

Lord Chancellor's Department

Collection of fines and other financial penalties in the criminal justice system



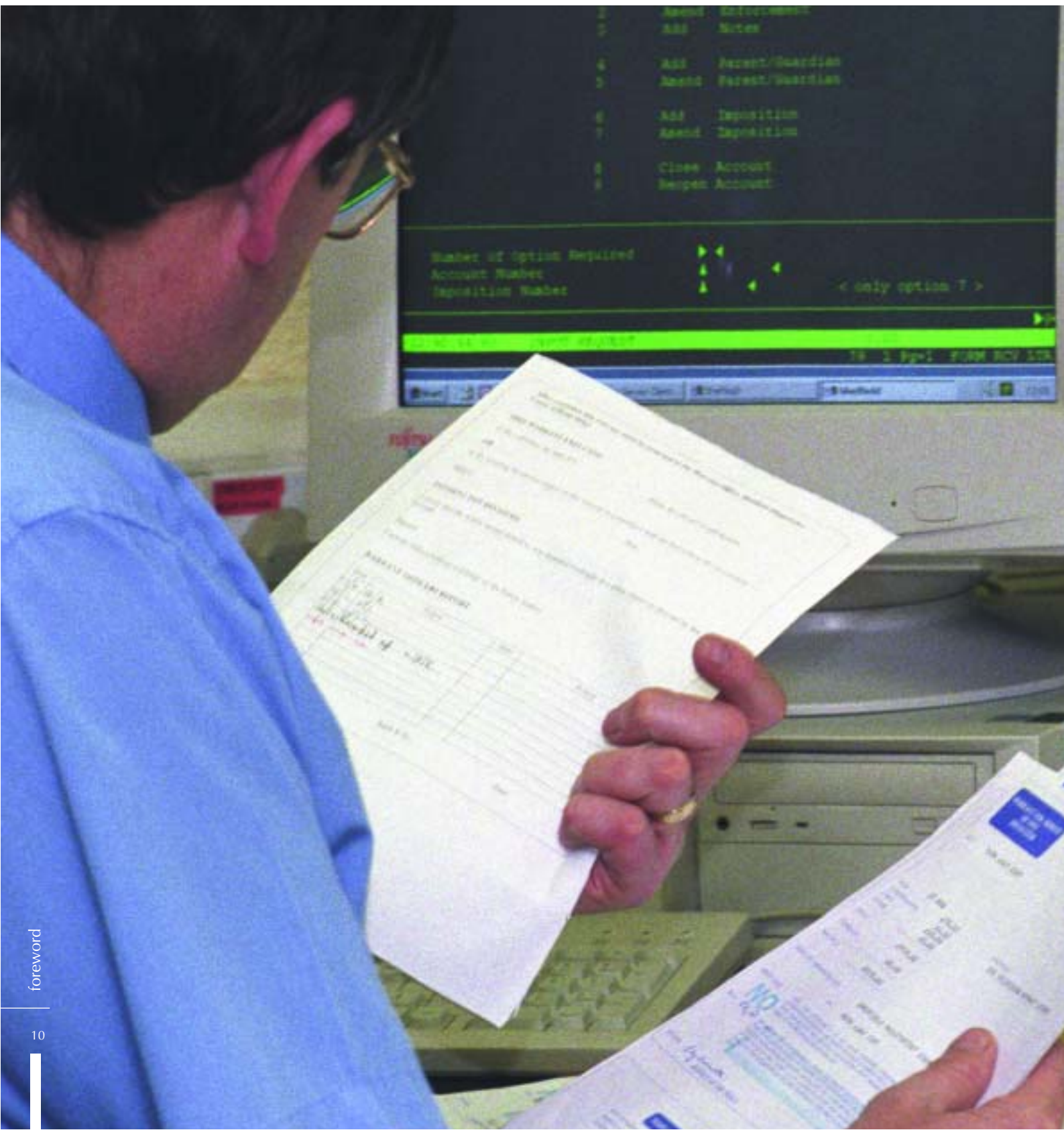
REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 672 Session 2001-2002: 15 March 2002

Foreword

Foreword by the Comptroller and Auditor General

- 1 Magistrates' courts are responsible for collecting financial penalties imposed by the criminal justice system. In 2000-01, penalties collected, including fines, compensation and prosecutors' costs, accounted for 63 per cent of total impositions of £385 million across the 42 magistrates' courts committees in England and Wales. In the same year, £74 million was written off as unenforceable, largely because the offenders could not be traced.
- 2 Our fieldwork suggests that there is an urgent need to improve the efficiency and effectiveness of collection. The process of enforcement is often over-complex and time consuming, in some cases requiring many court hearings and other enforcement action, and involving delays in executing warrants issued by the courts for the arrest of defaulters. The collection of financial penalties is hampered by unreliable management information making it difficult to compare performance between court areas.
- 3 To help improve performance, the Lord Chancellor's Department has recently organised a series of conferences aimed at disseminating ideas and good practice on enforcement issues. In April 2001, it transferred responsibility for executing warrants for the arrest of defaulters from the police to magistrates' courts committees to raise the priority of this work and speed up enforcement. As a result, for the first time, magistrates' courts committees were given complete control over the enforcement process. In February 2002, the Department announced details of further steps it was taking to improve performance. These steps included setting a target to increase the payment rate in 2002-03 by 5 per cent, from 63 per cent to 68 per cent and allocating magistrates' courts committees an additional £10 million from April 2002 for enforcement.
- 4 This report identifies further areas for improvement. They involve:
 - strengthening arrangements to obtain and verify details of offenders' means prior to sentence and for keeping track of offenders' addresses;
 - examining the scope for incentives to encourage prompt payment of financial penalties;
 - reviewing the scope to permit further delegation to administrative staff of responsibility for taking enforcement action, to help expedite enforcement;
 - improving the completeness and accuracy of management information and introducing relevant and challenging indicators so that the performance of magistrates' courts in collecting financial penalties can be measured and compared;
 - expanding the range of specialist training provided to staff employed on enforcement activities;
 - examining, with the Home Office, whether the current range of sentencing options is wide enough to minimise the imposition of uncollectable fines; and
 - exploring the possibility, in the medium term, of creating "centres of excellence" at local, regional or national level to take responsibility for enforcement.

- 5 Our examination was based on interviews with key staff in the Lord Chancellor's Department and in depth visits to five magistrates' courts areas undertaken between April and July 2001. We also undertook shorter visits to six other areas to discuss enforcement issues and local processes and systems. We have drawn upon recent work on enforcement undertaken by the Magistrates' Courts Service Inspectorate as part of their routine inspections. We supplemented this with: a review of the work of the Lord Chancellor's Department Internal Assurance Division on fines enforcement; research into best practice; and discussions with interested parties.



executive summary

In this section

Key points	3
Encouraging the prompt payment of financial penalties	4
Taking prompt effective action against defaulters	5
Developing the skills and resources needed to improve enforcement	7

- 1 Financial penalties are the most common punishment imposed by Crown and magistrates' courts on offenders and account for 70 per cent of all sentences. Such penalties include compensation to victims, costs to prosecutors and fines. The responsibility for collecting penalties, and for enforcing payment when the offender fails to pay by the due date, lies with individual magistrates' courts committees, including since April 2001 responsibility for executing warrants for the arrest of defaulters assumed from the police. Collection is crucial to maintaining the credibility of fines as a form of punishment; ensuring that victims are recompensed according to the wishes of the courts; and ensuring prosecutors' costs are offset.
- 2 Magistrates are assigned to a "bench" covering one of 303 petty sessions areas - the catchment area for court business. These areas are locally managed by 42 independent magistrates' courts committees. The committees have statutory responsibility for the efficiency and effectiveness of the courts in their area. Since 1992, the Lord Chancellor's Department has been responsible to Government for the magistrates' courts service and provides local authorities with a grant to meet 80 per cent of each magistrates' courts committee's costs with the remainder contributed by local government. The Department does not control the service directly but it can give directions to committees to meet specified standards of performance and issue guidance to them, including on the enforcement of financial penalties.

Key points

- 3 In 2000-01, penalties collected, including fines, compensation and prosecutors' costs, accounted for 63 per cent¹ of total impositions of £385 million¹ across the 42 magistrates' courts committees in England and Wales. As well as the effectiveness of local enforcement methods, magistrates' courts' success in collecting penalties reflects a range of other factors, including the ability of offenders to pay, and the ease with which defaulters can be traced.
- 4 Collection is affected by the generally limited financial means of some defaulters. Many defaulters also have other financial penalties outstanding and/or are multiple debtors. Magistrates and Crown Court judges are required to take account of offenders' means when imposing financial penalties but the magistrates' courts we visited did not have systematic arrangements in place to obtain and verify such information. Also, at some of these courts, magistrates were not provided with information about outstanding fines. As a result, fines can be imposed that have little prospect of being paid. This can delay the punishment of the court, incur additional enforcement costs, and add to the debt and other problems faced by the offender.

¹ These totals include figures for both criminal and civil impositions as the systems of many courts cannot differentiate between the two.

- 5 Few financial penalties are paid on the date of imposition and less than a third are paid without the need for enforcement action. Local courts employ a range of enforcement strategies and tools comprising, for example, reminder letters and the services of civilian enforcement staff including bailiffs. However, the process of enforcement is often over-complex and time consuming, including delays in executing warrants issued by the courts for the arrest of defaulters. We found no evidence at the courts we visited that staff resources devoted to enforcement had been matched to workloads and to a greater or lesser degree all of these courts were unable to act as promptly or as intensively as they would have liked.
- 6 The systems used to pursue enforcement are underdeveloped. As separate bodies, magistrates' courts committees conduct their enforcement activities independently of each other. There has, therefore, been no attempt to share resources across committee boundaries or create "centres of excellence" that might assist in developing specialist skills and help create a specific management focus for enforcement activities. The collection of financial penalties is hampered by poor record keeping and a paucity of reliable information on overall enforcement performance. To help improve the sharing of good practice, the Department held a series of conferences for enforcement staff in early 2001 and a further round is planned for April 2002. On 28 February 2002, the Department announced that it was establishing a Criminal Enforcement Policy Advisory Group to bring together the different criminal justice agencies involved in enforcement, for example, magistrates' courts committees, the police and the probation service.
- 7 For the most difficult cases, enforcement can require many court hearings and extend over several years, even for quite modest amounts. Whilst the cost of collection should not be a factor determining whether penalties are pursued, the cost of collection in the most complex cases is likely to exceed greatly the penalties involved. The Department and the Home Office should, when reviewing the sentencing options available to the courts, consider whether the range of sentencing options is wide enough to minimise the imposition of uncollectable fines.

Our detailed findings are set out below.

Encouraging the prompt payment of financial penalties

- 8 When a magistrates' court imposes a financial penalty it may require immediate payment, allow time for payment, or order payment by instalments. Courts do not routinely produce information to show how frequently immediate payment occurs, but the courts we visited told us that it was the exception rather than the rule. Amongst these courts, the proportion of fines levied in June 2001 which were paid in full on the day due ranged from 1.8 per cent in Durham (South) to 4.3 per cent in Brent and Avon (Woodspring).
- 9 The magistrates' courts we visited had expanded the number of ways in which payments might be made. If a financial penalty is not paid immediately, magistrates' courts will usually order payment within 14 to 28 days of the court hearing. Aside from the threat of initiating enforcement action, there are few incentives available to encourage immediate payment, or at least payment according to the payment plan initially agreed by the court. The late payment of a penalty does not itself attract any interest or other financial

penalties. However, if a financial penalty is enforced by means of a distress warrant executed by a bailiff, there is a requirement to pay the bailiff's fees as well and this can act as a disincentive to late payment.

- 10** Some defaulters claim that they cannot afford to pay their financial penalties because, for example, they have other financial commitments or are not in regular employment. Judges and magistrates are required to take account of offenders' means when imposing fines, with the objective of reducing collection and enforcement problems. Although magistrates will often question offenders on their means in court, we found no systematic arrangements in place at the courts we visited for obtaining this information before the fine was imposed or for verifying any information that was obtained. For less serious offences, the law permits magistrates to determine cases and impose fines in the absence of offenders. In these cases, offenders will usually be sent a means assessment form to complete but court staff told us that it was rare for them to be returned and that there was no legal obligation on offenders to do so.
- 11** Some offenders are unable to pay, at least within a reasonable timescale, because they already have outstanding fines. Although courts can identify from their records whether any fines they have imposed on offenders are still outstanding, magistrates may not have information to hand on outstanding fines at the time of sentence. Problems arise when courts impose new financial penalties in ignorance of outstanding penalties. One court we visited told us that computer print outs of defendants' outstanding fines were no longer provided because of staff shortages. Sentencing courts have no way of identifying outstanding fines imposed by other courts and must rely on the offenders for this information.

Recommendations

- 12** We recommend:
- a The Lord Chancellor's Department and the Home Office review the scope for legislative change to enable courts to offer incentives to encourage the timely payment of financial penalties.
 - b Magistrates' courts committees strengthen their arrangements to obtain information on offenders' means prior to sentence, for example requesting sight of benefit books, pay slips and bank statements, but should avoid unduly delaying the judicial process.
 - c Magistrates' courts committees ensure that before magistrates impose a financial penalty on an offender, they have full information available on any fines still unpaid by the offender.

Taking prompt and effective action against defaulters

- 13** There are a number of methods open to magistrates' courts to enforce payment of financial penalties, including agreeing to payment by instalments, using distress warrants to seize assets and making direct deductions from income or benefit. The ultimate sanction for non-payment is imprisonment. All the courts visited by us were using a variety of methods to help enforce payment. No one enforcement method is likely to be effective in all cases and court staff emphasised to us the importance of continually changing the methods used to help keep up the pressure particularly on persistent defaulters.

- 14** Magistrates' courts do not always initiate enforcement action promptly - a factor often considered vital to the successful collection of debts in the private sector. In pursuing unpaid penalties, courts are under no legal obligation to give priority to compensation awards to victims and therefore it is only when a payment is actually received by the court that there is a legal obligation to give priority to settling compensation awards. Victims, therefore, have to wait for their compensation if penalties are not paid promptly. The courts we visited each had a timetable for the interval to elapse between the use of the various enforcement options open to them. At one court it was clear that the time intervals had been set at levels designed to allow staff to cope with workloads rather than to bring cases to a prompt resolution. The Lord Chancellor's Department told us that, historically, it had been fairly common for courts to extend timetables in the face of staff shortages, to prevent existing staff from being overloaded.
- 15** Some defaulters have no intention of paying their financial penalties. Offenders can be adept at frustrating the courts by giving false addresses and not telling the court of a change of address. The problem begins when the fine is first imposed with courts sometimes failing to obtain and verify information that would enable them to keep track of offenders' whereabouts. None of the five courts we visited had, for example, systematic arrangements in place to obtain offenders' national insurance numbers or verify their addresses. In March 2001, the Lord Chancellor's Department issued guidance urging magistrates' courts to address this issue. Under the Access to Justice Act 1999, the Lord Chancellor may designate public authorities from whom courts can request information about fine defaulters to enable them to be traced. The Department for Work and Pensions is a designated public authority for this purpose. At the time of our visits to courts it was too early to assess the success of this initiative although court staff welcomed it as a positive development.
- 16** Magistrates' courts may issue a distress warrant enabling the seizure of money and goods from the defaulter to the value of the unpaid fine and this is one of the most commonly used enforcement tools. Amongst the areas we visited, the proportion of distress warrants successfully acted upon by bailiff firms varied between 6 and 27 per cent. Whilst it may not be possible to act successfully on all distress warrants, senior court staff emphasised the importance of closely monitoring the performance of bailiff firms to ensure that all warrants were given proper attention. New regulations which came into force in January 2001, lay down monitoring arrangements for contracts between magistrates' courts committees and private enforcement agencies approved to execute warrants on their behalf such as bailiff firms.
- 17** When the police had primary responsibility for the execution of warrants for the arrest of defaulters, they tended to give the work low priority when resources were stretched. Following the transfer of responsibility in April 2001, some magistrates' courts inherited backlogs of unexecuted warrants from the police. In Brent this consisted of over 2,000 unexecuted warrants which court staff estimated could take four years to clear assuming current staffing levels. Even where courts used their own civilian enforcement officers to execute warrants, rather than the police, backlogs had built up. In Avon court staff estimated, based on current staffing levels, that a backlog of three to four years of unexecuted warrants had built up by April 2001, although in this case at least one attempt had already been made to execute most of the warrants outstanding. The Department has since estimated that at the time of transfer there was a backlog of around 106,000 unexecuted warrants in England and Wales. In March 2002, the Department published its post implementation review of the transfer of warrants. The Department's review concluded that although there is room for significant improvement, the foundation had been laid for more effective enforcement of fines in future.



Recommendations

18 We recommend:

- d The Lord Chancellor's Department should review the scope to permit further delegation to administrative staff of responsibility for taking enforcement action, to help expedite enforcement.
- e Magistrates' courts committees should review their arrangements for keeping track of offenders. Subject to avoiding unacceptable delays to the judicial process, steps should be taken to verify addresses and national insurance numbers when the defendant first appears in court, by for example, requesting them to produce benefit books or utility bills.
- f The Lord Chancellor's Department should: review the success of the arrangements for allowing courts access to information kept by the Department for Work and Pensions; and consider the need to extend the arrangements to other government departments and agencies, for example, the Inland Revenue.
- g The Lord Chancellor's Department and the Home Office should review whether the current range of sentencing options is wide enough to minimise the imposition of uncollectable fines.
- h The Lord Chancellor's Department and Home Office should review the scope for action to reduce the time victims may have to wait for their compensation.
- i Magistrates' courts committees should have arrangements in place to monitor their performance in executing warrants, and have effective contracts in place and monitor the performance of any contractors involved in enforcement activities.

Developing the skills and resources needed to improve enforcement

19 Amongst the courts visited by us, staff working on enforcement activities had received induction and basic training but most of their expertise in enforcement was acquired on the job and they received little specialist training. The type of specialist training needed will vary according to the enforcement strategy adopted by their committees. Guidance issued by the Lord Chancellor's Department on the transfer of responsibility for executing warrants for the arrest of defaulters, included advice on training for civilian enforcement officers. We found comparatively few opportunities for sharing good practice between committee areas. Some staff considered that enforcement was accorded a lower priority than other court work and that it was the first activity to get "squeezed" when there was pressure elsewhere. In the courts we visited the staff were committed, enthusiastic and keen to ensure that offenders do not escape paying their financial penalties, but limited in their capacity to do so by the time and tools available to them.

20 Enforcement in some committee areas has been centralised but in others it is carried out by staff attached to individual courts. The Lord Chancellor's Department told us that centralised enforcement was now identifying benefits including better management of enforcement agents and civilian enforcement officers. We did not come across any examples of resources being pooled across committee boundaries. The Institute of Credit Management told us that other organisations involved in debt collection had tended to centralise their debt management functions in recent years, thereby allowing staff to develop specialist skills, adopt a consistent approach to collection, and achieve some economies of scale. The Lord Chancellor's Department considered that current

administrative arrangements for the employment of staff could make it difficult to set up pooled enforcement offices across magistrates' courts committee boundaries especially as they may operate different systems. The Department considered that the planned introduction of a new national computer system for all magistrates' courts - Libra - should be able to facilitate working across committee boundaries.

- 21** Monitoring the prompt collection of fines is hampered by the lack of reliable, consistently produced management information, for example, some magistrates' courts committees cannot distinguish between financial penalties collected as part of the criminal justice system and civil impositions, such as maintenance payments.
- 22** Under current accounting rules, all the fines collected by magistrates' courts committees are remitted to the Lord Chancellor's Department for surrender into the Consolidated Fund. The Department told us that from 1 April 2002 it would be trialling new arrangements under which magistrates' courts committees would be allowed to use money collected to purchase additional staff resources for enforcement work.

Recommendations

- 23** We recommend:
- j The Lord Chancellor's Department should, in consultation with local committees, and drawing upon experiences elsewhere in the public and private sectors, consider creating "centres of excellence" at local, regional or national level to take responsibility for enforcement.
 - k Magistrates' courts committees should, in the interim, and in addition to the events organised by the Lord Chancellor's Department, improve the arrangements for sharing good practice in the enforcement of financial penalties, for example through seminars and, possibly, sharing staff.
 - l The Lord Chancellor's Department and magistrates' courts committees should identify the specialist training needs of staff involved in enforcement and devise a national programme for meeting these needs.
 - m The Lord Chancellor's Department should take steps to improve the completeness and accuracy of data on the collection of penalties so that the performance of magistrates' courts committees can be measured and compared.