

**Address by Mr. PJ Fitzpatrick, Chief Executive Officer, The Courts
Service, on the occasion of the launch by the Law Reform
Commission on its report on the Court Poor Box**

1. Introduction

President, Commissioners, members of the judiciary and other distinguished guests I am delighted to have been invited by the President of the Law Reform Commission to launch this very important report. I would like to take this opportunity of publicly congratulating the Honourable Mrs. Justice Catherine McGuinness on your appointment as President of the Law Reform Commission and to wish you well, President, in the very important work programme that the Commission is engaged in.

2. The Courts Service and the Law Reform Commission

The Courts Service has a keen interest in the Commission's current Programme for Law Reform, and values greatly the close working relationship which has developed with the Commission and your staff, President. Acknowledging the distinct and leading role of the Commission in the area of reform of the law generally, the Courts Service, for its part, has a vital stake in law reform, particularly in the area of litigation process and criminal procedure. This is evident, indeed, from our founding statute, which empowers the Courts Service to formulate proposals in relation to the distribution of jurisdiction and business among the courts and matters of court procedure.

In pursuit of that mandate, we established in 2002 a dedicated Directorate – the Directorate of Reform and Development - to drive the modernisation and reform of court practices and procedures, court rules and formulation of proposals to the Minister for legislative changes in those areas.

The work of the Commission is particularly helpful to us. President I know that our staff and your staff have and continue to work very closely on a number of important projects and I might mention the Commission's work on the law relating to the elderly and proposals for an Office of Public Guardian, and the eConveyancing project as important examples in this regard.

I am acutely aware that your reports are mainly launched by Ministers, Attorney Generals and Chief Justices and that, by your invitation, you have honoured me by placing me in very distinguished company. I would like to congratulate the Commission on yet another excellent Report. I would like to congratulate all involved in its research, compilation and presentation. The Report proposes retention of the most beneficial features of the existing poor box arrangements, while placing those arrangements on a statutory basis, integrating them with a reformed probation of offenders regime. That regime would encompass the making of a Financial Reparations Order, as one of a range of conditions imposable on the conditional dismissal of a charge . Payments under such orders would be made into a Reparation Fund, managed and controlled by the Minister for Justice, Equality and Law Reform, to replace the existing poor box. Proceeds of the Fund would be applied towards provision of reparation and victim assistance, and the addressing of offending behaviour. The Reparation Fund would be administered by an Advisory Committee having accounting obligations, and would be subject to audit by the Comptroller and Auditor General.

3. History of the Court Poor Box

The practice of courts directing that money be paid into a court poor box in lieu of or in conjunction with another penalty is a practice which predates the foundation of the State itself and one for which there appears to be no statutory basis. The practice appears to stem from judges' jurisdiction at common law to exercise discretion in imposing a penalty, if any, and/or imposing other conditions i.e. donations to the poor box or to a particular charity. While all of the courts of first instance have used the poor box on occasion understandably it is predominantly used by the District Courts. The individual amounts vary substantially. In 2004, for example, the average payment was €800. The poor box has been the subject of much comment in the media and elsewhere. Some comments have been well-informed, others less so. The poor box arrangements were also considered by the Dáil Public Accounts Committee back in 2001.

The issue of the court poor box was considered by the new Board of the Courts Service shortly following its establishment. The Board considered the merits and the

difficulties, particularly issues of perception, surrounding the existing arrangements. The very firm view of the Board which was communicated to the Minister for Justice, Equality and Law Reform, was that if the poor box is to be retained, such a facility should be enshrined in legislation and there should be an appeal mechanism as with other penalties. During the last two years, 2004 and 2003, €1m approximately was paid into the court poor box each year. 99% of this related to District Court cases. District Courts deal with 500,000 matters or two-thirds of the total matters coming before the courts in Ireland.

As the Commission has itself indicated, the current poor box arrangements exhibit both positive and negative aspects, which are worth considering for a moment.

4. Arguments for the poor box scheme

- It is important that the purpose of the court poor box is not seen as being to generate income but rather to act as a sanction in appropriate circumstances. The option of paying into the court poor box arises usually where the offence is minor in nature and would not attract a custodial sentence. Public order offences are the most common offences for which the poor box option is given to defendants. These include breaches of the peace, intoxication or disorderly conduct in a public place, threatening, abusive or insulting behaviour in a public place or failing to comply with a direction from An Garda Síochána. It is sometimes used for road traffic offences, drug offences and offences against property or animals. There are many reasons why the court poor box is used by judges. The accused may never previously have been before the courts. The accused may have pleaded guilty. A conviction might be inappropriate or might adversely affect employment or career prospects or the offence may be of a minor or trivial nature. Public debate tends to focus on the arguments against the poor box but, as the Commission has pointed out in their Consultation Paper of March 2004, there are arguments for retaining the poor box in some form, and I mention here the most significant of these:
- The need to impose a conviction or a custodial sentence may be reduced or avoided particularly where the court considers a custodial sentence may be unduly harsh or may have undesired long term implications for the accused.

- It supports the generally accepted principle that imprisonment should be a last resort.
- It allows the court to impose a penalty that is proportionate to the seriousness of the offence and to take into account the age, income and previous record of the offender, the guilty plea and the need for a punishment that does not inflict undue punishment on the offenders family.
- It can be a more meaningful punishment than the maximum fine where the value of a maximum fine may have been eroded by inflation.
- When combined with the Probation of Offenders Act it provides a option where some financial penalty is merited but a conviction and fine are not.
- It is founded on the exercise of the discretionary powers of the courts which is an integral part in determining a prosecution having regard to all the relevant circumstances of a particularly case.

5. Arguments Against

Of course there are arguments against the poor box, some of which, as I have mentioned, are founded on perception.

- It is frequently perceived as being a way of avoiding a conviction and/or a term of imprisonment and this has the potential to damage public confidence in the administration of justice.
- It can create a perception that there is one law for the rich and a different law for the poor.
- Some have argued that in the absence of a clear statutory basis courts have no jurisdiction to use it.
- The absence of clear guidelines in relation to beneficiaries and how money for the poor box is allocated has also been the subject of criticism.

It should also be mentioned that many charities and voluntary organisations benefit significantly from the court poor box. Most of these tend to be local and the funding received by them is, we know, very much appreciated and of great assistance to them.

6. Conclusion

I can assure the Commission that the final recommendations in this Report, the salient features of which I have already described, will be very carefully considered by the Courts Service in conjunction with the Department of Justice, Equality and Law Reform. I would like again to congratulate and compliment the Law Reform Commission on producing another excellent report. The consultation model used by the Law Reform Commission ensures that these reports are not produced in isolation or without having regard to the views of the judiciary, legal practitioners and most important of all members of the public. For that you are to be commended.

Finally it is my great pleasure to launch this report this evening and I have no doubt that it will be of great assistance to Government, the Courts Service, the judiciary and other interests within the justice system in providing the necessary impetus for reform.

Again thank you very much for your invitation and we look forward to continuing the excellent working relationships which has developed between our respective Organisations.

PJ Fitzpatrick

20th September 2005