibility criteria and risk, the following barriers to implementation were identified.

- Some probation staff who were interviewed felt that they had insufficient human resources for them to service FPW on a large scale.
- Problems were identified by several interviewees (FPW participants and probation officers) in mixing FPW participants with offenders who had been sentenced to unpaid work (now known as Community Payback). Of those who reported problems with mixing participants, some FPW participants reported feeling intimidated by offenders on unpaid work, while some probation officers reported concerns about mixing people with different risk factors, although most work placement providers did not see this as problematic.
- A small number of Probation Service interviewees expressed concerns regarding the risks involved in participants being supervised by untrained placement supervisors (in charity shops, for example) although the supervisors themselves did not share these concerns.
- There was inconsistency and some lack of clarity about arrangements and responsibilities for monitoring compliance and attendance.
- In some areas, administration costs of FPW were perceived to be high; in particular the time taken to manage FPW candidates by both HMCS and the Probation Service was seen to be onerous.

### Costs

Areas with low take up viewed the costs of operating FPW as high as they had achieved no economies of scale. For the courts service, however, the cost of operating FPW was no higher than operating any other fine enforcement sanction option as the same processes were involved.

Work placement supervisors reported that considerable additional value had been accrued to the voluntary bodies which hosted placements. In

addition, offenders reported various 'soft benefits' such as improved confidence and in a few cases gaining employment.

The set-up costs in high uptake areas were around £6,000 per court and £3,000 in medium uptake areas. The reasons for higher set-up costs in high uptake areas were that staff involved in these pilot areas had provided specific training for magistrates, tailored sentencing guidelines and engaged the Probation Service in aspects of training.

Running costs seemed to fall mainly to the Probation Service and, based mainly on figures from Devon and Cornwall which had a dedicated probation resource, amounted to an average of £92 per referred case (where an individual started FPW but repaid it by other means) and £190 per completed case (where an individual completed repayment of his/her fine by FPW).<sup>7</sup>

## Recommendations and implications

In the light of the above findings, it may be concluded that the concept of FPW had wide support, and that roll-out to other areas would be a desirable goal. However, experiences in the pilots suggest that the numbers of cases dealt with are unlikely to be large, that commitment levels will vary widely, and that there will be major barriers to overcome in many areas. Therefore any roll-out should be undertaken in a cautious and gradual manner, addressing the obstacles identified, and issuing clear guidance on topics such as eligibility criteria and monitoring compliance.

The main recommendations are as follows.

- Any national roll-out should be approached in a gradual and cautious manner, beginning in areas which are keen to adopt FPW. Local 'champions' should be identified, with the role of promoting and explaining the scheme and helping to overcome barriers, and developing effective working relationships between the Probation Service and HMCS.

- If FPW is rolled out, guidance should be amended to encourage use of FPW in the first instance if it is evident that other enforcement sanctions will fail.
- Further consideration should be given to the mixing of FPW and Community Payback participants in order to support any implementation guidance that is issued. Specific research questions may address why the Probation Service tend to perceive placing FPW offenders on work placements in charity shops and other locations as a risk, while work supervisors do not.
- FPW should be applicable to costs imposed on the individual by a court, but not to compensation to victims.

More specifically, in any roll-out there is a need to do the following.

- Share good practice especially in relation to: possible management models; work placement options; exception reporting; more personalised use of risk assessment; and procedures related to unauthorised absences.
- Encourage close working relationships between HMCS and the Probation Service. The Probation Service in each area should be engaged at all stages in its implementation to ensure the most appropriate model of delivery given the local circumstances.
- Wider roll-out would need to take account of the resources which would need to be deployed by local Probation Areas and Trusts.
- Develop a national model Service Level Agreement between HMCS and the Probation Service.
- Develop monitoring information via Libra<sup>8</sup> to include the capture of positive and negative outcomes of FPW orders.

<sup>7</sup> Costs per case were calculated using figures from Devon and Cornwall, the only Probation area to have a dedicated Probation resource. The ongoing costs for this area (£14,000) were defrayed across 153 referrals to calculate the cost per referral (£92).

<sup>8</sup> HMCS's national case management system.

The above recommendations have the following implications for potential roll-out of the scheme.

- Should the decision be made to roll-out the scheme, additional work would be required to ensure that the guidance on eligibility criteria and risk factors is more consistently applied in order to promote higher uptake in certain areas.
- Given the variation in uptake of the scheme, any roll-out of the scheme should be approached gradually, ensuring that local champions and agreed guidance are in place before proceeding.
- It was originally anticipated that participants in the pilots would be managed by voluntary or community sector organisations; however, in a number of areas, supervision fell to the Probation Service. Consideration should therefore be given to the additional resources that would be needed to be deployed by the Probation Service in the supervision of participants should the scheme be rolled out.
- In order to capture future success and to promote continued use of the scheme, positive and negative outcomes should be included in the fine collection rate data.

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