

## REFORM OF SUMMARY CRIMINAL JUSTICE & LEGAL ASSISTANCE

### Introduction



## REFORM OF SUMMARY CRIMINAL JUSTICE & LEGAL ASSISTANCE

### The story so far – things already settled

- legislation enacted
- implementation plans laid
- new systems developed & resources committed
- policy goals endorsed by new Scottish Government

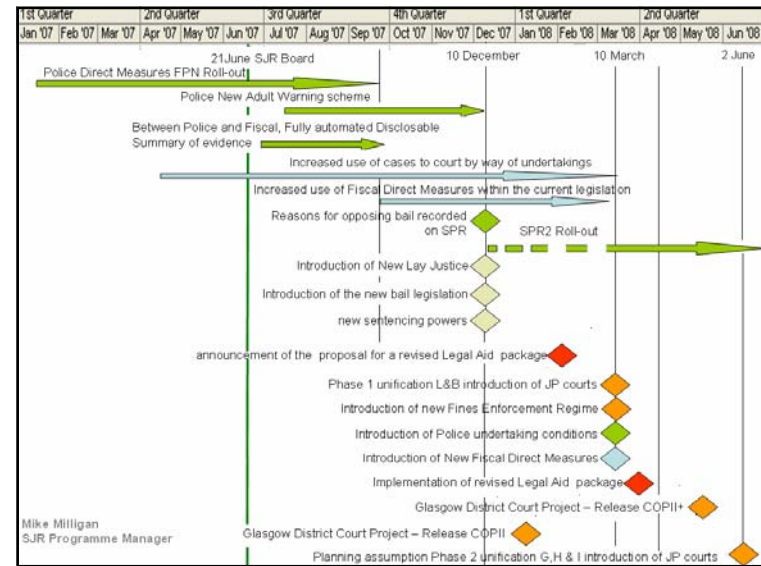
### Last chapter – for consultation

- summary criminal legal assistance

## REFORM OF SUMMARY CRIMINAL JUSTICE & LEGAL ASSISTANCE

### From theory to practice: the challenge for justice agencies

- managing 'delivery' across the country
- addressing the people factor – behaviour & culture
- monitoring change & learning from results
- focusing on benefit: process with a purpose



Mike Milligan  
SJR Programme Manager

## The Scottish Government

### Summary Justice Reform

David Dickson and Rachael Weir, Scottish Government

### Why do it?

- “A system which fails to dispose of over half of all cases within 6 months of the offence cannot truly be considered to be summary”. (McInnes report)
- 29% of trials adjourned twice or more
- 75% of those prosecuted after direct measure offered plead guilty
- 8% of Sheriff Court trials result in warrants
- Around 90% of cases set down for trial have no evidence led

 The Scottish Government

### Driving the process of change

- **Smarter systems** – flexible court procedures which allow effective case management within a unified summary system
- **Effective interventions** - ensuring that the system addresses offending behaviour with quick, appropriate punishments that are robustly enforced
- **Community involvement** – ensuring access to opportunities for those who wish to become involved and improving the operation of the system as experienced by victims and witnesses

 The Scottish Government

### Intentions behind reforms

- **Fair** to the accused, victims and witnesses
- **Effective** in deterring, punishing and helping to rehabilitate offenders
- **Efficient** in the use of time and resources
- **Quick and simple** in delivery

 The Scottish Government

## The Criminal Proceedings etc (Reform) (Scotland) Act 2007

Main areas covered by the Act

- Criminal procedure
- Direct measures (alternatives)
- Fines enforcement
- Court unification
- Lay justice
- Bail and remand

## Procedural changes

- Undertakings (s7)
- Charges which disclose PCs (s12)
- Trials in absence (s14)
- Intermediate diets, notices of defences, and agreement of evidence (ss18-20)
- Service of documents on solicitor (s21)
- Identification procedures (s34)
- Excusal of procedural irregularities (s40)

## Sentencing powers

- Common law offences – 12 months (s43)
- Particular summary statutory offences (e.g. Police (Sc) Act) – 12 months (s44)
- “Each way” statutory offences – 12 months (s45)
- Otherwise, offences triable summarily only remain unchanged
- District Court – power to disqualify

## Extending the use of direct measures

- Builds on well-established concept of the fiscal fine
- Recognises need to increase public confidence
- Demonstrates that direct measures are an integral part of the criminal justice system
- Increases speed and efficiency of courts by keeping out those cases which need not be there, allowing court system to concentrate on those which do

## PF direct measures (ss50-54)

- Fiscal fines – to £300
- Compensation offers – to £5000
- Proceeds to court *only* if accused takes action to request hearing – otherwise deemed to be accepted
- Disclosure in court as if PC if accused offends again within 2 years
- Enforced as if imposed by a court
- Work offer – “fine on time”
- Recall provisions
- PF can withdraw

## Fines enforcement (s55)

- New role of fines enforcement officer (FEO) created
- Responsible for enforcing fines more effectively through active management
- Range of enforcement options
- Those who default on fines know they will be pursued and effective action taken
- Information and advice more readily available for those who are genuinely struggling to pay
- More administrative enforcement action through FEO will lead to less waste of police and court time – FEO will become expert

## JP courts – the future for lay justice

- Unification of courts under SCS
- Creation of JP court
- Retention of lay justices
- Revised arrangements for appointment, training and appraisal
- Use of capacity created by greater use of direct measures
- Change in sentencing powers

## Bail and remand

- Clear framework of criteria for bail to be applied in every case (s1)
- Bail only in exceptional circumstances for those on the most serious charges with convictions for similar offences (s1)
- Court takes the bail decision (s1)
- Reasons always given for decisions (s2)
- Underline to accused what the conditions are and what will happen if they are breached (s2)
- Increased penalties for breach (s3)

## Legal aid

- “We recommend that defence solicitors should be properly remunerated for work done at an early stage of a case and be able to obtain reasonable remuneration for work for legally aided clients pleading guilty at this stage.”
- “We recommend that the summary criminal legal aid scheme should be amended to remove the current incentive to plead not guilty, to encourage the early resolution of cases and to discourage the maintenance of pleas of not guilty until relatively late in the proceedings in cases which the trial is not likely to proceed.”

- McInnes report



## Links

- **McInnes report:**  
<http://www.scotland.gov.uk/Publications/2004/03/19042/34176>
- **Next Steps:**  
<http://www.scotland.gov.uk/Publications/2005/03/20888/55016>
- **2007 Act:**  
<http://www.opsi.gov.uk/legislation/scotland/acts2007/20070006.htm>
- **SJR homepage**  
<http://www.scotland.gov.uk/Topics/Justice/criminal/criminalprocedure/19008>
- **Commencement order**  
[http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi\\_20070479\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070479_en.pdf)



## COFPS

- Tom Dysart, Area PF – Dumfries and Galloway



## POLICE OPTIONS

- Discretionary Warning
- Antisocial Behaviour, Etc (Scot) Act 2004 - Fixed Penalties
- Formal Adult Warning

## PF OPTIONS – DIRECT MEASURES

- Fixed Penalties – up to £300
- Compensation Offer – up to £5,000
- Work Offers of 10-50 hours unpaid work
- Opt out as against opt in

## Lay Magistracy

- Justices - improved recruitment, training and assessment, better trained
- Case Load – will be maintained at existing levels

## CASE TRAJECTORY

### CITED CASES

- Improved Police reporting times
- Improved PF marking performance

### UNDERTAKINGS

- 14 days to report
- 14 days to mark
- Appearance at Court within 28 days

## However...

April – September 06 – Glasgow area:

- 10.5% were trials where evidence led as a percentage of trials fixed
- 6% were cases with evidence led as a percentage of first callings
  
- National average – 11%

## COPFS Response

- Disclosable Summaries
- CWP for Investigation
- Early Indication of acceptable plea
- Disclosure timeline
- Early Disclosure of Critical Productions
- *Aspiration* to provide advance copy complaint for undertakings
- Earlier ID prep.
- Identification of evidence capable of agreement – Section 257 modified
- Better engagement
- 4 week period between ID and Trial diet

## REFORM OF SUMMARY CRIMINAL LEGAL ASSISTANCE

**Tom Murray**  
**Director of Legal Services and  
Applications**



## Preamble

- **Why reform Summary Criminal Legal Assistance?**
- **Current use of ABWOR/legal aid**
- **Focus on appropriate aid type**
- **Focus on appropriate advice**

## Where Will the Changes be Made?

- **Criminal advice and assistance**
- **Representation from custody and undertaking**
- **Extended use of ABWOR**
- **Summary criminal legal aid**
- **Remuneration**

## Criminal Advice and Assistance

- Solicitor grant
- Focus on appropriate advice
- Removal of minimum fee
- General advice
- Standard advice
- Increases in authorised expenditure

## Custody and Undertaking Cases

- Use of solicitor of choice
- Retention of duty scheme – increased duty payments
- ABWOR in custody cases – no tests
- ABWOR for undertakings

## Extended use of ABWOR

- Substantial increase in ABWOR fees - £300/£200
- Extended to CWP
- Block fees for 2<sup>nd</sup> and subsequent CWP
- Block fees for deferred sentences
- Who grants and why?
- What test and what supporting information?

## Summary Criminal Legal Aid

- Timing of application
- What tests and what information needed?
- Undue hardship – alignment of capital threshold with A&A
- Grant with standard conditions
- Retention of single core fixed payments
- If refused, ABWOR for post conviction hearings
- Exceptional case status retained

## Proposals for Remuneration (1)

- **Preamble**
  - front loading of system
  - shift in balance of remuneration
  - potential for duplication
- **Advice and Assistance**
  - general £35
  - standard £95
  - 21% increase
  - payments linked to and subsumed into ABWOR/legal aid
  - minimum fee removed
- **Duty Scheme**
  - £63 initial fee
  - £9 additional cases
  - £150 follow up cap with discretion to extend

## Proposals for Remuneration (2)

- **ABWOR**
  - custody cases at duty solicitor rates
  - cited/undertaking cases £70 on day
  - otherwise £200/£300 to include 1 CWP
  - block fee £50 for 2<sup>nd</sup> CWP, £25 thereafter
  - block fee for deferred sentences £50
  - provision for exceptional (time and line) cases
- **Summary legal aid**
  - core fee £525/£325
  - otherwise fee and structure unchanged
  - exceptional case status retained

## REFORM OF SUMMARY CRIMINAL JUSTICE & LEGAL ASSISTANCE

### Questions and answers

