

Summary Justice Reform
Thematic Report on the Use of
Compensation Offers and Combined
Fiscal Fines and Compensation Offers

February 2010

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Chapter 1

Introduction

- 1.1 The Inspectorate of Prosecution in Scotland (IPS) was created in December 2003. It is the independent inspectorate for the Crown Office and Procurator Fiscal Service (COPFS), which is the sole prosecuting authority in Scotland and also responsible for investigating sudden deaths and complaints of a criminal nature against the police. The Inspectorate was put on a statutory basis by the Criminal Proceedings etc (Reform) (Scotland) Act 2007, Part 5 (sections 78 and 79) and given statutory powers and responsibilities.

- 1.2 The principal functions of the Inspectorate of Prosecution in Scotland are to inspect, or arrange for the inspection of, the operation of the Crown Office and Procurator Fiscal Service and to report to the Lord Advocate on any matter connected with the operation of the Crown Office and Procurator Fiscal Service which the Lord Advocate refers to the IPS. The overall aim is to contribute to improvements in service delivery of the Crown Office and Procurator Fiscal Service, contribute to the accountability of the Crown Office and Procurator Fiscal Service and enhance public confidence in the system of public prosecution in Scotland.

- 1.3 The IPS carries out wide ranging inspections of the 11 separate Areas of the Crown Office and Procurator Fiscal Service in Scotland together with Crown Office (Headquarters) functions. In addition it carries out thematic works either singly or more commonly in conjunction with criminal justice partners.

- 1.4 The IPS is committed to observing agreed policy on the principles of inspection including taking a customer focus, pursuing the purpose of improvement, being evidence based and publishing all reports.
- 1.5 This is the eighth thematic report prepared by the Inspectorate.
- 1.6 All reports can be viewed on the Inspectorate's website at www.scotland.gov.uk/topics/justice/ipis.
- 1.7 In common with current thinking on inspection the Inspectorate of Prosecution in Scotland takes a risk based approach to choice of topics. Summary Justice Reform generally represented a major change in the criminal justice system and enhanced powers to Procurators Fiscal to issue Fiscal Fines, Compensation Offers etc was identified as a suitable topic for consideration once the system had bedded in. Accordingly this became part of the IPS's Business Plan.
- 1.8 Following media and other concerns about the issue of Fiscal Fines we published in February 2009 a thematic report on the use of Fiscal Fines.
- 1.9 This report is a follow up from that dealing with powers given to the Procurator Fiscal Service to issue combined Fiscal Fines and Compensation Offers and stand alone Compensation Offers.



JOSEPH T O'DONNELL
HM CHIEF INSPECTOR OF PROSECUTION
February 2010

Chapter 2

Methodology

- 2.1 Policy and guidance material relating to the issue of Fiscal Fines and Compensation Offers was accessed and reviewed. The guidance remains confidential but the Inspectorate of Prosecution in Scotland has access to it. A questionnaire was devised that addressed various aspects of the issue of Compensation Offers and combined Fiscal Fine and Compensation Offers including compliance with the in-house guidance and the results were analysed.
- 2.2 The Inspectorate of Prosecution in Scotland takes an evidence based approach to the work and the methodology used in this inspection was strongly evidence based. A random selection of Compensation Offers and combined Fiscal Fine and Compensation Offers was selected from each of the 11 Crown Office and Procurator Fiscal Service Areas in Scotland. These were cases recorded in the Crown Office and Procurator Fiscal Service IT system in September 2008 and May 2009. This meant that in practice (from September 2008) 6 months had elapsed from the commencement of the new powers and 14 months in relation to the cases examined in May 2009.
- 2.3 The cases were picked by the Inspectorate Team to cover all the available levels of Compensation Offer and combined offer (ie combined Fiscal Fine and Compensation Offer). A table is produced for each of the Areas showing the number and levels of cases examined.
- 2.4 In total about 270 cases were examined which were recorded in May 2009. An earlier sample of 240 Compensation Offers and Combined Offers looked at the data from September 2008. The report concentrates on the most recent sample of 270 cases. However,

examination of the two sets of data shows that the issues thrown up in the recent sample reflect the issues from the earlier sample. Cases examined in May 2009 represent about 75% of the cases issued that month.

- 2.5 The sample size although reasonably large is not held out to be statistically relevant but large enough to get an indication of the type of decisions made across the country and detect any emerging issues about compliance with the guidance.
- 2.6 In addition the Inspectorate team had previously attended much of the training on Summary Justice Reform offered by the Scottish Prosecution College in Glasgow and we are again grateful to the college for facilitating this. A form of recording was devised to ensure that all inspectors doing this type of work covered the same issues as far as possible. In particular any apparent deviation from the guidance was noted.
- 2.7 Any cases identified as "apparent" breaches of policy or guidance were then taken up with the issuing office for any comments they had. The substance of the replies is now contained in the body of this report.
- 2.8 We would like to thank the members of the Crown Office and Procurator Fiscal Service staff and others who responded to our various requests for information.

Chapter 3

Background

- 3.1 Copious volumes over the years have been written about the purposes of the criminal justice system and in particular what the objectives of sentencing should be.
- 3.2 Currently Crown Office & Procurator Fiscal Service guidance indicates that there are 7 sentencing objectives consisting of one or more of the following:-
1. Restitution
 2. Rehabilitation
 3. Incapacitation
 4. Denunciation
 5. Retribution
 6. Deterrence (personal)
 7. Deterrence (community)
- 3.3 In any particular case there may of course be more than one sentencing objective.
- 3.4 The new "Direct Measures" available to prosecutors introduced by the 2007 Criminal Proceedings etc (Reform) (Scotland) Act gave enhanced powers to prosecutors to issue Fiscal Fines and also Compensation Offers or a combination of both.
- 3.5 This is the latest attempt to factor in compensation or restitution to the system. Prior to 1980 the only way a court could deal with restitution or compensation was to defer sentence on an accused to enable repayment to be made or other restitution to be effected. If this were done then the sentence would be adjusted accordingly. Alternatively if probation

was competent then with the offender's consent there could be a condition of probation that the offender pay a fixed sum if necessary by instalments to the victim of the crime.

3.6 During the late 1970s there was increasing dissatisfaction with this system. The only additional remedy for someone suffering loss would be to raise a civil action against the accused which could be costly and time consuming.

3.7 This was linked with growing concerns that the victims of crime were not at the centre of processes involved in the criminal law. At the same time there was a substantial increase in the number of criminal prosecutions with an apparent emphasis on the offender rather than the victim.

3.8 This led to the creation of a committee under the Chairmanship of Lord Dunpark in 1977 whose remit was 'to examine reparation by the offender to the victim in Scotland and, in particular, whether there should be statutory provision empowering Scottish criminal courts to order the making of such reparation following conviction'. Lord Dunpark reported with his recommendations in July 1977. The report canvassed the various approaches to the problem about giving criminal courts power to order compensation to victims. The main recommendation of Lord Dunpark's committee was that all criminal courts in Scotland should have a discretionary power when sentencing someone to order that person to pay such sum of money that seems appropriate in the circumstances as compensation for any personal injury loss or damage sustained'.

3.9 This recommendation was largely implemented by Section 58 of the Criminal Justice (Scotland) Act 1980 with limits set depending on whether the proceedings were solemn or summary and whether in the Sheriff or District Court.

- 3.10 Following implementation of the 1980 Act Procurators Fiscal were encouraged to place relevant details before sentencing courts and forms were devised to be sent by the prosecutor to the victim which would show (preferably with receipts) the amount of loss or damage caused and these would then be laid before the court prior to sentencing being effected.
- 3.11 At this time the prosecutor had no power to directly order compensation by an accused person to a victim. The only exception to that would be very informal arrangements. Reparation could be made with a view to the prosecutor taking that into consideration as to whether to commence proceedings or not. There were some schemes run by some agencies who could mediate and provide information on repayment as part of a reconciliation process.
- 3.12 Implementation of these powers available to the court was somewhat patchy and the obtaining of information from victims by the prosecutor gradually fell into general non-use for a variety of reasons.
- 3.13 As we noted in our previous report Fiscal Fines were introduced in 1987 but previous Crown Office guidance on the issue of these precluded their use if it was thought that compensation should form all or part of the appropriate court disposal because there was no authority at that time for the Procurator Fiscal to seek compensation as well as offering a financial penalty.
- 3.14 In November 2001 the then Minister for Justice, Jim Wallace, created a committee under the Chairmanship of Sheriff Principal McInnes to review Summary Justice in Scotland. The formal remit of the committee included 'making recommendations for the more efficient and effective delivery of summary justice in Scotland'.

- 3.15 The McInnes Committee in its report in January 2004 as part of its consideration of alternatives to prosecution looked at the possibility of creating Fiscal Compensation Offers. It noted that in 2001 Compensation Orders were imposed by courts in only 4% of cases proved in the Sheriff Summary Court, 7% in the District Court and 1% in the Stipendiary Magistrates Court. Statistics obtained for the Committee showed there were just over 1,000 summary cases a year where the main penalty was a Compensation Order and the Committee felt that many of these would be suitable for Fiscal Compensation Offers. In addition there were some 5,000 cases where a Compensation Order was additional to the main sentence and it felt that a large number of these could be dealt with by way of a combination of Fiscal Fine and Fiscal Compensation Offer. Finally it noted that there were around 15,000 cases of simple assault, shoplifting, vandalism and other property offences which were dealt with by fine where a Compensation Offer might have been appropriate. It noted the courts imposed compensation in only 44% of all vandalism cases.
- 3.16 Evidence gathered by the committee showed support for Fiscal Compensation Offers in the arena of vandalism and shoplifting but not for physical injuries arising from assault. There was however a view that compensation offers for assault could be supported by the issue of appropriate and sensitive prosecution guidelines.
- 3.17 The committee noted that the then law contained in Section 250 of the Criminal Procedure (Scotland) Act 1995 required a court to prefer a Compensation Order where both a Compensation Order and a fine might be appropriate but the offender was thought to have insufficient means to pay both. The committee recommended that a similar approach be taken by prosecutors in the issue of Fiscal Fines and Fiscal Compensation Offers. The committee also recommended an extension to the types of

offending behaviour which could be covered by Compensation Orders both by courts and by the prosecutor including cases where loss was not immediately quantifiable. The committee noted that to achieve consistency clear guidance to Procurators Fiscal would be important. Interestingly the committee did not think there should be any upper limit on Fiscal Compensation Offers.

3.18 The committee therefore recommended that a Procurator Fiscal should be able, in conjunction with or separate from a Fiscal Fine, to issue a Compensation Offer to an alleged offender and that guidelines on the use of Compensation Offers should be produced and that these guidelines should, as far as possible, be publicly available. A Compensation Offer was to be preferred where an offender's means were insufficient to pay both a Fiscal Fine and a Compensation Offer.

3.19 The government consulted widely on the recommendations of the McInnes report following its publication and in March 2005 published its response under the banner of Smarter Justice, Safer Communities, Summary Justice Reform Next Steps. The response outlined opinions on the proposals in relation to Fiscal Fines and Compensation Offers but indicated that the Fiscal Compensation Offers proposed by the committee should be introduced with an upper limit on their use equivalent to the Level 5 of the scale of summary fines which at that time was £5,000. The government accepted that Fiscal Compensation Offers should be available both for cases where quantifiable loss had been established and where the victim had been subjected to frightening, distressing or annoying behaviour or behaviour which could cause nuisance or anxiety. In particular as noted in our report on Fiscal Fines a system of presumed opt in was indicated, ie upon receipt of a Fiscal Fine or Fiscal Compensation Offer the accused would have to take positive steps to indicate if he or she would rather have a court hearing than pay the penalty. In addition prosecutors would be allowed to

provide details of previously accepted Fiscal Fines or Compensation Offers in any subsequent court conviction but only for a period of 2 years following their offer.

3.20 These accepted recommendations were implemented by Section 50 of The Criminal Proceedings etc (Reform) (Scotland) Act 2007 which introduced new provisions into the 1995 Criminal Proceedings Act.

3.21 During the passage of the Bill through Parliament various objections were made in particular -

- That the Procurator Fiscal would be both prosecutor and judge/sentencer
- That full facts about the offence or offender's circumstances might not be known
- It would be a secret system with justice not seen to be done at the very time when courts were being encouraged to be much more open in sentencing policy
- Victims and the public would not see the outcome

3.22 Several of these concerns were debated in the Scottish Parliament at the time of the Justice 1 Committee Report on the then Bill (May 2006). In particular there was concern expressed about the difficulty of assessing human distress.

3.23 The then Solicitor General responded to those concerns in 2006 and assured the committee that Compensation Offers for assault would be supported by guidance and prosecutors would use their experience to assess the level of compensation. Crown Office and Procurator Fiscal Service officials confirmed that detailed work on the operation of Compensation Offers was being undertaken and that detailed guidance would be provided to prosecutors particularly on their use for offences of violence.

Chapter 4

Implementation by Crown Office and Procurator Fiscal Service

- 4.1 Section 50 of the 2007 Act was brought into force on 10 March 2008. In the event it provided that a Compensation Offer or a combined Fiscal Fine and Compensation Offer could be offered by a Procurator Fiscal for any relevant offence which was defined as an offence which could be tried summarily and for which a court could competently make a Compensation Order. The Act provides that if a Compensation Offer is accepted no prosecution can take place and no conviction will be recorded. A maximum sum for compensation (of the prescribed sum of £5,000) was imposed.
- 4.2 Prior to the coming into force of the Act an extensive training programme was rolled out by Crown Office and Procurator Fiscal Service in the then newly opened Scottish Prosecution College in Glasgow. As stated in our report on Fiscal Fines staff involved in the decision making process were initially targeted for this training which was wide ranging and covered practical exercises as well as theory. Initially 410 staff were trained between January and March 2008.
- 4.3 Policy and guidance was issued on the use of Fiscal Fines and Compensation Offers but remains confidential as the Lord Advocate considered that it would not be appropriate to issue the guidance into the public domain as there was a danger that accused persons might tailor their behaviour accordingly (Justice 1, May 2006).
- 4.4 Nevertheless the Law Officers have made as much information as possible public and in particular to the Scottish Parliament by way of detail on the number and type of offences for which Fiscal Fines and Compensation Offers have been issued.

- 4.5 Extensive written guidance was provided to Crown Office and Procurator Fiscal Service staff in the form of circulars and the Case Marking Guidance Manual (which are the standard instructions given to Procurators Fiscal on how prosecution decisions should be taken). Compensation Offers and combined Fiscal Fine and Compensation Offers are included under the heading of "Direct Measures" (ie cases where prosecution in court in the first instance would be a disproportionate response). The Crown Office has made public a prosecution code which lays out the broad guidelines for prosecutors in deciding what action to take in relation to reports of crime they receive. This code applies to Direct Measures as much as any other area of activity.
- 4.6 The **general** approach, however, is based on the over-arching objectives of reducing offending and re-offending and maintaining and improving public confidence in the criminal justice system.
- 4.7 There is for the first time a **presumption in favour** of taking **action** and the decisions are **outcome focused** requiring the issuer to decide on the appropriate outcome for the offender, the victim and the wider community and the most suitable option to achieve it. Particular regard is to be had to previous convictions and the likelihood of re-offending which can "lift" a non-serious offence into the prosecution in court option.
- 4.8 Sentencing objectives, as previously indicated, are broken into 7 categories with **indicative** disposal shown for each of these. Some of these would attract court action rather than the issue of a Fiscal Fine or Compensation Offer.
- 4.9 The guidance having established the general ground rules gives staff a list of situations where Fiscal Fines (and by extension combined Fiscal

Fines and Compensation Offers) **must not** be issued and these include categories which are in the public domain such as violence likely to attract imprisonment, violence against police and emergency workers, the use of knives or offensive weapons, racial or religious prejudice, domestic abuse and cases where there is a significant sexual element or the accused suffers from a mental disorder.

- 4.10 In addition to the categories of crime/offences which are struck at by the nature of the offence themselves there are prohibitions on the issue of Fiscal Fines (and by extension combined Fiscal Fine and Compensation Offers) dictated by the circumstances of the offender such as the offender's record or status. This prohibition applies irrespective of what might otherwise be a minor offence.
- 4.11 There is then another general category where the issue of Fiscal Fines **may be inappropriate** and there is in effect a presumption against their use although they are not automatically excluded.
- 4.12 Detailed guidance is then given to staff on when to consider the making of a Fiscal Compensation Offer. In addition detailed information is given on assessing the appropriate level of compensation and the various factors which should be taken into account. Similarly guidance is given where the loss is non-quantifiable. In addition there is instruction given on when a combined Fiscal Fine and Compensation Offer should be offered and determining the appropriate level of the fine and the compensation element.
- 4.13 The new system then commenced in operation in March 2008. Since then there have been various attacks on the new system and accusations of soft touch justice.

4.14 The Inspectorate carried out this thematic report (as with the earlier one) in an effort to get away from “anecdotal” evidence and to look at decisions actually made by prosecutors across the country.

Chapter 5

Results

- 5.1 As previously indicated a random selection of cases was examined. In the case of Combined Offers 120 were looked at and in the case of stand alone Compensation Offers 151 were examined. These were offers issued on the Crown Office IT system during May 2009. This random sampling covered all 7 possible levels of Fiscal Fine and the numbers examined by Area according to the level is as per the undernoted tables.
- 5.2 Fiscal Fines fall into 7 possible levels (£50, £75, £100, £150, £200, £250 and £300). Compensation Offers (for monitoring purposes) are divided into 5 Bands for management information purposes (up to £100, £200, £500, £1,000 and over £1,000). Clearly in combined cases there will be a Fiscal Fine level and a Compensation Band. The tables below show for stand alone Compensation Offers the Band into which they fell and for combined offers show the Fiscal Fine level which applied.

ARGYLL & CLYDE

	COMBINED FF/COMPENSATION OFFERS
LEVEL 1	0 CASES
LEVEL 2	2 CASES
LEVEL 3	1 CASE
LEVEL 4	1 CASE
LEVEL 5	0 CASES
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	4 CASES

COMPENSATION OFFERS	BAND
7 CASES	BAND 1
5 CASES	BAND 2
4 CASES	BAND 3
1 CASE	BAND 4
0 CASES	BAND 5
N/A	
N/A	
17 CASES	

AYRSHIRE

LEVEL 1	9 CASES
LEVEL 2	5 CASES
LEVEL 3	11 CASES
LEVEL 4	2 CASES
LEVEL 5	0 CASES
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	27 CASES

3 CASES	BAND 1
2 CASES	BAND 2
4 CASES	BAND 3
0 CASES	BAND 4
0 CASES	BAND 5
N/A	
N/A	
9 CASES	

CENTRAL

LEVEL 1	1 CASE
LEVEL 2	3 CASES
LEVEL 3	4 CASES
LEVEL 4	0 CASES
LEVEL 5	0 CASES
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	8 CASES

2 CASES	BAND 1
4 CASES	BAND 2
1 CASE	BAND 3
1 CASE	BAND 4
0 CASES	BAND 5
N/A	
N/A	
8 CASES	

DUMFRIES & GALLOWAY

LEVEL 1	0 CASES
LEVEL 2	1 CASE
LEVEL 3	3 CASES
LEVEL 4	2 CASES
LEVEL 5	1 CASE
LEVEL 6	1 CASE
LEVEL 7	0 CASES
TOTALS	8 CASES

2 CASES	BAND 1
1 CASE	BAND 2
1 CASE	BAND 3
1 CASE	BAND 4
0 CASES	BAND 5
N/A	
N/A	
5 CASES	

FIFE

LEVEL 1	5 CASES
LEVEL 2	4 CASES
LEVEL 3	0 CASES
LEVEL 4	0 CASES
LEVEL 5	0 CASES
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	9 CASES

4 CASES	BAND 1
10 CASES	BAND 2
4 CASES	BAND 3
0 CASES	BAND 4
0 CASES	BAND 5
N/A	
N/A	
18 CASES	

GLASGOW

LEVEL 1	1 CASE
LEVEL 2	5 CASES
LEVEL 3	6 CASES
LEVEL 4	6 CASES
LEVEL 5	1 CASE
LEVEL 6	1 CASE
LEVEL 7	0 CASES
TOTALS	20 CASES

9 CASES	BAND 1
8 CASES	BAND 2
5 CASES	BAND 3
1 CASE	BAND 4
1 CASE	BAND 5
N/A	
N/A	
24 CASES	

GRAMPIAN

LEVEL 1	3 CASES
LEVEL 2	5 CASES
LEVEL 3	0 CASES
LEVEL 4	1 CASE
LEVEL 5	0 CASES
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	9 CASES

4 CASES	BAND 1
4 CASES	BAND 2
1 CASE	BAND 3
2 CASES	BAND 4
0 CASES	BAND 5
N/A	
N/A	
11 CASES	

HIGHLANDS AND ISLANDS

LEVEL 1	0 CASES
LEVEL 2	4 CASES
LEVEL 3	0 CASES
LEVEL 4	0 CASES
LEVEL 5	1 CASE
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	5 CASES

4 CASES	BAND 1
8 CASES	BAND 2
1 CASE	BAND 3
0 CASES	BAND 4
0 CASES	BAND 5
N/A	
N/A	
13 CASES	

LANARKSHIRE

LEVEL 1	1 CASE
LEVEL 2	4 CASES
LEVEL 3	6 CASES
LEVEL 4	0 CASES
LEVEL 5	1 CASE
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	12 CASES

4 CASES	BAND 1
4 CASES	BAND 2
2 CASES	BAND 3
3 CASES	BAND 4
2 CASES	BAND 5
N/A	
N/A	
15 CASES	

LOTHIAN AND BORDERS

LEVEL 1	2 CASES
LEVEL 2	3 CASES
LEVEL 3	3 CASES
LEVEL 4	1 CASE
LEVEL 5	0 CASES
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	9 CASES

4 CASES	BAND 1
10 CASES	BAND 2
0 CASES	BAND 3
3 CASES	BAND 4
0 CASES	BAND 5
N/A	
N/A	
17 CASES	

TAYSIDE

LEVEL 1	1 CASE
LEVEL 2	3 CASES
LEVEL 3	5 CASES
LEVEL 4	0 CASES
LEVEL 5	0 CASES
LEVEL 6	0 CASES
LEVEL 7	0 CASES
TOTALS	9 CASES

7 CASES	BAND 1
3 CASES	BAND 2
3 CASES	BAND 3
0 CASES	BAND 4
1 CASE	BAND 5
N/A	
N/A	
14 CASES	

OVERALL TOTALS: 120 CASES

151 CASES

- 5.3 This combined total of 271 cases was out of a total of 355 of all such direct measures issued that month, meaning that the sample was approximately 75% of all such cases issued that month. In addition to that sample, the earlier sample of 240 Compensation Offers and Combined Offers from September 2008 was examined and the analysis of that earlier sample is contained in Annex I and Annex II.
- 5.4 For the purposes of this review the analysis was concentrated on the sample from May 2009 but with some cross referencing to the earlier sample.
- 5.5 The type of cases covered included a wide range of both statutory and common law offences.

5.6 Common law offences included assault, breach of the peace, fraud and theft.

5.7 Statutory offences included vandalism, certain vehicle excise offences and a small miscellaneous group of infrequent offences.

Combined Fiscal Fine/Compensation Offers – May 2009

A breakdown of the charges for the review of Combined Offers are as follows:

CHARGE	FREQUENCY
Road Tax Offences	43
Vandalism	38
Assault	15
Fraud	10
Theft	10
Breach of the Peace	1
Culpable and Reckless Conduct	1
False Accusation	1
Failure to pay rail fare	1
TOTAL	120

A breakdown of the charges for the review of Compensation Offers are as follows:

CHARGE	FREQUENCY
Vandalism	87
Theft	23
Assault	21
Road Tax Offences	7
Breach of the Peace	5
Fraud	5
Communications Act 2003	1
Dogs Act 1871	1

Uttering	1
TOTAL	151

- 5.8 It can be seen that for Compensation Offers alone vandalism accounted for 57% of the cases. Assaults represented 14% of the total. In Combined Offers road tax offences accounted for 35%, vandalism 31% and assaults 12.5%.
- 5.9 All of the cases were examined against Crown Office and Procurator Fiscal Service guidance and those with apparent non-compliance were raised with the issuing office for comments. In total 38 queries were raised with the relevant Procurator Fiscal office, 10 in respect of combined offers and 28 in respect of stand alone offers. This is about 14% of the total. Where the same situation arose more than once, only one enquiry was made.
- 5.10 In relation to stand alone offers queries included why a combined offer had not been made, length of time it would take to pay (in some cases several years) and in a small number of cases why there had been no prosecution.
- 5.11 In relation to combined offers queries included why nothing had been added for apparent aggravations, whether the compensation level was too high and why there had been no prosecution in some cases.
- 5.12 It must be stressed that most of these queries were of a minor nature and generally accepted by the issuing offices. In four cases we felt the offer was wrong. In two cases of assault we considered that prosecution should have followed and this was accepted by the Area Procurator Fiscal. In a further two cases there was insufficient evidence in one case

and in the other compensation was offered albeit there had been full recovery (and it was therefore inappropriate).

5.13 When we looked at Fiscal Fines on their own in our earlier report our random sampling threw up 18 cases of vandalism where no Compensation Offer was made. This raises the issue of the general approach to prioritising compensation (see Recommendation 1).

Chapter 6

Conclusions and Recommendations

- 6.1 Looking at the number of cases we examined, the range of offences and the range of levels, the overarching conclusion is that the use of Compensation Offers and combined Fiscal Fine and Compensation Offers was proportionate and generally in line with the philosophy of the enhanced use of these measures. The queries we made were generally of a minor nature.
- 6.2 As stated in our previous report on Fiscal Fines the Crown Office and Procurator Fiscal Service has taken the opportunity to substantially update and expand its policy and guidance relating to the marking of cases (ie deciding on what course of action to take). As we mentioned in that report the Case Marking Guidelines provide to Deputes a concise summary of substantive law, procedure and guidance and particular guidance on where Direct Measures are likely to be appropriate and relevant levels.
- 6.3 Revised guidelines on the use of Direct Measures were issued by Crown Office and Procurator Fiscal Service in October 2008 and these addressed some of the teething problems we outlined in our previous report.
- 6.4 As with our previous report there does remain the issue of balancing the dual concerns of encouraging the careful consideration of each case (on its own facts and circumstances) while ensuring a consistency of approach to marking and decision making. We again feel that there is potential conflict in aspects of the policy. It is not entirely clear from looking at the policy as to whether compensation should be considered first and only excluded for good reason. For example in our previous

report on Fiscal Fines a number of Fiscal Fines were issued for vandalism with no compensation offered and it is not clear why these would be distinguished from cases where compensation was included. Accordingly we recommend:-

Recommendation 1

That the guidance on the use of Compensation Offers be clarified by the Crown Office. There requires to be a clear indication as to whether compensation should be a first consideration and only excluded for good reason.

To do otherwise risks too much discretion being employed by individuals and/or offices to interpret similar cases but in different ways with compensation being offered only in some cases and not in other almost identical cases. A presumption in favour of compensation would be in line with the thinking of the McInnes Committee.

- 6.5 Our second recommendation relates to combined offers. The guidance suggests that these will be used infrequently and we found the guidance as to how to calculate the balance between the Fiscal Fine element and the Compensation Offer to be extremely complicated and consider that it is likely to have discouraged the use of combined offers. Accordingly we recommend:-

Recommendation 2

In the case of combined Fiscal Fines and Compensation Offers that revised guidance on the calculation of the relative amounts should be issued and the system simplified.

6.6 In virtually all cases the default payment setting of £10 per fortnight was chosen by the marking Depute. This appeared to be divorced from consideration of the means and circumstances of the offender and in some cases led to long repayment periods. Accordingly we recommend:-

Recommendation 3

That revised guidance be issued to marking Deputes on the choice of the payment period with regard being given to the circumstances and means of the offender.

6.7 The Prosecution Code which is a published document does deal with Fiscal Fines but requires to be updated to reflect the changes to direct measures and accordingly we recommend:-

Recommendation 4

That the Prosecution Code be updated to include information on the new provisions on Direct Measures.

6.8 As part of this review we examined a number of cases involving assault and in two of these we took issue with the use of a Fiscal Fine based on the circumstances of the assault and other considerations. We looked at assault in our previous report on stand alone Fiscal Fines and therefore adhere to our earlier recommendation in that report that all direct measures for assault continue to be monitored.

6.9 We also adhere to the second recommendation from our previous report that the self imposed restriction on the issue of Fiscal Fines (and by extension Compensation Offers) because of the status of the offender be relaxed subject to the same safeguards.

ANNEX I

Compensation Offers - September 2008

Argyll & Clyde:

Offer	Band¹
Band 1	11
Band 2	5
Band 3	6
Band 4	4
Band 5	0
Total	26

Ayrshire:

Offer	Band
Band 1	2
Band 2	0
Band 3	0
Band 4	2
Band 5	0
Total	4

Central:

Offer	Band
Band 1	0
Band 2	0
Band 3	1
Band 4	2
Band 5	0
Total	3

¹ Levels relate to amounts within certain bandings eg Level 1 – up to £100; Level 2 – £101 to £200, Level 3 - £201 to £500; Level 4 - £501 to £1,000; Level 5 - £1,001 to £5,000

Dumfries & Galloway:

Offer	Band
Band 1	1
Band 2	2
Band 3	0
Band 4	0
Band 5	0
Total	3

Fife:

Offer	Band
Band 1	15
Band 2	7
Band 3	4
Band 4	1
Band 5	0
Total	27

Glasgow:

Offer	Band
Band 1	13
Band 2	11
Band 3	3
Band 4	3
Band 5	0
Total	30

Grampian:

Offer	Band
Band 1	8
Band 2	3
Band 3	9
Band 4	1
Band 5	1
Total	22

Highlands & Islands:

Offer	Band
Band 1	5
Band 2	9
Band 3	6
Band 4	1
Band 5	1
Total	22

Lanarkshire:

Offer	Band
Band 1	12
Band 2	5
Band 3	5
Band 4	1
Band 5	0
Total	23

Lothian & Borders:

Offer	Band
Band 1	13
Band 2	9
Band 3	7
Band 4	2
Band 5	0
Total	31

Tayside:

Offer	Band
Band 1	10
Band 2	8
Band 3	6
Band 4	0
Band 5	0
Total	24

Overall total

215

Summary of Review of Compensation Offers – September 2008:

215 Compensation Offers were issued in September 2008, 209 (6 offers could not be accessed) were reviewed against Crown Office guidelines.

As can be seen from the above table Compensation Offer levels 1, 2 & 3 were applied most with 90 at Level 1, 59 at Level 2 and 49 at Level 3. Level 4 was used 13 times and Level 5 was used twice.

In all cases the default of full payment or £10 per fortnight was offered.

Cases marked for compensation related to the following charges:

- Vandalism (of which were in the majority at 139)
- Assault
- Breach of the Peace
- Fraud
- Theft
- Malicious Mischief
- Fire-raising

In 20 cases the Procurator Fiscal requested more information from the police to allow informed decisions to be made eg cost of damage.

A breakdown of the charges for the review of compensation offers are as follows:

Charge	Frequency	%
Vandalism	139	67%
Assault	38	18%
Breach of the Peace	3	1%

Fraud	7	3%
Theft	20	10%
Malicious Mischief	1	0.5%
Fire-raising	1	0.5%
TOTAL	209	100%

ANNEX II

Combined Fiscal Fines and Compensation Offers - September 2008

The undernoted table shows the type of offence and the frequency thereof.

Charge	Frequency	%
Assault	10	40%
Vandalism	9	40%
Theft	3	10%
Vehicle Excise Act	3	10%
TOTAL	25	100%