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**CONSULTATION PAPER ON  
THE COURT POOR BOX**

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**(LRC CP 31 – 2004)**

**IRELAND**

**The Law Reform Commission  
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## INTRODUCTION

### Background to the Paper

1. Many people are familiar with the basic concept of the court poor box system: a person who has been charged with a criminal offence makes a contribution to a charity through the medium of the court as an indication of remorse and earnest of intention not to offend again. Where the charity involved is directly related to the crime (*eg* payment of a sum to the ISPCA in a case involving the use of illegal drugs on animals), the payment achieves a measure of restorative justice by assisting those who work to prevent the commission of similar offences by other persons.<sup>1</sup> Beyond that, however, it appears that little has been written about this aspect of the criminal jurisdiction of the courts. Nonetheless, because of its longstanding use, there has been much informal debate about the court poor box system. Proponents of the court poor box argue that reform of the system could retain its inherent benefits whilst curing any perceived defects,<sup>2</sup> although some critics of the system take the view that it would be best to abolish the poor box entirely.<sup>3</sup> Concern that the court poor box system operated in a manner which may deprive the Exchequer of funds was raised by the Public Accounts Committee in its consideration of the 1999 Annual Report of the Comptroller and Auditor General.<sup>4</sup> Against this background the

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<sup>1</sup> See generally von Hirsch *et al Restorative Justice and Criminal Justice* (Hart 2003) and paragraph 2.34 below.

<sup>2</sup> See *eg* Hannon “Poor box system under threat as probe launched into courts system” *The Irish Examiner* 29 March 2001.

<sup>3</sup> See *eg* Coulter “Review to consider abolishing the court poor box” *The Irish Times* 30 March 2001 and Hannon “Department considering abolition of court poor box” *The Irish Examiner* 30 March 2001.

<sup>4</sup> 29 March 2001. A transcript of this meeting of the PAC is available at [www.irlgov.ie/committees-01/c-publicaccounts/010329/Page1.htm](http://www.irlgov.ie/committees-01/c-publicaccounts/010329/Page1.htm).

Commission decided to examine the court poor box as part of its Second Programme for Law Reform.

### **Overview of the Paper**

2. In order to make a critical assessment of the court poor box system, it is necessary first to ascertain the circumstances in which the court poor box is applied. This process is complicated by a number of factors. First, the court poor box does not have a statutory basis. Secondly, the jurisdiction to apply the court poor box has not been considered in any reported judgments of the Superior Courts. Thirdly, there is a lack of information and empirical data on the circumstances in which the court poor box is applied. Against this background, Chapter 1 of this Paper endeavours to supply the factual context within which an informed debate on the court poor box system can take place. This information was obtained from a variety of sources including informal discussions with some judges of the District Court and Circuit Court and practitioners with whom the Commission consulted.

3. Chapter 2 of this Paper is intended to address critically the court poor box system as currently applied. It addresses the arguments in favour of the present system and those against it. It also discusses whether a combination of section 1(3) of the *Probation of Offenders Act 1907* and section 6 of the *Criminal Justice Act 1993* constitute the potential future basis for a revised court poor box system.

4. Chapter 3 of the Paper outlines the charitable and revenue difficulties which arise in the context of the current court poor box system.

5. Chapter 4 surveys the operation of similar or related systems in other jurisdictions.

6. Chapter 5 considers whether there is a need for a statutory jurisdiction providing for spent convictions. This arises because under current law, any criminal conviction is permanent (apart from certain situations involving children) and the court poor box has sometimes been used to avoid the permanency of a criminal record.

7. Against the backdrop of the analysis in the preceding chapters and, in particular, the critical assessment of the present court poor box system in Chapters 2 and 3, a range of possible reform options are outlined in Chapter 6. Finally, Chapter 7 summarises the provisional recommendations of the Commission.

8. Appendix A outlines the draft scheme of a Court Charity Fund Bill. Figures on the payments made into the court poor box between 1999 to 2003 are set out in Appendix B, whilst payments made out of the court poor box in those years are contained in Appendix C. Appendices D and E provide a breakdown of payments made to organisations and persons from court poor box funds in 2002 and 2003.



## CHAPTER 1 THE APPLICATION OF THE POOR BOX SYSTEM

### Introduction

1.01 One of the notable features of the court poor box system is the veil of uncertainty which has tended to shroud its application.<sup>1</sup> To a large extent, this has resulted from its non-statutory basis and the lack of empirical data both in respect of the circumstances in which it is applied and, at least until recently, the method of receipt and distribution of court poor box funds. This Chapter attempts to address the dearth of information in this area. Section B of this Chapter attempts to trace the origins of the court poor box. Section C of this Chapter is concerned with the circumstances in which the court poor box has been applied by the courts. This issue is addressed under the following headings:

- (a) how the possibility of making a contribution arises in a particular case;
- (b) the type of offences in respect of which the option of making a contribution to the court poor box arises;
- (c) the reasons why the option of making a contribution to the court poor box arises;
- (d) the relevance of section 1(1) of the *Probation of Offenders Act 1907*; and
- (e) the type of offenders who seek to make a contribution to the court poor box and who are permitted or offered the option of making a contribution to the court poor box.

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<sup>1</sup> Although the court poor box is applied in open court with the reasoning for its application being explained, this “veil of uncertainty” refers to the lack of countrywide uniformity in respect of the types of cases in which the court poor box may be applied, the amount of contributions which may be required, and the methods by which payments are made.

1.02 Section D of this Chapter is concerned with the receipt and distribution of court poor box funds. In particular, it indicates the monetary amounts which have been paid into the court poor box in recent years and provides an overview of the manner in which court poor box funds have been distributed.

### **A Origins of the Court Poor Box**

1.03 The first question which should be addressed in any consideration of the court poor box system is the precise origins of the concept. It is incontrovertible that the court poor box system is a long established tradition, predating the foundations of the State. It has been suggested by some that its provenance can be linked to the alms box as administered by the Church in feudal times. Others suggest that the roots of the concept can be found in the Brehon laws; Corley describes the Brehon law as providing “[t]he earliest record we have in Ireland of fines being used for the support of the poor”.<sup>2</sup> Under Brehon law, the relief of the destitute was the responsibility of a relieving officer appointed for that purpose; this officer was empowered to levy a rate on landowners for the maintenance of the “wretched and wandering poor”.

1.04 Since this provision of the Brehon law, the concept of the relief of the poor by a court poor box system has probably further evolved from a practice of the British courts which was subsequently applied in Ireland. Corley notes that in England, “the practice of allowing prisoners their freedom on payment of a sum of money commenced as far back as 1275”.<sup>3</sup> MacNamara notes that “since the 18<sup>th</sup> year of Elizabeth (when the first instance is found), it has been a frequent practice to appropriate some part of the penalty to the poor of the parish where the offence is committed”.<sup>4</sup> Thus, a judge could “amerce” a defendant, *ie* impose a penalty other than a fine, which

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<sup>2</sup> Corley “The Court Poor Box” *Westmeath Independent* 27 April 2001.

<sup>3</sup> Corley *op cit*.

<sup>4</sup> Paley (H.T.J. MacNamara ed) *Law and Practice of Summary Jurisdiction [Under the Summary Jurisdiction Acts 1848-1884]* (5<sup>th</sup> ed 1866 London Sweet Maxwell Stevens Butterworths) at 278-279. MacNamara refers to the adoption of this practice into specific statutes, *eg* statute 5 Anne c 14, which provided that where a person was convicted under that statute, half the penalty was to be paid over to the poor of the parish where the offence was committed.

could include a contribution to the court poor box, where the judge was of the opinion that such penalty was more appropriate.

1.05 It has also been suggested that the court poor box has as its origin the “Elizabethan Poor Law”. The statute 43 Elizabeth c. 2, 1601 “An Act for the relief of the poor” has been described as “the legal and spiritual origin of many aspects of English social history”.<sup>5</sup> Part I of the 1601 statute concerned the imposition of the poor rate and its administration, with section 15 providing:

“That all the surplusage which shall be remaining in the said stock of any county, shall by discretion of the more part of the justices of the peace in their quarter session be ordered, distributed, and bestowed for the relief of the poor hospitals of that county, and of those that shall sustain losses by fire, water, the sea, or other casualties, and to other charitable purposes, for the relief of the poor, as to the more part of the said justices of the peace shall seem convenient.”

1.06 Although it is thus possible to identify a number of possible sources from which the court poor box system evolved, it is not possible to state with certainty which, if any, of these sources is the antecedent. Perhaps it may be the case that the concept evolved from an amalgam of these sources. Nevertheless, it is beyond doubt that the practice of allowing an offender to make a payment to the court poor box as an alternative to conviction and sentence where, in the circumstances of the case, the court takes the view that a conviction would be unduly harsh, is now regarded by some judges as a familiar feature of the common law, and applied accordingly. However, its application remains solely a matter for individual judges, and it is beyond doubt that there is serious inconsistency in the use of the court poor box.<sup>6</sup> Whilst there are many reasons for the non-application, or limited application, of the court poor box,<sup>7</sup> it may well be that a factor

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<sup>5</sup> See the Courts Management Change Program (of Victoria, Australia) *Report on the Administration of Court Poor Box Funds* (Project No 7 1985) Appendix B.

<sup>6</sup> Whilst each and every mode of disposition is a matter for the individual judge in our system, it is nevertheless the case that there is a lack of uniformity in the use and availability of the court poor box on a geographical basis.

<sup>7</sup> Further consideration to this issue will be given *infra* at paragraphs 2.42-2.97.

in some judges' hesitation in utilising the court poor box is the somewhat uncertain status the court poor box enjoys in Irish law.

## **B The Circumstances in which the Court Poor Box is Applied by the Courts**

1.07 This section of the Paper is concerned with the circumstances in which the court poor box is applied. This issue will be addressed under the sub-headings referred to above.<sup>8</sup>

### **(1) How the possibility of making a contribution arises in a particular case**

1.08 The possibility of making a contribution to the court poor box arises in a number of different ways; however, it may be said that the manner in which it will come about ultimately depends on the particular formulation of the court poor box jurisdiction which is applied by the individual judge. The most frequent way in which a contribution to the court poor box arises is as a result of a request by or more usually on behalf of an offender. In some courts, however, a "canvassing disqualifies" policy is adopted which entails the rejection of applications by or on behalf of an offender to make a contribution to the court poor box.

1.09 The possibility of making a contribution also frequently arises at the instance of the court and, in particular, as a result of:

- (a) a suggestion by the court that a contribution would be appropriate;
- (b) a request by the court that the offender should make a contribution;
- (c) a direction by the court that the offender should or must make a contribution;<sup>9</sup>
- (d) an indication by the court of a willingness "to deal with the case in a particular way" or "to adopt a certain course";  
or

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<sup>8</sup> *Supra* at paragraph 1.01.

<sup>9</sup> See *eg The Irish Times* 12 September 2002 ("[the accused] was ordered to pay €100 into the Court Poor Box by [the court]").

(e) an indication by the court that it would dismiss a charge on condition that the offender pay a particular sum to the court poor box.<sup>10</sup>

1.10 It is only on very rare occasions and only in certain courts that the possibility of making a contribution arises as a result of a request made by the prosecution. Some judges, however, ask the prosecuting Garda if he or she has any comments on the proposal of making a contribution to the court poor box.

**(2) *The type of offences in respect of which the option of making a contribution to the court poor box arises***

1.11 In general, the court poor box is applied in respect of minor offences which do not merit a custodial sentence although, on occasion, it has been applied in relation to more culpable offences which might seem to merit a significant fine or custodial sentence. The following is a brief overview of the most common offences in respect of which the court poor box has been used as a disposition.

**(a) *Public order offences***

1.12 The court poor box is most frequently applied in respect of public order offences and, in particular, offences under the *Criminal Justice (Public Order) Act 1994*.<sup>11</sup> The most frequent offences in this regard are breach of the peace and offences contrary to the following sections of the 1994 Act: section 4 (intoxication in a public place), section 5 (disorderly conduct in a public place), section 6 (threatening, abusive or insulting behaviour in a public place) and section 8 (failure to comply with a direction by a member of the Garda Síochána).<sup>12</sup>

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<sup>10</sup> See eg *The Irish Times* 13 November 1997 (“The judge ... said he would strike out the charge [of breach of the peace] on condition that £200 was paid into the court poor box”).

<sup>11</sup> See eg *The Irish Times* 13 November 1997.

<sup>12</sup> See *Public Order Offences in Ireland* (Report by the Institute of Criminology, University College Dublin for the National Crime Council 2003), which considers the breakdown of court disposals of public order offences at pp. 74-75. The statistical evidence establishes that between the period January 2000 to March 2002, a contribution to the court poor box accounted for 4% of disposals of offences under the *Criminal Justice (Public Order) Act 1994*. This may be contrasted with the number of cases

(b) *Offences contrary to the Road Traffic Acts*

1.13 The court poor box is also frequently applied in relation to offences under the *Road Traffic Act 1961*, as amended, and in particular offences contrary to section 52(1)<sup>13</sup> (careless driving), section 53<sup>14</sup> (dangerous driving), section 47<sup>15</sup> (exceeding a speed limit) and section 56<sup>16</sup> (driving without insurance).

(c) *Offences in relation to property*

1.14 The court poor box is also applied in respect of various property-related offences. In particular, it is applied in relation to petty larcenies and offences involving damage to property contrary to the *Criminal Damage Act 1991*.<sup>17</sup> Some judges restrict the application of the court poor box to cases where compensation has been offered or paid by the offender for the damage in question.

(d) *Drugs offences*

1.15 Some courts apply the court poor box in respect of drugs offences. The possession of cannabis for personal use contrary to section 3 of the *Misuse of Drugs Act 1977*<sup>18</sup> is the most frequent offence in this category.<sup>19</sup> However, some courts also apply the court

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disposed of by the application of section 1(1) of the *Probation of Offenders Act 1907*, which amounted to 1% for the same period.

<sup>13</sup> As amended by section 51 of the *Road Traffic Act 1968* and section 3 of the *Road Traffic (Amendment) Act 1984*.

<sup>14</sup> As amended by section 51 of the *Road Traffic Act 1968* and section 3 of the *Road Traffic (Amendment) Act 1984*.

<sup>15</sup> As amended by section 26 of the *Road Traffic Act 1968*.

<sup>16</sup> As amended by section 41 of the *Road Traffic Act 1994*.

<sup>17</sup> See *eg The Irish Times* 9 February 1999. (A person released a fire extinguisher causing water to land on the coat of another person and was charged with causing malicious damage to the coat. The judge applied the *Probation of Offenders Act* and ordered the offender to pay £100 into the court poor box. It is significant to note that the charge related to the damage of the coat rather than interfering with fire equipment, the latter being far less likely to be characterised as “trivial”.)

<sup>18</sup> As amended by section 2 of the *Misuse of Drugs Act 1984*.

<sup>19</sup> A high profile example of the use of the court poor box in this context is the case of Adam Clayton, a member of U2, who appeared before the Dublin District Court on 1 September 1989. The initial charge of possession of cannabis with intent to supply was reduced to a charge of

poor box in relation to an offence of possession of ecstasy for personal use.

(e) *Offences involving animals*

1.16 The court poor box is also applied by some courts in respect of offences contrary to section 1 of the *Protection of Animals Act 1911*<sup>20</sup> (cruelty to animals) and section 6 of the *Animal Remedies Act 1993* (possession of an animal remedy). Reported cases in this category include deer-poaching,<sup>21</sup> the injection of slurry into cattle to obtain compensation under the TB eradication scheme<sup>22</sup> and the injection of illegal growth-promoters into cattle to enhance their value.<sup>23</sup>

(f) *Offences against persons*

1.17 The court poor box has also been applied in respect of minor assaults. However, some judges limit its application in this regard to circumstances where the victim has declined an offer of compensation by the accused. On rare occasions, the court poor box has been applied in relation to more serious offences against the person including sexual offences against minors and offences under the *Child Trafficking and Pornography Act 1998*.<sup>24</sup> Many judges do not apply the court poor box in respect of assaults or offences against the person of any kind.

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possession for personal use. Mr Clayton pleaded guilty to this lesser charge and the charge was ultimately dismissed without conviction by the application of section 1(1) of the *Probation of Offenders Act 1907*, but only on condition that Mr Clayton pay a sum of £25,000 to the Women's Aid Refuge Centre. See *The Irish Times* 2 September 1989. No doubt a conviction might have had a devastating effect on the musician's capacity to travel as a member of U2 in view of difficulties in obtaining visas.

<sup>20</sup> As amended by the *Protection of Animals Act 1965* and section 20 of the *Control of Dogs Act 1986*.

<sup>21</sup> See *The Irish Times* 15 October 1998.

<sup>22</sup> See *The Irish Times* 1 December 2000.

<sup>23</sup> See *The Irish Times* 9 February 1999.

<sup>24</sup> See eg *The Irish Times*, *The Irish Independent* and *The Irish Examiner* on 17 January 2003, discussing the prosecution of Tim Allen under the 1998 Act.

(g) *Safety at work*

1.18 The court poor box is also sometimes applied in respect of prosecutions under the *Safety, Health and Welfare at Work Act 1989*. Thus, in the breakdown of statistics on prosecutions taken by the Health and Safety Authority in 1998, reference is made to one case in which the *Probation of Offenders Act 1907* was applied, on condition that the defendant contribute IR£4,000 to the court poor box.<sup>25</sup> Similarly, in 2001 a company which pleaded guilty to breaches of construction regulations and a subsequent prohibition notice was dealt with under section 1(1) of the *Probation of Offenders Act 1907* at Drogheda District Court upon payment by the company of IR£5,000 to River Rescue Service in Drogheda.<sup>26</sup>

1.19 In at least one such case, however, *National Authority for Occupational Safety and Health v Town of Monaghan Co-Op Ltd*,<sup>27</sup> the Health and Safety Authority appealed<sup>28</sup> the decision of the District Court judge to strike out the charges against the defendant after it made a contribution of €600 to the Special Olympics Fund.

1.20 Finally, in at least one case a remedy with some similarity to the court poor box system has also been utilised in respect of Health and Safety matters in the High Court. In 1997, Kelly J dealt with an order made under section 39 of the 1989 Act<sup>29</sup> against Zoe Developments Ltd on the application of the Health and Safety Authority, in respect of 13 breaches of health and safety regulations at

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<sup>25</sup> Health and Safety Authority *Annual Report 1998* Appendix 2: "HSA Prosecution Outcomes 1998".

<sup>26</sup> 19 October 2001. See Health and Safety Authority *Annual Report 2001* at p. 72.

<sup>27</sup> Monaghan District Court, 26 November 2002. The defendant pleaded guilty to breaches of sections 12(3), 12(4) and 48(17) of the *Safety, Health and Welfare at Work Act 1989* and Regulation 17(1)(a) of the *Safety, Health and Welfare at Work (General Application) Regulations 1993*. The case arose after a milk tanker driver was crushed against a wall by a reversing milk tanker lorry, resulting in serious injury. See Health and Safety Authority *Annual Report 2002* at p. 52. This case is under appeal at the time of writing.

<sup>28</sup> Pursuant to the specific power to appeal against decisions of the District Court granted by section 52 of the 1989 Act.

<sup>29</sup> Under which the High Court may order closure of a place of work.

a site owned by the company at Charlotte Quay in Dublin.<sup>30</sup> The application had been brought under section 39 of the 1989 Act to the High Court by the Authority following the death of a construction worker on the site. Having heard that the company had 12 previous convictions for breaches of health and safety regulations at other sites, Kelly J indicated that he would allow work to continue on the site at Charlotte Quay subject to the company continuing to comply with an agreed health and safety plan. In order to ensure the company understood the seriousness of the matter, Kelly J also indicated that a contribution to local charities would be an appropriate gesture, representing a “substantial indication of the company’s *bona fides*”. The company undertook to make a £100,000 donation to charity, of which £50,000 was allocated to the Society of St Vincent de Paul and £50,000 to Temple Street Children’s Hospital. Whilst this case represents a high profile example of the use of something akin to the court poor box in the High Court, it is rare that circumstances would arise where such a disposition would be appropriate in respect of cases appearing in the High Court. Furthermore, because of its application outside the criminal process, the Commission considers that this instance does not fall within the scope of the current Consultation Paper.

**(3) *The reasons why the option of making a contribution to the court poor box arises***

1.21 A variety of factors are taken into account by the courts when determining whether to apply the court poor box in a particular case. The most significant factors in this regard will be addressed under the following sub-headings.

**(a) *The first occasion on which the offender had committed the offence in question (or any offence)***

1.22 The most significant factor which underlies a decision to apply the court poor box is that the offender was never previously charged with the offence in question or was never previously charged with any other offence. Many judges will only consider applying the court poor box in relation to persons who satisfy this condition and, in this sense, the absence of a prior criminal record constitutes a “prerequisite” to the application of this method of dealing with an

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<sup>30</sup> See Carolan “Judge warns Zoe to comply with safety plan” *The Irish Times* 25 November 1997.

offender.<sup>31</sup> Other judges do not apply this rule rigidly and may, for example, consider the court poor box in respect of a person who had not offended for a very long time.

*(b) A plea of guilty by the offender*

1.23 Another factor which weighs very heavily in the decision-making process is a plea of guilty by the offender. Indeed, many judges also consider such a plea to be a “prerequisite” to the application of the court poor box.

*(c) A concern to avoid a conviction*

1.24 A concern on the part of the court to avoid a conviction is also a very significant factor. For reasons which overlap with the other factors outlined in this section, a court may consider that it would be inappropriate to impose a conviction on an offender in a particular case. This frequently occurs where a conviction would adversely affect employment prospects or prevent an offender from securing the necessary visa to work or travel abroad. The permanency of a conviction once recorded is another factor in this regard.<sup>32</sup>

*(d) The minor or trivial nature of the offence*

1.25 The minor or trivial nature of the offence with which an offender is charged is another factor which frequently underlies a court’s decision to apply the court poor box.

*(e) A lack of proportionality between any outcome other than a contribution to the court poor box and the offence in question*

1.26 A lack of proportionality between any outcome other than the court poor box and the offence in question is also a significant factor.

*(f) The family circumstances of the offender*

1.27 The courts frequently have regard to the family circumstances of the offender when considering whether to apply the

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<sup>31</sup> Many of the judges who participated in the Commission’s informal discussions on the matter described this factor as a “prerequisite”.

<sup>32</sup> The issue of deleting or expunging spent convictions will be considered in further detail below in Chapter 5.

court poor box. Where an outcome other than the court poor box would, in effect, also punish the members of the family who depend for particular help and needs on the offender, the courts are likely to take this into account as a factor which favours application of the court poor box.

*(g) A concern to avoid an injustice*

1.28 In broad terms, many of the factors considered in this section are concerned with avoiding an injustice. Some judges, however, specifically limit the application of the court poor box to cases in which the imposition of a penalty provided by law would result in an unjust and disproportionately penal outcome.

*(h) The inadequacy of the maximum fine in respect of the offence because of the effects of inflation<sup>33</sup>*

1.29 Some judges employ the court poor box as a means of countering the effects of inflation over time on the maximum value of fines for particular offences.

*(i) A concern to avoid a fine*

1.30 A concern on the part of the court to avoid imposing a fine is very rarely a factor which influences a decision to apply the court poor box. Indeed, a majority of judges consider that the financial penalty inherent in a contribution to the court poor box as an integral part of this approach to dealing with an offender without the need to record a conviction but yet to require some evidence of an earnest of good intention. Accordingly, most judges do not apply the court poor box for the purpose of enabling an offender to avoid paying a fine.

*(j) A concern to avoid imprisonment*

1.31 Similarly, a concern on the part of the court to avoid imposing a term of imprisonment is very rarely a factor which influences a decision to apply the court poor box.

1.32 To the extent that it is a factor, it would appear that it is only considered in circumstances which, in the judge's view, merit a suspended sentence. However, most judges do not apply the court poor box for the purpose of enabling a person to avoid a term of imprisonment (including a suspended sentence).

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<sup>33</sup> See generally the Report by the Law Reform Commission entitled *The Indexation of Fines – a Review of Developments* (LRC 65 – 2002).

**(4) The application of section 1(1) of the Probation of Offenders Act 1907**

1.33 It is also appropriate to consider the extent to which the court poor box is applied in conjunction with section 1(1) of the *Probation of Offenders Act 1907*. Section 1(1) provides as follows:

“Where any person is charged before a court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either –

- (a) dismissing the information or charge; or
- (b) discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.”

1.34 Section 1(1) thus affords a judge an opportunity to determine the facts and find the ingredients of the charge proved but yet ultimately to dismiss a charge in the light of the circumstances referred to therein.<sup>34</sup> Some judges believe that the court poor box option dovetails effectively with section 1(1) because it affords a court a means of dealing with an offender in circumstances where some financial penalty is merited but a conviction and any other sentence would be inappropriate. It should be noted that section 1(3) of the *Probation of Offenders Act 1907* allows for the payment of a sum of money in cases where section 1(1) is applied, but this is

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<sup>34</sup> See generally, in relation to section 1 of the *Probation of Offenders Act 1907*, Osborough ‘Dismissal and discharge under the Probation of Offenders Act 1907’ (1981) *Ir Jur* 1; Osborough ‘Probation in Northern Ireland’ (1974) *Ir Jur* 233. See also *O’Donoghue v Morris* (1918) 52 ILTR 25; *McLelland v Brady* [1918] 2 IR 63; and *Gilroy v Brennan* [1926] IR 482.

currently limited to €12; this provision will be considered in further detail below.<sup>35</sup>

1.35 The practice of individual judges varies to a significant degree; it appears that, in some courts, the court poor box is often applied in conjunction with section 1(1) of the 1907 Act, whilst in others, this practice is never followed.<sup>36</sup> At District Court level, a significant number of judges who utilise the court poor box always apply it in conjunction with section 1(1). However, as against this it should be noted that one District Court judge indicated during informal discussions with the Commission that the court poor box is “never” applied in conjunction with the *Probation of Offenders Act*; another judge indicated that the court poor box would “very rarely” be applied in conjunction with section 1(1).<sup>37</sup>

1.36 The practice of applying the court poor box in conjunction with section 1(1) appears to be less frequent in the Circuit Court.

**(5) *A profile of the persons who seek to make a contribution to the court poor box and/or who are permitted or requested to make such a contribution***

1.37 In the absence of the necessary empirical data, it is difficult to provide a firm indication of the type of persons who seek to make a contribution to the court poor box and who are permitted or requested to make a contribution to the court poor box. Subject to this caveat, however, the Commission offers the following tentative observations on the general profile of such persons on the basis of its research.

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<sup>35</sup> At paragraphs 2.98-2.105.

<sup>36</sup> Comprehensive empirical data is not available as a result of the somewhat *ad hoc* manner in which the court poor box is applied in individual courts. However, it may also be argued that the idiosyncratic application is not the reason for lack of data; until recently there has been a paucity of information recorded about dispositions in the District Court. See the recommendations of the Fennelly Report in respect of the need to improve the recording and collection of information: Working Group on the Jurisdiction of the Courts *The Criminal Jurisdiction of the Courts* (Courts Service 2003) at paragraph 834.

<sup>37</sup> Another response from a District Court judge indicated that the court poor box, when applied, is akin to giving the offender “one chance”, and the matter is normally struck out.

(a) *Persons who have no previous criminal record*

1.38 As noted above,<sup>38</sup> the most significant factor which underlies a decision to apply the court poor box is that the offender was never previously charged with the offence in question or was never previously charged with any other offence. It is unsurprising, therefore, that persons who have no prior criminal record feature very strongly in the profile of persons who are permitted or requested to make a contribution to the court poor box.<sup>39</sup>

(b) *Persons who are relatively affluent*

1.39 The court poor box system is contingent upon a payment by an offender to a particular charity. At first sight, therefore, the court poor box system would appear inherently to favour the relatively affluent. In this light, it is perhaps unsurprising that a significant proportion of the persons who seek to make a contribution to the court poor box appear to be relatively affluent and in a position to afford an apparently “generous” contribution.

1.40 On one view, it is arguable that the imbalance in this regard can be redressed by a court directing a contribution in accordance with a person’s means, so that it is irrelevant whether a person is affluent. However, whilst in theory such an approach might offer some redress to the inequality argument, from a practical perspective at least many believe that under the present system, the court poor box is more frequently availed of by or afforded to the relatively affluent than less well off members of society.

(c) *Persons from all sections of society*

1.41 Notwithstanding the foregoing, it is appropriate to indicate that most of the judges of the District and Circuit Courts who indicated their views to the Commission stated that the court poor box is applied in relation to persons from *all sections of society*. In many respects, this is unsurprising in view of the type of offences (*eg* public

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<sup>38</sup> *Supra* at paragraph 1.22.

<sup>39</sup> See *eg The Irish Times* 27 March 2001 (A musician who had no previous convictions and pleaded guilty to charges of being drunk and disorderly and using abusive and threatening language was afforded the *Probation of Offenders Act 1907* upon paying £3,000 to charity).

order offences and road traffic offences) and the circumstances in which the court poor box is applied (as outlined above).<sup>40</sup>

*(d) Students*

1.42 Students are also frequently afforded the opportunity of making a contribution to the court poor box. During informal discussions, several judges indicated to the Commission that the court might consider using the court poor box in respect of a student where other factors were also present (such as a first offence, plea of guilty), on the grounds that to record a conviction might disproportionately affect the future prospects of a student or apprentice in terms of employment or travel.

**C The Receipt and Distribution of Court Poor Box Funds**

***(1) The amounts which are paid into the court poor box***

1.43 The amounts which are paid into the court poor box vary greatly. To a large extent, the amounts depend upon the gravity of the offence and the means of the offender and the practice of the judge. For example, some judges have adopted a practice of directing the payment of a particular sum in all cases, irrespective of the means of an accused. Other judges direct the payment of a sum within a defined range (*eg* €50 - €300). Other judges determine a payment without reference to any particular range but, rather, in view of the gravity of the offence and in accordance with the means of the offender.

1.44 The following is an overview of the total amounts which were paid into the court poor boxes of the District Court and the Circuit Court for the years 1999 – 2003.<sup>41</sup> This information was provided by the Courts Service.

<b>Year ending</b>	<b>District Court</b>	<b>Circuit Court</b>
1999	£369,029.00	£20,928.00
2000	£413,733.00	£14,565.00

<sup>40</sup> *Supra* at paragraphs 1.21 *et seq.*

<sup>41</sup> It should be noted that the figures for 2003 are provisional.

2001	€577,374.56	€151,007.43
2002	€903,826.13	€34,581.99
2003	€980,330.79	€2,700.00

**(2) *The manner in which funds from the court poor box are distributed***

1.45 The manner in which court poor box funds are administered and distributed varies from court to court, further compounding the inconsistencies which have already been noted in the administration of the system. In some cases, payments are made directly to a particular charity and, thus, do not pass through court channels. In such cases, a receipt for payment is generally submitted to the court. In other cases, payments are made through the Probation and Welfare Services or through the Garda Síochána. In most cases, however, it appears that payments are made to an officer of the court (eg the District Court Clerk) who ultimately distributes the monies to various charitable organisations in accordance with the judge's directions.

1.46 The following is an overview of the total amounts which were paid out of the court poor boxes of the District Court and the Circuit Court for the years 1999 – 2003.<sup>42</sup> This information was provided by the Courts Service.

<b>Year ending</b>	<b>District Court</b>	<b>Circuit Court</b>
1999	£338,500.00	£8,405.00
2000	£408,734.00	£26,964.00
2001	€518,537.24	€18,014.72
2002	€891,157.77	€44,681.73
2003	€980,196.85	€4,491.55

1.47 A list of the organisations which benefited from court poor box payments in 2002 and 2003 is provided in Appendices D and E to this Paper.

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<sup>42</sup> Figures for 2003 are provisional.

## CHAPTER 2    A CRITICAL ASSESSMENT OF THE COURT POOR BOX SYSTEM

### A        Introduction

2.01        This Chapter provides a critical assessment of the present application of the court poor box system. The aim here is to establish a balanced, comprehensive account of the court poor box system which will enable an informed decision to be made as to the merits of the arguments favouring retention of the system, and those calling for its abolition. Accordingly, Part B of this Chapter will set out the arguments which can be made in favour of the court poor box system, whilst Part C will set out the arguments which can be made against. Part D considers whether there exists the future potential for a statutory jurisdiction to require offenders to make a financial contribution as an earnest of intention, drawing on the *Probation of Offenders Act 1907* and the *Criminal Justice Act 1993*. Part E develops some conclusions drawn by the Commission from the assessment made in this Chapter.

### B        Arguments In Favour of the Court Poor Box System (As           Currently Applied)

2.02        This section analyses the positive features of the court poor box system as currently applied.

#### *(1)        It may avoid or reduce the need to impose a conviction*

2.03        For a variety of reasons, a court may consider that it would be inappropriate or unduly harsh to impose a conviction on the offender in the circumstances of a case. A significant factor in this regard is the permanency of a conviction once recorded.<sup>1</sup> As a judge of the District Court observed in relation to cases involving young persons who were prosecuted for acts of folly which they

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<sup>1</sup>        The issue of deleting or expunging convictions is considered further below at Chapter 5.

subsequently regretted (which he confirmed encompass a significant number of cases before the District Court) “it seems unduly harsh to hang the millstone of a criminal conviction around their necks for the rest of their lives because of a few moments of excess, exuberance or stupidity”. Another factor is the impact of a conviction on an offender’s employment prospects and capacity to secure the necessary visa to work or travel abroad. In this regard, one can instance the case of a person who committed a minor public order offence while intoxicated and had planned to travel and work abroad but for whom a conviction could preclude the obtaining of the necessary visas.<sup>2</sup>

**(2) It may avoid or reduce the need to impose a term of imprisonment**

2.04 The principle that imposing a term of imprisonment is a sentencing option of last resort commands considerable international support.<sup>3</sup> Indeed, the principle recently obtained statutory expression in this jurisdiction in relation to young offenders. Section 96(2) of the *Children Act 2001* provides, *inter alia*, that “a period of detention should be imposed [on a child] only as a measure of last resort.”

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<sup>2</sup> See eg *The Irish Times* 3 March 1999. (A person who intended to travel to Australia was involved in a bottle-throwing incident while intoxicated in a night club; if convicted of the offence with which he had been charged, he would have been unable to obtain a visa. The judge directed the offender to pay £100 to the court poor box and to enrol in an alcohol awareness programme.)

<sup>3</sup> See eg Law Reform Commission *Report on Penalties for Minor Offences* (LRC 69-2003) at 28-29 (noting that there is now widespread international assent to the principle of restraint in the use of imprisonment); Bacik ‘The practice of sentencing in the Irish courts’ in O’Mahony (ed) *Criminal Justice in Ireland* (Institute of Public Administration 2002) (noting that “[w]hatever rationale for sentencing may be adopted, those groups and experts who have reviewed the Irish penal system over the years have all recommended less use of imprisonment...”); O’Malley *Sentencing Law and Practice* (Round Hall Press 2000) at 147 *et seq* (noting that “[t]he principle that imprisonment should be a punishment of last resort has been acknowledged as part of the common law in other jurisdictions”); Ashworth *Sentencing and Criminal Justice* (Butterworths 2000) at 80-81 and 237 (noting that there is now widespread international acceptance that imprisonment should be used with restraint). See also *Final Report of the Expert Group on the Probation and Welfare Service* (Pn.7324) (Department of Justice, 1999) at p. 23, where it approves the *Report of the National Crime Council* (1998) that imprisonment is a punishment of last resort.

2.05 To the extent that it avoids the need to impose a term of imprisonment or reduces a term which otherwise would be imposed, it can be argued that the court poor box system accords with the general principle of imposing a term of imprisonment as a sentencing option of last resort. Furthermore, it can also be said that the court poor box system broadly adheres to the principles of restorative justice, by including a reparative element in the form of a financial contribution, which is ultimately applied for the benefit of the community as a whole, in the outcome reached by the court.<sup>4</sup>

**(3) *It enables the court to determine an appropriate outcome having regard to all of the circumstances of a case***

2.06 Advocates of the court poor box argue that many of the factors which underlie a decision to afford a person the option of making a contribution to the court poor box highlight the intrinsic merit of a system which enables a court to impose a penalty that does not include or depend upon a conviction. The following are the most significant factors in this regard:

**(a) *It enables the court to determine an outcome that is proportionate to the gravity of the offence***

2.07 It is an established principle of sentencing that the punishment should be proportionate to the crime. In *State (Healy) v Donoghue*<sup>5</sup> Henchy J stated that the constitutional guarantees of trial in due course of law,<sup>6</sup> personal rights<sup>7</sup> and personal liberty<sup>8</sup> “necessarily [imply], at the very least a guarantee that a citizen shall not be deprived of his liberty as a result of a criminal trial conducted in a manner or in circumstances, calculated to shut him out from a reasonable opportunity of establishing his innocence; or where guilt

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<sup>4</sup> For an outline of the principles of restorative justice, see O’Malley *op cit* at paragraphs 1-14-1-15, and Von Hirsch *et al Restorative Justice and Criminal Justice* (Hart 2003).

<sup>5</sup> [1976] IR 325.

<sup>6</sup> Article 38.1 of the Constitution.

<sup>7</sup> Articles 40.3.1° and 40.3.2° of the Constitution.

<sup>8</sup> Article 40.4.1° of the Constitution.

has been established or admitted, of *receiving a sentence appropriate to his degree of guilt* and his relevant personal circumstances.”<sup>9</sup>

2.08 The constitutional dimension to the proportionality principle, as articulated by Henchy J in *Healy*, merits emphasis. By virtue of the elevation of the proportionality principle to the constitutional plane and, in particular, its *locus* in the guarantees of Articles 38.1, 40.3.1°, 40.3.2° and 40.4.1°, a person who has been convicted of an offence enjoys a fundamental constitutional right to receive a sentence that is proportionate to, *inter alia*, the gravity of that offence<sup>10</sup> and there is a concomitant obligation on the State, including the courts, to protect and vindicate that right.

2.09 In the light of this emphasis on the importance of the principles of proportionality, an analogy might be drawn between these sentencing principles and the court poor box system. It can thus be argued that there may be cases in which the most proportionate way of dealing with a particular person before the court is not to record a conviction, but rather to allow such person to provide a financial contribution as “an earnest of intention” and to apply section 1(1) of the *Probation of Offenders Act 1907*. The court poor box, according to this view, enables a court to achieve an outcome which is proportionate to, *inter alia*, the gravity of the offence.

(b) *It enables the court to determine an outcome that is proportionate to the personal circumstances of the person having regard to all of the circumstances of the case*

2.10 The constitutional principle of proportionality applies not simply in relation to the gravity of the offence but also in relation to the personal circumstances of the offender. In *People (Attorney General) v O’Driscoll*,<sup>11</sup> Walsh J held that, in the light of the objects of imposing a sentence,<sup>12</sup> “it is ... the duty of the courts to pass what

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<sup>9</sup> [1976] IR 325 at 353. (Emphasis added). See also *People (DPP) v W.C.* [1994] 1 ILRM 321.

<sup>10</sup> The right also embraces an entitlement to receive a sentence that is proportionate to the personal circumstances of the offender.

<sup>11</sup> (1972) 1 Frewen 351.

<sup>12</sup> Walsh J stated that “[t]he objects of passing sentence are not merely to deter the particular criminal from committing a crime again but to induce him in so far as possible to turn from a criminal to an honest life and

are the appropriate sentences in each case having regard to the particular circumstances of that case – not only in regard to the particular crime but *in regard to the particular criminal*.<sup>13</sup> In *State (Healy) v Donoghue*,<sup>14</sup> Henchy J held that the Constitution guarantees a citizen whose guilt of a criminal offence has been established or admitted of the right to “[receive] a sentence appropriate to his degree of guilt *and his relevant personal circumstances*.”<sup>15</sup>

2.11 In *People (DPP) v. M.*,<sup>16</sup> Denham J stated that “[t]he nature of the crime and the personal circumstances of the appellant are the kernel issues to be considered and applied in accordance with the principles of sentencing ....”<sup>17</sup> Denham J continued:

“Sentencing is a complex matter in which principles, sometimes being in conflict, must be considered as part of the total situation. Thus, while on the one hand a grave crime should be reflected by a long sentence, attention must also be paid to individual factors, which include remorse and rehabilitation, often expressed *inter alia* in a plea of guilty, which in principle reduce the sentence.”<sup>18</sup>

2.12 Denham J also reiterated the principle that sentences must be proportionate to the crime and to the personal circumstances of the offender and observed that “[t]he essence of the discretionary nature of sentencing is that the personal situation of the [offender] must be taken into consideration by the court.”<sup>19</sup>

2.13 Drawing an analogy with these principles of sentencing, it might be said that there would appear to be good reason for a judge to consider the personal circumstances of a person before the court when considering whether to apply the *Probation Act* and/or to require a

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indeed the public interest would be best served if the criminal could be induced to take the latter course”. *Ibid* at 359.

<sup>13</sup> (1972) 1 Frewen 351 at 359. (Emphasis added).

<sup>14</sup> [1976] IR 325.

<sup>15</sup> *Ibid* at 353. (Emphasis added).

<sup>16</sup> [1994] 3 IR 306.

<sup>17</sup> *Ibid* at 317.

<sup>18</sup> *Ibid* at 318.

<sup>19</sup> *Ibid* at 316.3

contribution to the court poor box. Thus, it may be said that by virtue of its inherent flexibility, the court poor box significantly enhances the capacity of a court to reach an outcome which is proportionate to the personal circumstances of the person before the court.

(c) *It enables the court to determine a monetary penalty that is proportionate to the means of the person before the court*

2.14 The principle that a court should have regard to the means of an offender when imposing a fine was recently reaffirmed by the Court of Criminal Appeal in *People (DPP) v Redmond*<sup>20</sup> in the context of an appeal by the Director of Public Prosecutions for a review of a fine pursuant to section 2 of the *Criminal Justice Act 1993*. The respondent had pleaded guilty to 10 charges which related to a failure to make tax returns in respect of a number of specified years.<sup>21</sup> The trial judge had imposed a fine of £500 in respect of each of the first five charges and £1,000 in respect of each of the next five and, thus, a total fine of £7,500. The Court of Criminal Appeal emphasised that “regard must be had to the means of the offender when a fine is being imposed”.<sup>22</sup> The Court continued:

“In this respect, a fine imposed by a criminal court differs from a revenue financial penalty. Unless there is specific provision to the contrary ... a Court must indeed proportion the fine to the means of the offender. A revenue penalty, however, is generally of fixed amount (whether provided by statute or arrived at as a result of computation) and is payable in that sum without regard to the means of the offender subject only to such statutory mitigation as may be possible. For example, a Court would rarely impose a fine which would have the consequence that the defendant

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<sup>20</sup> [2001] 3 IR 390.

<sup>21</sup> The ten charges were virtually identical. The first alleged:

“That [the accused] within the State, being a chargeable person knowingly or wilfully failed to deliver a return in the prescribed form of [his] income, profits or gains, or of the sources of [his] income, profits or gains, to the appropriate Inspector of Taxes for the year of assessment 1989/90 on or before the specified return date for that chargeable period, that is to say 31 December 1989, as was required by section 10 of the *Finance Act 1988*, contrary to section 94(2)(e)(i) of the *Finance Act 1983*, as amended.”

<sup>22</sup> Citing O'Malley *Sentencing Law and Practice* (Round Hall Press 2000).

would have to sell his or her house because to do so might be regarded as an extraordinary punitive measure. A revenue penalty, on the contrary, arises in a specified amount without regard to the means of the offender or what steps he will have to take to pay it. And there is generally only a limited amount of mitigation available, and that at the discretion of the Revenue Commissioners.”<sup>23</sup>

2.15 The Court observed that a fine of £7,500 is neither lenient nor harsh in itself, but only in terms of the circumstances of the person who must pay it.

2.16 In the circumstances of the case and having regard to the onus of proof on the application, the Court concluded that the matters stated by the trial judge to have been taken into consideration were correctly so considered:

“The fines imposed are the result of a logical process whereby the trial judge, working with the limited and sometimes contradictory information before him, tried to balance the gravity of the offences, the other penal consequences to the offender, and the personal circumstances. There is no evidence that he erred in principle.”<sup>24</sup>

2.17 The flexibility which inheres in the court poor box system enables a judge to determine an outcome, such as a financial contribution to the court poor box, which is proportionate to the means of the offender (to the extent that his or her means can be ascertained)<sup>25</sup> and, thus, accords with the proportionality principle which is applied in relation to fines, and may be applied by analogy to the court poor box.

(d) *The offender had never previously committed the offence in question (or any other offence)*

2.18 The absence of a prior criminal record has traditionally been regarded by the courts as a significant mitigating factor in the

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<sup>23</sup> [2001] 3 IR 390 at 404.

<sup>24</sup> *Ibid* at 406.

<sup>25</sup> See in this context the Law Reform Commission *Report on Penalties for Minor Offences* (LRC 69-2003) at Chapter 5.

sentencing of an offender. In *People (Attorney General) v McClure*,<sup>26</sup> the Court of Criminal Appeal held that “the sole fact that this offence [of gross indecency] is the first one on the part of a man 33 years old, and the testimony that, apart from this offence, he bore an exceptionally high character, would alone justify our disapprobation of the severity of the sentence”.<sup>27</sup> In *People (DPP) v V.*,<sup>28</sup> the Court of Criminal Appeal stated that the absence of previous convictions was a matter of considerable importance and, in part on this basis, reduced the sentence of imprisonment from nine years to seven years.

2.19 The court poor box enables a court to afford a “second chance” to persons who have no prior convictions for the offence in question or for any other offence but in respect of whom it would be inappropriate to apply section 1(1) of the *Probation of Offenders Act 1907 simpliciter*. Some judges have indicated their view that an offender should be afforded a second chance in these circumstances, particularly where one or more of the other factors referred to in this section are applicable.

(e) *The offender made an early admission and pleaded guilty to the offence(s) in question*

2.20 It is an established (even if somewhat controversial)<sup>29</sup> principle of sentencing law that an offender who pleads guilty to an offence is entitled to a reduction in the sentence which otherwise would have been imposed upon a conviction after a plea of “not guilty”.<sup>30</sup> The principle was clearly articulated by Finlay CJ<sup>31</sup> in *People (DPP) v Tiernan*<sup>32</sup> as follows:

“A plea of guilty is a relevant factor to be considered in the imposition of sentence and may constitute, to a lesser or

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<sup>26</sup> [1945] IR 275.

<sup>27</sup> *Ibid* at 278.

<sup>28</sup> Court of Criminal Appeal 16 January 1995.

<sup>29</sup> See eg *People (DPP) v Bambrick* [1996] 1 IR 265.

<sup>30</sup> See eg *People (DPP) v Tiernan* [1988] IR 250.

<sup>31</sup> With whom the other members of the Supreme Court (Walsh, Henchy, Griffin and McCarthy JJ) concurred.

<sup>32</sup> [1988] IR 250.

greater extent, in any form of offence, a mitigating circumstance”.<sup>33</sup>

2.21 This principle has been reaffirmed by the courts in a number of decisions. Thus, in *People (DPP) v M.*,<sup>34</sup> Egan J stated that “the most important mitigating factor in the case [was] the fact that the appellant admitted his guilt promptly and [had] pleaded guilty at his trial.”<sup>35</sup> Denham J stated that “a plea of guilty may be an important mitigating factor, which is further enhanced by an early indication that it will occur”, adding that “[t]he amount of mitigation will depend on the circumstances, including the likelihood of conviction if there had been no plea”.<sup>36</sup> Denham J further observed that “[t]here may be circumstances where a plea is discounted, for example where the accused is caught *in flagrante delicto* and his conviction is not a matter for doubt”.<sup>37</sup>

2.22 The principles in this area were consolidated and altered in certain respects by section 29 of the *Criminal Justice Act 1999*. Section 29(1) provides that:

“[i]n determining what sentence to pass on a person who has pleaded guilty to an offence, other than an offence for which the sentence is fixed by law, a court, if it considers it appropriate to do so, shall take into account

(i) the stage in the proceedings for the offence at which the person indicated an intention to plead guilty; and

(ii) the circumstances in which this indication was given.”<sup>38</sup>

2.23 For the avoidance of doubt, section 29(2) provides that subsection (1) “shall not preclude a court from passing the maximum sentence prescribed by law for an offence if, notwithstanding the plea of guilty, the court is satisfied that there are exceptional

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<sup>33</sup> *Ibid* at 255.

<sup>34</sup> [1994] 3 IR 306.

<sup>35</sup> *Ibid* at 313.

<sup>36</sup> *Ibid* at 319.

<sup>37</sup> *Ibid*.

<sup>38</sup> In section 29, the expression “fixed by law” in relation to a sentence for an offence means “a sentence which a court is required by law to impose on a person of full capacity who is guilty of the offence”: section 29(3).

circumstances relating to the offence which warrant the maximum sentence.”

2.24 The application of the court poor box in circumstances where an offender has made an early admission and entered a plea of “guilty” accords with the principles outlined above. It can be argued however, that these principles should have little or no application to the type of offences in respect of which the court poor box is applied: as such offences are invariably at the less serious end of the spectrum, the objective of sparing victims from the trauma of giving evidence against the offender and from being subjected to cross-examination, (which forms a significant part of the rationale which justifies a reduction in sentence in respect of an early admission and a plea of “guilty”<sup>39</sup>) applies to a lesser extent in respect of such offences. Although the recent jurisprudence has emphasised the relevance of a timely plea, it is clear that it does not provide the sole basis for reducing a sentence in the circumstances under consideration. As noted above, in *People (DPP) v Tiernan* Finlay CJ stated that “[a] plea of guilty is a relevant factor to be considered in the imposition of sentence and may constitute, to a lesser or greater extent, *in any form of offence*, a mitigating circumstance”.<sup>40</sup> It is clear that the Supreme Court considered the principle to be one of general application, albeit one that applies with particular force in circumstances where a victim is spared additional suffering.<sup>41</sup> Moreover, it is clear from section 29(1) of the *Criminal Justice Act 1999* that the applicability of the principle does not depend upon the gravity of the offence in question. It follows, therefore, that a court may regard an early admission of

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<sup>39</sup> See *eg per* Denham J in *People (DPP) v M.* [1994] 3 IR 306 at 319:

“Even with modern legal procedures the trauma of anticipating and ultimately going to court are serious concerns for children and it is a sound policy to shield them, if appropriate, from the necessity of the court procedure including, as it does, cross-examination. Thus, a plea of guilty may be an important mitigating factor, which is further enhanced by an early indication that it will occur.”

<sup>40</sup> [1988] IR 250 at 255. (Emphasis added).

<sup>41</sup> Finlay CJ considered that “an admission of guilt made at an early stage in the investigation of the crime which is followed by a subsequent plea of guilty, can be a significant mitigating factor” because “it necessarily makes it possible for the unfortunate victim to have early assurance that she will not be put through the additional suffering of having to describe in detail her rape and face the ordeal of cross-examination.” [1988] IR 250 at 255.

guilt and a subsequent plea of guilty as mitigating factors in the sentencing of offenders for minor offences, notwithstanding the absence of a victim and, accordingly, this principle is relevant by analogy in the context of an assessment of the court poor box system.

(f) *The offender is genuinely remorseful*

2.25 It is also an established principle of sentencing that a court is entitled to consider remorse on the part of an offender as a mitigating factor in determining a sentence. This principle was emphasised by the Court of Criminal Appeal in *People (DPP) v Naughton*<sup>42</sup> where a relatively lenient sentence for aggravated sexual assault<sup>43</sup> was upheld on the basis of the genuine remorse of the offender. The Court of Criminal Appeal stated that remorse was the most important single factor in the case and observed that “everything confirmed his remorse was genuine”.<sup>44</sup>

2.26 The application of the court poor box in circumstances where an offender is genuinely remorseful accords with this principle.<sup>45</sup>

(g) *It enables the court to arrive at an outcome for the offender without also (or at least unduly) punishing his or her family*

2.27 A court is entitled to have regard to the effect which a particular sentence would have on the family of the offender. A similar argument may be made by way of analogy in the case of the use of the court poor box.

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<sup>42</sup> Court of Criminal Appeal 18 May 1999.

<sup>43</sup> The offender had been sentenced to imprisonment for a period of three years. The assault was a particularly serious one: as the Court noted, it entailed not simply a threat to kill but also an attempt to choke the victim.

<sup>44</sup> As O'Malley observes, this approach may be justified on the ground that a truly remorseful offender is less likely to re-offend and may be more willing to take steps to deal with his own behavioural problems: see O'Malley 'Principled discretion: towards the development of a sentencing cannon' (2002) *Bar Review* 135 at 139 (citing Posner *Frontiers of Legal Theory* (Harvard 2001)).

<sup>45</sup> See eg *The Irish Times* 12 September 2002 (a person who engaged in a streaking incident during the interval of a football game while drunk was ordered to make a contribution to the court poor box after the prosecuting Garda informed the court that the offender was regretful and remorseful).

2.28 The court poor box affords a court a means of punishing an offender where an outcome other than one based upon the court poor box would, in effect, also punish the family of that person. Thus, for example, a court may decide to deal with a person, who earns a living from driving and who has committed an offence under the *Road Traffic Acts*, by applying the court poor box, rather than by disqualification from driving, having regard to the exceptionally serious effect which disqualification would have on the offender's family.

(h) *The age of the offender justifies (at least in part) a reduced punishment*

2.29 It is clear that the age of an offender may be a ground for mitigation. In *People (DPP) v M.*,<sup>46</sup> Denham J stated that “[a]ge is ... relevant to the concept of keeping the light at the end of the tunnel visible, with the consequent effect on motivation and rehabilitation”.<sup>47</sup> In *M.*, the appellant was 50 years of age and “would be in his final trimester of life when he was considered for remission”<sup>48</sup> and, in part for these reasons,<sup>49</sup> the Supreme Court reduced the sentence that had been imposed by the trial judge.<sup>50</sup>

2.30 In *People (DPP) v Warren*,<sup>51</sup> the Court of Criminal Appeal had particular regard to the fact that two of the appellants (who had been convicted of money laundering offences contrary to section 31(3) of the *Criminal Justice Act 1994*) were 69 years of age and the

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<sup>46</sup> [1994] 3 IR 306.

<sup>47</sup> *Ibid* at 319.

<sup>48</sup> *Per* Denham J at 319. See also the judgment of Egan J at 314.

<sup>49</sup> The Supreme Court also had regard to the accused's early admission of guilt, his plea of guilty and the fact that the offender was unlikely to re-offend upon release from prison.

<sup>50</sup> The trial judge had imposed sentences of eighteen years penal servitude in respect of each of three counts of buggery, four years imprisonment in respect of one count of indecent assault, nine years imprisonment in respect of each of two counts of indecent assault and eighteen years in respect of each of two counts of sexual assault. The sentences were expressed to run concurrently. The Supreme Court reduced the sentences of eighteen years to twelve years, nine years to seven years and four years to three years respectively.

<sup>51</sup> Court of Criminal Appeal 5 July 1999.

impact which a custodial sentence would have upon them. The court stated that, *inter alia*, the age of Mr and Mrs Warren was among “[t]he most obvious features of [the] case” and that “there [was] no doubt that the custodial sentence imposed by the learned trial judge [would] impinge very heavily on these people and cause them hurt and embarrassment and shame and be a particular burden on an elderly couple who have not been separated in the previous fifty years”.

2.31 The relevance of the age of an offender in determining an appropriate sentence was recently considered by the Court of Criminal Appeal in *People (DPP) v J.M.*<sup>52</sup> Having reaffirmed that “in every case, the court of trial must have regard in imposing sentence, not merely to the circumstances of the particular offence, but also to the circumstances of the offender”, the Court observed that “[i]n many cases, the age of the offender will not be a relevant consideration” while “in some, it clearly will be”.<sup>53</sup>

2.32 In appropriate cases, the court poor box system provides a valuable means of punishing an elderly offender in respect of whom other outcomes would yield a disproportionate or unjust punishment.

(i) *It enables the court to achieve a just result and to avoid an unjust one*

2.33 The court poor box is widely regarded by judges who apply it as an essential component of the process by which they administer justice.<sup>54</sup> On this view, and having regard to the other considerations outlined in this section, it is clearly arguable that there are circumstances in which the court poor box solution is the option which is most conducive to achieving a just result and avoiding an unjust outcome.

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<sup>52</sup> [2002] 1 IR 363.

<sup>53</sup> *Ibid* at 368.

<sup>54</sup> It is a separate question as to whether certain aspects of the court poor box system – and in particular the receipt, administration and distribution of court poor box funds – form part of the administration of justice within the meaning of Articles 34.1 and 37.1 of the Constitution and this question is addressed below at paragraphs 2.83 *et seq.*

**(4) It enables its beneficiaries to assist restorative justice**

**(a) Charities**

2.34 Advocates of the court poor box system point out that it enables a judge to provide financial assistance to a charity whose work is relevant to the circumstances of a particular case (eg the ISPCA in a case involving the injection of illegal drugs into animals).<sup>55</sup> In this way, the judge achieves a measure of restorative justice by assisting those who work to prevent the commission of similar offences by other persons.<sup>56</sup>

2.35 A number of matters arising in relation to charities must however be addressed, ranging from the legal definition of charities, to the various revenue requirements which must be met by such organisations, and the consequences of a failure to comply with the tax code in this regard. These issues will be addressed below.<sup>57</sup>

**(b) Victims**

2.36 In a similar vein, the court poor box enables a judge to benefit organisations which represent the interests of the victim (eg Victim Support). A particular advantage of the court poor box in this regard is that it provides a central pool from which financial assistance can be provided to the victims, thus obviating the need to transfer such funds directly from an offender to the victim. In this light, the court poor box achieves a result which, from the perspective of a victim (who may not want money from the offender), is superior to that achieved by virtue of a Compensation Order under the *Criminal Justice Act 1993*.<sup>58</sup>

**(c) Offenders**

2.37 The court poor box has also been used to provide financial assistance to offenders in appropriate cases. In one case, a 60 year-old man had stolen £25 worth of groceries from a supermarket in order to feed his family of six, which he was unable to do on his social welfare allowance. The judge applied section 1(1) of the

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<sup>55</sup> See *The Irish Times* 1 December 2000.

<sup>56</sup> In this context, see generally von Hirsch *et al Restorative Justice and Criminal Justice* (Hart 2003).

<sup>57</sup> See Chapter 3.

<sup>58</sup> In this context, see paragraphs 2.77-2.105 below.

*Probation of Offenders Act 1907* and gave him £50 from the court poor box so that he could return to the shop to buy twice as much food.<sup>59</sup> In another case, a heroin addict who had broken the window of a social welfare office in an effort to obtain treatment for her condition was provided with £800 from the court poor box so that she could obtain an assessment and one month in a private treatment centre.<sup>60</sup> In another case, a judge directed the payment of £250 from the court poor box to pay for the lodgings of a boy (for whom there was no State accommodation) until he was due to appear in the Children's Court.<sup>61</sup>

2.38 Whilst it is obviously difficult to criticise the motive underlying the efforts of judges to grant assistance in such needy individual cases, such practice does nevertheless raise a number of difficult questions. The first, whether it is any part of the judicial function to engage in such practice, will be considered further below.<sup>62</sup> This practice also raises queries as to the administration of court poor box funds in terms of payments made out of such funds, and whether there is any system of checks and balances to ensure that such payments are made in compliance with the various Revenue requirements.<sup>63</sup>

**(5) *It provides a mechanism for countering the effects of inflation on maximum fine values***

2.39 The maximum fines which can be imposed for particular offences are specified in legislation but their value is eroded over time by the effects of inflation. As a result, even where a court imposes a maximum fine, such a fine may not reflect the gravity of the offence in question or the true maximum fine which the legislature had intended. Some judges have used the court poor box system to structure a penalty which constitutes an appropriate admonishment in

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<sup>59</sup> See *The Irish Times* 3 July 1993.

<sup>60</sup> See *The Irish Times* 19 May 1997.

<sup>61</sup> See *The Irish Times* 16 August 1999.

<sup>62</sup> At paragraphs 2.83-2.90.

<sup>63</sup> The various Revenue requirements will be dealt with in further detail below in Chapter 3.

respect of the particular offence with which a person has been charged and in the light of all relevant circumstances.<sup>64</sup>

**(6) Section 1(1) of the Probation of Offenders Act 1907 simpliciter may be inadequate**

2.40 In some cases where a judge is satisfied that a conviction is not merited, section 1(1) of the *Probation of Offenders Act 1907 simpliciter* may be thought to be inadequate to enable the judge to achieve justice having regard to all of the relevant circumstances. Thus, unless there is a mechanism whereby a judge can, in effect, impose a financial penalty to reflect the gravity of an offence (which nevertheless does not merit a conviction and sentence), he or she may even be reluctant to apply the *Probation Act* even if otherwise it would be appropriate to do so. On this view, the court poor box fills an existing lacuna in the legislation and enhances a judge's capacity to achieve justice in individual cases.

**(7) It is founded upon the exercise of the discretionary powers of the court**

2.41 It has been suggested in the discussion of many of the other factors outlined in this section that the broad measure of discretion which underlies the court poor box system is central to its effectiveness as a means of dealing with cases which merit some form of sanction but are not such as to warrant a conviction and/or a term of imprisonment. To the extent that one may object to the breadth of a court's discretion in this regard, the Irish courts have repeatedly confirmed that such discretion is an inherent part of the judicial function in the sentencing of offenders and, even if the court poor box system were to be abolished, this discretion would have to be preserved in relation to other sentencing options.<sup>65</sup>

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<sup>64</sup> This factor also highlights the need for the enactment of a standard fine system which would maintain the value of fines by reference to a price index. See generally the report by the Law Reform Commission entitled *The Indexation of Fines – a Review of Developments* (LRC 65 – 2002).

<sup>65</sup> See eg *People (DPP) v Aylmer* [1995] 2 ILRM 624.

**C Arguments Against the Court Poor Box System (As Currently Applied)**

2.42 This section analyses the principal arguments against the court poor box system as currently applied.

**(1) *It provides a means of buying one's way out of a conviction and/or a term of imprisonment***

2.43 It can be argued that the court poor box provides a means of “buying” one’s way out of a conviction or a term of imprisonment. At one level, it is undeniable that where money is paid into the court poor box and the charge in question is dismissed under the *Probation of Offenders Act 1907*, a relationship exists between the payment of money into the court poor box and the avoidance of a conviction and a possible term of imprisonment. However, the existence of such a relationship does not *per se* mean that the court poor box affords a means of buying one’s way out of a conviction and a term of imprisonment. As noted above, a variety of factors typically underlie a decision to apply the court poor box and, in any one case, they do not necessarily include the objective of avoiding a conviction and a term of imprisonment. Undoubtedly, however, the court poor box is applied in some cases for the precise purpose of, *inter alia*, avoiding a conviction and (to a significantly lesser extent) a term of imprisonment.

2.44 Even in such cases, however, it can be argued that the charge that the court poor box affords a means of buying one’s way out of a conviction and a term of imprisonment is unwarranted. In this respect, it is important to distinguish between the objective of an offender who offers a contribution to the court poor box and that of the judge who ultimately applies the court poor box as the choice of disposition. Even if one assumes that the offender is exclusively concerned with “buying” a way out of a conviction and a possible term of imprisonment, it is only the objective of the court which is relevant to an assessment of the court poor box in the context of the sentencing process. It is trite law that the determination of an appropriate sentence is the exclusive preserve of the sentencing judge. A desire on the part of an offender to buy his or her way out of a conviction will not achieve that result unless the sentencing judge decides to permit a contribution to the court poor box and to dismiss the charge under the *Probation of Offenders Act 1907*. Assuming that at least part of the reason for such a decision is a concern on the part

of the judge to avoid convicting the offender and imposing a term of imprisonment, it is difficult to argue that the judge ought not to have afforded the person the court poor box option if this forms part of an overarching concern to determine an outcome that is proportionate to the offence and the personal circumstances of the offender, or otherwise that represents an appropriate outcome.

2.45 Accordingly, it can be argued that viewed from the perspective of the sentencing judge, a contribution to the court poor box is not a means of enabling an offender to buy his or her way out of a conviction and a possible term of imprisonment. Rather, it may be described as a means of imposing a financial penalty upon a person in respect of whom neither a conviction and a term of imprisonment, on the one hand, nor a dismissal under the *Probation Act simpliciter*, on the other, would be appropriate.

**(2) *It is perceived as a means of buying one's way out of a conviction and/or a term of imprisonment***

2.46 Even if the court poor box cannot reasonably be regarded as a means of buying one's way out of a conviction and a possible term of imprisonment, it is likely that it will be perceived as such by the public at large, at least in certain cases. Although this perception is most likely to exist where a person has made a contribution to the court poor box and "escaped" a conviction, it may also arise where a person has been convicted and sentenced to a term of imprisonment. In the latter case, members of the public may perceive that the contribution to the court poor box resulted in a reduction of the sentence which otherwise would have been imposed, particularly if the sentence is wholly or in part suspended.

2.47 Certainly, some judges have applied the court poor box at least in part in order to avoid imposing a conviction and/or a term of imprisonment or in order to impose a reduced sentence. To this extent, the perceptions that the court poor box enables an offender to avoid a conviction and a term or imprisonment or to obtain a reduced term are well-founded in some cases. It might be argued, however, that for the reasons outlined above,<sup>66</sup> this does not mean that the court poor box amounts to a process whereby offenders can buy their way out of a conviction and a term of imprisonment or buy a more lenient sentence than otherwise would have been imposed.

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<sup>66</sup> Above at paragraph 2.43.

2.48 It is also appropriate to note that the court poor box is only applied for the purposes of avoiding a term of imprisonment or reducing a term which otherwise would be imposed on very rare occasions and by a minority of judges. It appears that the vast majority of judges do not apply the court poor box in circumstances where a term of imprisonment is merited. Nevertheless, where the court concludes, in the light of all of the circumstances, that a term of imprisonment would not be appropriate and also applies the court poor box, the perception that a contribution to the court poor box was the primary or, indeed, the sole factor which caused the offender to escape a term of imprisonment is likely to arise. This is particularly likely where the person makes a substantial contribution to the court poor box.<sup>67</sup>

2.49 It may also be argued that the perception that one can make a contribution to the court poor box and thereby avoid imprisonment and/or a fine reduces the deterrent effect of those sanctions.<sup>68</sup> Arguably, the deterrent effect of a significant proportion of fines has already been eroded by the effects of inflation. Indeed, as noted above,<sup>69</sup> some courts apply the court poor box, at least in part, for the purpose of countering the effects of inflation and determining a financial penalty that accords with legislative intent. Proponents of the court poor box argue that difficulties caused by this approach will be resolved upon the enactment of legislation which indexes fines in accordance with the recommendations of the Law Reform Commission.<sup>70</sup> Furthermore, supporters of the court poor box argue that it is questionable whether the court poor box has any adverse effect on the deterrent value of a term of imprisonment since most judges do not apply the court poor box in circumstances where a term of imprisonment is warranted.<sup>71</sup>

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<sup>67</sup> See eg the payment of £25,000 in 1989, and of €40,000 in 2003, discussed at paragraphs 1.15 and 2.72.

<sup>68</sup> See *People (AG) v O'Driscoll* (1972) 1 Frewen 351 at 359; *State (Stanbridge) v Mahon* [1979] IR 214 at 218. See generally the Law Reform Commission *Report on Sentencing* (LRC 53-1996).

<sup>69</sup> See paragraph 2.39.

<sup>70</sup> See generally the Report by the Law Reform Commission entitled *The Indexation of Fines – a Review of Developments* (LRC 65-2002).

<sup>71</sup> But see the examples referred to at paragraphs 2.72-2.73.

2.50 Nevertheless, it can strongly be argued that such perceptions, even if at least in some respects ill-founded, are inherently damaging to the administration of justice.<sup>72</sup> Proponents of the court poor box system suggest that a potential part of the solution in this regard may lie in promoting a greater public awareness of the totality of the reasons which underlie a decision to apply the court poor box. In this respect, it is suggested that the elevation of the court poor box “jurisdiction” to the statutory plane could play an invaluable role.

**(3) *It causes offenders whose circumstances are similar to be treated differently***

2.51 Viewed generally, it can be argued that the application of the court poor box results in an inequality of treatment of offenders whose circumstances are effectively identical. There are two principal limbs to this argument: first, that the court poor box is applied in a manner that discriminates between offenders based on their means and background and, secondly, that the court poor box system is applied by judges inconsistently, or not at all depending on the locality. Each point will be addressed in turn.

**(a) *Wealth-based discrimination***

2.52 The first argument is, in effect, a wealth-based discrimination argument. It is succinctly encapsulated in the popular critique of the court poor box that it creates “one law for the rich and another law for the poor”.<sup>73</sup> There is undoubtedly a perception on the part of the public that an offender who can afford to make a significant contribution to the court poor box in respect of a particular offence is likely to avoid incarceration and probably even a conviction. The perception is equally strong that another person who has been charged with the same offence and whose circumstances are identical to those of the first, save that he does not have the financial resources to make an appropriate (or any) contribution to the court poor box, will be exposed to the “full rigours of the law”.

2.53 This argument raises a number of issues which merit consideration. The first concerns the legality of distinguishing

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<sup>72</sup> See paragraphs 2.81-2.82.

<sup>73</sup> See eg *The Irish Times*, *The Irish Independent* and *The Irish Examiner* on 17 January 2003 (below at paragraph 2.72).

between offenders based upon their means and, by extension, their background. In this context, it is appropriate to consider Article 40.1 of the Constitution which provides as follows:

“All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”

2.54 As noted by Kelly,<sup>74</sup> “Article 40.1 does not mean that any legislative scheme must present identical features to all citizens: such a mechanical uniformity, in failing to appreciate the existence of categories naturally different (in the senses relevant to the purpose of the legislation) would work inequality in its result, rather than equality”.<sup>75</sup>

2.55 It is clear that the sentencing powers of the courts must be exercised in accordance with Article 40.1 of the Constitution. Thus, in *State (Keegan) v Stardust Victims’ Compensation Tribunal* Henchy J “accept[ed] that Article 40, s. 1 of the Constitution requires that people who appear before the courts in essentially the same circumstances should be dealt with in essentially the same manner”.<sup>76</sup>

2.56 In this light, it is necessary to analyse whether it is contrary to Article 40.1 for courts to impose sentences which effectively enable affluent offenders, but not offenders of limited means, to avoid a conviction and a possible term of imprisonment. As O’Malley notes,<sup>77</sup> this question was considered with tantalising brevity by the Supreme Court in *Re McIlhagga*.<sup>78</sup> In that case, the Central Criminal Court had imposed a term of imprisonment of three years on the appellant but had directed that he would be released upon the payment of £6,655 during that period. In applying for *habeas corpus*, the appellant appears to have argued that the order violated the

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<sup>74</sup> Hogan and Whyte (eds) Kelly *The Irish Constitution* (4<sup>th</sup> ed LexisNexis Butterworths 2003).

<sup>75</sup> *Ibid* at 1363.

<sup>76</sup> [1986] IR 642, 658 (citing *McMahon v Leahy* [1984] IR 525).

<sup>77</sup> O’Malley *Sentencing Law and Practice* (Round Hall 2000) at 111.

<sup>78</sup> Supreme Court 29 July 1971.

constitutional guarantee of equality before the law in that it favoured well-off citizens. The Supreme Court considered that it did not have to determine this issue as the payment in question was restitution of monies wrongfully obtained as distinct from a fine:

“The payment in question is not the imposition of a fine. Nor have we here a case – if such is to be supposed – where a court in sentencing two persons of equal obloquy, one rich and the other poor, sends the poor man to prison but lets the rich man go free on payment of a fine well within his means ... [In this case] neither in purpose nor in effect is there discrimination as between rich and poor. A condition requiring monies which have been fraudulently obtained to be restored to the injured parties far from being discriminatory is, on the contrary, eminently just.”<sup>79</sup>

2.57 Although *McIlhagga* does not represent an authoritative pronouncement on this issue, the Commission agrees with O’Malley that the Court appeared to accept that discrimination between rich and poor of the kind which it described would be contrary to Article 40.1 of the Constitution.

2.58 The Commission also agrees that, at the very least, the courts would almost certainly hold that a poor defendant cannot be imprisoned simply because he or she is unable to pay a heavy fine. As O’Malley explains,<sup>80</sup> this is a valid sentencing principle for two reasons:

“First, it is the nature of the offence and the relevant personal circumstances of the offender that count in the selection of sentence. While poverty (as a personal circumstance) may mitigate a sentence, it cannot in justice be treated as an aggravating factor. Secondly, regard must be had to the means of an offender when the amount of a fine is being determined. This rule would be violated if courts were free to treat poverty as a justification for preferring imprisonment to a fine or to impose a fine so

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<sup>79</sup> *Ibid.*

<sup>80</sup> O’Malley *Sentencing Law and Practice* (Round Hall Press 2000).

clearly beyond the offender's means that it would almost inevitably lead to imprisonment for default."<sup>81</sup>

2.59 This analysis applies with equal force to the application of the court poor box. Accordingly, the Commission believes that it is incompatible with Article 40.1 to deal with people who commit the same offence, and whose personal circumstances only differ (in any material respect) in relation to their means, in such a way that affluent persons can, by virtue of their affluence, avoid a conviction and/or a term of imprisonment while impoverished persons are unable to do so because of their lack of means.

2.60 In the absence of a detailed empirical study on sentencing trends, it is very difficult to assess the extent to which the application of the court poor box results in *de facto* discrimination between offenders based upon their means and background in the manner outlined above. Nevertheless, it is possible to offer some tentative observations.

2.61 Those who favour retention of the court poor box argue first, that most judges are vigilant in ensuring that the court poor box is not employed as a means of affording affluent members of society a more lenient outcome than that to which they otherwise would be subjected. Of those judges who utilise the court poor box, a large number have indicated that they apply the court poor box where, having regard to the totality of the circumstances,<sup>82</sup> they believe that the application of section 1(1) of the *Probation of Offenders Act 1907 simpliciter*<sup>83</sup> would be unduly lenient.

2.62 Insofar as it is suggested that "most judges are vigilant" in ensuring that the court poor box is not applied in a manner which allows more affluent offenders to obtain a more lenient outcome than might otherwise apply, critics of the court poor box might question whether such assumption is sufficient to ensure that the system is not misapplied or abused. Nevertheless, it may be argued that the absence of any objective or independent criteria governing the application of the court poor box presents grave difficulties, leaving

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<sup>81</sup> *Ibid* at 112.

<sup>82</sup> See in this context, the factors which underlie a decision to apply the court poor box, outlined above at paragraphs 1.21-1.31.

<sup>83</sup> That is, without probation conditions.

aside the question of whether the court poor box is *in fact* misapplied, but more importantly whether it is *perceived* as being liable to be misapplied.<sup>84</sup>

2.63 Secondly, it appears, however, that a small number of judges who apply the court poor box have a policy of requiring all persons who wish to avail of the court poor box to make a contribution of a pre-determined fixed sum (*eg* €1,000). Although the purported justification for this policy is the uniformity of treatment of all offenders, irrespective of their financial circumstances or social background, the Commission is strongly of the view that the application of such a policy in dealing with offenders is contrary to Article 40.1 of the Constitution. In many respects, such a policy exemplifies what Kelly described as mechanical uniformity which works inequality, rather than equality, in its result.<sup>85</sup> The Commission also believes that such a policy contravenes settled principles of sentencing – which, as noted above, also have a constitutional foundation<sup>86</sup> – and, in particular, the principle that a sentence must be proportionate to the crime and the personal and financial circumstances of the offender.<sup>87</sup> It can be argued that these principles should be applied by way of analogy in relation to the court poor box.

2.64 Thirdly, to the extent that there are residual concerns about the court poor box system in the light of Article 40.1, there are two ways in which these difficulties can be viewed. Advocates of retention of the court poor box would suggest that such concerns can be addressed by a conscious application of the court poor box in accordance with the principles of sentencing referred to above and, in particular, the principle that a sentence must be proportionate to the crime and the personal and financial circumstances of the offender. Accordingly, it is argued, an affluent offender should have to make a contribution to charity which is significantly greater than the contribution of a person with limited means, notwithstanding that both persons stand accused of committing the same offence.

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<sup>84</sup> See paragraphs 2.46-2.49.

<sup>85</sup> Hogan and Whyte (eds) Kelly *The Irish Constitution* (4<sup>th</sup> ed LexisNexis Butterworths 2003) at 1363.

<sup>86</sup> See paragraphs 2.07- 2.09 above.

<sup>87</sup> See paragraphs 2.07-2.13.

Proponents of this view would emphasise that it is imperative that judges are vigilant in ensuring that impoverished offenders are not denied an opportunity to “avail” of the court poor box procedure by virtue of their limited means. In the case of some impecunious offenders, therefore, judges will have to ensure that it is open to the less well off to make a purely nominal payment to charity (assuming that the person otherwise qualifies for the court poor box procedure).

2.65 Nevertheless, it may be queried whether these various difficulties are capable of a completely satisfactory remedy. The court poor box jurisdiction ultimately rests on the exercise of an individual judge’s discretion, and the view that it involves some subconscious element of preferential treatment for affluent offenders, is one which many believe has taken root in the public mind and is difficult to fully rebut. Ultimately, these concerns can be brought back to the intertwined issues of (a) whether the court poor box is *in fact* misapplied, or applied in a discriminatory manner, and (b) whether there is a *perception* that it is so misapplied.

(b) *Variation in the extent to which the court poor box is applied by the courts*

2.66 The second limb of the argument that the application of the court poor box results in inequality of treatment of offenders relates to the variation of the extent to which it is applied by judges. It is undoubtedly true that the court poor box is not applied to an equal extent by judges. Some judges do not apply the court poor box at all. Other judges apply it to varying degrees. In 2001, £41,906 was paid into the court poor box of Carlow District Court.<sup>88</sup> In the same period, a mere £159.99 was paid into the court poor box of Galway District Court.<sup>89</sup> Clearly, therefore, some judges apply the court poor box very frequently and generate substantial sums of money for charity as a result.<sup>90</sup> Indeed, in 2000, one judge generated over £70,000 from payments to the court poor box.<sup>91</sup> Other judges only

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<sup>88</sup> This information was provided by the Courts Service.

<sup>89</sup> *Ibid.*

<sup>90</sup> See generally the tables in Appendix B to this Paper which contain a detailed breakdown of the payments to the court poor box in the District Court from 1999-2003.

<sup>91</sup> See *The Irish Times*, 30 March 2001.

apply the court poor box on a limited basis and only in respect of certain types of offences and/or in particular circumstances.

2.67 Against this background, it is arguable that one of the effects of the present court poor box system is that persons who have committed the same offences are treated differently by the courts. This inequality of treatment may be illustrated by reference to the case of two individuals who had been involved in a rally of four cars travelling at almost 120 miles per hour late at night. One of the drivers had been disqualified from driving for three years and fined £400. Another of the drivers (who had appeared before a different District Court judge) was merely ordered to pay £400 to charity and his case was adjourned for ten months with a view to avoiding the necessity for a conviction.<sup>92</sup> Similarly, in a case involving eight persons charged with the same offence, four were convicted of the offence and each was fined £300 while the other four each contributed £500 to the court poor box and, thus, avoided a conviction.<sup>93</sup>

2.68 There are a number of cases which confirm that the constitutional guarantee of equality is not necessarily breached if persons who have committed the same offences receive different sentences. Thus, it may be argued by analogy that the application of the court poor box does not necessarily result in inequality of treatment for offenders whose circumstances are effectively identical. In *People (Attorney General) v Poyning*<sup>94</sup> and *People (DPP) v Tiernan*<sup>95</sup> the courts have approved the principle that all that is required is that the sentence imposed in an individual case represents a proportionate outcome having regard to all the circumstances of the case, and also taking into account the background, antecedents and character of the individual before the court in each particular case.<sup>96</sup>

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<sup>92</sup> Ultimately, the first driver succeeded, on appeal, in having the disqualification quashed on the basis of the more lenient sentence that had been imposed upon the second driver. (See *The Irish Times* 22 November 2000).

<sup>93</sup> See *The Irish Times*, 5 August 1999 (letter from Patrick J Brennan (retired District Court Judge) to the Editor).

<sup>94</sup> [1972] IR 402.

<sup>95</sup> [1988] IR 250.

<sup>96</sup> For a full consideration of the principles of proportionality in this context, see paragraphs 2.07-2.09.

Thus, in *Poyning*, the Court of Criminal Appeal stated that if there is found to be discrimination in the treatment of two offenders charged and convicted of the same crime, then the court will embark upon an investigation of that differentiation. However, the court also confirmed that it would only find unlawful discrimination if it could be established that the disparity in treatment was *not* linked to differences in the background, antecedents and character of each individual offender.<sup>97</sup> Thus, in *People (DPP) v. Tiernan*<sup>98</sup> Finlay C.J. doubted the appropriateness of an appellate court appearing to lay down any standardisation or tariff of penalty for cases “[h]aving regard to *the fundamental necessity for judges in sentencing in any form of criminal case to impose a sentence which in their discretion appropriately meets all the particular circumstances of the case (and very few criminal cases are particularly similar), and the particular circumstances of the accused.*”<sup>99</sup>

2.69 It is clear, therefore, that the mere fact that a sentence imposed by one judge for a particular offence appears to differ from that imposed by another judge (or even the same judge) in respect of another (but similar) offence is not in itself an indication that the offenders have been treated differently by the courts. It may be that the background, character and antecedents of a particular offender merit a sentence which is more or less lenient than that imposed on another offender who committed the same offence. In this light, it is appropriate to refer to the observation of the Court of Criminal Appeal in *People (DPP) v R*.<sup>100</sup> that one must approach media-reported cases and the analysis of the sentences imposed therein with considerable caution. This observation applies with particular force to reported applications of the court poor box by newspapers. For a variety of reasons,<sup>101</sup> newspaper reports frequently fail to convey the totality of the circumstances which caused the court to apply the court poor box in a particular case.

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<sup>97</sup> [1972] IR 402, 408-409 (*per* Walsh J).

<sup>98</sup> [1988] IR 250.

<sup>99</sup> [1988] IR 250, 254 (*per* Finlay CJ). [Emphasis added]

<sup>100</sup> Court of Criminal Appeal 15 March 1999.

<sup>101</sup> Including constraints of space, a lack of readership interest in the subtleties of the court’s reasoning and/or an incomplete statement by the judge of his or her reasoning.

2.70 Notwithstanding the foregoing, it is clear that, in at least one respect, the court poor box *is* being applied inconsistently by judges. This conclusion derives from the fact that, as noted above, some judges readily apply the court poor box (in appropriate cases) while others never apply it or only apply it in limited circumstances. As a result, two or more offenders who commit an offence, which in principle merits application of the court poor box, and whose relevant circumstances are effectively identical, will be treated differently by the courts depending on whether they are dealt with by a judge who applies the court poor box or one who does not (or only does so in limited circumstances).

2.71 Legislation which clearly defines the circumstances in which all judges may apply, or at least consider applying, the court poor box may be the solution to this aspect of the inequality inherent in the court poor box system as presently applied. However, it might be noted that even if the court poor box were to be placed on a statutory footing, it would be highly unlikely that such provisions would employ mandatory language. The use of the court poor box, even under a statutory scheme, would ultimately fall within the realm of a judge's discretion, and critics of the court poor box system might argue that little would ultimately change in respect of the inconsistency of application of the court poor box. Nevertheless, it must be acknowledged that placing the court poor box on a statutory footing would address the complaint that the court poor box is not available on a uniform (geographical) basis, and thus this aspect of the alleged inconsistency would be removed.

**(4) *Some offences in respect of which the court poor box is applied are not trivial and may merit significant fines and/or terms of imprisonment***

2.72 At least in some cases, the court poor box may be applied in respect of offences which are not trivial and arguably merit significant fines and/or terms of imprisonment. For example, in the case of a person who pleaded guilty to possessing child pornography in 2003,<sup>102</sup> the trial judge indicated that he had considered imposing a term of imprisonment but ultimately decided to sentence the convicted person to 240 hours of community service upon payment of

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<sup>102</sup> Contrary to section 6 of the *Child Trafficking and Pornography Act 1998*.

€40,000 to a charitable cause.<sup>103</sup> Other examples include the case of a driver who avoided a conviction for driving at almost 120 miles per hour late at night by paying £400 to the court poor box and the case of a farmer who injected his cattle with slurry in order to obtain £29,000 in compensation under the TB eradication scheme and had a four month sentence suspended on condition that he pay £1,000 to the court poor box and £250 to the Irish Society for the Prevention of Cruelty to Animals.<sup>104</sup> Moreover, these cases indicate that contrary to the general approach (in which the court poor box is used where a conviction is not warranted), it has been used on occasion where a conviction is appropriate.

2.73 The use of the court poor box in such cases may appear to be inappropriate, and adds to the extent of the harm caused by negative perceptions of the circumstances in which the court poor box is used and the types of offenders who are permitted to avail of it. One possible solution would lie in clearly stating in any statutory code that the option of making a contribution to the court poor box should not be available where the offence in question is not trivial and merits significant fines and/or terms of imprisonment. The Commission will give further consideration to this proposal below.<sup>105</sup>

**(5) *There are alternative means of devising an appropriate outcome***

2.74 A further criticism which can be levelled at the court poor box system is that there are a variety of alternative means (which have received legislative imprimatur) by which a judge can devise an appropriate outcome without having to invoke the court poor box. Of particular interest in this context are the sentencing powers conferred by the *Criminal Justice (Community Service) Act 1983*, the *Criminal Justice Act 1993* and the *Probation of Offenders Act 1907*.

**(a) *Community Service orders***

2.75 The *Criminal Justice (Community Service) Act 1983* applies to a person (who is referred to in the Act as an “offender”) who is at least 16 years of age and is convicted of an offence for which, in the

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<sup>103</sup> See *The Irish Times*, *The Irish Independent* and *The Irish Examiner* on 17 January 2003.

<sup>104</sup> See *The Irish Times* 1 December 2000.

<sup>105</sup> See paragraph 6.15.

opinion of the court, the appropriate sentence would be, but for the Act, one of imprisonment or detention in Saint Patrick's Institution, but does not apply where any such sentence is fixed by law (for example, in the case of murder, where a life sentence is mandatory).<sup>106</sup> Pursuant to sections 3 and 4 of the Act, a court which has convicted an offender of an offence can, instead of dealing with him in any other way, make a "community service order" in respect of the offence if certain specified conditions are fulfilled. A community service order obliges an offender to perform, in accordance with the Act, unpaid work for the number of hours that are specified in the order (which will be not less than 40 and not more than 240).<sup>107</sup> Before the court can impose a community service order, it must be satisfied, after considering the offender's circumstances and a report by a probation and welfare officer (including, if the court thinks it necessary, hearing evidence from such an officer), that the offender is a suitable person to perform work under such an order and that arrangements can be made for him to perform such work.<sup>108</sup> In addition, the offender must consent to the making of a community service order.<sup>109</sup>

2.76 It is clear from the foregoing that the jurisdiction to impose a community service order only arises where a person has been convicted of an offence. To this extent, therefore, it may be argued that it does not obviate the need for the sentencing option afforded by the court poor box system which enables a court to punish a person who has committed an offence but in respect of which a conviction would constitute a disproportionate penalty.<sup>110</sup> However, on an alternative view, it can be suggested that there already exists a sentencing option which enables a court to require payment of an

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<sup>106</sup> *Criminal Justice (Community Service) Act 1983*, section 2.

<sup>107</sup> *Ibid* section 3(2).

<sup>108</sup> *Ibid* section 4(1)(a).

<sup>109</sup> *Ibid* section 4(1)(b).

<sup>110</sup> *Eg* because it would preclude the opportunity of working and/or travelling abroad. See generally paragraphs 1.21-1.31 above. The Commission also notes that reform of the 1983 Act to allow community service orders to be made in minor cases and not just as an alternative to imprisonment has been suggested in its *Report on Sentencing* (LRC 53-1996) and the *Final Report of the Working Group on the Probation and Welfare Service* (Pn 7324) (Department of Justice 1999).

earnest of intention from a person without recording a conviction, where to do so would cause an injustice; this provision is section 1(1) of the *Probation of Offenders Act 1907*. As discussed above, some judges take the view that this provision is insufficiently flexible to deal with every case; others suggest that if this is so, the solution is amendment of the existing legislation, rather than resorting to the court poor box, a system which raises a number of not insignificant difficulties.

(b) *Compensation orders*

2.77 Pursuant to section 6 of the *Criminal Justice Act 1993*, a court, on conviction of a person of an offence, instead of or in addition to dealing with him or her in any other way, unless it sees reason to the contrary, can make a “compensation order” requiring him or her to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (referred to in the Act as the “injured party”) who has suffered such injury or loss. The compensation payable under a compensation order must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the convicted person, the injured party or the prosecutor. However, it cannot exceed the amount of the damages that, in the opinion of the court, the injured party would be entitled to recover in a civil action against the convicted person in respect of the injury or loss concerned.<sup>111</sup> Nor, in the case of an order made by the District Court, can it exceed the amount which stands prescribed for the time being by law as the limit of that court’s jurisdiction in tort (currently €6,350).<sup>112</sup> In determining whether to make a compensation order against persons and the amount of the compensation, the court is required to have regard to their means and, where relevant, to the means of the parent or guardian to the extent that such means appear

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<sup>111</sup> *Criminal Justice Act 1993*, section 6(2).

<sup>112</sup> See section 77A of the *Criminal Justice Act 1924* as carried forward by section 33 of the *Courts (Supplemental Provisions) Act 1961* and amended by section 4 of the *Courts Act 1991*. This limitation was to increase to €20,000 under the terms of the *Courts and Court Officers Act 2002*, but as yet the relevant sections have not been commenced.

or are known to the court. In assessing the means of offenders, the court is required to take into account their financial commitments.<sup>113</sup>

2.78 Where the court considers that it would be proper both to impose a fine and to make a compensation order but that the convicted person has insufficient means to pay both an appropriate fine and compensation, it can, if it is satisfied that the means are sufficient to justify this being done, make a compensation order and impose a fine, if it is satisfied that it is fair to do so having regard to the means which remain after compliance with the order.<sup>114</sup>

2.79 Although section 6(1) of the *Criminal Justice Act 1993* states that compensation orders can only be made where a person has been convicted of an offence, section 6(12)(b) provides that “references to conviction of a person include references to dealing with a person under section 1(1) of the *Probation of Offenders Act 1907*”. Thus, there already exists a statutory provision allowing the court to require an offender to make good any loss or damage caused by reason of the criminal activity which brought about the court appearance.

(c) *The Probation of Offenders Act 1907*

2.80 The jurisdiction to make an order under section 1(1) of the *Probation of Offenders Act 1907* has been considered above.<sup>115</sup> In many respects, the 1907 Act provides a legitimate alternative to the court poor box system. It is unsurprising therefore that it is frequently applied in the precise circumstances that merit application of the court poor box. The further potential use of an order under the 1907 Act combined with an appropriate compensation order is discussed below.<sup>116</sup>

**(6) *It impairs confidence in the administration of justice***

2.81 The importance of public confidence in the administration of justice cannot be overstated. This confidence hinges not merely upon the acts (or omissions) of judges but also the public perception

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<sup>113</sup> *Ibid* section 6(13).

<sup>114</sup> *Ibid* section 6(8).

<sup>115</sup> See paragraphs 1.33-1.34 above.

<sup>116</sup> See paragraphs 2.98-2.105.

thereof. As Denham J observed in *Kelly v O'Neill*,<sup>117</sup> “[w]ithin the concept of the administration of justice is the people’s right to an independent justice system where justice is *not only done but is seen to be done*.”<sup>118</sup> Denham J emphasised “the importance of the perception of the administration of justice” and reaffirmed the following passage from the judgment of Lord Hewart CJ in *R. v Sussex Justices, ex parte McCarthy*:<sup>119</sup>

“... a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”<sup>120</sup>

2.82 Having regard to the factors considered in this section, the application of the court poor box in particular cases may be misinterpreted or misunderstood by the media and members of the public, thus impairing confidence in the criminal justice system. Clearly, similar difficulties can arise in relation to other sentencing options.<sup>121</sup> Nevertheless, the Commission believes that there are certain aspects of the present court poor box system in respect of which even an *accurate* assessment thereof is likely to impair public confidence in the administration of justice. The receipt, administration and distribution of court poor box funds by judges is one of the most troubling aspects of the court poor box system in this regard.

**(7) *The receipt, administration and distribution of court poor box funds form no part of the judicial function***

2.83 The receipt, administration and distribution of court poor box funds raise a number of significant issues. Foremost of these, in the view of the Commission, is the question of whether these activities are, or ought to be, a function of the courts. In considering this question, the constitutional context is paramount.

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<sup>117</sup> [2000] 1 IR 354. The court confirmed that prejudicial comments made after conviction but before sentencing could amount to contempt of court.

<sup>118</sup> *Ibid* at 366. (Emphasis added).

<sup>119</sup> [1924] 1 KB 256.

<sup>120</sup> *Ibid* at 259.

<sup>121</sup> See paragraph 2.69.

2.84 The concept of the judicial power is not defined in the Constitution. Although the courts have been reluctant to attempt an exhaustive definition of the judicial power,<sup>122</sup> they have mapped out certain characteristic features of the judicial power in a number of cases. Indeed, it might be noted that in many such cases, the scope of the judicial power is in fact delineated by reference to matters which fall outside its scope, rather than identifying those matters which properly fall within its ambit. In *Lynham v Butler (No. 2)*,<sup>123</sup> Kennedy CJ (considering the ambit of the judicial power within the meaning of Article 64 of the Constitution of the Irish Free State) described it as a coercive power, “exercised in determining the guilt or innocence of persons charged with offences against the State itself and in determining the punishments to be inflicted on persons found guilty of offences charged against them...”<sup>124</sup>

2.85 In *McDonald v Bord na gCon*,<sup>125</sup> Kenny J held that the administration of justice has the following characteristic features:

- “1. a dispute or controversy as to the existence of legal rights or a violation of the law;
2. the final determination or ascertainment of the rights of parties to the imposition of liabilities or the infliction of a penalty;
3. the final determination (subject to appeal) of legal rights or liabilities or the imposition of penalties;

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<sup>122</sup> See eg *State (Shanahan) v Attorney General* [1964] IR 239 at 247 (where Davitt P stated that he “certainly [had] no intention of rushing in where so many eminent jurists have feared to tread, and attempting a definition of judicial power ...”) and *Keady v Commissioner of An Garda Síochána* [1992] 2 IR 197 at 204 (where McCarthy J “share[d] the reluctance of Davitt P in *State (Shanahan) v Attorney General* to attempt a definition of judicial power” and observed that “it is easier, if intellectually less satisfying, to say in a given instance whether or not the procedure is an exercise of such power, rather than to identify a comprehensive check-list for that purpose”).

<sup>123</sup> [1933] IR 74.

<sup>124</sup> *Ibid.* (Emphasis added.) Cited with approval by McCarthy J in *Keady v Commissioner of An Garda Síochána* [1992] 2 IR 197 at 202-203.

<sup>125</sup> [1965] IR 217.

4. the enforcement of those rights or liabilities or the imposition of a penalty by the court or by the executive power of the State which is called in by the court to enforce its judgment;

5. the making of an order by the court which as a matter of history is an order characteristic of courts in this country.”<sup>126</sup>

2.86 The characteristics of a judicial body enunciated by Kenny J in *McDonald* were endorsed on appeal<sup>127</sup> and have been reaffirmed by the Supreme Court on a number of occasions since.<sup>128</sup> In *State (Plunkett) v Registrar of Friendly Societies (No. 1)*,<sup>129</sup> the Supreme Court held that all five of the *McDonald* criteria must be satisfied before an activity will be held to constitute the administration of justice. In *Keady v Commissioner of An Garda Síochána*,<sup>130</sup> McCarthy J stated that “[i]t was scarcely intended by Kenny J or by [the Supreme Court] to exclude from the qualifying criteria such matters as were identified by Kennedy CJ in *Lynham v Butler (No. 2)*,<sup>131</sup> - authority to compel appearance of a party before it, to compel the attendance of witnesses, to order the execution of its judgments against persons and property.”<sup>132</sup>

2.87 Furthermore, it should be noted that the Constitution requires not merely that justice shall be administered by judges who are independent in the exercise of their judicial functions but also that they shall be seen to be so.<sup>133</sup>

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<sup>126</sup> *Ibid* at 231.

<sup>127</sup> *Ibid* at 244.

<sup>128</sup> See *Keady v Commissioner of An Garda Síochána* [1992] 2 IR 197 at 203; *Goodman International v Hamilton (No. 1)* [1992] 2 IR 542 at 589; and *State (Plunkett) v Registrar of Friendly Societies (No. 1)* [1998] 4 IR 1 at 5.

<sup>129</sup> [1998] 4 IR 1.

<sup>130</sup> [1992] 2 IR 197.

<sup>131</sup> [1933] IR 74.

<sup>132</sup> [1992] 2 IR 197 at 204.

<sup>133</sup> See further paragraphs 2.81-2.82.

2.88 Against this background, the constitutional difficulties and dangers inherent in the receipt, administration and distribution of court poor box funds by judges are brought sharply into focus. Under the present system, the extent to which a charity benefits from the court poor box fund is at the discretion of a judge. As a result, certain charities which are favoured by a judge – or, it may be perceived, judges generally – benefit to a greater extent than others. The difficulties in this area are further compounded by the absence of an approved list of charities and the inevitable questions about whether certain organisations ought to have benefited from court poor box funds. A list of the organisations which benefited from such funds in 2002 and 2003 is contained in Appendices D and E to this Paper.

2.89 A final difficulty which arises in this respect is linked to the fact that payments made from court poor box funds are solely at the discretion of the particular judge in charge of that fund. Once the decision has been made as to the precise individual or organisation which is to benefit from the monies, there is at present no means to ensure that the manner in which the payment is made does not attract revenue liabilities pursuant to the tax code. The difficulties raised by this issue will be considered in further detail below.<sup>134</sup>

2.90 In the light of the foregoing, the Commission believes that the receipt, administration and distribution of court poor box funds do not form any part of the function of the courts and, more particularly, are inconsistent therewith. Specifically, the Commission believes that such activities are liable to compromise the independence of the judiciary.

**(8) *Countering the effects of inflation***

2.91 As noted above,<sup>135</sup> the court poor box has been invoked in order to compensate for what are perceived to be deficiencies in the legislative code, in this instance the failure to ensure that the value of fines is kept in line with the rate of inflation. Whilst judges may of course express dissatisfaction with legislative deficiencies, they are nevertheless bound to apply the law as it stands. A further point is that to utilise the court poor box in order to impose a greater financial penalty than the maximum fine permitted by legislation may operate

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<sup>134</sup> See Chapter 3.

<sup>135</sup> See paragraph 2.39.

to deprive the Exchequer of funds, a matter which has caused some concern in recent times.<sup>136</sup>

2.92 It can further be suggested that the force of this argument will be diminished upon the enactment of legislation which indexes fines in accordance with the recommendations of the Law Reform Commission in its *Report on the Indexation of Fines: A Review of Developments*.<sup>137</sup>

**(9) Beneficiaries of court poor box funds**

2.93 Whilst it is beyond doubt that court poor box funds generate substantial, and much needed, monies for many charities, the current system cannot be described as fully satisfactory. As mentioned above, there is the complaint that some charities seem to derive far greater benefit from court poor box funds than others, with no objective criteria or mechanism by which all charities may apply in order to receive donations from the court poor box.

2.94 In addition to payments to charitable organisations, it has been suggested that court poor box funds can be used for the benefit of victims by providing a “central pool” from which financial assistance can be provided to victims, removing any direct link between the offender and the victim in particularly sensitive cases. However, the figures compiled by the Courts Service indicate that such payments constitute a fraction of the total made from court poor box funds, with the majority of payments made to organisations.

2.95 It has also been suggested that court poor box funds can be used to provide financial assistance to offenders in appropriate cases. Although this notion seems to have been a factor in the early conception of the court poor box, it appears to be an increasingly rare occurrence under the modern day court poor box. Thus, in 2002 there

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<sup>136</sup> See *Annual Report of Comptroller and Auditor General and Appropriation Accounts* (29 March 2001) where the Comptroller and Auditor General noted: “The committee had concerns about the poor box centring around the fact that the way the system operated may be depriving the Exchequer of fines which should ordinarily be imposed. It could be seen as involving the imposition of an alternative penalty to that provided by law”. Available at [www.irfgov.ie/committees-01/c-publicaccounts/010329/Page1.htm](http://www.irfgov.ie/committees-01/c-publicaccounts/010329/Page1.htm)

<sup>137</sup> LRC 65-2002. See also the Government’s legislative programme for the Dáil session commencing on 27 January 2004, which states that draft heads of a Bill giving effect to this Report are expected to be published in 2004; see <http://www.taoiseach.gov.ie/index.asp?locID=186&docID=-1>.

was a total of 82 payments made to individual beneficiaries, and most of these were categorised as either “family law” or “travel”. The total amount of these 82 payments was €30,380.19; when contrasted with the total sum disbursed to charitable organisations in that year – €480,083.21 – it is clear that alleviation of impecunious offenders in appropriate cases is not the main priority of the court poor box system. Finally, the practice of disbursing court poor box funds to impecunious offenders can be subject to the further criticism that it can lead to inequalities caused, for example, by lack of available funds in poorer areas, (or indeed unavailability of any such funds in areas where no court poor box is operated), variability in the method of assessment and inadequacy of amounts to remove immediate financial pressure.

**(10) *The court poor box lacks a clear legal basis***

2.96 As noted above, the court poor box does not enjoy a statutory foundation. Although it can be argued that it is deeply rooted in the common law,<sup>138</sup> it may also be suggested that, in the absence of a clear basis for the wide-ranging powers which inhere in the court poor box system, its application and appropriateness in certain cases lacks the element of specificity which is ordinarily part of a court’s jurisdiction.

**(11) *Revenue from fines***

2.97 Fines are payable to the Exchequer unless an order has been made under section 51 of the *Court Officers Act 1926* directing payment to another body.<sup>139</sup> Accordingly, it can be argued that the Exchequer is deprived of the revenue which would otherwise be generated by the imposition of fines.<sup>140</sup> The sums involved are not trivial. In 2000, over £508,000 (€645,027) was contributed to the court poor box.<sup>141</sup> In 2001, over £589,000 (€747,875) was

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<sup>138</sup> See the discussion of the origins of the court poor box above, at paragraphs 1.03-1.06.

<sup>139</sup> In this context, see Woods *District Court Practice and Procedure in Criminal Cases* (Woods 1994) at 236-238.

<sup>140</sup> Concerns in this respect were raised by the Public Accounts Committee in its consideration of the 1999 Annual Report of the Comptroller and Auditor General, 29 March 2001. A transcript of this meeting is available at [www.irlgov.ie/committees-01/c-publicaccounts/010329/Page1.htm](http://www.irlgov.ie/committees-01/c-publicaccounts/010329/Page1.htm).

<sup>141</sup> See *The Irish Times* 30 March 2001.

contributed to the court poor box. Contributions to the court poor box in 2002 totalled some €935,839.20.<sup>142</sup> Provisional figures for 2003 show a slight increase in the total receipts to the court poor box of €983,030.79.<sup>143</sup>

## **D A Potential Alternative to the Court Poor Box**

2.98 It is clear from the foregoing that, irrespective of the position taken in respect of retention or abolition of the court poor box, the system as currently operated presents serious difficulties. Whilst the options for reform will be fully considered in Chapter 6, it is instructive at this point to consider whether there is a potential alternative to the court poor box system. The Commission considers that section 1 of the *Probation of Offenders Act 1907* and section 6 of the *Criminal Justice Act 1993* provide such a potential statutory alternative.

2.99 As noted above,<sup>144</sup> section 1(1) of the *Probation of Offenders Act 1907* allows a court to dispose of a case by applying the terms of the Act, after and despite being satisfied that the charge is proved, where the court is satisfied that in all the circumstances of the case, “it is inexpedient to inflict any punishment or any other than a nominal punishment”. Section 1(3) of the 1907 Act enables the court to impose an additional financial order on an offender in respect of whom a dismissal under section 1(1) has been made, but its terms are subject to a significant limitation which has probably led to its falling into disuse. Section 1(3) of the 1907 Act provides as follows:

“The court may ... order the offender to pay such damages for injury or compensation for loss (not exceeding in the case of a court of summary jurisdiction ten pounds, or if a higher limit is fixed by any enactment relating to the offence, that higher limit) and to pay such costs of the proceedings as the court thinks reasonable ...”<sup>145</sup>

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<sup>142</sup> This information was provided by the Courts Service; see further paragraph 1.44 and Appendix B for a statement of payments made into the court poor box for these years.

<sup>143</sup> See Appendix B.

<sup>144</sup> See paragraph 2.80.

<sup>145</sup> As noted above, the remaining part of this provision dealing with offenders under the age of sixteen was repealed by the terms of the *Children Act*

2.100 The reference to £10 in the 1907 Act has not been updated since that time and now reads €12.<sup>146</sup> It is clear that a compensation order under section 1(3), limited to €12, has little practical value and it is not surprising that it has fallen into disuse. Indeed, it may be surmised that the increased use of the court poor box as a disposition in conjunction with section 1(1) of the 1907 Act has coincided with the diminishing practical value of section 1(3) of the 1907 Act. Whatever the reason, the Commission considers that the statutory reference to compensation orders in section 1(3) of the 1907 Act represents a significant potential alternative basis for reform.

2.101 The Commission also notes that this area is now governed by the terms of section 6 of the *Criminal Justice Act 1993*, which sets out a scheme for compensation orders. Section 6(1) provides:

“on conviction of any person of an offence, the court, instead of or in addition to dealing with him in any other way, may, unless it sees reason to the contrary, make (on application or otherwise) an order (in this Act referred to as a "compensation order") requiring him to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (in this Act referred to as the "injured party") who has suffered such injury or loss”.

As noted above,<sup>147</sup> section 6(12)(b) of the Act provides that “references to conviction of a person include references to dealing with a person under section 1(1) of the *Probation of Offenders Act 1907*”.

2.102 The precise interrelationship between section 1(3) of the *Probation of Offenders Act 1907* and section 6 of the *Criminal Justice Act 1993* is unclear. On one view, it might be suggested that section 6 of the 1993 Act has effectively superseded that part of section 1(3) of the 1907 Act dealing with the payment of compensation. Alternatively, it may be the case that the sections stand separate, on

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1908, (in turn replaced by the *Children Act 2001*) but the passage of the section cited here remains in force.

<sup>146</sup> See the *Euro Changeover (Amounts) Act 2001*.

<sup>147</sup> See paragraph 2.79.

the grounds that section 6 of the *Criminal Justice Act 1993* deals with specific instances of loss or damage in cases where there is an identifiable “victim”, whereas section 1(3) of the *Probation of Offenders Act 1907* is more wide-ranging, at least in principle, allowing payments of compensation (limited of course to €12) as evidence of an “earnest of intention to reform” in cases where there is no single “victim” or instances of physical loss or damage caused.

(a) *Limitations on the Probation of Offenders Act 1907*

2.103 Whatever the conclusion as to the overlap between the 1907 and 1993 Acts, a major limitation on the existing provisions of the 1907 Act is that the amount payable pursuant to section 1(3) of the *Probation of Offenders Act 1907* has never been increased from £10 (€12). The Commission is of the view that section 1(3) of the 1907 Act comprises a potentially useful alternative to the court poor box system, which already enjoys legislative imprimatur and thereby avoids some of the objections which can be made in relation to the court poor box. If amended (or recast as part of any scheme designed to place the court poor box on a statutory footing), section 1(3) could provide a flexible and invaluable tool in the armoury of judges by allowing the courts to require an offender either to pay an amount of “compensation” in the generally understood sense, provide a sum of money as evidence of an “earnest of intention” or even make a contribution towards the costs which have arisen as a result of the case.

2.104 If it is accepted that section 1(3) of the 1907 Act constitutes a potential and preferable alternative to the court poor box, it would remain to amend the maximum amount payable pursuant to section 1(3). In this respect, it might be suggested that an attractive option would be to adopt the approach taken in section 6(2) of the *Criminal Justice Act 1993*, and limit the maximum amount payable to “the amount as may stand prescribed for the time being by law as the limit of that Court's jurisdiction in tort.” Currently this stands at €6,350 for the District Court and €38,100 for the Circuit Court.<sup>148</sup>

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<sup>148</sup> The *Courts and Courts Officers Act 2002* provides that these limits be raised to €20,000 and €100,000 respectively, but commencement orders for these changes have not been made to date.

(b) *Limitations on section 6 of the Criminal Justice Act 1993*

2.105 One final point which should be addressed in this context is the limitations on the scheme for Compensation Orders set out in section 6 of the *Criminal Justice Act 1993*. The terms of a compensation order are limited to “requiring [the offender] to pay compensation in respect of any personal injury or loss resulting from the offence in question ... to any person ... who has suffered such injury or loss”.<sup>149</sup> The only definition of “injured party” under the Act is of a person who suffered injury or loss, and on this basis it would appear that the section is limited to requiring payment of compensation to actual victims of criminal activity.<sup>150</sup> Thus, it would seem unlikely that section 6(1) of the 1993 Act could be invoked, for example, in cases involving public disorder where the only “victim” might be regarded as the public at large, as taxpayers. However, consideration could be given to amending the terms of the 1993 Act to allow a court to impose a compensation order, which is payable to the State in cases where there is no identifiable person who has suffered injury or loss or where the injured party is reluctant to accept compensation from the offender.<sup>151</sup>

## **E Conclusions**

2.106 For ease of reference, it is appropriate to summarise the principal arguments for and against the present court poor box system and the Commission’s views in respect thereof.

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<sup>149</sup> Section 6(1) of the *Criminal Justice Act 1993*. Reference should also be made to section 6(3) which deals with loss or damage to property, providing:

“Where the commission of the offence by the convicted person involved the taking of property out of the possession of the injured party and the property has been recovered, any loss occurring to the injured party by reason of the property being damaged while out of his possession shall be treated for the purposes of subsection (1) as having resulted from the offence, irrespective of how the damage was caused or who caused it.”

<sup>150</sup> See sections 1 and 6 of the *Criminal Justice Act 1993*.

<sup>151</sup> A further possibility in cases where there is no identifiable “victim” is to require the offender to make a contribution towards the costs of the case. Provision for this exists in section 1(3) of the *Probation of Offenders Act 1907*.

**(1) Summary of arguments in favour of the court poor box system (as currently applied)**

2.107 The principal arguments in favour of the present court poor box system may be summarised as follows.

2.108 First, the court poor box may avoid or reduce the need to impose a conviction or custodial sentence. For a variety of reasons a court may consider that it would be inappropriate or unduly harsh to impose a conviction on the offender in all the circumstances of the case. A particular concern in this regard is the permanency of a conviction and the future impact such a record might have on the accused, as it might arise in relation to such matters as obtaining a visa for travel or work abroad. Furthermore, it may be said that the court poor box accords with the generally recognised principle that a term of imprisonment should be imposed only as a last resort. It can also be said that the court poor box accords with the principles of restorative justice.

2.109 Secondly, it can be argued that the poor box enables the court to determine an appropriate punishment for the commission of a criminal offence having regard to all of the circumstances of a case. This argument encompasses a number of specific propositions which are founded upon fundamental principles of constitutional law and sentencing law. Thus, the court is enabled to determine an outcome that is proportionate to the gravity of the offence having regard to:

- (a) the personal circumstances of the offender having regard to all of the circumstances of the case;
- (b) the means of the offender;
- (c) whether the offender had never previously committed the offence in question (or any other offence);
- (d) whether the offender made an early admission and pleaded guilty to the offence(s) in question;
- (e) whether the offender is genuinely remorseful;
- (f) the need to punish a person without also (or at least unduly) punishing his or her family;
- (g) whether the age of the person justifies (at least in part) a reduced punishment; and

(h) the need to achieve a just result and to avoid an unjust one.

2.110 The constitutional dimension to the foregoing arguments merits emphasis. Thus, a person who has been convicted of an offence enjoys a fundamental constitutional right to receive a sentence that is proportionate to the gravity of that offence and his personal circumstances and there is a concomitant obligation on the State, including the courts, to protect and vindicate that right. By way of analogy, it can be argued that it is incumbent upon the State to adopt and apply a system like the court poor box system which affords the courts a wide range of discretionary sentencing options, thereby enhancing the capacity of the courts to reach an outcome which is appropriate having regard to all of the circumstances of a case.

2.111 Thirdly, charities and victims of criminal offences benefit from the payments which are made to the court poor box. In appropriate circumstances, impoverished offenders may also benefit from such payments.

2.112 Fourthly, it can be argued that it provides a mechanism for countering the effects of inflation on maximum fine values. The maximum fines which can be imposed for particular offences are specified in legislation but their value is eroded over time by the effects of inflation. As a result, even where a court imposes a maximum fine, such a fine may not reflect the gravity of the offence in question or the true maximum fine which the legislature had intended. It has thus enabled judges to structure a penalty which constitutes an appropriate admonishment in respect of the particular offence with which a person has been charged and in the light of all relevant circumstances.

2.113 Fifthly, the court poor box system dovetails effectively with section 1(1) of the *Probation of Offenders Act 1907* because it affords the court a means of dealing with an offender in circumstances where some financial penalty is merited but a conviction and any other sentence would be inappropriate. Thus, it is argued that the court poor box system enables the court to determine an outcome which strikes an appropriate balance between the “extremes” of an order under section 1(1) of the *Probation of Offenders Act simpliciter* and a conviction and fine.

2.114 Sixthly, the court poor box system is founded upon the exercise of the discretionary powers of the court, an integral component of a process whereby the outcome of a prosecution is determined in the light of all of the relevant circumstances of a case.

**(2) *Summary of arguments against the court poor box system (as currently applied)***

2.115 The principal arguments against the present court poor box system may be summarised as follows.

2.116 First, it can be argued that the court poor box affords a means of “buying” one’s way out of a conviction and/or a term of imprisonment, but the Commission is not persuaded by this argument.

2.117 Secondly it can be argued that the court poor box is *perceived* as a means of buying one's way out of a conviction and/or a term of imprisonment. The Commission agrees that, where the court concludes, in the light of all of the circumstances, that a term of imprisonment would not be appropriate and also applies the court poor box, the perception that a contribution to the court poor box was the primary or, indeed, the sole factor which caused the offender to escape a term of imprisonment is likely to obtain. This is particularly likely where the offender makes a substantial contribution to the court poor box. The Commission believes that such perceptions, even if at least in some respects ill-founded, are damaging to the administration of justice and constitute a serious cause for concern.

2.118 Thirdly, it can be argued that the court poor box causes offenders whose circumstances are similar to be treated differently, contrary to Article 40.1 of the Constitution. Put simply, one aspect of this is that it creates “one law for the rich and another for the poor”. Although the Commission is of the view that the majority of judges who apply the court poor box do not in fact apply it in such a discriminatory fashion, the Commission nevertheless confirms its view that it *is* incompatible with Article 40.1 to deal with offenders who are charged with the commission of the same offence, and whose personal circumstances only differ (in any material respect) in relation to their means, in such a way that affluent offenders can, by virtue of their affluence, avoid a conviction and/or a term of imprisonment while impoverished offenders are unable to do so because of their lack of means.

2.119 To the extent that there are residual concerns about the court poor box system in the light of Article 40.1, the Commission believes that they can best be addressed by a conscious application of the court poor box by way of analogy with established principles of sentencing law and, in particular the principle that a sentence must be proportionate to the crime and the personal/financial circumstances of the offender. Accordingly, an affluent offender should have to make a contribution to charity which is significantly greater than the contribution of an offender with limited means, notwithstanding that both offenders committed the same offence.

2.120 A second aspect of inequality relates to the inconsistency with which it is applied by judges. It is undoubtedly true that the court poor box is not applied to an equal extent by all judges. Some judges do not apply the court poor box at all. Other judges apply it to varying degrees: some apply it very frequently while others only apply it on a limited basis and only in respect of certain types of offences and/or in particular circumstances. However, in this regard, it should be emphasised that simply because a sentence imposed by one judge for a particular offence appears to differ from that imposed by another judge (or even the same judge) in respect of another (but similar) offence is not in itself an indication that the offenders have been treated differently by the courts. It may be that the background, character and antecedents of a particular person are such as to merit an outcome which is more or less lenient than that imposed on another person who committed the same offence.

2.121 Fourthly, some offences in respect of which the court poor box is applied are not trivial and may merit significant fines or terms of imprisonment. Many view the use of the poor box in such cases as highly inappropriate, and this practice may add to the extent of the harm caused by negative perceptions of the circumstances in which the court poor box is applied, and the types of offenders in respect of whom it is applied.

2.122 Fifthly, it can be argued that there are alternative means of dealing with a person which obviate the need for the court poor box. It should be noted that certain alternative measures are not available in the context of the *Probation of Offenders Act 1907* – such as community service orders, which can only be imposed following conviction. However, this is not the case in respect of compensation orders under section 6 of the *Criminal Justice Act 1993*, which

provides that for the purposes of that section, a reference to a convicted person includes a person whose case was disposed of by reference to section 1(1) of the *Probation of Offenders Act 1907*.

2.123 Sixthly, it can be argued that, because of its non-statutory basis, judges have no defined jurisdiction to apply the court poor box. Although it appears to be deeply rooted in the common law, it can be argued that, in the absence of a clear statutory basis for the wide-ranging powers which inhere in the court poor box system, its application and appropriateness in particular cases lacks the element of specificity which is ordinarily part of a court's jurisdiction.

2.124 Seventhly, it can be argued that the court poor box system impairs confidence in the administration of justice. The importance of public confidence in the administration of justice cannot be overstated. The application of the court poor box in particular cases may be misinterpreted or misunderstood by the media and/or members of the public, thus impairing confidence in the criminal justice system.

2.125 Eighthly, it can be argued that difficulties arise in relation to beneficiaries of court poor box funds. Thus, the absence of any objective criteria or mechanism by which charities qualify as eligible to benefit from court poor box funds means that some charities benefit to a far greater degree than others. In relation to application of poor box funds for the benefit of impecunious individuals, it also appears that this particular use of the court poor box is quite limited.

2.126 Ninthly, it can be argued that the receipt, administration and distribution of court poor box funds should preferably form no part of the judicial function and are inconsistent therewith. The Commission agrees with this argument. The Constitution requires not merely that justice shall be administered by judges who are independent in the exercise of their judicial functions but also that they shall be seen to be so. Under the present system, the extent to which a charity benefits from the court poor box fund is at the discretion of a judge. The difficulties in this area are further compounded by the absence of an approved list of charities who should benefit from court poor box funds. In addition, there is at present no procedure which ensures that the manner in which the payment is made does not attract revenue liabilities pursuant to the tax code. In this light, the Commission believes that the distribution of monies from the court poor box to various charitable and non-charitable organisations diminishes the

independence of the courts, or at least may be perceived as doing so, and to that extent such activities are damaging to the administration of justice.

2.127 Tenthly, the Exchequer is deprived of the revenue which otherwise may have accrued to it from the levying of fines.

**(3) *A potential alternative to the court poor box***

2.128 Given the difficulties with the existing arrangements, the Commission considers that an updated version of section 1(3) of the *Probation of Offenders Act 1907* combined with section 6 of the *Criminal Justice Act 1993* provides the basis for a potential alternative statutory jurisdiction to the court poor box system. Section 1(3) of the 1907 Act allows a court to require an offender to provide compensation to any person who has suffered loss or damage as a result of the offender's activities, but the maximum amount payable is currently fixed at €12. Section 6 of the 1993 Act sets out a scheme for requiring an offender to pay compensation to any injured party who has suffered loss or damage as a result of the offender's activities. The maximum amount payable pursuant to the 1993 Act is the equivalent of the ceiling of the court's jurisdiction in tort.

2.129 These sections represent a potential future alternative to the court poor box in that they allow a court to apply section 1(1) of the *Probation of Offenders Act 1907* but still require the offender to make some "earnest of intention" or financial contribution. Furthermore, such an alternative would appear to avoid many of the criticisms levelled at the court poor box as considered above.

2.130 However, it should be noted that these sections are limited; the maximum amount payable pursuant to section 1(3) of the *Probation of Offenders Act 1907* is currently capped at €12, which is too low to be of any real effect. A more serious limitation on these sections is the fact that both require the existence of an injured party to whom the monies are then payable. Many of the cases which are currently disposed of by way of a contribution to the court poor box involve "victimless crimes", particularly in respect of public disorder offences. The question of whether it is possible to extend the scope of these sections to provide an expanded jurisdiction which would replace the current court poor box system will be considered in detail in Chapter 6.

**(4) Conclusion**

2.131 *The Commission provisionally recommends that the court poor box system be reformed by avoiding the inappropriate features which currently exist, but retaining its positive and important aspects. The Commission provisionally recommends that the court poor box jurisdiction should be replaced by a statutory scheme based on the provisions of the Probation of Offenders Act 1907 and the Criminal Justice Act 1993 which would provide a revised method of avoiding a conviction for minor offences while introducing an appropriate system allowing for the making of a financial contribution akin to an “earnest of intention”, which also accords with the principles of restorative justice.*

2.132 *The Commission considers that any such scheme should not be applied in cases where a conviction has been recorded. This arises partly from a recognition of the underlying rationale of such a scheme, namely a concern to avoid imposing a conviction (akin to allowing a first time offender “one chance”). Furthermore, the Commission believes that the application of the court poor box scheme in cases where a conviction has been recorded leads to accusations that offenders can “buy” their way out of a prison sentence. The Commission believes that such perceptions, although ill-founded, are nevertheless harmful to the administration of justice, which must not only be done, but seen to be done.*



## CHAPTER 3 THE CHARITABLE AND REVENUE IMPLICATIONS OF THE COURT POOR BOX SYSTEM

### A Introduction

3.01 In this Chapter, the Commission considers the implications of the operation of the court poor box system from the perspective of charity law in general, and also in connection with the taxation system. Concern has been expressed by the Comptroller and Auditor General that in its current state the court poor box system deprives the Exchequer of funds.<sup>1</sup>

3.01 Whilst as a general rule, trusts for purposes rather than for the benefit of persons are invalid, charitable trusts which are considered to be for the public benefit constitute an exception to this principle.<sup>2</sup> Charitable trusts are considered as being for the benefit of the public generally or at least for an appreciable section of it and for this reason have traditionally enjoyed a number of advantages over other types of trust.

3.02 The most significant of these advantages is the fact that charitable trusts enjoy a number of exemptions from liability to various forms of taxation. Sections 207 and 208 of the *Taxes Consolidation Act 1997* grant exemptions from income tax in respect of income accruing to charitable bodies or trusts established for charitable purposes to the extent that such income is applied for charitable purposes.<sup>3</sup> Corrigan notes that “[e]xemptions available under the income tax code are also available under the corporation tax

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<sup>1</sup> 1999 Annual Report of the Comptroller and Auditor General, delivered to the Public Accounts Committee on 29 March 2001. Transcript available at <http://www.irlgov.ie/committees-01/c-publicaccounts/010329/Page1.htm>

<sup>2</sup> Delany *Equity and the Law of Trusts in Ireland* (3<sup>rd</sup> ed Round Hall Sweet & Maxwell 2003) at 291.

<sup>3</sup> See Corrigan *Revenue Law* (Round Hall Sweet & Maxwell 2000) at paragraphs 8-161 – 8-162.

code so that, for instance, companies limited by guarantee, a favoured choice of charitable structure bringing with it limited liability, also qualify for the exemption”.<sup>4</sup> Exemptions also apply in respect of capital taxes, and a capital gain which accrues to a charity is not chargeable to capital gains tax provided that it is applied for charitable purposes.<sup>5</sup> In addition, section 76(2) of the *Capital Acquisitions Tax Consolidation Act 2003* provides that a gift or inheritance taken for public or charitable purposes will be exempt from capital acquisitions tax provided that the Revenue Commissioners are satisfied that it has been or will be applied to such purposes. Finally, it should be noted that by virtue of section 45 of the *Finance Act 2001*, charities can now reclaim the tax paid on donations made to them.

## **B Charitable Law Implications of the Court Poor Box System**

### **(1) The “Pemsel” classification of charitable trusts**

3.03 The Irish courts rely on the classification of trusts for charitable purposes which was set out by Lord MacNaghten in *Commissioners of Income Tax v Pemsel*<sup>6</sup> as a starting point in the classification of charitable trusts. In *Pemsel*, Lord MacNaghten divided such trusts into four broad categories:

- (i) trusts for the relief of poverty;
- (ii) trusts for the advancement of education;
- (iii) trusts for the advancement of religion; and
- (iv) trusts for other purposes beneficial to the community.

3.04 These categories are generally understood to delineate the boundaries of the legal recognition of trusts for charitable purposes, though it is important to note that the categories are not mutually exclusive. As Delany notes:

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<sup>4</sup> *Ibid* at paragraph 8-161.

<sup>5</sup> Section 611 of the *Taxes Consolidation Act 1997*. Section 611(1)(b) provides that if such property subsequently ceases to be subject to charitable trusts any gain arising will be chargeable and will be calculated as if the property had been sold for its market value on that date.

<sup>6</sup> [1891] AC 531.

“this classification is one of convenience only and ... there may be purposes which do not fit neatly into one or other of these categories, or which fit into one or more categories at the same time ... [I]t has nevertheless over the last century provided the basis on which the courts both in this jurisdiction and in England have approached the question of whether a trust should be accorded charitable status.”<sup>7</sup>

For the sake of completeness, a brief outline of the scope of each of the *Pemsel* categories of trusts for charitable purposes is set out below.<sup>8</sup>

(a) *Trusts for the relief of poverty*

3.05 As Corrigan notes,

“[p]overty in this context does not mean destitution but refers instead to the relief of persons who have to “go short” in the ordinary meaning of the term, due regard being had to their status in life”.<sup>9</sup>

Although it is generally a prerequisite to a finding of a trust for charitable purposes that there be an element of “public benefit” administered by the organisation in question,<sup>10</sup> it was held by Evershed MR in *Re Scarisbrick’s Will Trusts*<sup>11</sup> that the public benefit

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<sup>7</sup> Delany *op cit* at 297.

<sup>8</sup> See also Law Society Report *Charity Law: The Case for Reform* (2002) at p. 41, and Department of Community, Rural and Gaeltacht Affairs *Establishing a Modern Statutory Framework for Charities* (Consultation Paper 2003) at paragraph 3.15.

<sup>9</sup> Corrigan *Revenue Law* (Round Hall 2000) at paragraph 8-165. The reference to persons who “go short” is drawn from the judgment of Evershed MR in *Re Coulthurst* [1951] Ch 661.

<sup>10</sup> As Delany has noted,

“An examination of the various judicial interpretations of the types of trust which are legally charitable show that there are in effect two hurdles to be overcome, first, an element of benefit, e.g. the relief of poverty and secondly, an element of public benefit.” As Viscount Simonds commented in *IRC v Baddeley* [1955] AC 572, 592, it is necessary to distinguish “between a form of relief extended to the whole community, yet by its very nature advantageous only to a few and a form of relief accorded to a selected few out of a larger number equally willing and able to take advantage of it.”

<sup>11</sup> [1951] Ch 622.

requirement was of lesser importance in relation to trusts for the relief of poverty on the grounds that “the relief of poverty is of so altruistic a character that the public element may necessarily be inferred thereby”.<sup>12</sup>

3.06 It should also be noted in this context that in a *Revenue Precedent*, the Revenue Commissioners have stated that a gift to a narrow class of persons for the relief of poverty is a valid charitable gift if the gift is expressly for the relief of poverty.<sup>13</sup>

(b) *Trusts for the advancement of education*

3.07 Trusts for the advancement<sup>14</sup> of education have long been afforded charitable status.<sup>15</sup> However, as Delany notes, “the concept of what is ‘educational’ in the sense of what will be recognised as legally charitable has been widened considerably over the last fifty years by a process of judicial interpretation”.<sup>16</sup> Thus, for example, Vaisey J held in *Re Shaw’s Will Trusts*<sup>17</sup> that “education includes ... not only teaching, but also the promotion or encouragement of those arts and graces of life which are, perhaps, the finest and best part of the human character”.<sup>18</sup> This approach has been confirmed in Irish law by the judgment of Keane J in *Re Worth Library*, where he held that:

“[G]ifts for the advancement of education ... would embrace, not merely gifts to schools and universities and the

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<sup>12</sup> *Ibid* at 639.

<sup>13</sup> *Revenue Precedent: TCA 1997, s. 207, Income Tax – Charitable Exemptions*. See also Corrigan *op cit* at paragraph 8-165.

<sup>14</sup> Note that the definition of the term “advancement” as proposed in the Department of Community, Rural and Gaeltacht Affairs *Establishing a Modern Statutory Framework for Charities* (Consultation Paper 2003) includes “protection, maintenance, support, research, improvement or enhancement”; at p. 8.

<sup>15</sup> See, for instance, the terms of the Preamble of the *Statute of Charitable Uses (Ireland) 1634*, which refers to “the erection, maintenance or support of any college, school lecture in divinity, or on any of the liberal arts or sciences, the building, re-edifying or maintaining in repair any college [or] school”.

<sup>16</sup> Delany *op cit* at 308.

<sup>17</sup> [1952] 1 All ER 49.

<sup>18</sup> *Ibid* at 55.

endowment of university chairs and scholarships: ‘education’ has been given a broad meaning so as to encompass gifts for the establishment of theatres, art galleries and museums and the promotion of literature and music. In every case, however, the element of public benefit must be present and, if the benefit extends to a section of the community only, that section must not be numerically negligible.”<sup>19</sup>

3.08 Despite the generally broad scope given to the concept of “trusts for the advancement of education” by the judiciary, it should be noted that one important limitation was established in *Bonar Law Memorial Trust v IRC*,<sup>20</sup> where it was decided that a trust established for the purpose of advancing education in the area of political thought was not charitable, on the grounds that the terms in which the gift was phrased was intended to operate to the benefit of a particular political party.<sup>21</sup> However, the breadth of the scope of the concept of “trusts for the advancement of education” was recently confirmed by the Revenue Commissioners in a *Revenue Precedent* which included references to an organisation established to foster enterprise, cultural and educational interests between two countries, and also “a tour of Africans in Ireland to educate the Irish public in the area of African culture”.<sup>22</sup>

(c) *Trusts for the advancement of religion*

3.09 It was confirmed by Walsh J in *Quinn’s Supermarket v Attorney General*<sup>23</sup> that notwithstanding the references to the Christian nature of the State in Article 44 of the Constitution, religion is not confined to the Christian faith. However, Delany has suggested that “it would be unwise to speculate unduly on the question of

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<sup>19</sup> [1995] 2 IR 301, 336.

<sup>20</sup> (1933) 17 TC 508.

<sup>21</sup> The issue of gifts with a potential political dimension will be returned to below in the context of “gifts for other purposes beneficial to the community”, with a consideration of the appropriateness of payments being made out of the court poor box where the benefit may ultimately be applied for a political or quasi-political purpose.

<sup>22</sup> *Revenue Precedent: TCA 1997, s. 207, Charitable Exemption*, referred to in Corrigan *op cit* at paragraph 8-168.

<sup>23</sup> [1972] IR 1.

whether the courts in this jurisdiction would be prepared to stretch the meaning of ‘religion’ to the extent to which their counterparts elsewhere in the common law world have done.’<sup>24</sup>

3.10 The scope of this category is illustrated by Corrigan by reference to the types of purposes which have been deemed charitable under this category, which include the following:

- (i) donations to ecclesiastical office holders in their professional capacity;<sup>25</sup>
- (ii) gifts for the celebration of masses;<sup>26</sup>
- (iii) gifts for the erection, upkeep, maintenance and repair of churches, tombs, vaults and monuments;<sup>27</sup>
- (iv) retirement homes for priests of a particular order.<sup>28</sup>

3.11 Finally, it should be noted that in order to resolve some confusion which arose as to whether or not gifts to some religious organisations satisfied the public benefit requirement,<sup>29</sup> section 45(1) of the *Charities Act 1961* provides as follows:

“In determining whether or not a gift for the purpose of the advancement of religion is a valid charitable gift it shall be conclusively presumed that the purpose includes and will occasion public benefit.”

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<sup>24</sup> Delany *op cit* at p. 318.

<sup>25</sup> *Re Davidson* [1909] 1 Ch 567.

<sup>26</sup> *Attorney General v Delaney* (1875) IR 10 Ch 104; *O’Hanlon v Logue* [1906] 1 IR 247.

<sup>27</sup> *Re Vaughan* (1886) 33 Ch D 275. See also section 50 of the *Charities Act 1961*.

<sup>28</sup> *Revenue Precedent: TCA 1997 s. 207, Income Tax – Charitable Exemption*.

<sup>29</sup> This issue arose in the context of the status of gifts to cloistered religious orders. For a consideration of the leading cases on this issue, including the English decision of *Cocks v Manners* (1871) LR 12 Eq 574, and the Irish decisions of *Maguire v Attorney General* [1943] IR 238, *Munster and Leinster v Attorney General* [1940] IR 19, and *Bank of Ireland Trustee Co. Ltd v Attorney General* [1957] IR 257 see Delany *op cit* at 324-327.

(d) *Trusts for other purposes beneficial to the community*

3.12 The final *Pemsel* category of trusts for charitable purposes has been described as “the most difficult of Lord MacNaghten’s classes of charitable trust to define and delimit”.<sup>30</sup> This category includes purposes which do not fall within any of the three categories already considered but which are nevertheless beneficial to the community in a way recognised by the law as charitable. This final category is not intended to act as a “catch-all provision”, a point which was emphasised by Viscount Cave in *Attorney General v National Provincial and Union Bank of England Ltd*,<sup>31</sup> where he stated as follows:

“Lord MacNaghten did not mean that all trusts beneficial to the community are charitable, but that there were certain charitable trusts which fell within that category; and accordingly to argue that because a trust is for a purpose beneficial to the community it is therefore a charitable trust is to turn round his sentence and to give it a different meaning. So ... it is not enough to say that the trust in question is for public purposes beneficial to the community or is for the public welfare; you must also show it to be a charitable trust.”<sup>32</sup>

3.13 As in the case of trusts for the advancement of education, it is informative to refer to Corrigan’s list of activities which have been deemed charitable under this heading,<sup>33</sup> as follows:

- (i) bequests for the aged<sup>34</sup> and sick,<sup>35</sup>
- (ii) a home for starving and forsaken cats;<sup>36</sup>
- (iii) a gift to a council to encourage and provide a means of healthy recreation for residents of a certain area;<sup>37</sup>

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<sup>30</sup> Delany *op cit* at p. 329.

<sup>31</sup> [1924] AC 262.

<sup>32</sup> *Ibid* at 265.

<sup>33</sup> Corrigan *op cit* at paragraph 8-170.

<sup>34</sup> *Re Robinson* [1951] Ch 198.

<sup>35</sup> *Re McCarthy’s Will Trusts* [1958] IR 311.

<sup>36</sup> *Swifte v Attorney General* [1912] 1 IR 133.

- (iv) the improvement<sup>38</sup> and the provision of a water supply<sup>39</sup> to a town;
- (v) the establishment of a house of rest for nurses;<sup>40</sup>
- (vi) the protection of lives or property of the community such as a lifeboat or fire brigade service;<sup>41</sup>
- (vii) the provision of advice whether financial or legal for the benefit of the community.<sup>42</sup>

3.14 Reference should be made to the types of purposes and organisations which are deemed to fall outside the scope of trusts for other purposes beneficial to the community. It was held in *National Anti-Vivisection Society v IRC*<sup>43</sup> that an anti-vivisection trust could not be regarded as charitable, on the basis of a finding of fact made by the court that the benefits of vivisection to the public outweighed animal suffering. Finally, it should be noted, that “[i]t is well-established that trusts for the advancement of political purposes are not charitable and as a result gifts for the benefit of specific political parties will clearly not qualify for charitable status.”<sup>44</sup> However, it can be difficult to identify the distinction between trusts *bona fide* for the advancement of education from those which are simply disguised as being for such a purpose and are in fact designed to promote political purposes.<sup>45</sup>

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<sup>37</sup> *Shillington v Portadown Urban Council* [1911] 1 IR 247. Corrigan also notes in this context that the Revenue Commissioners also regard “Tidy Towns” organisations as charitable : see *Revenue Precedent: TCA 1997, s. 207 – Charitable Exemption*.

<sup>38</sup> *Attorney General v Heelis* (1824) 2 Sim & St 67.

<sup>39</sup> *Jones v Williams* (1767) Amb 651.

<sup>40</sup> *Re White’s Will Trusts; Tindall v Board of Governors of the United Sheffield Hospital* [1951] 1 All ER 528.

<sup>41</sup> See *Revenue Precedent: TCA 1997, s. 207 – Charitable Exemption*.

<sup>42</sup> *Ibid.*

<sup>43</sup> [1948] AC 31.

<sup>44</sup> Delany *op cit* at p. 350.

<sup>45</sup> In *Re Trusts of the Arthur McDougall Fund* [1957] 1 WLR 81, a trust for the teaching of political theory was accepted as being educational in nature and in *Re Koepler’s Will Trusts* [1986] Ch 423 a bequest to fund the holding of conferences with political themes was also upheld. However,

(e) *Recommendations of Department of Community, Rural and Gaeltacht Affairs*

3.15 Finally, for the sake of completeness, reference should be made to the recommendations of the Department of Community, Rural and Gaeltacht Affairs in its recent paper on *Establishing A Modern Statutory Framework for Charities*.<sup>46</sup> This paper arose as a result of a commitment from the government to undertake “a comprehensive reform of the law relating to charities ... to ensure accountability and to protect against abuse of charitable status and fraud”.<sup>47</sup>

3.16 Of interest in this context are the recommendations of the paper in relation to the definition of “charity” under Irish law. The paper refers to the fact that “there has been considerable criticism of the [*Pemsel*] classification as being outdated and unsatisfactory”.<sup>48</sup> The paper proposes the introduction of a statutory definition which would codify and replace the current common law position, setting out clear charitable purposes of public benefit. However, in order to ensure conformity between the new statutory definition and the well established existing principles, the paper recommends that the new definition should “keep in line with the interpretation of charitable purposes as currently determined by the Revenue Commissioners”.<sup>49</sup>

3.17 Thus, the formulation proposed for this new statutory definition, informed by both common law precedent and the experience of other common law jurisdictions, is as follows:

“ ‘Charitable purposes’ could cover:

- The advancement of health, which includes the prevention and relief of sickness, disease or of human suffering;
- The advancement of education;

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these decisions can be contrasted with the decision in *Bonar Law Memorial Trust v IRC*, referred to above at paragraph 3.08.

<sup>46</sup> (Consultation Paper, December 2003). A copy of this paper can be obtained from <http://www.pobail.ie/en/CharitiesRegulation/ccp-en.doc>.

<sup>47</sup> Agreed Programme for Government, June 2002.

<sup>48</sup> *Op cit* at 6.

<sup>49</sup> *Ibid.*

- The advancement of community welfare, which includes:
  - § the prevention and relief of poverty, distress or disadvantage,
  - § the care, support and protection of the aged and people with a disability,
  - § the care, support and protection of children and young people, and
  - § the promotion of community development;
- The advancement of religion;
- The advancement of the natural environment;
- Other purposes beneficial to the community, which include:
  - § the prevention and relief of suffering of animals;
  - § the promotion and fostering of culture, and
  - § the care, preservation and protection of the Irish heritage.<sup>50</sup>

3.18 Whilst it is clear that this new definition draws on the established rules of the *Pemsel* classification, there are clearly some new elements added, and also a certain amount of amalgamation of previously separate categories. For example, this is clearly the case in relation to the sub-categories under “trusts for the advancement of community welfare” which absorbs the previously distinct category of trusts for the relief of poverty. How these recommendations will be received, and whether they will be adopted wholesale or with some modification, remains to be seen.

## **C      Appropriate Scope of Application of Court Poor Box Funds**

### ***(1)      Court poor box funds and the Pemsel classification***

3.19 Having briefly considered the scope of the *Pemsel* categories of trusts which are legally regarded as trusts constituted for charitable purposes, one question remains outstanding in relation to the court poor box as currently administered. Given that the

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<sup>50</sup> *Op cit* at 7. It should be noted that “advancement” is taken to include protection, maintenance, support, research, improvement or enhancement.

definition of a “trust for the relief of poverty” has been quite tightly circumscribed by the case law, as outlined above,<sup>51</sup> is it then the case that the “court poor box” by definition should benefit only those charities which fall under this heading of the *Pemsel* classification?

3.20 The question of which of the *Pemsel* categories should be entitled to benefit from court poor box funds is, on one view, a simple policy choice; however, the Commission is of the view that it is appropriate to point out that some of the *Pemsel* categories could be problematic from an administrative perspective. Specifically, the Commission is of the view that “trusts for the advancement of education”, “trusts for the advancement of religion”, and “trusts for other purposes beneficial to the community”, should be excluded from the scope of potential beneficiaries of court poor box funds.

3.21 Addressing first the concerns which might be raised in relation to “trusts for the advancement of education”, the Commission is of the view that this *Pemsel* category as elucidated by the case law is simply too broad and indeterminate. Although the charitable status of trusts involved in the advancement of education, as understood on a traditional, orthodox basis (*eg* gifts to schools and universities, scholarships etc) can scarcely be questioned, one can envisage some difficulty in delimiting the scope of the category in light of the courts’ self-professed “broad meaning” approach, as *per* Keane J in *Re Worth Library*.<sup>52</sup> On the basis of references in the case law on trusts for the advancement of education to such concepts as the “arts and graces of life”<sup>53</sup> and general “mind widening” purposes,<sup>54</sup> the Commission is satisfied that it would be preferable that trusts for the advancement of education be excluded from the scope of beneficiaries of court poor box funds.

3.22 The Commission is of the view that “trusts for the advancement of religion” should also be excluded from the pool of

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<sup>51</sup> At paragraphs 3.05-3.06.

<sup>52</sup> [1995] 2 IR 301, 336. For the context in which this approach was set out, see full quote at paragraph 3.07.

<sup>53</sup> *Per* Vaisey J in *Re Shaw’s Will Trusts* [1952] 1 All ER 49, considered above at paragraph 3.07.

<sup>54</sup> This phrase was used in the English decision of *Re Lopes, Bence-Jones v Zoological Society of London* [1931] 2 Ch 130, referred to in *Corrigan Revenue Law* (Round Hall Sweet & Maxwell 2000) at paragraph 8-167.

potential beneficiaries of court poor box funds. The rationale behind such a view can be stated as follows: the Commission believes it would be simply inappropriate for judges to adjudicate between the merits of different religious organisations in terms of neediness and worthiness, and one can all too easily envisage circumstances where controversy would follow a decision of a judge administering court poor box funds for the benefit of a specific religious organisation, ostensibly at the expense of other established religious organisations.

3.23 With regard to the recommendation that “trusts for other purposes beneficial to the community” be excluded from the pool of potential beneficiaries of court poor box funds, it is again administrative concerns which inspire the Commission’s views. The fourth *Pemsel* category remains, in spite of a large body of case law devoted to the delineation of this class, somewhat nebulous in scope. Its potential for the inclusion of quasi-political and other such activities, and the difficulty in assessing whether a particular organisation would fall within or outside the scope of this *Pemsel* category, ultimately suggest that it would be best practice to circumvent any difficulties in this regard by excluding such trusts from the scope of application of court poor box funds.

3.24 *The Commission recommends that funds generated by the court poor box, or any replacement scheme, should be applied only for the benefit of “trusts for the relief of poverty”. Accordingly, it is recommended that trusts for the advancement of education, religion and trusts for other purposes beneficial to the community should be excluded from the scope of application of court poor box funds.*

**(2) Possibility of “ring fencing” court poor box funds**

3.25 One further question which arises is whether it would be possible, under any replacement scheme for the court poor box system, to ensure that the funds generated are “ring fenced”, that is, maintained separately from the general pool of Exchequer funds, and applied exclusively for the benefit of charitable organisations. Section 51(1) of the *Court Officers Act 1926* provides that:

“Save as is otherwise provided under this section, all fines, amerciaments, penalties and forfeited recognisances imposed or levied by any court after the appointed day shall be paid into or disposed for the benefit of the Exchequer in such manner as the Minister for Finance shall direct and notwithstanding any enactment to the contrary, no part of

any such fine, amercement, penalty, or recognisance shall be paid or allowed to any prosecutor, informer, or other person or paid into any fund.”

3.26 A legislative precedent for the ring fencing of monies for the benefit of a specific fund is the environment fund, which was recently established to disburse funds raised by levies on plastic bags and landfills. Section 72 of the *Waste Management Act 1996*<sup>55</sup> provides for the introduction of an environmental levy in respect of the supply to customers of plastic bags. The amount of the levy is fixed by statutory instrument, and is currently set at €0.15 by Article 4 of the *Waste Management (Environmental Levy) (Plastic Bag) Regulations 2001*. A similar scheme exists in respect of landfills, pursuant to the *Waste Management (Landfill Levy) Regulations 2002*.

3.27 Section 73 of the *Waste Management Act 1996*<sup>56</sup> establishes the Environment Fund. The purposes for which this fund is to be applied are set out in section 73(9) of the 1996 Act, which specifies no less than thirteen specific activities in the area of waste management, waste re-use, recycling and other related environmental initiatives.

3.28 Of interest to the Commission in this regard is the manner in which the funds, the subject of the environment levy, are collected, and “ring fenced”; *ie* maintained separately from the general pool of Exchequer receipts. Article 9 of the 2001 Regulations designates the Revenue Commissioners as the “collection authority” for the plastic bag levy. The Department of the Environment, Heritage and Local Government has confirmed that once the Revenue Commissioners, as the collection authority, have collected the levies in question, those funds are automatically transferred to the Environment Fund which is administered by the Department of the Environment.

3.29 The question which may be asked in relation to the court poor box, or any replacement scheme, is whether it would be possible to introduce a similar scheme in relation to such funds. In such instance, it might be proposed that monies generated by the court poor box would be paid into the Exchequer but “ring fenced” in that they could be applied only for charitable purposes. Whilst a

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<sup>55</sup> As inserted by section 9 of the *Waste Management Amendment Act 2001*.

<sup>56</sup> As inserted by section 12 of the *Waste Management Amendment Act 2001*.

precedent for such a scheme exists in the Environment Fund, it should be noted that there are some differences between these schemes.

3.30 The first point to note is in relation to the role of the collection authority. The plastic bag levy, as a type of fine, is collected by the Revenue Commissioners and subsequently transmitted to the Environment Fund. This is an entirely different situation to the question of whether it is possible to maintain funds separately which are initially paid into the Exchequer and subsequently applied for a particular purpose.

3.31 Furthermore, there is the question of the administration of poor box funds. Whilst the Environment Fund is administered by the Department of the Environment, Heritage and Local Government pursuant to the terms of the *Waste Management Acts*, it would appear that there is currently no existing bureaucracy capable of undertaking the administration of poor box funds. This raises one of the fundamental problems in relation to the court poor box; the administration of funds received and distributed appears to be a major difficulty in the successful operation of such a system. One proposal to remedy this difficulty is to recommend that a separate fund be established within an appropriate government department, for example, Department of Community, Rural and Gaeltacht Affairs, on a similar basis to the operation of the Environment Fund by the Department of the Environment, Heritage and Local Government. Further consideration will be given to the question of the appropriate body for the administration of poor box funds below.<sup>57</sup>

## **D Revenue Implications of Charitable Status**

3.32 As noted above,<sup>58</sup> one of the most significant advantages associated with recognition of charitable status is the fact that charitable trusts enjoy a number of significant fiscal immunities in terms of exemptions from liability to various forms of taxation. Whilst such advantages include exemptions from income tax, a reduced rate of corporation tax and possible exemption from capital

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<sup>57</sup> See paragraphs 6.27-6.31.

<sup>58</sup> *Ibid* at paragraph 3.02.

gains tax, the most important exemption for present purposes arises in relation to the Capital Acquisitions Tax code.<sup>59</sup>

3.33 A charge to Capital Acquisitions Tax arises where, as a result of a disposition, any person becomes beneficially entitled in possession to any benefit other than for full consideration in money or money's worth, as provided by sections 4 and 5 of the *Capital Acquisitions Tax Consolidation Act 2003*. However, a gift or an inheritance which is taken for a charitable purpose will be exempted from Capital Acquisitions Tax to the extent that the Revenue is satisfied that it has been, or will be, applied to purposes which are charitable in law.

3.34 In order for a charitable organisation to avail of this exemption to CAT, an application is made to the Revenue Commissioners for a "CHY number".<sup>60</sup> In order to obtain recognition as a trust established for charitable purposes, the organisation concerned must establish:

- (a) that it falls within one of the *Pemsel* categories of charitable trust;
- (b) that the organisation has been legally established in the State and has its centre of management and control therein;<sup>61</sup>
- (c) that the objects and powers of the organisation are framed so that every object to which its income can be applied is charitable;<sup>62</sup> and

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<sup>59</sup> This arises because many payments to the court poor box would be classified as gifts pursuant to the CAT code, and thus not dealt with under Income Tax, as the payments are generally made on a "one-off" basis and are not in the nature of continuing payments.

<sup>60</sup> For a full statement of Revenue guidelines on the application process for CHY numbers, see Revenue Commissioners *Applying for Relief From Tax on the Income and Property of Charities* (CHY1 2003) at pp. 2-3. This paper is available at <http://www.revenue.ie/pdf/chy1.doc>.

<sup>61</sup> There must also be a minimum of three directors/officers/trustees, the majority of whom must be resident within the State, and the organisation must have a permanent establishment and some operations therein. It should be noted, however, that the requirement that the jurisdictional limitations in respect of availing of charitable exemptions which apply, *eg*, to the income tax code, do not apply to the Capital Acquisitions Tax code.

(d) that the organisation is bound, as to its main objects, and the application of its income or property, by a governing instrument (eg Memorandum and Articles of Association in respect of an incorporated body, or deed of trust, constitution or rules in the case of an unincorporated body).

3.35 If the Revenue is satisfied that each of these requirements has been fulfilled, a decision will be made to grant charitable tax exemption pursuant to section 207 of the *Taxes Consolidation Act 1997*. Upon this decision, a charity reference number eg CHY 1111 will be issued. The exemption granted is a blanket exemption to all potential capital acquisitions tax liability; there is no obligation to renew this status on an annual basis, although the accounts of the organisation may be inspected by the Revenue at its discretion in order to determine that the organisation remains in compliance with the requirements outlined above.

**(1) *Non-charitable beneficiaries and the principles of primary and secondary liability***

3.36 As noted above, section 5 of the *Capital Acquisitions Tax Consolidation Act 2003* provides that a charge to CAT will arise “where, under or in consequence of any disposition, a person becomes beneficially entitled in possession ... to any benefit ... otherwise than for full consideration in money or money’s worth ...”. Liability to CAT may arise either directly, on the basis of a primary liability; or indirectly, as a secondary liability. According to the principle of primary liability, the person on whom the burden of

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<sup>62</sup> On the issue of the severability of non-charitable objects, reference should be made to the decision of Hanna J in *Pharmaceutical Society of Ireland v Revenue Commissioners* [1938] IR 202, where it was held that the Pharmaceutical Society of Ireland had not been established for charitable purposes *only* and thus could not avail of the exemption. This decision was based on the fact that, although the main object of the society was to provide competent and qualified chemists for the benefit of the public (which Hanna J accepted as a *bona fide* charitable purpose under the fourth *Pemsel* category), the second main object of the organisation –namely “the establishment of a professional or vocational society to maintain a high standard of knowledge among pharmaceutical chemists by examination and teaching and to secure that only those having such high standards should be permitted to keep open shop for the sale of poisons and the compounding of prescriptions” – could not be regarded as a charitable object.

discharging the liability to CAT falls is the person receiving the gift. This is clear from section 45(1) of the *Capital Acquisitions Tax Consolidation Act 2003*, which provides that “[t]he person primarily accountable for the payment of tax shall be ... the donee”.

3.37 However, in the event of the person bearing the primary liability failing to discharge the amount owed to the Revenue, the terms of the CAT Acts make provision for this scenario by virtue of the principle of secondary liability. This arises from the wording of the relevant provisions of the *Capital Acquisitions Tax Consolidation Act 2003*. Section 45(2) of the 2003 Act provides:

“ ... the following persons shall also be accountable for the payment of any amount of the tax for which the persons referred to in [section 45(1)] are made primarily accountable-

(a) in the case of a gift-

(i) the disponer ...

(ii) every trustee, guardian, committee, personal representative, agent or other person in whose care any property comprised in the gift or the income from any such property is placed at the date of the gift or at any time after that date and every person in whom the property is vested after that date, other than a bona fide purchaser or mortgagee for full consideration in money or money’s worth, or a person deriving title from or under such a purchaser or mortgagee”. [Emphasis added].

3.38 Section 2 of the *Capital Acquisitions Tax Consolidation Act 2003* defines a disponer as follows:

“ ‘disponer’, in relation to a disposition, means the person who, for the purpose of the disposition, *directly or indirectly* provided the property comprised in the disposition ...”.<sup>63</sup>  
[Emphasis added]

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<sup>63</sup> It should also be noted that section 2 defines “disposition” as including “the payment of money”.

3.39 It is worth pointing out in the context of the court poor box system that under this broad definition, persons who might be found secondarily liable in the event of non-payment of CAT by the person bearing the primary responsibility,<sup>64</sup> include not only the offender who made the contribution (under the broad definition of “disponer” outlined above), but potentially also the judge of the relevant district or circuit who has ultimate responsibility for the administration of the court poor box fund (as a result of the wide category of other accountable persons in section 45(2)(a)(ii), also considered above).<sup>65</sup>

3.40 To summarise, difficulties could arise as a result of the combination of the definition of “disponer”/ “accountable persons” and the principle of secondary liability in the following way:

1. An offender (who is the “disponer” for the purposes of the CAT Acts) is ordered to make a payment into the court poor box, which payment is duly made.
2. The judge in charge of that fund subsequently orders a payment to be made out of the court poor box to a particular organisation/individual (who is the donee/beneficiary).
3. As has been confirmed by the Courts Service, no inquiry is made prior to payment being issued from the court poor box as to the charitable status of the beneficiary.
4. If that beneficiary is a non-charitable organisation, then it bears the primary liability for the amount of CAT owed. If that liability has not been discharged,<sup>66</sup> it may be that the offender, as the “disponer”, or even the judge, as a “person in whose care [the] property ... is placed” is in fact liable for the undischarged tax.

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<sup>64</sup> *Ie* the donee, namely the person in whose favour the payment from the court poor box funds was made.

<sup>65</sup> Note however the potential application of the principle of judicial immunity. The point here is not intended to suggest that judges will in future be pursued for secondary liability to CAT, but rather as a graphic illustration of the breadth of the provisions of the *Capital Acquisitions Tax Consolidation Act 2003*.

<sup>66</sup> In that the organisation does not have a CHY number (as referred to *infra*), and no certificate of discharge is obtained. This issue will be considered below.

3.41 Thus, it would appear that the effect of the legislation is that at present, either/both the offender or the judge could in fact be liable for the undischarged amount of CAT. The rate of CAT chargeable in respect of all gifts or inheritance taken after 1 December 1999 is 20%.<sup>67</sup>

3.42 Finally, in addition to the question of primary and secondary liability to CAT, sections 45 and 46 of the *Capital Acquisitions Tax Consolidation Act 2003* also places an obligation on “accountable persons”<sup>68</sup> to make returns, keep records and deliver returns in accordance with the provisions of the Act. The issue of the compliance of the current court poor box system with this obligation may also be queried.

**(2) *Payments to non-charitable individuals/ certificate of discharge***<sup>69</sup>

3.43 The above consideration of secondary liability to CAT refers primarily to situations where the beneficiary in question is an organisation, potentially eligible to be assigned a CHY number by the Revenue Commissioners. Whilst CHY numbers are assigned by the Revenue Commissioners to bodies which satisfy the requirements for charitable status, the procedure is somewhat different in respect of individuals. There is no analogous Revenue procedure for payments to individuals; instead, where a gift is made to an individual and the disponent wishes to ensure that no taxation liability arises in respect of that gift, the procedure to be followed is for the individual beneficiary in question to issue a certificate of personal discharge<sup>70</sup> to the disponent.

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<sup>67</sup> *Capital Acquisitions Tax Act 1976*, Schedule 2, paragraph 3(b), as inserted by section 145 of the *Finance Act 2000*.

<sup>68</sup> Defined in section 45 of the 2003 Act; considered above at paragraph 3.37.

<sup>69</sup> The issue of payments to individuals who do not qualify for the exemptions available to charitable organisations, and the need to obtain a certificate of discharge from such persons, presupposes that the person in question may not avail of the “small gifts exemption”; this issue will be considered in further detail below, at paragraphs 3.45-3.47.

<sup>70</sup> Pursuant to Form CA44, which is a Certificate of Personal Discharge from CAT. It is issued to secondarily liable persons *eg* executor, trustees, provided all taxes (if any) in respect of the primarily liable beneficiaries have been discharged.

3.44 Thus, the difficulties in relation to secondary liability to CAT as set out above apply equally to payments made from court poor box funds for the benefit of individuals. Where no certificate of discharge has been issued by the individual who is taking the benefit of the gift, and the gift is in fact liable to a payment of CAT,<sup>71</sup> either/both the offender who made the payment into the court poor box, or the judge who administers the court poor box, could be secondarily liable for the non-payment of the resulting liability.

**(3) *Small gifts exemptions and “approved trusts”***

3.45 It is also appropriate to refer briefly to the issue of the “small gifts exemption” and “approved trusts”, both of which arise in relation to the administration of the court poor box system. There has traditionally been an exemption available for small gifts in respect of capital acquisitions tax. Although the amount of this exemption had until recently been €1,270,<sup>72</sup> section 149 of the *Finance Act 2003* raised the amount of this exemption to €3,000, effective from 28 March 2003.

3.46 The issue of the small gift exemption is relevant to this discussion in that it would apply to certain non-charitable organisations and individuals who benefit from the court poor box.<sup>73</sup> Thus, CAT is chargeable at the rate of 20% on the excess amount of any gift above the threshold of €3,000.

3.47 In discussing the issue of small gift exemptions for non-charitable organisations and individuals, reference should be made to the concept of the “approved trust”. The development of “approved trusts” came about as a result of situations where informal trust funds were established in a particular locality for the benefit of a local person who had in some way suffered a physical disability as a result of an accident. Although such trusts do not enjoy charitable status,

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<sup>71</sup> This presupposes that the small gifts exemption is not available in the instant case; the issue of small gifts exemptions is considered below.

<sup>72</sup> Section 53 of the *Capital Acquisitions Tax Act 1976*, first amended by section 44 of the *Finance Act 1978* to £500. Subsequently amended by section 204 of the *Finance Act 1999* to £1,000, now governed by section 69 of the *Capital Acquisitions Tax Consolidation Act 2003*.

<sup>73</sup> The tables of beneficiaries provided by the Courts Service include numerous examples of such organisations and individuals benefiting from payments out of the court poor box.

the Revenue in recent years has granted exemptions to “approved trusts” subject to such trusts satisfying a number of stipulations, for example:

- (i) that the trustees are not relatives of the beneficiary of the fund;
- (ii) any surplus remaining in the fund must be applied for charitable purposes.

3.48 It may be that some of the individual trust funds which benefit from court poor box funds could constitute “approved trusts”, but as mentioned above, discussions with the Courts Service have established that no inquiries are made in relation to the status of beneficiaries prior to the payment of monies from the court poor box. This could therefore once again raise the question of secondary liability of the disponent if a payment is made to an individual trust fund which does not enjoy charitable status and which also fails to satisfy the Revenue conditions for exemption of “approved trusts”.

#### **E Accounting and Accountability Difficulties Arising From the Receipt, Administration and Distribution of Court Poor Box Funds**

3.49 One final difficulty which should be addressed relates to the accounting procedures involved in the administration of the court poor box system, and also the question of accountability in the receipt, administration and distribution of poor box funds.

3.50 Dealing first with the accounting requirements, information provided by the Courts Service suggests that the present accounting requirements are somewhat rudimentary. The first point to note is that there is no “central fund” into which court poor box funds are paid, and from which payments to organisations are subsequently made. Rather, the system operates on the basis of each district or circuit having its own account into which the court poor box funds are lodged. The procedure followed at the local level is that receipts are credited to the cash accounts of the relevant district or circuit and, when a sufficient amount has accumulated – usually once or twice a year – a direction is sought from the judge of that district or circuit as to the disbursement of the funds. Each district or circuit is required to submit a quarterly statement of accounts which would include the

details of court poor box funds, if any,<sup>74</sup> in that district or circuit. Statistics on those accounts are then compiled by the Courts Service on an annual basis.

3.51 Although the Courts Service is satisfied that there is no “black hole” in relation to court poor box funds, that is, that the account statements are complete and correct, one major problem which arises is the fact that the only role of the Courts Service in relation to court poor box funds is to compile the annual statistics on those accounts. There is at present no inquiry made either at a local level or by the Courts Service, for example, as to whether or not court poor box funds are administered in a tax compliant manner.<sup>75</sup> This is a significant issue, as inevitably some payments from the court poor box accounts could attract liability to Capital Acquisitions Tax unless the beneficiaries in question are entitled to avail of the exemption granted to organisations which are recognised by the Revenue Commissioners as having charitable status.<sup>76</sup> The failure of the accounting and accountability procedures to oversee such issues as tax compliance means that, in this respect at least, this constitutes one area in the administration of court poor box funds which is not currently subjected to scrutiny and verification to ensure all relevant rules and requirements have been complied with.

3.52 It then falls to be considered how best to remedy this difficulty. Supporters of the court poor box might argue that although this lacuna in the procedures at present does constitute a problem, it can be remedied by the implementation of the necessary procedures. Critics of the court poor box, however, would question whether in fact this is possible. The problem here can be stated as follows: in the absence of any body overseeing such issues as tax compliance in the administration of court poor box funds, the question falls as to who should bear this responsibility. If the decision is made to continue the

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<sup>74</sup> This refers to the fact that not all district or circuit court judges operate a court poor box system; as noted below,

<sup>75</sup> The issue of potential liability to CAT is considered above, at paragraphs 3.32-3.48.

<sup>76</sup> This refers to the requirement to ascertain that a legally recognised charity, which is entitled to avail of the exemptions to CAT, has a CYC number, which denotes revenue recognition of such exemption. If the organisation in question has no such exemption, then a certificate of discharge should be obtained. See further paragraphs 3.32-3.48.

operation of the court poor box system on a local level, the issue of tax compliance would fall to be dealt with by the clerk of each district or circuit. As a matter of practicality, it is highly questionable whether already overburdened registrars could meet all the requirements in this regard.

3.53 The other option would be to operate a centralised court poor box fund, which would have a dedicated staff to ensure such matters as compliance with the relevant revenue requirements. However, the establishment of any such centralised fund would inevitably involve the incurring of not insignificant costs. Whether the means can be made available to provide for such costs is one question. Another question is who the appropriate body would be to administer such a centralised fund. Although the Courts Service might seem a likely candidate, the wisdom of imposing such a burden on that organisation for what represents a relatively small fund is again an issue to bear in mind in the context of the necessary allocation of resources.<sup>77</sup>

3.54 Another suggestion of an appropriate body to administer court poor box funds on a centralised basis is the Commissioners of Charitable Donations and Bequests for Ireland. This organisation was established in Ireland in 1844. As Delany notes, “[i]ts role is now governed by the provisions of Part II of the Charities Act 1961 and its jurisdiction and powers are set out in Chapter II of Part II of the Act of 1961 as amended by the Charities Act 1973.”<sup>78</sup> The commissioners have the power to advise trustees of charitable organisations in relation to the administration of trusts and can authorise the compromise of any proceedings brought by or against such trustees. In addition to various other powers set out in the Acts, the commissioners also have powers in relation to the investment of funds held on charitable trusts. It might be suggested that as a result of this aspect of the administration of charitable funds, the commissioners might be an appropriate body to administer a centralised court poor box scheme. However, the distribution of

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<sup>77</sup> It is informative to note that the Courts Service is responsible for funds currently estimated to be worth approximately €900 million. The court poor box generates an annual amount of approximately €1 million; see the table of amounts generated by the court poor box at paragraph 1.46.

<sup>78</sup> Delany *Equity and the Law of Trusts in Ireland* (3<sup>rd</sup> ed Round Hall 2003) at 294.

funds to charitable organisations is very different from the investment of funds on behalf of a specified list of charities, and it is again questionable as to whether or not the Commissioners, who operate on a voluntary basis, could assume such a burdensome role in addition to their existing onerous obligations.<sup>79</sup>

3.55 Finally, it might be recommended that funds generated under the court poor box system, or any replacement scheme, be transferred to the Exchequer pursuant to section 51 of the *Courts Officers Act 1926* subject to a legislative scheme similar to that which governs the Environment Fund. Thus, monies generated might be “ring fenced” and applied for the benefit of appropriate charitable organisations. Such administration might be carried out, for example, by the Department of Community, Rural and Gaeltacht Affairs, as the Department which is currently responsible for charities. Payments out of the Fund might be preceded by consultation with relevant bodies, such as the National Crime Council.

3.56 It is clear that there currently exist some serious difficulties in relation to the accounting and accountability aspects of the receipt, administration and distribution of court poor box funds. It would appear that whether such a system was to be operated on a localised basis, as at present, or on the basis of a centralised scheme, some difficulties remain. As has been noted above, whether it is possible to ensure such matters as full revenue compliance in a locally administered scheme is highly unlikely.

3.57 *The Commission is of the view that since the current operation of the poor box system may not fully comply with all tax legislation and that the receipt, administration and distribution of court poor box funds form no part of the judicial function, any funds generated by the court poor box system, or any replacement scheme, should be transferred to the Exchequer pursuant to section 51 of the Court Officers Act 1926.*

3.58 *Having regard to the benefits derived by the many worthwhile charities which currently receive donations from court poor box funds, the Commission further recommends that*

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<sup>79</sup> Furthermore, it should be noted that any such proposal would also require legislative amendment to the jurisdiction and powers of the Commissioners, as set out in Part II of the *Charities Act 1961* (as amended by the *Charities Act 1973*).

*consideration be given to putting in place a scheme providing for the “ring fencing” of monies generated by such a scheme on a similar basis to the operation of the Environment Fund. One possibility would be to recommend that such a separate fund be established within an appropriate government department, for example Department of Community, Rural and Gaeltacht Affairs, which would administer any funds raised by the replacement court poor box scheme. However, the Commission recognises that to an extent, this is uncharted territory, and as such submissions on the administration and distribution of such funds, and in particular the appropriate body to be designated responsible for this role, would be welcomed.*



## CHAPTER 4 THE OPERATION OF SIMILAR OR RELATED SYSTEMS IN OTHER JURISDICTIONS

### A Introduction

4.01 This Chapter provides an overview of sentencing systems in other jurisdictions the characteristics of which are similar to those of the court poor box system or certain aspects thereof.

### B Systems Which Involve A Payment To Charity

#### (1) *New Zealand*

4.02 A scheme which has strong parallels with the Irish court poor box system is the diversion scheme which is applied in New Zealand. Diversion was introduced in New Zealand after a pilot scheme was completed in Wellington in 1987.<sup>1</sup> The scheme, which does not appear to have any statutory basis,<sup>2</sup> is applied both by the police and by the courts in circumstances where a conviction would be inappropriate but some form of punishment other than a term of imprisonment is merited. Typically, the punishment entails a contribution to a charity by the offender. In addition, or in the alternative, the offender may have to make an apology and reparation to the victim, avail of counselling, engage in community work and/or attend at an alcohol or drug abuse programme.

4.03 The scheme is generally restricted to first-time offenders who admit their guilt and accept responsibility for their actions. According to a 1996 study on diversion, a primary objective of the

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<sup>1</sup> Triggs *Crime to Sentence: Trends in Criminal Justice 1986 to 1998* (Ministry of Justice Reports 1998).

<sup>2</sup> The scheme is subject to police guidelines, see *Police Pre-Trial Diversion Guidelines* (1994) now contained in the Manual of Best Practice compiled by the Commissioner of the New Zealand Police. For background on these guidelines, see the judgment of Panckhurst J in *Thompson v Attorney General* [2000] NZAR 583.

scheme is “to provide first offenders with a second chance”.<sup>3</sup> Other objectives include: (a) addressing the needs of victims (offenders are frequently expected to apologise for their offending and to pay reparation where appropriate); (b) providing those who are at risk of committing further offences with an opportunity to be rehabilitated early in their offending careers; and (c) saving of court resources (since the use of diversion reduces the number of defended hearings).

4.04 The type of offences in respect of which the scheme is applied include the following: public disorder,<sup>4</sup> careless driving, minor thefts,<sup>5</sup> minor assaults,<sup>6</sup> indecent exposure<sup>7</sup> and certain drugs offences.<sup>8</sup> In a study of the diversion scheme in Auckland and Manukau in 1992 and 1994, the majority of diversions were for

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<sup>3</sup> See Laven *The Police Adult Diversion Scheme: Trends in the use of diversion – 1992 to 1994, Wellington Central and Manukau Districts and beyond* (Crime Prevention Unit Wellington 1996).

<sup>4</sup> See *eg The Wellington Post* 16 March 2001 (charges of disorderly behaviour and intentional damage against two anti-capitalist protesters were withdrawn on the basis that one of the offenders paid \$100 to charity and the other paid the \$60 cost of removing a sticker he had allegedly placed on a bank’s doors during the protest). See *eg The Wellington Evening Post* 15 January 2000 (a charge of offensive behaviour against a man who had urinated in public was withdrawn because the man had completed his diversion).

<sup>5</sup> See *eg The Waikato Times* 13 March 1997 (theft of a chocolate bar from a supermarket).

<sup>6</sup> See *eg The New Plymouth Daily News* 5 September 2000 (a teenager who engaged in a prank which caused injury to another teenager was given the benefit of the diversion scheme after she admitted the assault and apologised to the victim).

<sup>7</sup> See *eg The New Plymouth Daily News* 17 January 2002 (two students who ran naked through a department store had to pay \$250 to a charity through the police diversion scheme).

<sup>8</sup> See *eg The Southland Times* 17 December 2002 (a judge ordered two Queenstown high school students who had been charged with the cultivation and possession of cannabis and admitted the offences to pay \$750 each to charity and dismissed the charges. The judge noted that overseas travel could be greatly restricted by a conviction.)

shoplifting or other theft, possession or use of cannabis, minor assaults, property damage, and disorderly or offensive behaviour.<sup>9</sup>

4.05 Where the diversion scheme is applied, the offender avoids obtaining a conviction. Indeed, a concern to avoid recording a conviction, with all its damaging and long lasting effects, is frequently central to a decision to apply the diversion scheme.<sup>10</sup>

4.06 Although some commentators have raised questions about the application of the scheme in respect of certain offences,<sup>11</sup> it would appear to command a very broad level of support.<sup>12</sup> Spiller, who studied the operation of the scheme in Christchurch, concluded that it is a humane way of dealing with persons who have committed minor offences.<sup>13</sup> Laven, who studied the scheme in Auckland and Manukau, concluded that diversion “can be an appropriate sanction in carefully selected cases – provided that the victim agrees to the diversion and both parties are appropriately supported during the process.”<sup>14</sup>

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<sup>9</sup> See Laven *The Police Adult Diversion Scheme: Trends in the use of diversion – 1992 to 1994, Wellington Central and Manukau Districts and beyond* (Crime Prevention Unit Wellington 1996).

<sup>10</sup> See *eg The Wellington Dominion* 8 April 2000 (A senior university lecturer who assaulted a person was discharged without conviction on condition that he paid \$2,500 to charities. The judge noted that a conviction would have significant consequences, including the loss of a possible professorial position and difficulties in relation to future employment in teaching and research.)

<sup>11</sup> See *eg Gill* ‘Court’s diversion offers a better deal, but who for?’ *The Waikato Times* 13 March 1997 (noting two high profile cases involving domestic violence in which the police granted diversion).

<sup>12</sup> See *eg Gill* ‘Court’s diversion offers a better deal, but who for?’ *The Waikato Times* 13 March 1997 (“Putting aside the concern about domestic violence diversions, the scheme itself seems to have met with universal support. Police like it, lawyers were slow to come around but by and large now support it, judges are happy because it doesn’t clog up their courtrooms, victims get the apology many always wanted, and the offenders get a second chance.”)

<sup>13</sup> Cited in Gill *op cit*.

<sup>14</sup> See Laven *The Police Adult Diversion Scheme: Trends in the use of diversion – 1992 to 1994, Wellington Central and Manukau Districts and beyond* (Crime Prevention Unit Wellington 1996).

**(2) Germany**

4.07 Germany also has a scheme with parallels to the Irish court poor box system. In contrast to the current Irish and New Zealand systems, however, the German system has a statutory basis in that it derives from the German *Code of Criminal Procedure*. Section 153 of the Code is concerned with the non-prosecution of petty offences and provides as follows:

“(1) If a less serious criminal offence is the subject of the proceedings, the public prosecution office may dispense with prosecution with the approval of the court competent for the opening of the main proceedings if the perpetrator’s culpability is considered to be of a minor nature and there is no public interest in the prosecution. The approval of the court shall be not required in the case of a less serious criminal offence which is not subject to an increased minimum penalty and where the consequences ensuing from the offence are minimal.

(2) If charges have already been preferred, the court, with the consent of the public prosecution office and the indicted accused, may terminate the proceedings at any stage thereof under the conditions in subsection (1). The consent of the indicted accused shall not be required if the main hearing cannot be conducted for the reasons stated in section 205, or is conducted in the cases of section 231(2) and sections 232 and 233 in his absence. The decision shall be given in a ruling. The ruling shall not be contestable.”<sup>15</sup>

4.08 Section 153a of the Code is concerned with the provisional termination of proceedings and provides as follows:

“(1) In a case involving a less serious criminal offence, the public prosecution office may, with the consent of the court competent to order the opening of the main proceedings and with the consent of the accused, dispense with preferment of public charges and concurrently impose a condition upon the accused:

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<sup>15</sup> Section 231(2) concerns “absence because of disorderly conduct”, section 232 addresses the holding of the main hearing despite the failure of the accused to appear, whilst section 233 deals with allowing applications by a defendant to be released from the obligation to attend the hearing.

- (a) to make a certain contribution towards reparation for damage caused by the offence,
- (b) to pay a sum of money to a non-profit-making institution or to the Treasury,
- (c) to perform some other service of a non-profit-making nature,
- (d) to comply with duties to pay maintenance at a certain level, or
- (e) to participate in a seminar pursuant to section 2b(2), second sentence, or section 4(8), fourth sentence, of the *Road Traffic Act*, if such conditions and instructions are of such nature as to eliminate the public interest in criminal prosecution and if the degree of culpability does not present an obstacle. The public prosecution office shall set a time limit within which the accused is to comply with such conditions and instructions, and which, in respect of the cases referred to in numbers 1 to 3 and 5 of the first sentence, shall be a maximum of six months and, in respect of the cases referred to in number 4 of the first sentence, a maximum of one year. The public prosecution office may subsequently revoke the conditions and instructions and may extend the time limit once for a period of three months; with the consent of the accused it may subsequently impose or change conditions and instructions. If the accused complies with the conditions and instructions, the offence can no longer be prosecuted as a less serious criminal offence. If the accused fails to comply with the conditions and instructions, there shall be no compensation for such contribution as he has made towards compliance. Section 153(1), second sentence, shall apply *mutatis mutandis* in the cases referred to in the first sentence, numbers 1 to 4.

(2) If the public charges have already been preferred, the court may, with the consent of the public prosecution office and of the indicted accused, provisionally terminate the proceedings up until the end of the main hearing in which the findings of fact can last be examined, and concurrently impose the conditions and instructions referred to in subsection (1), first sentence, on the indicted accused. Subsection (1), second to fifth sentences, shall apply *mutatis*

*mutandis*. The decision pursuant to the first sentence shall be given in a ruling. The ruling shall not be contestable. The fourth sentence shall also apply to a finding that conditions and instructions imposed pursuant to the first sentence have been met.

(3) The running of the period of limitation shall be suspended for the duration of the time limit set for compliance with the conditions and instructions.

4.09 It is also appropriate to refer to section 153b of the Code which provides as follows:

“(1) If the conditions exist under which the court may dispense with imposing a penalty, the public prosecution office may, with the consent of the court which would have jurisdiction over the main hearing, dispense with preferment of public charges.

(2) If charges have already been preferred the court may, with the consent of the public prosecution office and of the indicted accused, terminate proceedings prior to the beginning of the main hearing.”

4.10 A recent high profile case which appears to have been determined under section 153(a) of the Code concerned a 53-year old man who was obsessed with Formula One motor racing champion Michael Schumacher and stole his helmet (which was worth \$90,000) but presented it to a priest two days later.<sup>16</sup> The Berlin court ordered the man, who was undergoing psychiatric treatment, to pay almost \$4,000 to a charity and gave him a suspended jail sentence.

**(3) *Australia***

**(a) *Basis of the Victoria Magistrates' Fund***

4.11 There is also a jurisdiction similar to the Irish court poor box system operated by the Magistrates' Court of Victoria, Australia. The Magistrates' Court is the lowest tier of Victoria's court hierarchy, established by the *Magistrates' Court Act 1989*.<sup>17</sup> The court fund operated in Victoria is a non-statutory scheme allowing the payment of money into court which is disbursed into various welfare

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<sup>16</sup> See *The Sydney Sunday Telegraph* 13 October 2002.

<sup>17</sup> See <http://www.magistratescourt.vic.gov.au>.

organisations in the community. The circumstances in which a payment to the court fund may be ordered bear many similarities to the current operation of the court poor box in Ireland. Thus, magistrates may order a payment to be made to the court fund as an alternative to recording a conviction, generally in respect of minor offences committed by first time offenders, who are genuinely remorseful, or where the magistrate is satisfied that the offences was not intended or there is little chance of it being repeated.<sup>18</sup>

(b) *Payments to impecunious individuals*

4.12 The objective of the Magistrates' court fund was originally to assist people with immediate financial needs, such as food, clothing, shelter and urgently required medicines. Previously, funds were disbursed to needy individuals who applied to court for assistance, sometimes filling in questionnaires and providing documentation to establish their immediate needs. Magistrates' funds were also disbursed to welfare agencies who would then distribute the funds to the needy.

4.13 Originally, poor box funds in Victoria were "utilised primarily as emergency assistance to people in necessitous circumstances who had dealings with a Court".<sup>19</sup> Such assistance was provided to deserted wives and children during the initial stages of maintenance proceedings, to defendants or witnesses at Court, for travelling expenses and towards the cost of issuing fees on documents prepared by court officials. In a small number of cases, impecunious individuals applied for, and received, direct assistance from the court. However, "most emergency relief was provided through traditional welfare channels, with little demand on the poor box from outside the court system".<sup>20</sup>

4.14 However, by the mid-1980s there had been a massive increase in demand for emergency assistance, and welfare organisations in Victoria were unable to meet the demands with their own limited resources. As a result, such organisations developed a

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<sup>18</sup> The Commission is indebted to Murray Thompson, Member of Parliament for Sandringham, Victoria for providing information on the operation of the magistrates' court fund in Victoria.

<sup>19</sup> See Law Department Victoria *Report on the Administration of Court Poor Box Funds* (Project No 7 1985) at paragraph 2.10.

<sup>20</sup> *Ibid* at paragraph 2.11.

practice of referring persons to the court fund for assistance, although this was said to occur only as a “last resort”.

4.15 The manner in which impecunious individuals could obtain assistance from the Magistrates’ fund appears to have varied somewhat in respect of the precise procedures to be followed. There were no established guidelines to assist clerks when considering applications by impecunious individuals for relief from the court fund, with no limits on the levels of assistance which could be provided. Payments were, however, “confined to meeting the immediate financial needs of the person being assisted within the limits of the funds available”.<sup>21</sup> As a matter of practice, the person seeking assistance was asked to provide some detail in order to verify the extent of financial need, with some courts requiring applicants to complete a questionnaire for this purpose. In some cases, documentation provided by welfare agencies was used to determine and expedite the assistance required.

4.16 Criticisms of the scheme of disbursing court funds to needy individuals included the inconsistency and inadequacy of donations, lack of available funds in poorer court areas, limited awareness in the community of the funds available, lack of accessibility of funds to non-English speaking people and great variability in the methods of assessment.

(c) *Payments to welfare agencies*

4.17 In addition to payments to impecunious individuals, some payments from the Magistrates’ fund were also authorised to welfare organisations which were active within the particular court area and which worked in co-operation with the court system. In some court areas, local welfare agencies would assign staff to the court in order to provide liaison between applicants and clerks of court.

4.18 Amongst the criticisms of the disbursement of funds to welfare agencies is the fact that the funding is not consistent. The amount of money contributed to the fund varies significantly each month, and the designated charities therefore cannot rely on regular funding. Concern was also voiced by the Law Department of Victoria in 1985 that the:

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<sup>21</sup> *Ibid* at paragraph 2.23.

“apparent inter-relationship between the Courts Poor Box and the demand for welfare assistance was ... problematic ... Poor Box monies were never intended to be a substitute for income security provision, and it was considered that should they be seen as such, that Magistrates may cease the orders for contributions to the Poor Box Fund”.<sup>22</sup>

(d) *Present operation of Magistrates’ Fund*

4.19 As a result of particular difficulties in the system of making payments directly to impecunious individuals, the poor box funds are no longer directly disbursed by the court, but rather are distributed to welfare agencies on a monthly basis,<sup>23</sup> which in turn pass on the funds to needy individuals. Lack of accountability in the disbursement of court funds to welfare agencies had previously been a cause of concern.<sup>24</sup> Addressing this issue in 1985, the Law Department of Victoria recommended greater co-ordination between the Magistrates’ Court and the Victorian Council on Social Service [VCOSS] and the Victorian Emergency Relief Committee [VERC].<sup>25</sup> The Law Department Report recommended that advances to welfare

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<sup>22</sup> *Ibid* at paragraph 2.17.

<sup>23</sup> Examples of such welfare organisations who benefit from court funds in Victoria include the Salvation Army and the Society of St Vincent de Paul.

<sup>24</sup> See Law Department Victoria *Report on the Administration of Court Poor Box Funds* (Project No 7 1985) at Chapter 4, which outlines various options for reform of the manner in which the magistrates’ fund was operated at that time. The Report ultimately recommended retaining the arrangements which existed at the time (*ie* the system of payments to needy individuals) but that clerks of courts should be better trained to handle applications for assistance in a more appropriate manner and to collaborate more closely with local welfare agencies, with a major focus on establishing necessary accountability mechanisms. However, discussions with the Registrar at the Melbourne Magistrates’ Court in October 2003 indicate that the current administration of poor box funds in Victoria no longer involves the making of applications for assistance by individuals directly to the court. Payments are now made from the court fund to local welfare agencies who satisfy accountability criteria, and these agencies are then responsible for the disbursement of funds on a case by case basis. Thus, it would appear that the magistrates no longer have a role in the allocation of the funds to the ultimate recipients of such funds.

<sup>25</sup> The VERC comprised representatives from a range of welfare agencies who met at VCOSS on a monthly basis to discuss a range of issues associated with the provision of emergency relief.

agencies should be approved by the VERC.<sup>26</sup> It would appear that the issue of charitable status and related questions of revenue law have not been considered in relation to the operation of the Victoria Magistrates' Fund.

4.20 Contributions to the court fund are now paid into an account maintained at Magistrates' Court for that purpose, from which cheques are drawn and given to various welfare agencies.<sup>27</sup> The Magistrates' Court does not deduct any money from the Fund for administrative expenses. However, a report by the Law Department of Victoria in 1985 estimated the administrative costs to the court per year were approximately \$175,000.<sup>28</sup>

(e) *Conclusions*

4.21 As noted above, the court poor box scheme in Victoria is a non-statutory scheme administered by Victorian judges according to their discretion. However, it is of interest to note that the appropriateness of this manner of dealing with offenders has also been subjected to recent scrutiny. The Law Reform Committee of Victoria held an inquiry into legal services in rural Victoria in 2000,<sup>29</sup> during the course of which it was revealed that in the Ballarat Magistrates' Court a direction was made that the court fund had to cease and that any such payments as might be ordered by a judge were in future to be made by way of fines.

4.22 Nevertheless, the continued operation of the Magistrates' Court fund in Victoria is testament to its popularity, particularly amongst the magistrates who regard this form of disposition as a way of "temper[ing] justice with a degree of mercy by ordering contributions to the poor box, to avoid a conviction". Some magistrates in Victoria also traditionally valued their discretion in the disbursement of court funds as a flexible means of offering assistance to those who need it with the minimum of "bureaucratic red-tape".

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<sup>26</sup> Law Department Victoria *Report on the Administration of Court Poor Box Funds* (Project No 7 1985) at paragraph 5.2.

<sup>27</sup> No payments are made from the magistrates' court fund by cash.

<sup>28</sup> Law Department Victoria *Report on the Administration of Court Poor Box Funds* (Project No 7 1985) at paragraph 2.28.

<sup>29</sup> Law Reform Committee of Victoria "Inquiry into legal services in rural Wodonga" 13 June 2000.

However, as in Ireland, it should be noted that the Victoria Magistrates' fund is not without its detractors, as evidenced by the direction to magistrates in Ballarat to cease to order payments to the court fund.<sup>30</sup>

## **C Conclusions**

4.23 The philosophy of the New Zealand diversion scheme is strikingly similar to that of the court poor box system.<sup>31</sup> Of particular significance in this regard are the objectives of providing first-time offenders with a second chance and avoiding the imposition of a conviction.

4.24 Germany also has a scheme with parallels to the Irish court poor box system. In contrast to the present Irish and New Zealand systems, however, the German system has a statutory basis. The non-custodial sentencing options which are provided by section 153a of the German Civil Code are notable. They include the following:

- (a) making a certain contribution towards reparation for damage caused by the offence;
- (b) paying a sum of money to a non-profit-making institution or to the Treasury; and
- (c) performing some other service of a non-profit-making nature.

4.25 The most similar scheme to the current operation of the Irish court poor box is to be found in the magistrates' fund as operated in Victoria. It is interesting to note that some of the difficulties which have been identified in the current Irish system

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<sup>30</sup> See also transcript of the meeting of the Law Reform Committee of Victoria "Inquiry into legal services in rural Wodonga" 13 June 2000 at p. 2, where Mr A.J. McIntosh (member of the Law Reform Committee) suggested it had been indicated by the CEO of the Magistrates' Court that "the court fund is diminishing in value ... the sentencing magistrate does not have the flexibility or the disposition to order money to be put into the court poor box".

<sup>31</sup> However, a distinction which can be made is that the New Zealand diversion scheme can be operated by the police as well as the courts, so that a person dealt with by way of diversion may never actually appear before the court. In this respect, the operation of the New Zealand scheme differs significantly from the Irish practice.

have also been raised in relation to the Victoria court fund, particularly concerns in relation to accountability. However, the Irish and Victoria poor box practices diverge somewhat in respect of the distribution of funds raised. Whilst the court poor box funds in Ireland have traditionally been disbursed to charitable organisations which have as their object the relief of poverty generally (in addition to a small number of payments to impecunious individuals), the Victoria magistrates' funds appear to be applied on a slightly narrower basis, *ie* to welfare organisations who have as their specific task the alleviation of poverty of individuals who seek assistance. Nevertheless, it is instructive to note the continued existence of this jurisdiction in the Victoria magistrates' court, which appears to be broadly comparable to the Irish court poor box.

4.26 The evolution, existence and growth of diversion schemes, the German civil code provisions and the disposition of cases pursuant to a court poor box jurisdiction as in Melbourne, Australia may be seen as indicative of the utility of a disposition which enables a case to be dealt with on the basis of an offence being proven or admitted but with the court having a discretion in appropriate cases, particularly where the entry of a conviction and the long term consequences of a criminal record would be disproportionately severe, so as to allow an earnest of intention to be given together with other terms and conditions.

## CHAPTER 5 THE NEED FOR A STATUTORY JURISDICTION FOR SPENT CONVICTIONS?

### A Introduction

5.01 The factors which underlie a decision to apply the court poor box in a particular case were outlined in Chapter 1.<sup>1</sup> One of the most significant factors in this regard is a concern to avoid imposing a conviction. Having regard to the permanency of a conviction once recorded, a court may consider that its imposition would constitute a disproportionately severe penalty and, therefore, decide to dismiss the charge and direct a payment to the court poor box. By enabling the court to devise an outcome which does not depend upon a conviction, the court poor box system mitigates the harshness of a criminal justice system in which a conviction is “for life”. Against this background, it is appropriate to consider whether the law should allow for the “deletion” of convictions in respect of adults after a particular period of time, either as an alternative or as an adjunct to the court poor box system. In this regard, it is appropriate to refer to Irish legislation which has introduced such a scheme in relation to persons under 18, and also the provisions of the British *Rehabilitation of Offenders Act 1974*.

### B Ireland

5.02 Although there is at present no jurisdiction allowing for the deletion of convictions in respect of adults, section 258 of the *Children Act 2001* introduced a provision governing the non-disclosure of offences committed by persons below the age of 18 after a period of three years. It is clear that section 258 of the 2001 Act is based on analogous provisions in the *Rehabilitation of Offenders (Northern Ireland) Order 1978*,<sup>2</sup> which was modelled directly on the

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<sup>1</sup> *Supra* at paragraphs 1.21-1.31.

<sup>2</sup> On the Committee Stage of the Children Bill 1999, before the Select Committee on Justice, Equality, Defence and Women’s Rights (5 April

British *Rehabilitation of Offenders Act 1974*. The 1974 Act is discussed below.

5.03 Section 258(1) of the 2001 Act provides as follows:

“Where a person has been found guilty of an offence whether before or after the commencement of this section, and—

(a) the offence was committed before the person attained the age of 18 years,

(b) the offence is not an offence required to be tried by the Central Criminal Court,

(c) a period of not less than 3 years has elapsed since the finding of guilt, and

(d) the person has not been dealt with for an offence in that 3-year period,

then, after the end of the 3-year period or, where the period ended before the commencement of this section, after the commencement of this section, the provisions of subsection (4) shall apply to the finding of guilt.”

5.04 Section 258(4)(a) provides that a person to whom the section applies shall be treated for all purposes in law as a person “who has not committed or been charged with or prosecuted for or found guilty of or dealt with for the offence or offences which were the subject of the finding of guilt”. Furthermore, the subparagraph provides that:

(i) no evidence shall be admissible in any proceedings before a judicial authority to prove that any such person has committed or been charged with or prosecuted for or found guilty of or dealt with for any offence which was the subject of that finding, and

(ii) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question

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2001), the Minister of State for Children, Mary Hanafin, noted that what became s.258(4)(d) of the 2001 Act ‘is similar to an analogous provision’ in the *Rehabilitation of Offenders (Northern Ireland) Order 1978*. The debate is available at: <http://www.irlgov.ie/committees-01/c-justice/010405/Default.htm>

relating to his or her past which cannot be answered without acknowledging or referring to a finding or findings to which section 258 refers or any circumstances ancillary thereto.

5.05 The Explanatory Memorandum to the *Children Bill 1999* described what became section 258 of the 2001 Act as providing a “limited clean slate” in respect of offences committed by children. It also stated that:

“It [will not be] possible to say an offence never took place; what this section does is to limit as far as possible the effects of a finding of guilt by treating the person for all purposes in law as a person who has not committed, been charged with, prosecuted for, found guilty or dealt with for an offence.”<sup>3</sup>

5.06 It should also be noted that the 2001 Act contains a further potential limitation on the operation of this “clean slate” jurisdiction by providing in section 258(4)(d) that:

“The Minister may by order make such provision as in his or her opinion is appropriate—

(i) for excluding or modifying the application of either or both of subparagraphs (i) and (ii) of paragraph (b) in relation to questions put in such circumstances as may be specified in the order”.

Thus, it would appear that the Minister may by order exclude from the operation of section 258 serious offences such as, *eg*, child molestation or paedophilia, where justifiable concern might well arise as to the ability of a person convicted of such offences to rely on this statutory regime of non-disclosure.

5.07 As a result of the stipulation contained in this section that three years must have elapsed in order for the principle of non-disclosure to apply, it is not yet possible to assess the operation of this section in practice.

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<sup>3</sup> Children Bill 1999, Explanatory Memorandum.

## C England and Wales

### (1) *Rehabilitation of Offenders Act 1974*

5.08 As already noted, the essential elements of section 258 of the *Children Act 2001* mirror those of the British *Rehabilitation of Offenders Act 1974* and the *Rehabilitation of Offenders (Northern Ireland) Order 1978* which provide for, *inter alia*, the rehabilitation of offenders who have not been convicted of any serious offence for a particular period. Where an individual has been convicted of any offence or offences and certain conditions are satisfied, he or she is treated, after the expiration of a particular period, as a “rehabilitated person” for the purposes of the Act and the conviction in question is treated as spent.<sup>4</sup> The conditions referred to are as follows: (a) a sentence which is excluded from “rehabilitation under the Act”<sup>5</sup> was not imposed on the person; and (b) in respect of a subsequent conviction during the rehabilitation period applicable to the first-mentioned conviction,<sup>6</sup> a sentence which is excluded from rehabilitation under the Act was not imposed on the person.<sup>7</sup> A person cannot become a rehabilitated person for the purposes of the Act in respect of a conviction unless he or she has served or otherwise undergone or complied with any sentence imposed on him or her in respect of that conviction. However, the following cannot prevent a person from becoming a rehabilitated person for these purposes:

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<sup>4</sup> *Rehabilitation of Offenders Act 1974*, section 1(1).

<sup>5</sup> Pursuant to section 5(1) of the Act, the following sentences are excluded from rehabilitation under the Act: (a) a sentence of imprisonment for life; (b) a sentence of imprisonment or corrective training for a term exceeding thirty months; (c) a sentence of preventive detention; (d) and a sentence of detention during Her Majesty’s pleasure or for life, or for a term exceeding thirty months passed under section 53 of the *Children and Young Persons Act 1933* or under section 57 of the *Children and Young Persons (Scotland) Act 1937* (young offenders convicted of grave crimes). Any other sentence is a sentence subject to rehabilitation under the Act.

<sup>6</sup> The rehabilitation periods under the Act are set out in section 5. They range from a period of ten years for a sentence of imprisonment or corrective training for a term exceeding six months but not exceeding 30 months to a period of six months for, *inter alia*, an order discharging a person absolutely for an offence.

<sup>7</sup> *Rehabilitation of Offenders Act 1974*, section 1(1).

(a) failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a recognizance or of a bond of caution to keep the peace or be of good behaviour;

(b) breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, where the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not, in any case, he or she is in fact so dealt with);

(c) failure to comply with any requirement of a suspended sentence supervision order.<sup>8</sup>

5.09 Pursuant to section 4(1), a person who has become rehabilitated in respect of a conviction within the meaning of the Act must be:

“treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and notwithstanding the provisions of any other enactment or rule of law to the contrary, [but subject to sections 7 and 8 of the Act]:

a. no evidence shall be admissible in any proceedings before a judicial authority<sup>9</sup> exercising its jurisdiction or functions in Great Britain to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any

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<sup>8</sup> *Ibid* section 1(2).

<sup>9</sup> For the purposes of section 4 and also section 7, “proceedings before a judicial authority” include, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question, which said power arises: (a) by virtue of any enactment, law, custom or practice; (b) under the rules governing any association, institution, profession, occupation or employment; or (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder. *Ibid.*, section 4(6).

offence which was the subject of a spent conviction;  
and

- b. a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.”<sup>10</sup>

5.10 However, section 4(1) does not affect: (a) any right to grant a free pardon, to quash any conviction or sentence, or to commute any sentence; (b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction; (c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or (d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 6 of the Act to the conviction.<sup>11</sup>

5.11 Where a question seeking information with respect to a person’s previous convictions, offences, conduct or circumstances is put to them or to any other person otherwise than in proceedings

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<sup>10</sup> *Rehabilitation of Offenders Act 1974*, section 4(1).

<sup>11</sup> *Ibid* section 7(1). See also section 7(2) which provides that section 4(1) does not affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person’s previous convictions or to circumstances ancillary thereto: (a) in any criminal proceedings before a court in Great Britain; (b) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings; (c) in any application for a sex offender order; (d) in any proceedings relating to adoption or to the guardianship, wardship, marriage, custody, care or control of, or access to, any minor, or to the provision by any person of accommodation, care or schooling for minors; (e) in any proceedings under the *Children Act 1989*; (f) any proceedings relating to the variation of a supervision order; (g) in any proceedings in which he is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he or she consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence notwithstanding the provisions of section 4(1).

before a judicial authority, the questions must be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions,<sup>12</sup> and the answers thereto may be framed accordingly.<sup>13</sup> In addition, the person questioned cannot be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction in his answer to the question.<sup>14</sup>

5.12 Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person cannot extend to requiring him or her to disclose a spent conviction or any circumstance ancillary to a spent conviction (whether the conviction is his or her own or another's).<sup>15</sup> A conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, cannot be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for prejudicing him or her in any way in any occupation or employment.<sup>16</sup>

5.13 The Act also prohibits the unauthorised disclosure of spent convictions. It is an offence for any person who, in the course of his

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<sup>12</sup> For the purposes of section 4 and section 7, the following are circumstances ancillary to a conviction:

- (a) the offence or offences which were the subject of that conviction;
- (b) the conduct constituting that offence or those offences; and

(c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence. *Ibid.*, section 4(5).

<sup>13</sup> *Rehabilitation of Offenders Act 1974*, section 4(2). This provision is subject to any order made by the Secretary of State under section 4(4) of the Act.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid* section 4(3).

<sup>16</sup> *Ibid.* There are some important exceptions for certain professions (for example medical practitioners, lawyers and child care workers) and offices (for example judicial appointments and others involved in law enforcement).

or her official duties, has or at any time has had custody of or access to any official record or the information contained therein, and, knowing or having reasonable cause to suspect that any specified information<sup>17</sup> he or she has obtained in the course of those duties is specified information, discloses it, otherwise than in the course of those duties, to another person.<sup>18</sup>

5.14 One further point concerns the interaction between the provisions of the *Rehabilitation of Offenders Act 1974* and the freedom of expression of the media. As Robertson and Nicol note, “[t]he provisions of the Act are complex, but they have little effect on media freedom.”<sup>19</sup> Section 8 of the *Rehabilitation of Offenders Act 1974* provides that the media may publish details of “spent” convictions and, if sued, can plead the defence of justification or fair comment, unless the claimant can show that the publication was actuated by malice.<sup>20</sup> As Robertson and Nicol point out, it would be extremely difficult to establish such malice “since there can be no dishonesty involved in stating the truth”; thus, in order for a claimant to succeed it must be established that the motivation for publishing details of the conviction was not a desire to inform the public, but rather “an overwhelming desire to injure the claimant”.<sup>21</sup>

**(2) “Breaking the Circle” – Home Office Review of the Rehabilitation of Offenders Act 1974<sup>22</sup>**

5.15 The Home Office recently conducted a review of the *Rehabilitation of Offenders Act 1974* in a Green Paper entitled *Breaking the Circle: A Report of the Review of the Rehabilitation of Offenders Act*. The original aims of the 1974 Act were reaffirmed by

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<sup>17</sup> For the purposes of section 9, “specified information” means information imputing that a named or otherwise identifiable rehabilitated living person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a spent conviction: *Ibid* section 9(1).

<sup>18</sup> *Rehabilitation of Offenders Act 1974*, section 9(2).

<sup>19</sup> Robertson & Nicol *Media Law* (4<sup>th</sup> ed Penguin 2002) at 118.

<sup>20</sup> Defined by Griffiths LJ in *Herbage v Pressdram* [1984] 2 All ER 769 as “published with an irrelevant, spiteful or improper motive”.

<sup>21</sup> *Ibid*.

<sup>22</sup> Home Office, 17 July 2002. A copy of this paper is available at <http://www.homeoffice.gov.uk/docs/breakcircle.pdf>.

the Review Group, namely resettlement of offenders in the wider community as a key element in crime reduction strategies, with employment in turn seen as a key element of resettlement. An effective scheme allowing for “spent convictions” should facilitate these aims, but the Review concluded at the outset that the 1974 Act no longer met all of these aims; as the report states, the legislation “is not achieving the right balance between resettlement and protection”.

5.16 Amongst the specific criticisms levied at the 1974 Act were the fact that the scheme was seen as confusing to both offenders and employers; the failure to explain the terms of the Act in the sentencing process was the subject of criticism, and it was also noted that “many employers know little or nothing about the [Rehabilitation of Offenders Act]”.<sup>23</sup> Compounding the difficulties caused by the lack of proportionality<sup>24</sup> and clarity in the operation of the Act is the many changes which have taken place in the criminal justice system since the time of the enactment of the Act.<sup>25</sup> The Review also pointed to the effects of “sentence inflation”<sup>26</sup> which has had the effect of restricting the application of the 1974 Act.

5.17 In order to address these difficulties, the Review Group made several wide-ranging recommendations. With regard to the aim of protecting the general public, the Review accepted that “certain types of posts, professions and licensing bodies should continue to be excepted from the disclosure scheme”. Thus, positions which involve an issue of national security, or where the employee would hold a position of trust, particularly in positions involving contact with children and vulnerable adults, are specifically excluded from the scope of application of the Act. Furthermore, it was recommended

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<sup>23</sup> *Ibid* at 5.

<sup>24</sup> Between the need to protect the public (by excluding certain specific offences and offenders from the application of the non-disclosure scheme) and the competing aim of the rehabilitation of offenders and all that entails.

<sup>25</sup> *Ibid* at 5-6.

<sup>26</sup> The Review gives an example based on samples extracted from the Offenders Index based on Standard List offences, which showed that “whereas 3,537 offenders were sentenced to custody for over 30 months in 1974 (and therefore unable to benefit from the protection of the [1974 Act]), the number had risen to over 11,000 by the year 2000”. It is further noted that this difficulty is underlined by the fact that “the total number of offenders has not increased greatly between 1974 and 2000”. *Ibid* at 6.

that a new discretion should be afforded to the judiciary in relation to the fixed disclosure periods. Thus, if a judge decided in a particular case that there was a “particular risk of significant harm”, the standard disclosure period under the scheme could be disapplied.

5.18 Amongst the proposals aimed at ensuring offenders’ understanding of the operation of the scheme, the Review recommended that rules relating to disclosure should be explained to offenders as part of the pronouncement of sentence. However, this recommendation was criticised by a number of consultees, and the British government’s response to submissions on the Green Paper ultimately rejected this recommendation.<sup>27</sup>

5.19 The Review also suggested that clear guidance on the operation of the scheme should be made available through statutory agencies, and other organisations involved with the rehabilitation and resettlement of offenders. In order to ensure full awareness of the scheme among employers, and compliance with its terms, the Review proposed the development of a voluntary code of practice to govern disclosures in the recruitment process, along with sanctions for an applicant or existing employee who loses a job on the grounds of a previous conviction which they were not required to disclose.

5.20 Specific recommendations regarding the revision of the 1974 Act included the recommendation that the disclosure scheme should be based on fixed periods, which were regarded as the best way to simplify the scheme. The Review suggested that these fixed periods should be based on sentence, with different periods applying to custodial and non-custodial sentences. Furthermore, the disclosure periods should comprise the length of the sentence plus an additional “buffer” period, which would cover the period of the greatest risk of re-offending.<sup>28</sup>

5.21 The Review also contained proposals designed to widen the scope of application of the scheme. Thus, it was recommended that

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<sup>27</sup> Home Office *Breaking the Circle: A Summary of the Views of Consultees and the Government Response to the Report of the Review of the Rehabilitation of Offenders Act 1974* (April 2003), available at <http://www.homeoffice.gov.uk/docs/roaresponse.pdf>

<sup>28</sup> *Ibid* at 7. It should also be noted that the Review suggested that separate disclosure periods should be set for young offenders (aged 10-17); provision for such offenders has already been made in this jurisdiction in the *Children Act 2001*, considered above at paragraphs 5.02-5.07.

“the scheme should apply to all ex-offenders who have served their sentence”.<sup>29</sup> Thus, the current 30 month cut-off should be removed so that the scheme applies to all offenders who have served their sentence. The English government accepted this recommendation, but took into account concerns expressed in considering the appropriate buffer periods for custodial sentences of four years and over. It further accepted the recommendation that the new arrangements should be applied retrospectively to bring this group within the protection of the scheme without delay.

5.22 In regard to the appropriate “buffer periods” to be applied, the review sought submissions on the appropriate length of such periods to be applied to custodial and non-custodial sentences, “in order to ensure that they represent an appropriate balance between the needs of protection and the needs of resettlement”.<sup>30</sup> The periods proposed in the report were one year for non-custodial sentences and two years for custodial sentences. It was stated that these very short periods of disclosure were deliberately chosen in order to provide those with previous convictions with the best chance of “breaking the circle of their offending behaviour”.<sup>31</sup> However, the proposals attracted some criticism, with a number of consultees complaining of the failure to differentiate between shorter custodial sentences in relation to minor offences, and longer sentences in respect of more serious crimes.

5.23 The issue of the appropriate length of buffer periods was clearly the most controversial aspect of the proposed reforms, and the British government ultimately accepted that in the interest of proportionality, it would be preferable to differentiate between custodial sentences of less than four years, and those of four years or over.<sup>32</sup> The government thus proposed that the disclosure periods for adults will be as follows:

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<sup>29</sup> *Ibid* at 8. It would appear that the limitations prescribed by section 5(1) of the 1974 Act (set out above) are not affected by this recommendation.

<sup>30</sup> *Ibid* at 9.

<sup>31</sup> Home Office *Breaking the Circle* (17 July 2002) at 30. A copy of this paper is available at <http://www.homeoffice.gov.uk/docs/breakcircle.pdf>.

<sup>32</sup> Home Office *Breaking the Circle: A Summary of the Views of Consultees and the Government Response to the Report of the Review of the Rehabilitation of Offenders Act 1974* (April 2003), available at <http://www.homeoffice.gov.uk/docs/roaresponse.pdf> at 10. This proposal

(a) For non-custodial sentences, the period of disclosure will be the period of the sentence plus an additional buffer period of one year;

(b) For custodial sentences of less than four years, the period of disclosure will be the period of the sentence as ordered by the court<sup>33</sup> plus an additional buffer of two years; and

(c) For custodial sentences of four years or more, the period of disclosure will be the period of the sentence as ordered by the court plus an additional buffer period of four years.

5.24 The proposed reforms clearly require primary legislation, and the summary of the views of the consultees and the government's response indicated that a draft Bill would be published as soon as parliamentary time allowed. Although the 2003 Queen's Speech<sup>34</sup> referred to a proposed Criminal Justice Act "to ensure the effective punishment of dangerous and persistent offenders", there was no reference to the implementation of the recommended reforms of the *Rehabilitation of Offenders Act 1974*.

## **D Other Jurisdictions**

5.25 The Commission is aware that comparable provisions exist in a number of other common law jurisdictions, including Queensland,<sup>35</sup> the Commonwealth of Australia,<sup>36</sup> Western Australia,<sup>37</sup>

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mirrors the arrangements in place in England for young offenders, where a split has been made between custodial sentences of less than 24 months, and 24 months and over.

<sup>33</sup> Including "that part served in prison and that part served on licence in the community": *ibid* at 10.

<sup>34</sup> Delivered on the opening of parliament, 26 November 2003. Full text available at <http://www.number-10.gov.uk/output/Page4897.asp>.

<sup>35</sup> *Criminal Law (Rehabilitation of Offenders) Act 1986*.

<sup>36</sup> Part VIIC of the *Crimes Act 1914*, giving effect to the recommendations of the Australian Law Reform Commission *Report on Spent Convictions* (Report No. 37 1987).

<sup>37</sup> *Spent Convictions Act 1988*.

New South Wales,<sup>38</sup> and Northern Territory of Australia.<sup>39</sup> These legislative schemes broadly resemble the provisions of the United Kingdom *Rehabilitation of Offenders Act 1974* as considered above.

## **E Conclusions**

5.26 One of the most significant factors which underlies a decision to apply the court poor box is a concern to avoid imposing a conviction. Having regard to, *inter alia*, the permanency of a conviction once recorded, a court may consider that the imposition of a conviction would constitute a disproportionately severe penalty and, therefore, decide not to record a conviction despite accepting that the charge is proved and instead direct a payment to the court poor box. By enabling the court to reach a satisfactory method of disposing of the case which does not depend upon a conviction, the court poor box system mitigates the harshness of a criminal justice system in which a conviction is “for life”.

5.27 Despite the arguments in favour of a spent convictions jurisdiction, there are a number of drawbacks associated with such schemes. A key problem is that it is clear from the British Review of the 1974 Act that the complexity of the British scheme has caused confusion as to its scope. Moreover, the “wiping clean” of certain offences, even in limited cases, may give rise to fears that legitimate employment checks may be stymied. This also raises the question (though not strictly related to spent conviction schemes) of the use, and deletion, of criminal intelligence gathered by police forces. The failure of various English police forces and social services agencies to disclose that Ian Huntley had been suspected of a string of sexual offences against minors prior to his employment as a caretaker at Soham community college illustrate this issue.<sup>40</sup> The failure to disclose this crucial information has been attributed to a

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<sup>38</sup> *Criminal Records Act 1991*.

<sup>39</sup> *Criminal Records (Spent Convictions) Act 1992*.

<sup>40</sup> Ian Huntley was convicted at the Old Bailey on 17 December 2003 of the murder of Holly Wells and Jessica Chapman. For further information, see <http://www.bichardinquiry.org.uk/about>.

misunderstanding of the provisions of the *Data Protection Act*,<sup>41</sup> and is currently the subject of the Bichard Inquiry.<sup>42</sup>

5.28 *The Commission believes that there are many complex issues which must be considered in any comprehensive discussion of the merits and demerits of “spent conviction” schemes, and that such debate ultimately falls outside the scope of this Consultation Paper. However, the Commission may consider this matter in greater detail at a future date. The Commission would welcome submissions on the issue of spent convictions from any interested bodies or persons, with a view to a future publication dedicated to a full consideration of whether such a scheme should be introduced in this jurisdiction.*

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<sup>41</sup> It is important to note that the provisions of the *Rehabilitation of Offenders Act 1974* governing spent convictions were not relevant to the Huntley case as he had not been convicted of the offences in question. Nevertheless, the point remains that the complexity of non-disclosure schemes, whether in relation to allegations of criminal wrongdoing or actual criminal records, can lead to confusion as to the extent of the obligation of non-disclosure and ultimately to the misapplication of such legislative schemes.

<sup>42</sup> Launched on 18 December 2003 by the Home Secretary. The full terms of reference of the Bichard Inquiry are: “Urgently to enquire into child protection procedures in Humberside Police and Cambridgeshire Constabulary in the light of the recent trial and conviction of Ian Huntley for the murder of Jessica Chapman and Holly Wells. In particular to assess the effectiveness of the relevant intelligence-based record keeping, the vetting practises in those forces since 1995 and information sharing with other agencies, and to report to the Home Secretary on matters of local and national relevance and make recommendations as appropriate”. For further information see <http://www.bichardinquiry.org.uk>.

## CHAPTER 6 REFORM OPTIONS

### A Introduction

6.01 This Chapter analyses possible options for reforming the court poor box system in the light of the critical appraisal in Chapter 2 and also the survey of comparable or related systems in other jurisdictions in Chapter 4.

### B Reform Options

#### (1) *Abolition of the court poor box system*

6.02 One option is the abolition of the court poor box system in its entirety. This raises the question of whether legislation is necessary to achieve this result. Arguably, since the court poor box does not have a statutory basis, the desired reforms could be achieved by the issuing of directions to judges from the Presidents of their respective courts indicating that the court poor box jurisdiction is not to be exercised. The Commission believes, however, that this argument fails to have sufficient regard to the fact that the court poor box is deeply rooted in the common law and in court practice. Accordingly, the Commission considers that any proposed reforms in this area should be addressed in legislation enacted by the Oireachtas.

6.03 Against the background of the critical assessment of the court poor box system in Chapter 2 and, in particular, the positive features of this system, the Commission is of the view that it should not be abolished *in its entirety*, although submissions on this point are welcome.

6.04 *The Commission is provisionally of the view that the court poor box should not be abolished in its entirety but welcomes submissions on this point.*

**(2)      *Retention of the court poor box system as currently applied***

6.05      A second option is the retention of the court poor box system as it is currently applied. It is clear from the analysis of the present system in Part B of Chapter 2 that there are aspects of the current system which are commendable. Thus, it might be suggested that the court poor box ought to be retained as currently applied in order to afford judges the maximum discretion to reach an outcome in a case which is proportionate to the offence and to the personal circumstances of the offender. The constitutional dimension to the fundamental principles of sentencing law, and the analogies which can be made in the context of the court poor box system, have been considered above. Notwithstanding the force of this argument, the Commission is unable to overlook the negative features of the present system as outlined in Part C of Chapter 2. The Commission therefore considers that it would be inappropriate simply to retain the court poor box system as currently applied.

6.06      *The Commission provisionally recommends that the court poor box system as currently applied should not be retained.*

**(3)      *Reform of the court poor box system***

6.07      A third avenue of reform considered by the Commission is to replace the court poor box with a statutory scheme which would retain the positive features of the court poor box system as currently applied, whilst removing the problematic elements of that system. The Commission has provisionally concluded that this is the most appropriate option for reform.

6.08      *The Commission provisionally recommends that the court poor box should be reformed in order to preserve the positive aspects of the court poor box jurisdiction whilst removing the problematic aspects of the current system.*

6.09      A number of separate issues merit consideration in this context.

**(a)      *Re-naming the court poor box jurisdiction***

6.10      At the outset, it is appropriate to consider whether, in the context of the proposal to replace the court poor box system, that system ought to be renamed. The present description is somewhat misleading since some contributions to the court poor box are

transmitted to organisations which are charitable but not involved in alleviating the plight of the poor.<sup>1</sup> Moreover, having regard to the problematic aspects of the present court poor box system and the reforms which are proposed below, it might be regarded as preferable, at least in terms of nomenclature, to distance the proposed system from the present one, and to make a change to a more appropriate modern name.

6.11 To a large extent, the determination of an appropriate name hinges on the nature and extent of that jurisdiction. For example, if the system of making payments to a charitable organisation is to be retained, it may be appropriate to rename the court poor box the “Court Charity Fund”. As noted above, the Commission recommends provisionally that trusts for the relief of poverty should benefit from court poor box funds in the event of the poor box system being retained. For ease of reference, the reformed court poor box will be referred to herein as the “Court Charity Fund”.

6.12 *The Commission is of the opinion that, in the event of reform of the court poor box system, it should be renamed. The Commission considers that “Court Charity Fund” is an appropriate title.*

(b) *Circumstances in which the court charity fund can be applied*

6.13 The Commission believes that the circumstances in which the Court Charity Fund can be applied should be defined by legislation. Nevertheless, it is important to emphasise that any such legislation must preserve the discretionary powers of the judge to determine an outcome which is proportionate to the offence in question and to the personal circumstances of the offender. The Commission considers that the factors which are currently taken into account in the application of the court poor box<sup>2</sup> could form the basis of the Court Charity Fund.

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<sup>1</sup> See the list of organisations which obtained funds from the court poor box in 2002 and 2003 in Appendices D and E to this Paper. For a discussion of the definition of “charities” and the different categories of trusts for charitable purposes, see paragraphs 3.01-3.24.

<sup>2</sup> See paragraphs 1.21*ff.*

6.14 *The Commission recommends that the factors to be taken into account in the application of the Court Charity Fund could include the following:*

- (a) the nature of the offence and, in particular:*
  - (i) whether, having regard to all relevant circumstances, the offence is of a trivial nature;*
  - (ii) whether the offender caused any injuries to other persons and, if so, the nature and extent of such injuries;*
  - (iii) whether the offender caused any injuries to animals and, if so, the nature and extent of such injuries; or*
  - (iv) whether the offender caused any damage to property and, if so, the nature and extent of such damage; and*
- (b) the personal circumstances of the offender and, in particular, his or her:*
  - (i) character;*
  - (ii) family circumstances;*
  - (iii) age; or*
  - (iv) health; and*
- (c) the need to avoid an injustice, whether to the offender or to any victim.*

6.15 A further point which must be addressed is the question of whether to limit the scope of the Court Charity Fund to cases where no conviction has been recorded. As considered above,<sup>3</sup> it may be argued that the application of the court poor in cases where a conviction has been recorded is inconsistent with the fundamental philosophy underpinning this jurisdiction, namely the concern to avoid recording a conviction in certain cases. Once a conviction has been recorded, a full range of sentencing options is available to the court, including custodial sentence, suspended sentence, fine, community service order, or compensation order. Furthermore, the Commission is of the view that the application of the court poor box post-conviction is liable to damage public perception in relation to the proper administration of the court poor box.

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<sup>3</sup> See paragraphs 2.81.

6.16 *The Commission recommends that the Court Charity Fund should not be available in cases where a conviction has been recorded.*

(c) *The monetary amount*

6.17 It is also appropriate to consider whether reforming legislation should limit the amount of a contribution which may be accepted by the court as a contribution to the Court Charity Fund. One option in this regard would be to limit the monetary amount to the maximum amount of the fine to which a person would be liable if convicted of the offence with which he has been charged.

6.18 In its favour, it can be argued that it would reduce the scope for affluent persons to make apparently generous contributions and, thus, evade a conviction and/or a term of imprisonment. Even if, for the reasons outlined above,<sup>4</sup> the Court Charity Fund would not afford affluent persons such an opportunity, the *perception* that it does so may nevertheless exist; in this respect also, a limitation on the maximum permissible contributions arguably would serve a valuable function since it would diminish the basis for such a perception.

6.19 However, it can also be argued that a limitation on the maximum permissible contribution would operate to the advantage of the affluent and that, without that constraint, a court would be better placed to determine a monetary amount which is proportionate to the means and circumstances of the offender. Clearly, a monetary limitation would not in itself preclude a court from having regard to the means and circumstances of an offender in determining an appropriate contribution. Nevertheless, the fact that contributions could not exceed a prescribed limitation would diminish the capacity of a court to determine appropriate contributions from affluent offenders. Arguably, this problem also exists in relation to fines and ought not, therefore, to be addressed in isolation. In this context, however, a number of additional factors merit consideration.

6.20 First, the value of fines is eroded over time by the effects of inflation and, accordingly, even where a court imposes a maximum fine, it may not reflect the gravity of the offence in question or the true maximum fine which the legislature had intended. Against this background, it is questionable whether it would be appropriate to

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<sup>4</sup> See paragraph 2.43.

limit contributions to the Court Charity Fund in accordance with maximum permissible fines. Indeed, as noted above,<sup>5</sup> some courts apply the court poor box, at least in part, for the purpose of countering the effects of inflation and determining a penalty which is appropriate in all the circumstances. The force of this argument will be diminished, however, upon the enactment of legislation which indexes fines in accordance with the recommendations of the Law Reform Commission.<sup>6</sup>

6.21 Secondly, parity between a contribution to the Court Charity Fund and a fine may be inappropriate in that the punishment encompassed in the latter includes not simply a monetary payment but also a conviction; under the proposed reforms, a contribution to the Court Charity Fund is premised on the avoidance of a conviction.

6.22 Thirdly, it can be argued that the flexibility which inheres in the present court poor box system in relation to the determination of the amount of the contribution ought to be retained as an integral part of any reformed system.

6.23 In the light of the foregoing, it would appear that it is inappropriate for maximum permissible fines to be used as benchmarks for determining the amount of a contribution to the Court Charity Fund.

6.24 It is thus necessary to return to the original question of the appropriateness of setting *any* limitations on the maximum amount a person may be required to contribute to the Court Charity Fund. On one view, judges should be at liberty to determine a monetary penalty which is proportionate to the offence and the personal circumstances (including the means) of the offender. Another view would have as an alternative proposal the setting of a cap on the amount which the court can require an offender to pay in *any* case in order to combat the perception that the Court Charity Fund allows affluent offenders to

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<sup>5</sup> See paragraph 1.29.

<sup>6</sup> See generally the report by the Law Reform Commission entitled *The Indexation of Fines – a Review of Developments* (LRC 65 – 2002). The Government’s legislative programme for the Dáil session commencing on 27 January 2004 states that draft heads of a Bill are expected to be published in 2004; see the statement of Mary Hanafin TD, Chief Whip, at <http://www.taoiseach.gov.ie/index.asp?locID=186&docID=-1>.

avoid the recording of a conviction against them by offering generous contributions to the fund.

6.25 *The Commission recommends that there should be a limit on the maximum amount an offender may be requested to contribute to the Court Charity Fund.*

6.26 The question of the scope of such appropriate limitation on contributions must also be addressed. This issue will be addressed below.<sup>7</sup>

(d) *Receipt, administration and distribution of the court charity fund*

6.27 The Commission believes that in the event of reform and replacement of the court poor box system, it is imperative to provide for transparency and accountability in relation to the receipt, administration and distribution of the Court Charity Fund. In this regard, there are three recommendations for consideration

6.28 First, it might be proposed that a particular court officer should be designated with responsibility for the receipt and administration of monies which are paid to the Court Charity Fund. In the case of the District Court, for example, it may be appropriate to designate the District Court Clerk as the officer with this responsibility.

6.29 Secondly, monies paid to the Court Charity Fund should not be distributed by or at the direction of judges. For the reasons outlined in Chapter 2 of this Paper,<sup>8</sup> it is submitted that from the aspect of public perception it is desirable that the distribution of such monies should not form a part of the judicial function.

6.30 Thirdly, in the light of the foregoing, it is necessary to consider how payments to the Court Charity Fund should be disbursed.<sup>9</sup> One option in this regard would be to provide for the

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<sup>7</sup> See paragraph 6.40.

<sup>8</sup> See paragraphs 2.83-2.90.

<sup>9</sup> It should be reiterated that there are significant difficulties in relation to the formulation of an appropriate mechanism for ensuring that such disbursements are done in an objective, accountable, and tax compliant, manner. See further paragraphs 3.32-3.48.

transmission of the monies to a central fund from which they could be disbursed by an appropriate body to designated charities.

6.31 As has been noted in Chapter 3, the existence of a fully transparent and accountable procedure is essential to the proper administration of the Court Charity Fund. The question of the receipt and distribution of funds is at the heart of this issue, and presents significant difficulties in the formulation of an acceptable replacement scheme.

(e) *Options in respect of administration and allocation of the court charity fund*

6.32 The Commission is of the view that since the current operation of the poor box system may not fully comply with all tax legislation and that the receipt, administration and distribution of court poor box funds should preferably form no part of the judicial function,<sup>10</sup> any funds generated by the Court Charity Fund should be transferred to the Exchequer pursuant to section 51 of the *Court Officers Act 1926*.<sup>11</sup>

6.33 Having regard to the benefits derived by the many worthwhile charities which currently receive donations from court poor box funds, the Commission further recommends that consideration be given to putting in place a scheme providing for the “ring fencing” of monies generated by such a scheme on a similar basis to the operation of the Environment Fund. One possibility would be to recommend that such a separate fund be established within an appropriate government department, for example Department of Community, Rural and Gaeltacht Affairs, which would administer any funds raised by the Court Charity Fund in consultation with appropriate bodies. However, the Commission recognises that to an extent, this is uncharted territory, and as such submissions on the administration and distribution of such funds, and in particular the appropriate body to be designated responsible for this role, would be welcomed.

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<sup>10</sup> See paragraphs 2.83-2.90.

<sup>11</sup> See paragraph 3.25.

(f) *Basis of the court charity fund scheme*

6.34 One final issue remains to be considered, namely the precise mechanism by which the replacement of the court poor box system is to be achieved.

6.35 It was noted in Chapter 2 that, in addition to the options of retention and reform of the court poor box, there were a number of existing statutory provisions which provided the kernel of a jurisdiction to require offenders to make a financial contribution in certain circumstances. Thus, it was suggested that in the provisions of section 1(3) of the *Probation of Offenders Act 1907* and section 6 of the *Criminal Justice Act 1993*, there exists some basis of a reformed system which allows a court to require a person to make a financial contribution which might be viewed either as an “earnest of intention” (*ie* undertaking to reform), or a compensatory payment to any victim(s) in respect of damages for loss caused by the offender. These provisions can be employed in respect of persons who have not been convicted, but who have received the benefit of section 1(1) of the *Probation of Offenders Act 1907*.<sup>12</sup>

6.36 However, these provisions at present do not constitute a complete or viable alternative to the court poor box system, and there are a number of further issues which must be addressed.

(g) *Current limitations on the scope of existing statutory provisions*

6.37 The first problem to be addressed is the maximum amount a court can require the offender to contribute. The maximum amount payable under the terms of section 1(3) of the 1907 Act is €12.<sup>13</sup> The failure to amend this provision since the time of its enactment has rendered the potential effect of this power nugatory. If this existing statutory jurisdiction is to be employed as an alternative to the court poor box system, it is clear that the maximum amount payable would have to be increased substantially.

6.38 A further difficulty with the provisions of both section 1(3) of the *Probation of Offenders Act 1907* and section 6 of the *Criminal*

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<sup>12</sup> Section 6(12)(b) of the *Criminal Justice Act 1993* provides that: “references to conviction of a person include references to dealing with a person under section 1(1) of the Probation of Offenders Act 1907”.

<sup>13</sup> See paragraph 2.130.

*Justice Act 1993 Act* is that, in relation to the restitutionary aspect of these provisions, both require the existence of an identifiable “victim” to whom the compensation is payable. This raises a difficulty in that many cases which currently result in the application of section 1(1) of the *Probation of Offenders Act 1907* in conjunction with a payment to the court poor box are effectively “victimless crimes”, such as public order offences, where the community is afflicted rather than a specific person. The requirement of an identifiable victim thus limits the applicability of these provisions by excluding such cases from their potential scope of application.

6.39 One further issue which was also highlighted above<sup>14</sup> is the precise nature of the inter-relationship between section 1(3) of the *Probation of Offenders Act 1907* and section 6 of the *Criminal Justice Act 1993*. Furthermore, it would appear that the provisions of section 6 of the *Criminal Justice Act 1993* are somewhat narrower in scope than those of section 1(3) of the 1907 Act. This arises as a result of the requirement in section 6 that there be an identifiable victim who has suffered loss or damage as a result of the actions of the offender. Although there was a similar provision in section 1(3) of the 1907 Act, section 1(3) also allowed the court to require the offender to make a contribution to the costs of the case in addition to or as an alternative to a payment of compensation. No such equivalent provision exists in relation to the scheme for compensation orders in section 6 of the *Criminal Justice Act 1993*.

6.40 In terms of the appropriate limitation on the maximum contribution which an offender may be requested to make to the Court Charity Fund,<sup>15</sup> the Commission considers that an attractive option would be to adopt the approach taken in section 6(2) of the *Criminal Justice Act 1993*, and limit the maximum amount payable to “the amount as may stand prescribed for the time being by law as the limit of that Court's jurisdiction in tort.” Currently this stands at €6,350 for the District Court and €38,100 for the Circuit Court.<sup>16</sup> These limits

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<sup>14</sup> At paragraphs 2.98-2.105.

<sup>15</sup> See paragraph 6.25.

<sup>16</sup> The *Courts and Courts Officers Act 2002* provides that these limits be raised to €20,000 and €100,000 respectively, but commencement orders for these changes have not been made to date.

would apply in respect of the reformed Court Charity Fund and should not affect the jurisdiction to award compensation or costs.

6.41 *The Commission recommends that the maximum amount payable by an offender under the Court Charity Fund should be limited to “the amount as may stand prescribed for the time being by law as the limit of that Court’s jurisdiction in tort”.*

(h) *Guidance for application of compensation orders*

6.42 Given that the proposed Court Charity Fund scheme draws in part on the provisions of the *Criminal Justice Act 1993* in respect of compensation orders, it is also appropriate to consider the circumstances in which compensation orders may be made. The scheme for compensation orders in this jurisdiction was introduced by the *Criminal Damage Act 1991*.<sup>17</sup> The 1991 Act was amended in 1993 in order to take account of problematic aspects of the original provisions, giving rise to the current regime contained in the *Criminal Justice Act 1993*. Despite the fact that the scheme for compensation orders has therefore been available under Irish law for over a decade, anecdotal evidence suggests that this scheme has generally been little used. Although official statistics on the number of compensation orders made annually are not available, inquiries with practitioners and the Courts Service have confirmed that such orders are infrequently made. One possible reason for the infrequency of use of these provisions may be the absence of any guidance as to the circumstances in which a court may impose a compensation order upon an offender.

6.43 The 1993 Act is based on comparable provisions now included in the English *Powers of Criminal Courts (Sentencing) Act 2000*, ss. 130-132.<sup>18</sup> The English courts have enunciated several

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<sup>17</sup> Section 9 of the *Criminal Damage Act 1991* provided: “On conviction of any person of an offence under section 2 of damaging property belonging to another, the court, instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order (in this Act referred to as a “compensation order”) requiring him to pay compensation in respect of that damage to any person (in this section referred to as the “injured party”) who, by reason thereof, has suffered loss (other than consequential loss).” The inclusion of this compensation provision was based on the recommendation of the Law Reform Commission in its *Report on Malicious Damage* (LRC 26-1988).

<sup>18</sup> Replacing section 35(1) of the *Powers of Criminal Courts Act 1973* as substituted by section 67(1) of the *Criminal Justice Act 1982*.

principles in relation to the making of compensation orders; one of the leading cases in this regard was *R. v Miller*.<sup>19</sup> The seven principles deduced from the case law on the circumstances in which a compensation order may be made under the Act are summarised by Boyle and Allen<sup>20</sup> as follows:

- (a) A compensation order is not an alternative to sentence.
- (b) Such an order should only be made where the legal position is clear.
- (c) The power to order compensation should only be used for dealing with claims in straightforward cases.<sup>21</sup>
- (d) An order should not be made unless the sum claimed by the victim is either agreed or has been proved.<sup>22</sup>
- (e) In considering whether or not to make a compensation order, it is not a relevant consideration for the court to consider whether or not the offender has profited from the offence. The proper question for the court to consider is the extent of the loss suffered by the victim.
- (f) In determining whether to make a compensation order against any person, and in determining the amount to be

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<sup>19</sup> (1979) 68 Cr App R 56. Much of the analysis of the principles set out in this decision are drawn from the commentary by Boyle & Allen *Sentencing Law and Practice in Northern Ireland* (SLS Publications 1983) at 97-101. The Northern Ireland courts are also empowered to make compensation orders on the basis of comparable statutory provisions, now contained in the *Criminal Justice (Northern Ireland) Order 1994*.

<sup>20</sup> *Ibid* at 97.

<sup>21</sup> This was confirmed in *R. v White* [1996] 2 Cr App R (S) 58, where the Court of Appeal discouraged criminal courts from embarking on complicated investigations which might require the court to embark on a prolonged course of hearing evidence in order to determine questions as to the fact or the amount of loss. See Archbold *Criminal Pleading, Evidence and Practice* (London Sweet & Maxwell 2003) at 5-411 – 5-430.

<sup>22</sup> Thus, it has been confirmed that if property is stolen and recovered undamaged, it is not open to the court to make a compensation order in respect of the value of the goods: *R. v Hier* 62 Cr App R 233, *R. v Boardman* 9 Cr App R (S) 74, *R. v Tyce* 15 Cr App R (S) 415.

paid by such person, the court shall have regard to the offender's means.<sup>23</sup>

6.44 Other principles which can be derived from the English case law include the fact that the order “must be precise: it must be related to an offence of which the offender has been convicted or to an offence which he has asked to be taken into consideration, and the total amount and the instalment amount must be specified in the order”.<sup>24</sup> Elaborating on the relevance of the means of the offender, the English courts have stated that, as a general rule, a compensation order should not be made against an offender on the assumption that the order will be paid by third parties: *R. v Mortimer*.<sup>25</sup> Where it is proposed to make a compensation order against an offender on the assumption that the funds may be raised by the sale of an asset, it has been held that it is vital that there should be a proper valuation of the asset presented to the court before such an order is made.<sup>26</sup>

6.45 The relationship between compensation orders and length of sentence is precisely stated by Archbold as follows:

“Inability to pay compensation is not a matter which should affect the length of ... sentence. The significance of an offer to pay compensation is that it might be taken as some token of remorse on the defendant's behalf as well as redressing the victim's loss. *To that extent and no further it features in the sentencing exercise*: compensation orders are

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<sup>23</sup> This principle was placed on a statutory footing by section 130(11) of the *Powers of Criminal Courts (Sentencing) Act 2000*. Archbold notes that “[a] compensation order should not be made unless it is ‘realistic’ in the sense that the court is satisfied that the offender either has the means available, or will have the means to pay the compensation within a reasonable time”: *ibid* at paragraph 5-423.

<sup>24</sup> Boyle & Allen *op cit* at 99. This principle is confirmed by Archbold, see paragraph 5-416.

<sup>25</sup> [1977] Crim LR 624, applying the decision of the Court of Appeal in *R. v Inwood* 60 Cr App R 70.

<sup>26</sup> *R. v Chambers* 3 Cr App R (S) 318. However, the English courts have generally discouraged the making of compensation order on the basis that the offender will raise the funds by selling the family home, particularly if his or her family will be made homeless as a result: *R. v Butt* 8 Cr App R (S) 216, *R. v Hackett* 10 Cr App R (S) 388.

otherwise wholly independent of that exercise”.<sup>27</sup> [Emphasis added]

6.46 Given that section 6 of the *Criminal Justice Act 1993* is based on the English legislation in this area, the Commission is of the view that the principles set down by the English courts on the circumstances in which a court may make a compensation order, and the matters suggested to be considered (or indeed not considered) in reaching that decision, may be of some assistance to the courts in this jurisdiction when considering making an order pursuant to the *1993 Act*.

## **C Conclusions**

6.47 *The Commission provisionally recommends the introduction of legislation establishing a Court Charity Fund to replace the current court poor box system. A draft scheme of a Court Charity Fund Bill is contained in Appendix A.*

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<sup>27</sup> Archbold *Criminal Pleading, Evidence and Practice* (London Sweet & Maxwell 2003) at 5-429.

## **CHAPTER 7    SUMMARY OF PROVISIONAL RECOMMENDATIONS**

### **A        Introduction**

7.01    In the light of the foregoing chapters, the principal recommendations of the Commission may be summarised as follows.

### **B        Summary of Recommendations**

7.02    The Commission provisionally recommends that the court poor box system be reformed by avoiding the inappropriate features which currently exist, but which retain its positive and important aspects. The Commission provisionally recommends that the court poor box jurisdiction should be replaced by a statutory scheme based on the provisions of the *Probation of Offenders Act 1907* and the *Criminal Justice Act 1993* which would provide a revised method of avoiding a conviction for minor offences while introducing an appropriate system allowing for the making of a financial contribution akin to an “earnest of intention”, which also accords with the principles of restorative justice. [paragraph 2.131]

7.03    The Commission believes that any such scheme should not be applied in cases where a conviction has been recorded. This arises partly from a recognition of the underlying rationale of such a scheme, namely a concern to avoid imposing a conviction (akin to allowing a first time offender “one chance”). Furthermore, the Commission believes that the application of the court poor box scheme in cases where a conviction has been recorded leads to accusations that offenders can “buy” their way out of a prison sentence. The Commission believes that such perceptions, although ill-founded, are nevertheless harmful to the administration of justice, which must not only be done, but seen to be done. [paragraph 2.132]

7.04    The Commission recommends that funds generated by the court poor box, or any replacement scheme, should be applied only for the benefit of “trusts for the relief of poverty”. Accordingly, it is

recommended that trusts for the advancement of education, religion and trusts for other purposes beneficial to the community should be excluded from the scope of application of court poor box funds. [paragraph 3.24]

7.05 The Commission is of the view that since the current operation of the poor box system may not fully comply with all tax legislation and that the receipt, administration and distribution of court poor box funds form no part of the judicial function, any funds generated by the court poor box system, or any replacement scheme, should be transferred to the Exchequer pursuant to section 51 of the *Court Officers Act 1926*. [paragraph 3.57]

7.06 Having regard to the benefits derived by the many worthwhile charities which currently receive donations from court poor box funds, the Commission further recommends that consideration be given to putting in place a scheme providing for the “ring fencing” of monies generated by such a scheme on a similar basis to the operation of the Environment Fund. One possibility would be to recommend that such a separate fund be established within an appropriate government department, for example Department of Community, Rural and Gaeltacht Affairs, which would administer any funds raised by the replacement court poor box scheme. However, the Commission recognises that to an extent, this is uncharted territory, and as such submissions on the administration and distribution of such funds, and in particular the appropriate body to be designated responsible for this role, would be welcomed. [paragraph 3.58]

7.07 The Commission believes that there are many complex issues which must be considered in any comprehensive discussion of the merits and demerits of “spent conviction” schemes, and further believes that such debate ultimately falls outside the scope of this Consultation Paper on the Court Poor Box. However, the Commission may consider this matter in greater detail at a future date. The Commission would welcome submissions on the issue of spent convictions from any interested bodies or persons, with a view to a future publication dedicated to a full consideration of whether such a scheme should be introduced in this jurisdiction. [paragraph 5.28]

7.08 The Commission is provisionally of the view that the court poor box should not be abolished in its entirety but welcomes submissions on this point. [paragraph 6.04]

7.09 The Commission provisionally recommends that the court poor box system as currently applied should not be retained. [paragraph 6.06]

7.10 The Commission provisionally recommends that the court poor box should be reformed in order to preserve the positive aspects of the court poor box jurisdiction whilst removing the problematic aspects of the current system. [paragraph 6.08]

7.11 The Commission is of the opinion that, in the event of reform of the court poor box system, it should be renamed. The Commission considers that “Court Charity Fund” is an appropriate title. [paragraph 6.12]

7.12 The Commission recommends that the factors to be taken into account in the application of the Court Charity Fund could include the following:

- (a) the nature of the offence and, in particular:
  - (i) whether, having regard to all relevant circumstances, the offence is of a trivial nature;
  - (ii) whether the offender caused any injuries to other persons and, if so, the nature and extent of such injuries;
  - (iii) whether the offender caused any injuries to animals and, if so, the nature and extent of such injuries; or
  - (iv) whether the offender caused any damage to property and, if so, the nature and extent of such damage; and
- (b) the personal circumstances of the offender and, in particular, his or her:
  - (i) character;
  - (ii) family circumstances;
  - (iii) age; or
  - (iv) health; and
- (c) the need to avoid an injustice, whether to the offender or to any victim. [paragraph 6.14]

7.13 The Commission recommends that the Court Charity Fund should not be available in cases where a conviction has been recorded. [paragraph 6.15]

7.14 The Commission recommends that there should be a limit on the maximum amount an offender may be requested to contribute to the Court Charity Fund. [paragraph 6.25]

7.15 The Commission recommends that the maximum amount payable by an offender under the Court Charity Fund should be limited to “the amount as may stand prescribed for the time being by law as the limit of that Court’s jurisdiction in tort”. [paragraph 6.41]

7.16 The Commission provisionally recommends the introduction of legislation establishing a Court Charity Fund to replace the current court poor box system. A draft scheme of a Court Charity Fund Bill is contained in Appendix A. [paragraph 6.47]

**APPENDIX A DRAFT SCHEME OF COURT CHARITY  
FUND BILL**

**General Note**

This draft scheme of a Bill is intended as a guide only as to the shape of any proposed replacement of the Court Poor Box, taking account of the advantages and disadvantages of the current arrangements identified in the Consultation Paper. The current arrangements reflect general principles of restorative justice and provide a method of avoiding a conviction primarily in the case of first-time minor offenders. These elements and the criteria identified in the Consultation Paper have been incorporated in the draft scheme. The disadvantages in the current arrangements include lack of universal availability of the Court Poor Box, the inappropriateness of judicial involvement in administering funds, revenue-compliance difficulties and the potential diversion from the Exchequer of what might otherwise be collected in fines. The draft scheme aims to avoid these disadvantages while incorporating the commendable features underlying the court poor box disposition.

**Section 1**

**Dismissal of summary charge subject to payment of earnest of intention**

**(1) Where:**

- (a) a person is charged with an offence which may be tried summarily,**  
**and**
- (b) the Court is satisfied that the charge has been proved but considers that, having regard to the matters set out in section 2 it would not be appropriate to proceed to convict the person, the Court may dismiss the charge, subject to:**

- (i) the payment by the person charged, in accordance with section 3, of such sum by way of earnest of intention as the Court may order, and
- (ii) such other Order or Orders (if any) as the Court may make under sections 5 and 6.

**(2) In this section, ‘the Court’ means the District Court and the Circuit Court.**

**(3) Where a disposition under this section has been made by the District Court, the person charged may appeal against that disposition to the Circuit Court and the Circuit Court may exercise the same jurisdiction as the District Court.**

**(3) Where a disposition under this section has been made by the Circuit Court, the person charged may appeal against that disposition to the High Court and the High Court may exercise the same jurisdiction as the Circuit Court.**

[Note to section 1. This is an updated version of section 1(1) of the *Probation of Offenders Act 1907*, but in this version, the distinction between the full dismissal in s.1(1)(a) and the conditional discharge in s.1(1)(b) has been merged. In this updated version, it is clear that the scheme is not available if a criminal conviction is recorded and it also allows for the Court to impose no or some conditions to the dismissal. The draft scheme is not intended as a replacement for section 1(1) of the 1907 Act; the appropriate use of the conditional discharge is outside the scope of this Paper]

## **Section 2**

### **Matters to be considered in dismissal of summary charge**

**In the exercise of the discretionary power conferred by section 1, the Court is to have regard to the following matters:**

**(a) the nature of the offence and, in particular:**

- (i) whether, having regard to all relevant circumstances, the offence is of a trivial nature;**

- (ii) whether the offender caused any injuries to other persons and, if so, the nature and extent of such injuries;
  - (iii) whether the offender caused any injuries to animals and, if so, the nature and extent of such injuries; or
  - (iv) whether the offender caused any damage to property and, if so, the nature and extent of such damage; and
- (b) the personal circumstances of the offender and, in particular, his or her:
- (i) character;
  - (ii) family circumstances;
  - (iii) age; or
  - (iv) health; and
- (c) the need to avoid an injustice, whether to the offender or to any victim.

[Note to section 2. This places in statutory form the factors currently taken into account where the Court Poor Box is applied. ]

### **Section 3**

#### **Earnest of intention**

- (1) In determining the amount of the earnest of intention that is to be paid under section 1, the Court is to take into consideration:
- (i) whether any person has suffered any injury or loss resulting from the circumstances surrounding the charge;
  - (ii) whether the offender caused any injuries to animals and, if so, the nature and extent of such injuries; or
  - (iii) whether any property has been damaged resulting from the circumstances surrounding the charge.
- (2) Where no personal injury or loss, or injury to animals or damage to any property can be identified by the Court as resulting from the circumstances surrounding the charge, the Court may, in determining the amount of the earnest of intention, take into consideration all costs incurred in the prosecution of the offender.

**(3) In determining the amount of the earnest of intention the Court is to take into consideration the means of the offender.**

**(4) The amount of the earnest of intention is not to exceed the amount as may stand prescribed for the time being by law as the limit of the Court's jurisdiction in tort.**

[Note to section 3. This specifies that, in determining the level of the earnest of intention, the Court must take into account whether there has been any personal injury, injury to animals or property damage. Where these do not arise, for example in a public order offence, the Court may also take into account the costs of the prosecution, reflecting some elements of section 1(3) of the 1907 Act. The Court must also take into account the person's means. Finally, the amount of the earnest is limited to the Court's tort jurisdiction (this is the element taken from the *Criminal Justice Act 1993* to update the reference to £10 in the 1907 Act).]

#### **Section 4**

##### **Court Charity Fund**

**(1) The earnest of intention to be paid under section 1 is to be paid into a fund to be known as the Court Charity Fund, which is to be established, managed and controlled by the Minister for Community, Rural and Gaeltacht Affairs.**

**(2) From time to time (and at least annually), the Minister, having consulted with any relevant body, is to pay out of the Court Charity Fund such amounts of money as he or she considers appropriate for the purposes of promoting or assisting any trust established for the relief of poverty.**

[Note to section 4. This provides that the earnest of intention is to be made to the Court Charity Fund, modelled on the Environment Fund established under the *Waste Management (Amendment) Act 2001*. This avoids the inappropriateness of judicial involvement in administering funds, revenue-compliance difficulties and the potential diversion from the Exchequer of what might otherwise be collected in fines. The Department referred to is currently responsible for charity matters. Payments out of the Fund are to be limited to assist trusts for the relief of poverty. Consultation by the Minister prior to making payments out could involve a relevant or appropriate body, for example, the National Crime Council.]

## **Section 5**

### **Further Orders**

**Where the Court dismisses a charge under section 1 it may apply any of the following Orders to the person charged:**

- (a) a Community Service Order;**
- (b) a Probation Order (including mandatory Intensive Community Supervision by the Probation and Welfare Service);**
- (c) a Recognisance Order, with or without sureties, requiring the person charged to be of good behaviour for a period, not exceeding three years;**
- (d) a Treatment Order;**
- (e) a Mediation Order;**
- (f) a Reparation Order; or**
- (g) a Counselling Order.**

[Note to section 5. These dispositions are based on the list contained in the *Final Report of the Expert Group on the Probation and Welfare Service* (Pn 7324) (Department of Justice 1999). The Report recommended that the *Criminal Justice (Community Service) Act 1983* be amended to provide that a Community Service Order be available as *both* an alternative to imprisonment *and* as a sanction in its own right and this is reflected in section 5(a). This view was also expressed by the Commission in its *Report on Sentencing* (LRC 53-1996). It should be noted that the orders referred to in (e) to (g) are not currently available as orders under Irish law.]

## **Section 6**

### **Compensation Order**

- (1) Where the Court dismisses a charge under section 1 it may, instead of or in addition to making any Order under section 5, impose a Compensation Order on the person charged.**
- (2) A Compensation Order requires the person charged to pay compensation in respect of any personal injury or loss, or damage to property, resulting from the circumstances surrounding the charge to any person who has suffered such injury, loss or damage to property (the injured party).**

- (3) In determining the amount to be paid under a Compensation Order, the Court is to take into consideration the means of the person charged, including any earnest of intention paid under section 1, and that the sum involved is agreed to and proved by the injured party.**
- (4) The amount to be paid under a Compensation Order is not to exceed the amount as may stand prescribed for the time being by law as the limit of the Court's jurisdiction in tort.**

[Note to section 6. This is modelled on the terms of the *Criminal Justice Act 1993*. It clarifies that the making of a Compensation Order is separate from an earnest of intention, which replaces the contribution to the Court Poor Box, as well as the other dispositions under section 5.]

**APPENDIX B PAYMENTS TO COURT POOR BOX IN THE  
DISTRICT COURT AND CIRCUIT COURT  
(1999 - 2003)<sup>1</sup>**

<b>District Courts</b>	<b>1999 (£)</b>	<b>2000 (£)</b>	<b>2001 (£)</b>	<b>2002 (€)</b>	<b>2003 (€)</b>
Athlone	7,700.00	6,970.00	18,045.00	10,992.00	8,045.03
Ballina	1,804.56	6,740.00	9,075.00	N.A.	12,225.00
Ballinasloe	7,750.00	3,208.00	1,960.00	N.A.	7,875.00
Bray	2,410.00	7,545.00	5,750.00	4,602.64	2,513.65
Carlow	38,430.88	39,771.00	41,906.00	46,094.50	16,690.00
Ck-on-Shn	128.04	0.00	0.00	13,097.38	0.00
Castlebar	3,130.00	6,045.00	13,916.31	17,386.12	15,610.00
Cavan	200.00	1,355.00	0.00	0.00	0.00
Clonakilty	N.A.	32,165.00	94,574.00	132,556.94	145,515.46
Clonmel	5,738.51	9,140.00	11,455.00	28,804.29	14,833.80
Cork	12,770.04	7,857.00	2,173.02	5,862.33	0.00
Derrynea	0.00	0.00	0.00	N.A.	N.A.
Donegal	0.00	6,730.00	5,751.04	5,023.95	10,050.00
Drogheda	3,936.27	3,199.00	2,250.00	834.87	4,800.00

<sup>1</sup> It should be noted that the figures for 2003 are provisional. Details of payments made to the court poor box may not include details of “direct payments” made to charities at the direction of the Court.

Dundalk	2,621.17	3,484.00	3,532.89	3,425.00	4,828.49
Ennis	0.00	0.00	0.00	6,955.00	14,335.00
Fermoy	890.00	2,300.00	995.00	3,242.79	6,707.90
Galway	600.00	400.00	159.99	N.A.	4,240.00
Gorey	3,125.00	2,520.00	3,870.00	6,610.28	0.00
Kilkenny	5,300.00	6,229.00	3,775.00	5,432.00	150.00
Killarney	210.00	225.00	0.00	0.00	0.00
Letterkenny	0.00	0.00	0.00	0.00	9,145.00
Limerick	8,495.88	15,614.00	23,135.00	31,376.75	43,089.00
Listowel	1,180.00	1,005.00	2,645.00	3,021.95	1,030.00
Longford	4,388.00	4,290.00	9,694.47	5,515.00	3,100.00
Mallow	1,400.00	1,765.00	415.00	0.00	0.00
Monaghan	1,310.00	3,690.00	7,072.26	11,582.39	10,043.20
Mullingar	10,680.00	3,760.00	3,770.00	934.87	1,350.00
Naas	0.00	2,350.00	1,160.00	5,200.00	2,275.00
Nenagh	27,435.60	5,425.00	3,434.69	9,124.92	7,444.80
Portlaoise	41,548.27	38,160.00	5,900.00	15,185.23	14,590.00
Roscommon	3,050.00	260.00	1,065.00	600.00	900.00
Sligo	7,556.59	6,582.00	6,630.00	17,207.51	14,000.00
Swords	935.19	6,127.00	9,937.10	70,037.53	62,720.00
Thurles	11,365.00	8,900.00	6,350.00	7,956.97	13,563.00
Tralee	0.00	0.00	0.00	0.00	0.00
Trim	50.00	0.00	600.00	0.00	5,000.00

Tuam	470.00	1,145.00	0.00	2,590.00	4,350.00
Tullamore	11,705.00	8,825.00	5,890.00	817.43	300.00
Waterford	8,760.00	7,090.00	5,870.00	N.A.	1,520.00
Youghal	10,479.00	6,635.00	11,445.00	11,839.69	7,470.00
DMD Fines Office	94,514.15	133,856.00	232,159.00	375,909.71	462,779.79
DMD – Dun Laoghaire	8,822.00	7,091.00	14,735.46	27,822.51	32,021.00
DMD – Children’s Court	N.A.	N.A.	N.A.	N.A.	4,536.00

<b>Circuit Courts</b>	<b>1999 (£)</b>	<b>2000 (£)</b>	<b>2001 (£)</b>	<b>2002 (€)</b>	<b>2003 (€)</b>
Carlow	0.00	200.00	0.00	0.00	0.00
Ck-on-Shan	75.00	300.00	0.00	13,097.38	1,850.00
Castlebar	8,185.26	0.00	0.00	0.00	0.00
Cavan	0.00	0.00	0.00	2,800.00	0.00
Clonmel	2,000.00	175.00	400.00	515.00	300.00
Cork	0.00	0.00	0.00	0.00	N.A.
Dublin	0.00	0.00	0.00	0.00	N.A.
Dundalk	0.00	0.00	0.00	0.00	N.A.
Ennis	0.00	0.00	0.00	6,955.00	0.00
Galway	6,817.98	4,250.00	0.00	N.A.	0.00
Kilkenny	1,300.00	0.00	0.00	350.00	0.00
Letterkenny	0.00	2,350.00	11,700.00	7,784.87	550.00
Limerick	0.00	0.00	0.00	N.A.	N.A.
Longford	0.00	0.00	0.00	N.A.	N.A.
Monaghan	100.00	200.00	0.00	2,100.00	0.00
Mullingar	1,900.00	0.00	0.00	N.A.	N.A.
Naas	0.00	0.00	0.00	N.A.	N.A.
Portlaoise	1,900.00	0.00	0.00	0.00	0.00
Roscommon	0.00	0.00	0.00	N.A.	N.A.
Sligo	0.00	0.00	0.00	N.A.	N.A.
Tralee	0.00	0.00	0.00	N.A.	N.A.

Trim	350.00	0.00	0.00	0.00	0.00
Tullamore	0.00	0.00	0.00	0.00	0.00
Waterford	0.00	7,090.00	0.00	N.A.	0.00
Wexford	200.00	0.00	30.00	979.74	0.00
Wicklow	0.00	0.00	0.00	N.A.	N.A.



**APPENDIX C PAYMENTS OUT OF THE COURT POOR  
BOX IN THE DISTRICT COURT AND  
CIRCUIT COURT (1999-2003)<sup>1</sup>**

<b>District Courts</b>	<b>1999 (£)</b>	<b>2000 (£)</b>	<b>2001 (£)</b>	<b>2002 (€)</b>	<b>2003 (€)</b>
Athlone	8,050.00	6,970.00	18,045.00	10,992.47	8,045. 03
Ballina	2,154.00	500.00	18,815.00	7,728.95	12,225.00
Ballinasloe	8,161.00	3,808.00	300.00	N.A.	7,875. 00
Bray	100.00	8,359.00	13,040.00	5,500.00	295.00
Carlow	38,385.00	39,771.00	41,906.00	46,094.50	16,690.00
Ck-on-Shn	670.00	258.00	0.00	0.00	0.00
Castlebar	3,130.00	6,045.00	13,916.31	17,386.12	15,610.00
Cavan	200.00	1,355.00	0.00	0.00	0.00
Clonakilty	N.A.	22,125.00	43,545.00	113,975. 33	144,858. 00
Clonmel	7,115.00	6,060.00	11,950.00	20,927.26	16,950.00
Cork	12,524.00	7,950.00	1,370.00	5,650.00	0.00
Derrynea	0.00	0.00	0.00	0.00	N.A.
Donegal	0.00	6,730.00	5,751.04	5,023.95	10,050.00

<sup>1</sup> It should be noted that the figures for 2003 are provisional. Details of payments made to the court poor box may not include details of “direct payments” made to charities at the direction of the Court.

Drogheda	3,500.00	800.00	2,800.00	3,950.00	2,000.00
Dundalk	3,071.00	3,084.00	3,532.89	2,925.00	5,328.49
Ennis	0.00	0.00	0.00	1,000.00	50.00
Fermoy	0.00	1,650.00	300.00	2,375.27	6,200.00
Galway	0.00	583.00	1,149.99	N.A.	0.00
Gorey	3,085.00	2,630.00	0.00	0.00	0.00
Kilkenny	5,450.00	6,229.00	3,775.00	5,432.00	150.00
Killarney	210.00	225.00	0.00	0.00	0.00
Letterkenny	0.00	0.00	0.00	0.00	9,145.00
Limerick	12,825.00	11,500.00	19,920.00	26,104.00	44,417.00
Listowel	1,808.50	300.00	3,350.00	3,021.95	1,030.00
Longford	5,052.85	4,027.00	4,886.81	10,502.28	1,841.99
Loughrea	4,745.00	50.00	3,683.00	9,430.00	2,650.00
Mallow	230.00	3,165.00	415.00	0.00	0.00
Monaghan	1,400.00	4,529.00	3,918.77	10,763.31	10,218.20
Mullin-gar	9,600.00	3,610.00	4,725.00	1,650.00	1,500.00
Naas	0.00	2,350.00	1,160.00	4,701.97	2,275.00
Nenagh	25,625.60	9,060.00	4,040.91	8,652.73	6,544.80
Portlaoise	41,859.20	38,700.00	5,950.00	15,185.23	15,000.00
Roscommon	3,050.00	260.00	1,065.00	600.00	900.00
Sligo	7,556.59	6,582.00	6,630.00	17,207.51	14,000.00
Swords	528.89	6,306.00	10,356.50	68,740.70	61,885.00
Thurles	11,365.00	9,450.00	6,000.00	7,956.97	12,145.00

Tralee	0.00	0.00	0.00	0.00	N.A.
Trim	50.00	0.00	600.00	0.00	5,000.00
Tuam	470.00	1,145.00	0.00	2,590.00	4,350.00
Tullamore	12,765.00	7,300.00	590.32	2,720.39	1,000.00
Waterford	8,200.00	7,420.00	6,220.00	N.A.	1,300.00
Wexford	400.00	8,800.00	5,420.00	5,300.00	16.00
Youghal	85.00	11,770.00	2,560.00	18,133.67	21,200.00
DMD Fines Office	79,702.96	137,084.00	230,000.00	380,569.59	478,381.34
DMD Dun Laoghaire	8,180.00	7,091.00	11,519.70	28,761.68	34,535.00
DMD - Children's Court	N.A.	N.A.	N.A.	N.A.	4,536.00

<b>Circuit Courts</b>	<b>1999 (£)</b>	<b>2000 (£)</b>	<b>2001 (£)</b>	<b>2002 (€)</b>	<b>2003 (€)</b>
Carlow	0.00	0.00	0.00	67.00	2,091.55
Ck-on-Shan	75.00	300.00	0.00	13,097.38	1,850.00
Castlebar	0.00	10,744.00	0.00	0.00	0.00
Cavan	0.00	0.00	0.00	2,800.00	0.00
Clonmel	0.00	175.00	0.00	16,745.65	0.00
Cork	0.00	0.00	0.00	N.A.	N.A.
Dublin	0.00	0.00	0.00	N.A.	N.A.
Dundalk	0.00	0.00	0.00	N.A.	N.A.
Ennis	0.00	0.00	0.00	1,000.00	0.00
Galway	5,500.00	4,250.00	3,450.00	N.A.	0.00
Kilkenny	1,300.00	0.00	0.00	350.00	0.00
Letterkenny	0.00	2,350.00	2,350.00	7,784.87	550.00
Limerick	0.00	0.00	0.00	N.A.	N.A.
Longford	0.00	0.00	0.00	N.A.	N.A.
Monaghan	600.00	200.00	200.00	2,100.00	0.00
Mullingar	580.00	0.00	0.00	N.A.	N.A.
Naas	0.00	0.00	0.00	N.A.	N.A.
Portlaoise	0.00	0.00	0.00	736.83	0.00
Roscommon	0.00	0.00	0.00	N.A.	N.A.
Sligo	0.00	0.00	0.00	N.A.	N.A.
Tralee	0.00	0.00	0.00	N.A.	N.A.

Trim	350.00	0.00	0.00	0.00	0.00
Tullamore	0.00	0.00	0.00	0.00	0.00
Waterford	0.00	7,090.00	7,420.00	N.A.	N.A.
Wexford	0.00	0.00	2,500.00	0.00	0.00
Wicklow	0.00	0.00	0.00	N.A.	N.A.



**APPENDIX D ORGANISATIONS WHICH BENEFITED  
FROM THE COURT POOR BOX FUNDS IN  
2002 (RANKED IN ORDER OF TOTAL  
VALUE OF PAYMENT)**

<b>Charitable Organisation</b>	<b>Total No. of Payments made to Org.</b>	<b>Total Value of Payments made to Org.</b>	<b>Average Payment made to Org.</b>
St Vincent de Paul	96	78,939.04	822.28
Sight Savers International	2	30,000.00	15,000.00
Garda Benevolent Fund	51	25,457.44	499.17
North West Hospice	34	24,031.13	706.80
Victim Support	10	14,597.79	1,459.78
Amnesty International	1	10,000.00	10,000.00
Concern	3	8,650.00	2,883.33
Goal	1	7,500.00	7,500.00
Trocaire	1	7,500.00	7,500.00
Fr Peter McVerry	14	6,770.00	483.57
Focus Ireland	10	6,750.00	675.00
Aidan C O'Sullivan Trust Fund	1	6,500.00	6,500.00
Swords Drug Awareness	10	6,190.00	619.00

Chernobyl Children's Project	2	6,000.00	3,000.00
John Paul Carnay Trust Fund	1	5,000.00	5,000.00
Merchant's Quay Project	4	4,974.74	1,243.69
Darndale Holiday Fund	13	4,925.00	378.85
Probation Welfare Service	17	4,772.73	280.75
Simon Community	14	4,612.76	329.48
Hope House Foxford	25	4,343.76	173.75
Irish Cancer Society	5	4,230.00	846.00
Down Syndrome Ireland	6	3,903.95	650.66
Aislinn Centre	2	3,869.74	1,934.87
Garda Welfare Service	1	3,000.00	3,000.00
Alone	5	2,987.90	597.58
Active Age	7	2,850.00	407.14
Kinsale Community Centre	3	2,650.00	883.33
Irish Wheelchair Association	5	2,564.49	512.90
Trust Charity	5	2,500.00	500.00
West Cork Youth Development Fund	1	2,500.00	2,500.00
Donegal Hospice	4	2,484.87	621.22
Alzheimers Association	6	2,400.00	400.00
Carlow Women's Aid	1	2,298.35	2,298.35
Poor Clare Convent	1	2,150.00	2,150.00

Balbriggan Drug Awareness	7	2,040.00	291.43
Ballinahassig Parish Fund	2	2,000.00	1,000.00
Friends of St Theresa's Hospice Movement	2	2,000.00	1,000.00
Special Olympics Ireland	2	2,000.00	1,000.00
Aureila Trust Fund	1	2,000.00	2,000.00
Samaritans	8	1,956.98	244.62
Rape Crisis Centre	2	1,934.86	967.43
Holy Family Centre	2	1,703.95	851.98
Rutland Centre	5	1,670.00	334.00
South Tipperary Hospice	2	1,500.00	750.00
Barnardos	1	1,500.00	1,500.00
Friends of Nenagh Hospital	1	1,500.00	1,500.00
NAPBS	1	1,500.00	1,500.00
Nenagh Mental Health Association	1	1,500.00	1,500.00
Wicklow Meals-on-wheels Committee	1	1,500.00	1,500.00
Cope Foundation	2	1,450.00	725.00
Kildare Carer's Association	1	1,434.96	1,434.96
Stop Drugs Now Campaign	1	1,431.74	1,431.74
Sunshine House	7	1,390.00	198.57
Capuchin Friary	1	1,380.00	1,380.00
Jack & Jill Foundation	5	1,350.00	270.00

Athlone Chernobyl Aid Project	1	1,300.00	1,300.00
Brothers of Charity – Barnmore	1	1,300.00	1,300.00
Fr Gerry Daly	1	1,300.00	1,300.00
Limerick Youth Service	1	1,300.00	1,300.00
Social Services Centre Limerick	1	1,300.00	1,300.00
Sr Conselio Limerick	1	1,300.00	1,300.00
St Gabriel’s School & Centre	1	1,300.00	1,300.00
Westmeath Hospice	1	1,300.00	1,300.00
Harold’s Cross Hospice (Our Lady’s)	5	1,250.00	250.00
Bandon Hyperbaric Charity Fund	1	1,250.00	1,250.00
Bantry Care for the Aged	1	1,250.00	1,250.00
Go Action West Cork	1	1,250.00	1,250.00
Irish Heart Foundation	1	1,250.00	1,250.00
Irish Red Cross Society	1	1,250.00	1,250.00
West Cork Pets Fund	1	1,250.00	1,250.00
St Catherine’s Social Services Centre	1	1,220.00	1,220.00
Aware	3	1,213.95	404.65
Nenagh Day Care Centre	2	1,200.00	600.00
Scoil Mhuire Ballymany	2	1,150.00	575.00
Zambia Relief Fund	5	1,055.00	211.00

Meals on Wheels	3	1,050.00	350.00
Tabor Lodge Treatment Centre	1	1,050.00	1,050.00
Cahercalla Hospice	4	1,000.00	250.00
Grow Community Mental House	2	1,000.00	500.00
North Tipperary Hospice	2	1,000.00	500.00
Ballyourney Community Alert	1	1,000.00	1,000.00
Bantry Inshore Rescue	1	1,000.00	1,000.00
Carrick on Suir – Neighbourhood Youth Project	1	1,000.00	1,000.00
Castletownbere Business Dev Assn	1	1,000.00	1,000.00
Cork Carer's Association	1	1,000.00	1,000.00
Cork Women Against Violence	1	1,000.00	1,000.00
Durrus Community Alert	1	1,000.00	1,000.00
Guardian Angel Pre-School	1	1,000.00	1,000.00
Macroom Neighbourhood Watch	1	1,000.00	1,000.00
St Vincent's School, Lismagry	1	1,000.00	1,000.00
The Cottage Lodge Lighthouse	1	1,000.00	1,000.00
Parent Line	1	826.97	826.97
Glencastle Special School	2	800.00	400.00

Adapt House	1	800.00	800.00
Corpus Christi School	1	800.00	800.00
Marymount Hospice	1	800.00	800.00
Milford Hospice	1	800.00	800.00
Mullingar Lion's Club	1	800.00	800.00
Carers Association	3	780.00	260.00
St Brigid's Hospice & Home Care	1	775.00	775.00
Irish Foster Care Association	2	750.00	375.00
ISPCA	2	750.00	375.00
Anchology Dept (Mid-Western Health Board)	1	750.00	750.00
Mid-West Hospitals Development Trust	1	750.00	750.00
Sr Consilio Cuan Mhuire	1	700.00	700.00
Irish Epilepsy Association	1	650.00	650.00
Lavanagh Centre	1	650.00	650.00
Ballyglass Life Boat	3	640.00	213.33
Lions Club – Dun Laoghaire	1	635.00	635.00
Mountain Rescue Team	1	634.87	634.87
Thurles Mental Health Association	1	626.97	626.97
Payments to needy individuals	5	612.50	122.50
Athlone Lions Club	1	600.00	600.00

Athlone Sub Aqua Club	1	600.00	600.00
Esker House Refuge Centre	1	600.00	600.00
Joe Farrell Community Worker	1	600.00	600.00
Martina Keogh Family Support Worker	1	600.00	600.00
Mayo Mountain Rescue	1	600.00	600.00
McAuley Pre-school	1	600.00	600.00
Moyross Development Fund	1	600.00	600.00
North Tipperary Community Services	1	600.00	600.00
Order of Malta	1	600.00	600.00
Rainbows	1	600.00	600.00
Sharon Murphy – Limerick	1	600.00	600.00
St Mary's Youth Ministry	1	600.00	600.00
Crosscare	2	575.00	287.50
Waterford Probation Residence	1	560.00	560.00
Ann Curley – Sponsor a Child Holiday Scheme	2	550.00	275.00
Irish Kidney Association	2	525.00	262.50
Francis B Taffe & Co	1	507.90	507.90
Refund on Appeal	1	507.90	507.90
Ballina Tidy Towns	2	500.00	250.00
Sligo Social Services	2	500.00	250.00

Athy Travellers Club	1	500.00	500.00
Carmelites	1	500.00	500.00
Colomban Missionary Sisters	1	500.00	500.00
Community Care SEHB	1	500.00	500.00
Donegal Protestant Orphan Society	1	500.00	500.00
Finbarr O'Brien	1	500.00	500.00
IHCPT (Nenagh Branch)	1	500.00	500.00
Irish Guide Dog Association	1	500.00	500.00
Jim Rhatigan – Limerick	1	500.00	500.00
Kilcrohane Community Alert	1	500.00	500.00
Life Line	1	500.00	500.00
Nenagh Lions Club	1	500.00	500.00
North West Parents and Friends of Mentally Handicapped	1	500.00	500.00
Protestant Aid	1	500.00	500.00
Ross Pioneer Total Abstinence Association	1	500.00	500.00
Schull & Dist Community Alert	1	500.00	500.00
Sick Poor Society – South Parish Cork	1	500.00	500.00
Southill Community Services	1	500.00	500.00

Sr Loyola O'Donovan Home Work Scheme	1	500.00	500.00
St John's Cathedral Refurbishment	1	500.00	500.00
St Lazarian's School	1	500.00	500.00
St Patrick's Missionary Society	1	500.00	500.00
St Raphael's Centre	1	500.00	500.00
Thurles Social Service	1	500.00	500.00
Tullamore Mental Health Association	1	500.00	500.00
Coolmine Therapeutic Comm	3	450.00	150.00
Muscular Dystrophy	2	450.00	225.00
Portroe Over 60's club	1	450.00	450.00
Kerry Diocesan Youth Service	1	401.95	401.95
Ballina Hospital	2	400.00	200.00
Crumlin Children's Hospital	2	400.00	200.00
Killybegs Hospital – x-ray unit	2	400.00	200.00
Aiseiri Treatment Centre	1	400.00	400.00
Cando Limited	1	400.00	400.00
Darndale / Belcamp New Life for Youth	1	400.00	400.00
Hospitaller Order of St John of God	1	400.00	400.00

IHCPT (Birr Branch)	1	400.00	400.00
Kinnity Care of the Elderly	1	400.00	400.00
New Ross Community Workshop	1	400.00	400.00
Our Lady of Fatima School	1	400.00	400.00
Rehab Foundation – Wexford	1	400.00	400.00
St Helen’s Family Resource Centre	1	400.00	400.00
St Patrick’s Special School	1	400.00	400.00
Western Care	1	400.00	400.00
Wexford Hospice Homecare	1	400.00	400.00
Wexford Lions Club	1	400.00	400.00
Carlow / Kilkenny Home Care Team	1	380.94	380.94
St Frances’ Welfare Home	1	375.00	375.00
St Carthage’s House Lismore, Co Waterford	1	363.49	363.49
ISPCC	1	356.00	356.00
National Council for the Blind	2	350.00	175.00
Carers Resource Centre	1	350.00	350.00
New Ross No-Name Club	1	350.00	350.00
Newtown Senior Citizens	1	350.00	350.00
St Kieran’s School	1	350.00	350.00

Carlow Tidy Towns Community	1	317.43	317.43
Sisters of Charity	1	317.43	317.43
Mayo Roscommon Hospice	3	300.00	100.00
BEAM	1	300.00	300.00
CARI Foundation	1	300.00	300.00
Catherine McAulay School	1	300.00	300.00
Cavan Hospice	1	300.00	300.00
Curlew Trust Ltd	1	300.00	300.00
Dundalk Arch Club	1	300.00	300.00
Granard Resource Centre	1	300.00	300.00
North Louth Hospice	1	300.00	300.00
West Waterford Hospice	1	296.78	296.78
New York Fire Fighters	1	253.95	253.95
Arthritis Foundation	1	250.00	250.00
Carlow Carers' Association	1	250.00	250.00
Friends of St Camilla's Hospital	1	250.00	250.00
Irish Pilgrimage Trust	1	250.00	250.00
Kileen Basketball Club	1	250.00	250.00
O'Dwyer's Cheshire Home	1	250.00	250.00
Secular Franciscan Order	1	250.00	250.00
West Offaly Partnership	1	250.00	250.00
Cuan Mhuire	2	200.00	100.00

Crumlin Children's Medical and Research Foundation	1	200.00	200.00
Donegal Women's Refuge	1	200.00	200.00
Medical Missionaries of Mary	1	200.00	200.00
Sgt JP Murphy – Limerick	1	200.00	200.00
Sr Emmanuel, St Fiacc House	1	200.00	200.00
Rights for the Elderly	1	170.39	170.39
Teach Tearminn, Women's Refuge	3	151.00	50.33
ACCORD	2	150.00	75.00
Cystic Fibrosis	1	150.00	150.00
Friends of Lourdes	1	150.00	150.00
Hanley Centre	1	150.00	150.00
Pat's Gift – c/o Limerick Prison	1	150.00	150.00
St Anne's Special School	1	150.00	150.00
Thurles Pregnancy Counselling Services	1	150.00	150.00
Tullamore Traveller Movement	1	150.00	150.00
Ark Project	1	127.00	127.00
Elizabeth Miller – Limerick	1	127.00	127.00
Angela Frokeun – Laligan	1	100.00	100.00
Bridget Byrnes – Limerick	1	100.00	100.00

Bridget O'Donoghue – Limerick	1	100.00	100.00
Cork Association for Autism	1	100.00	100.00
Doohoma School Band	1	100.00	100.00
Edel Reeves – Limerick	1	100.00	100.00
James Kelly – Limerick	1	100.00	100.00
Ken King Children Helping Children	1	100.00	100.00
Madeline Kelly – Limerick	1	100.00	100.00
Phyllis Reeres – Limerick	1	100.00	100.00
RSPCA	1	100.00	100.00
St Luke's Hospital	1	100.00	100.00
Susan Kelly – Limerick	1	100.00	100.00
Tom O'Connell – Limerick	1	100.00	100.00
Multiple Sclerosis Society	1	80.00	80.00
Ballina Festival	1	70.00	70.00

**APPENDIX E ORGANISATIONS WHICH BENEFITED  
FROM THE COURT POOR BOX FUNDS IN  
2003 (RANKED IN ORDER OF TOTAL  
VALUE OF PAYMENT)<sup>1</sup>**

<b>Charitable Organisation</b>	<b>Total No. of Payments to Org.</b>	<b>Total Value of Payments to Org.</b>	<b>Average Payment made to Org.</b>
St Vincent de Paul Society	430	159,629.03	371.23
Focus Ireland	37	120,773.49	3,264.15
Fr. McVerry, Centre	524	84,819.12	161.87
Victim Support	209	76,615.00	366.58
Sightsavers	2	67,000.00	33,500.00
Garda Benevolent Fund	138	46,888.34	339.77
Merchant Quay Drugs Project	55	27,705.00	503.73
Harolds Cross Hospice, Our Ladys Hospice	60	26,110.00	435.17
Guido Nasi Appeal	20	24,260.00	1,213.00
Dublin Simon Community	53	24,160.00	455.85
Chuaín Mhuire	18	20,467.50	1,137.08
Citywise	26	19,340.00	743.85
Special Olympics	38	18,466.24	485.95
Alone	138	16,170.00	117.17
Bridge Project	13	15,236.88	1,172.07
Ruhama Womens Project	38	15,050.00	396.05

<sup>1</sup> It should be noted that these figures are provisional. This Appendix may not include details of payments where the monies were paid directly to a particular charity at the direction of the Court.

Marist Rehabilitation Centre	14	13,750.00	982.14
Jack & Jill Foundation	34	13,064.00	384.24
Cuan Mhuire	15	11,500.00	766.67
Focus Extension	30	10,610.00	353.67
Donegal Hospice	37	9,945.00	268.78
Concern	4	9,500.00	2,375.00
Crumlin Childrens Hospital, Our Ladys	56	8,796.00	157.07
Trocaire	4	8,700.00	2,175.00
Goal	5	8,500.00	1,700.00
Alice Leahy Trust	74	8445.00	114.12
Temple Street Hospital	23	7,770.00	337.83
Aurelic Trust Fund	2	7,500.00	3,750.00
Boltar	1	7,500.00	7,500.00
North West Hospice	25	7,290.00	291.60
Community Project (An Garda Siochana)	12	7,080.00	590.00
Capuchin Fathers	21	5,510.00	262.38
Irish Cancer Society	10	5,210.00	521.00
Kerry Parents & Friends Assoc.	1	5,000.00	5,000.00
Muir O'Connell Trust Fund	1	5,000.00	5,000.00
Navan Rehab	1	5,000.00	5,000.00
Probation & Welfare Service	11	4,920.00	447.27
Accord	12	4800.00	400.00
Simon Community	11	4,325.00	393.18
Aware	4	4,250.00	1,062.50
An Halladubh	14	4,170.00	297.86
St. Cartages Home, Lismore	3	4,000.00	1,333.33
Cavan Hospice	15	3,910.00	260.67
The Samaritans	8	3,700.00	462.50
Sligo Social Services	10	3,585.00	358.50
Guide Dogs for the Blind	9	3,450.00	383.33
Tabor Lodge	5	3,320.00	664.00

O'Devaney Gardens Project	8	3,210.00	401.25
Stop Drugs Now (Cork)	6	3,160.00	526.67
St. Marys Club	11	3,080.00	280.00
Irish Heart Foundation	1	3,000.00	3,000.00
ISPCA	5	3,000.00	600.00
Alzheimers Society	11	2,950.00	268.18
Hope House Foxford	12	2,900.00	241.67
Holy Family School, Coothehill	6	2,770.00	461.67
Irish Wheelchair Association	6	2,750.00	458.33
ISPCC	6	2,550.00	425.00
Poor Clare Sisters	3	2,500.00	833.33
The Wilderness Youth & Community Centre	1	2,500.00	2,500.00
Bond Project	5	2,300.00	460.00
Parentline	4	2,250.00	562.50
Stoneybatter & Areas Service (Senior Citizens)	9	2,250.00	250.00
Threshold	8	2,150.00	268.75
Mayo Roscommon Hospice	3	2,050.00	683.33
Drogheda Garda Senior Citizens Xmas Party	1	2,000.00	2,000.00
Kilcrahe Community Alert	2	2,000.00	1,000.00
Dorset Street Project	3	1,950.00	650.00
Balbriggan Drug Awareness	7	1,900.00	271.43
Rape Crisis Centre	6	1,900.00	316.67
Active 8	9	1,850.00	205.56
Motor Neurone Disease Fund	4	1,850.00	462.50
Harristown House Fund	2	1,800.00	900.00
C.O.F.F.A.	2	1,750.00	875.00
Travellers Support Group	2	1,750.00	875.00
Veritas	1	1,700.00	1,700.00
The Carers Association	3	1,650.00	550.00
Homeless Girls Society Ltd	14	1,550.00	110.71

R.N.L.I. Ireland	4	1,550.00	387.50
G.R.O.W.	2	1,500.00	750.00
Guardian Angel Pre School	1	1,500.00	1,500.00
Honan Home	1	1,500.00	1,500.00
Lavanagh Centre	1	1,500.00	1,500.00
Trust Charity	2	1,500.00	750.00
Wheelchair Assoc	2	1,500.00	750.00
Salvation Army	3	1,490.00	496.67
Kilimanjaro Climbers Fund	1	1,450.00	1,450.00
Sunshine Homes	3	1,450.00	483.33
St. Christopher's Hospice	7	1,420.00	202.86
Mountpellier	6	1,380.00	230.00
Chernobyl Children's Appeal	2	1,300.00	650.00
St. Michaels CBS (House)	2	1,300.00	650.00
Bandon Charitable Trust	1	1,250.00	1,250.00
Bantry Care for the Aged	1	1,250.00	1,250.00
Co-Action West Cork	1	1,250.00	1,250.00
Irish Red Cross	1	1,250.00	1,250.00
West Cork Peto Fund	1	1,250.00	1,250.00
Alcoholics Anonymous	8	1245.00	155.63
Dun Laoghaire Lions Club	2	1,235.00	617.50
Anna Liffey Drug Project	1	1,200.00	1,200.00
Cheshire House	2	1,200.00	600.00
Barnardos	3	1,195.00	398.33
Ballinasloe Junction Project	1	1,175.00	1,175.00
Aisling Clinic, Crumlin	3	1,150.00	383.33
Multiple Sclerosis Society	2	1,150.00	575.00
St. Lukes Hospital	3	1,150.00	383.33
Ballymun Charities	2	1,100.00	550.00
Order of Malta Ambulance Corps.	4	1,100.00	275.00
Downs Syndrome Association	4	1,050.00	262.50

Loughrea SVDP	2	1,050.00	525.00
Whiteoaks Rehabilitation Centre	5	1,050.00	210.00
Irish Kidney Association	3	1,015.00	338.33
Aid Cancer Treatment Fund	1	1000.00	1000.00
Amnesty International	1	1,000.00	1,000.00
Ballinasloe Lions Club	1	1,000.00	1,000.00
Bandon Youth Project	1	1,000.00	1,000.00
Belarus Project	1	1,000.00	1,000.00
Bluebell Summer Project	2	1,000.00	500.00
Caheragh Community Alert	1	1,000.00	1,000.00
Carrick-on-Suir Neighbourhood Youth Project	1	1,000.00	1,000.00
Cois Abhann, Youghal	1	1,000.00	1,000.00
Cope Foundation Clonakilty	1	1,000.00	1,000.00
Cork Spina Bifida	1	1,000.00	1,000.00
Cuan Saor Women's Refuge	1	1,000.00	1,000.00
Focus Outreach	10	1,000.00	100.00
Gallowglass Theatre Company	1	1,000.00	1,000.00
Holy Family Boys National School	1	1,000.00	1,000.00
Mercy Sisters	1	1,000.00	1,000.00
Nenagh Day Care Centre	1	1,000.00	1,000.00
Nenagh Mental Health Assoc	1	1,000.00	1,000.00
Nenagh Tipperary Community Services	2	1,000.00	500.00
Rehab Foundation	1	1,000.00	1,000.00
Rivermount Summer Project	1	1,000.00	1,000.00
Security of the Elderly	2	1,000.00	500.00
SEHB Social Work Team	1	1,000.00	1,000.00
Sesame Pre-School, Dungarvan	1	1,000.00	1,000.00
Skibbereen Geriatrics Society	1	1,000.00	1,000.00

Social Innovations	1	1,000.00	1,000.00
South Tipperary Hospice	1	1,000.00	1,000.00
Store Street Old Folks Centre	2	1,000.00	500.00
St. John of Gods Organisation	1	1,000.00	1,000.00
St. Theresa's Hospice, Clogheen	1	1,000.00	1,000.00
The Lalor Centre, Baltinglass	1	1,000.00	1,000.00
Youth Initiative	1	1,000.00	1,000.00
West Waterford Hospice	1	1,000.00	1,000.00
Youghal Hospice	1	1,000.00	1,000.00
Youth Development Fund	1	1,000.00	1,000.00
Tallaght Area	2	984.00	492.00
St. Aidans Boxing Club	1	950.00	950.00
St. Marks Scouts	1	950.00	950.00
Dun Laoghaire Community Workshops	1	930.00	930.00
Barrettstown Gang	1	900.00	900.00
Nenagh Lions Club	1	894.80	894.80
St Vincents National School	6	815.00	135.83
Crosscare Aftercare	2	800.00	400.00
Diabetes Federation of Ireland	4	800.00	200.00
Gardai - North Central Division	1	800.00	800.00
Laois MABS	2	800.00	400.00
McAuley Pre School	1	800.00	800.00
North Central Division Charities	1	800.00	800.00
O'Dwyer Cheshire Home	1	800.00	800.00
Pearse Street Project	1	800.00	800.00
Presentation Sisters, Portlaoise	1	800.00	800.00
Scoil Christ Ri	1	800.00	800.00
Unicef Ireland	2	800.00	400.00
Alona Centre - Dun Laoghaire	2	750.00	375.00
Headway Ireland	2	750.00	375.00

IHCPT	2	750.00	375.00
Irish Carers Association	1	750.00	750.00
Mayo Mountain rescue	1	750.00	750.00
Caramona Services (St John of God)	1	700.00	700.00
Hanley Centre	3	700.00	233.33
Kerrigan Family Appeal Fund	1	700.00	700.00
Meals on Wheels	3	700.00	233.33
Rutland Centre	5	680.00	136.00
Carers Association	2	650.00	325.00
Fan Project	4	650.00	162.50
North Tipp Hospice	1	650.00	650.00
Spina Bifida Assoc	1	650.00	650.00
Thurles Lions Club	1	650.00	650.00
Thurles Social Services	1	650.00	650.00
Western Care Association	3	650.00	216.67
Athlone Chernobyl Aid Fund	1	600.00	600.00
Athlone Lions Club	1	600.00	600.00
Athlone Sub Aqua	1	600.00	600.00
Ballyraggett/Ballyousskill Invalid Fund	1	600.00	600.00
Portarlinton Senior Citizens	1	600.00	600.00
Rathiniskas NS- Parents Council	1	600.00	600.00
Stepping Out Programme	1	600.00	600.00
Westmeath Hospice	1	600.00	600.00
Galway Hospice	4	570.00	
Cardonagh Hospital	4	550.00	137.50
Coolmine Drugs Centre	2	550.00	275.00
Enable Ireland	2	550.00	275.00
Friends of Sacred Heart Hospital	1	550.00	550.00
Holy Angels Day Care Centre	2	550.00	275.00
Sr Stanislaus, Stanhophe Centre	3	525.00	175.00

Monaghan Neighbourhood Youth Project	5	522.70	104.54
Abode	1	500.00	500.00
Ascend	1	500.00	500.00
Athy Town AFC	1	500.00	500.00
Bow Lane	1	500.00	500.00
Brainwave (Irish Epilepsy Assoc)	3	500.00	166.67
Cappagh Hospital - Day Centre	1	500.00	500.00
Care of Survivors of Torture	1	500.00	500.00
Carlow Network on Violence against women	1	500.00	500.00
Childrens Holiday Fund	1	500.00	500.00
Clondalkin Carers Association	1	500.00	500.00
Colbumben Missionary Sisters	1	500.00	500.00
Community Mediation Works	1	500.00	500.00
Cope Foundation Maroon	1	500.00	500.00
Finglas Youth Service	1	500.00	500.00
Garda Motorcycle Club	1	500.00	500.00
Lisdel House, Swords	1	500.00	500.00
Laois Diabetic Association	1	500.00	500.00
Laois Down Syndrome Association	1	500.00	500.00
Lourdes Day Care Centre	1	500.00	500.00
Loughrea Lions Club Food Appeal	1	500.00	500.00
Mary McLoughlin Family Support	1	500.00	500.00
National Parks & Wildlife Service	1	500.00	500.00
New Day Counselling Service	1	500.00	500.00
Portroe Over 60's Club	1	500.00	500.00
Prevention of Cruelty to Animals. Laois	1	500.00	500.00

Raheen Senior Citizens	1	500.00	500.00
St. Andrews Boxing Club	1	500.00	500.00
St. Angus School	1	500.00	500.00
St. Brigids AFC	1	500.00	500.00
St. Cecelias School	1	500.00	500.00
St. Christophers School, Longford	1	500.00	500.00
St. Francis Hospice	1	500.00	500.00
St. James Camino Network	1	500.00	500.00
St. Josephs Accordion Band	1	500.00	500.00
St. Patricks Missionary Society	1	500.00	500.00
The Carmelites	1	500.00	500.00
Carrigaline Youth Club	1	450.00	450.00
Castlebar Tidy Towns	1	450.00	450.00
Donegal Special Olympics	2	450.00	225.00
Educational Trust Fund	2	403.00	201.50
Amen	1	400.00	400.00
Cari Foundation	1	400.00	400.00
Darndale Children's Fund	1	400.00	400.00
Foster Parents Group (Portlaoise)	1	400.00	400.00
Kinnitty Care of the Aged	1	400.00	400.00
Newtown Senior Citizens	1	400.00	400.00
Open Door	1	400.00	400.00
Ossory Youth, Kilkenny	1	400.00	400.00
Portlaoise Senior Citizens	1	400.00	400.00
Irish Guide Dogs for the Blind	2	350.00	175.00
North Louth Hospice	2	350.00	175.00
Raheny Hospice	3	350.00	116.67
Wicklow Challenge	2	340.00	170.00
Abbeyleix Women's Group	1	300.00	300.00
Achill Life Boat	1	300.00	300.00
Arch Project	1	300.00	300.00

Arva Hall Committee	1	300.00	300.00
Borrisokane SVDP	1	300.00	300.00
Carlow Womens Aid	2	300.00	150.00
Carrick-on-Shannon Youth Project	1	300.00	300.00
Cystic Fibrosis Assoc.	1	300.00	
Portumna SVDP	1	300.00	300.00
Rainbows	1	300.00	300.00
Sligo Diabetics Assoc.	1	300.00	300.00
Special Needs Home Bundoran	1	300.00	300.00
The Elderly	2	300.00	150.00
Western Alzheimers Foundation	1	300.00	300.00
Womens Aid	1	300.00	300.00
Friends of St. Ita's Community Hospital	1	280.00	280.00
Monaghan Senior Citizen Group	1	275.00	275.00
Candle Community	1	250.00	250.00
Carlow Suicide Bereavement Group	1	250.00	250.00
Castledermot Community Services	1	250.00	250.00
Cavan Monaghan Community Services	1	250.00	250.00
Medical Research Fund	1	250.00	250.00
Stewards Foundation Ltd	1	250.00	250.00
St. John's Ambulance Brigade	1	250.00	250.00
Travellers Club, Athy	1	250.00	250.00
Stanhope Centre	1	240.00	240.00
Castleblayney Cancer Society	1	210.00	210.00
Birr Lions Club	1	200.00	200.00
Buncrana Community Playgroup	1	200.00	200.00
Cedar House	1	200.00	200.00
Childrens Medical Research	1	200.00	200.00
Dochas	1	200.00	200.00

Irish Sudden Infant Death Association	1	200.00	200.00
Keel Day Care Centre	3	200.00	66.67
Nelson Trust	1	200.00	200.00
Marymount Hospice	1	200.00	200.00
Miltown Respite Care Centre	1	200.00	200.00
Monaghan Addiction Resource Centre	2	200.00	100.00
Muscular dystrophy	2	200.00	100.00
North West Cancer Support Group	1	200.00	200.00
Venture Scouts	1	200.00	200.00
Cloncollig Celtic	1	175.00	175.00
Foroige (Tullamore)	1	175.00	175.00
The Cavan Centre	1	175.00	175.00
The Irish Pilgrimage Trust	1	175.00	175.00
Tullamore Schoolboys Soccer Club	1	175.00	175.00
Aids Help North West	1	150.00	150.00
Cats & Dogs Home	1	150.00	150.00
Crumlin Cancer Research	1	150.00	150.00
Galway Branch RSPCA	1	150.00	150.00
St. Claires Pre-School	1	150.00	150.00
Ballymun Drugs T.K.	1	105.00	105.00
Abbey Street Hostel	1	100.00	100.00
Access For Disabled	1	100.00	100.00
Convent of Mercy Granard	1	100.00	100.00
Drugs Treatment Centre	1	100.00	100.00
Friends of Nenagh Hospital	1	100.00	100.00
Hope Foundation	1	100.00	100.00
Russia	1	100.00	100.00
Sancta Maria House	1	100.00	100.00
Sgt.Murphy.xm	1	100.00	100.00
St Catherines Community Services Centre	1	100.00	100.00
St. Francis School	1	100.00	100.00

The McVerry Charity	1	100.00	100.00
Village Project	1	100.00	100.00
Walter Stevenson	1	100.00	100.00
Bay Project	1	50.00	50.00
Cahervalla Hospice	1	50.00	50.00
Neighbourhood Youth Project	1	50.00	50.00
NRS Association	1	50.00	50.00
Sligo Mentally Handicapped Assoc	1	50.00	50.00



**APPENDIX F LIST OF LAW REFORM COMMISSION  
PUBLICATIONS**

First Programme for Examination of Certain Branches of the Law with a View to their Reform (December 1976) (Prl 5984)	€0.13
Working Paper No 1-1977, The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises (June 1977)	€1.40
Working Paper No 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (November 1977)	€1.27
Working Paper No 3-1977, Civil Liability for Animals (November 1977)	€3.17
First (Annual) Report (1977) (Prl 6961)	€0.51
Working Paper No 4-1978, The Law Relating to Breach of Promise of Marriage (November 1978)	€1.27
Working Paper No 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse (December 1978)	€1.27

Working Paper No 6-1979, The Law Relating to Seduction and the Enticement and Harboring of a Child (February 1979)	€1.90
Working Paper No 7-1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979)	€1.27
Working Paper No 8-1979, Judicial Review of Administrative Action: the Problem of Remedies (December 1979)	€1.90
Second (Annual) Report (1978/79) (Prl 8855)	€0.95
Working Paper No 9-1980, The Rule Against Hearsay (April 1980)	€2.54
Third (Annual) Report (1980) (Prl 9733)	€0.95
First Report on Family Law - Criminal Conversation, Enticement and Harboring of a Spouse or Child, Loss of Consortium, Personal Injury to a Child, Seduction of a Child, Matrimonial Property and Breach of Promise of Marriage (LRC 1-1981) (March 1981)	€2.54
Working Paper No 10-1981, Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (September 1981)	€2.22
Fourth (Annual) Report (1981) (Pl 742)	€0.95

Report on Civil Liability for Animals (LRC 2-1982) (May 1982)	€1.27
Report on Defective Premises (LRC 3-1982) (May 1982)	€1.27
Report on Illegitimacy (LRC 4-1982) (September 1982)	€4.44
Fifth (Annual) Report (1982) (PI 1795)	€0.95
Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) (April 1983)	€1.90
Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983) (November 1983)	€1.27
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) (December 1983)	€1.90
Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983) (December 1983)	€3.81
Sixth (Annual) Report (1983) (PI 2622)	€1.27
Report on Nullity of Marriage (LRC 9-1984) (October 1984)	€4.44
Working Paper No 11-1984, Recognition of Foreign Divorces and Legal Separations (October 1984)	€2.54

Seventh (Annual) Report (1984) (PI 3313)	€1.27
Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) (April 1985)	€1.27
Report on Vagrancy and Related Offences (LRC 11-1985) (June 1985)	€3.81
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters (LRC 12-1985) (June 1985)	€2.54
Report on Competence and Compellability of Spouses as Witnesses (LRC 13-1985) (July 1985)	€3.17
Report on Offences Under the Dublin Police Acts and Related Offences (LRC 14-1985) (July 1985)	€3.17
Report on Minors' Contracts (LRC 15-1985) (August 1985)	€4.44
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Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors (LRC 17- 1985) (September 1985)	€3.81
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Consultation Paper on Rape (December 1987)	€7.62
Report on the Service of Documents Abroad re Civil Proceedings -the Hague Convention (LRC 22-1987) (December 1987)	€2.54
Report on Receiving Stolen Property (LRC 23-1987) (December 1987)	€8.89
Ninth (Annual) Report (1986-1987) (PI 5625)	€1.90
Report on Rape and Allied Offences (LRC 24-1988) (May 1988)	€3.81

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Tenth (Annual) Report (1988) (PI 6542)	€1.90
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Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney (LRC 31-1989) (October 1989)	€5.08
Eleventh (Annual) Report (1989) (PI 7448)	€1.90
Report on Child Sexual Abuse (LRC 32-1990) (September 1990)	€8.89

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Consultation Paper on Contempt of Court (July 1991)	€25.39
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Report on the Civil Law of Defamation (LRC 38-1991) (December 1991)	€8.89

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Thirteenth (Annual) Report (1991) (PI 9214)	€2.54
Report on the Crime of Libel (LRC 41-1991) (December 1991)	€5.08
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Consultation Paper on Aggravated, Exemplary and Restitutionary Damages (May 1998)	€19.05
Nineteenth (Annual) Report (1997) (PN 6218)	€3.81
Report on Privacy: Surveillance and the Interception of Communications (LRC 57-1998) (June 1998)	€25.39
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Consultation Paper on the Statutes of Limitation: Claims in Contract and Tort in Respect of Latent Damage (Other Than Personal Injury) (November 1998)	€6.35
Twentieth (Annual) Report (1998) (PN 7471)	€3.81
Consultation Paper on Statutory Drafting and Interpretation: <i>Plain Language and the Law</i> (LRC CP14-1999) (July 1999)	€7.62
Consultation Paper on Section 2 of the Civil Liability ( <i>Amendment</i> ) Act, 1964: <i>The Deductibility of Collateral Benefits from Awards of Damages</i> (LRC CP15-1999) (August 1999)	€9.52
Report on Gazumping (LRC 59-1999) (October 1999)	€6.35
Twenty First (Annual) Report (1999) (PN 8643)	€3.81
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