

# **Trends in Environmental Sentencing in England & Wales**

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# Executive Summary

In view of recent concern emanating from several groups over the inconsistency and low level of fines and other penalties imposed for environmental offences, the Department for Environment, Food and Rural Affairs (Defra) commissioned Environmental Resources Management (ERM) to examine current levels of sentencing for environmental offences.

The research aims at establishing a solid body of information, which could be used as a basis for future action so as to determine how to improve the consistency of sentencing for environmental offences, and to ensure that sentencing is proportionate to the actual harm or risk to the environment of specific offences. This research included collecting and analysing data on fines and other penalties for a range of specific environmental offences, as well as studying current prosecution and Magistrates' and Crown Courts practices, in order to determine the following:

- Are environmental offences consistently sanctioned geographically, by type of courts, prosecuting body, type of offences?
- Do magistrates and judges use the full extent of the sanctions that they have the power to impose?
- Are the prosecution bodies and the courts sufficiently trained / informed to assess the seriousness of offences and to take sound decisions?

This research has been carried out through collation and analysis of statistical data, complemented by structured interviews with different stakeholders. The scope of this research covers most of the environmental offences established by legislation.

## Availability and Consistency of Data

The data collation itself has revealed a number of issues regarding the availability and completeness of the information that is in the public domain. Due to the absence of centralised data on environmental sentences, ERM had to rely on a multiplicity of sources. This has resulted in some inconsistency in the data received. In some instances, data are incomplete or lacks detail e.g. data from the local authorities.

Some issues are linked to the fact that the different information sources record data in different way. In particular, a suspended sentence may be logged as a custodial sentence without mentioning the fact that it has been suspended. Custodial sentences are recorded for a number of individual offences when the sentence are to run concurrently. Finally, the way of recording the different offences under one case is not consistent. As the majority of the data received logged individual offences per defendant, ERM has structured the database using the same format i.e. per offence rather than per cases.

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ERM experienced some difficulties in conducting the court-based research because of problems encountered in obtaining information and arranging contacts with magistrates and judges. This has highlighted broad systemic problems associated with the availability of information on court cases and practice e.g. ill-defined lines of responsibility, lack of information on sentencing remarks and decision.

### **Consistency of Sentencing**

The research reveals a lack of consistency in environmental sentencing. Disparities have been identified geographically, depending on the type of Courts (Magistrates' versus Crown Courts) and the type of offences, as follows:

- There are significant regional variations in the number of offences and the level of penalties, with the regions with the highest number of prosecutions being the ones with the lowest average penalties.
- There is a very limited use of custodial sentences, consistent across all regions (the average for England & Wales is 1.2 per cent), with a significant proportion of cases resulting in fines (68.0 per cent) and/or costs often awarded (70.1 per cent).
- All other types of sentences e.g. community service order, conditional/absolute discharge, compensation, etc. are used infrequently (from 4.9 per cent to 8.0 per cent in Crown and Magistrates Courts respectively).
- The large majority of cases involving companies resulted in fines (81 to 85 per cent) while the proportion is more limited for cases involving individuals (54 to 65 per cent).
- For Magistrates' Courts, between 1999 and 2002 there was a general increase in the average size of fines (from £1,979 to £2,730).
- However, the average fine amount stays well below the maximum, which Magistrates' Courts can impose (generally up to £20,000).
- For the Crown Court, there was a general decrease in the severity of sanctions with a sharp decrease (47%) in the average size of fines between, on one hand, the years 1999/2000 (about £8,500 during the two years) and, on the other hand, the years 2001/2002 (with an average fine of about £4,600).
- The number of offences where the Crown Court awarded costs against the defendant tended to decrease between 1999 and 2002 (81 to 42 per cent), whilst it remained fairly constant for Magistrates' Courts (at around 72 to 74 per cent).

Generally Magistrates only receive a very low level of exposure to environmental offences relative to other offences. In one of the Court areas, only 5 to 6 of the 3445 cases heard per year are likely to be environmental related cases, which could fall to be heard by any of 149 Magistrates (or 3 person lay-bench). This implies that many Magistrates are not familiar with environmental cases. In the same Court area, less than a quarter of the Magistrates surveyed appeared reasonably aware of the 2001 Magistrates Courts' Sentencing Guideline on environmental offences.

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### **Prosecution**

Data on the different prosecuting bodies indicates that the majority of environmental cases are brought by the Environmental Agency (over 90 per cent) and the number of prosecutions brought by this body showed a regular increase over the study period. The average level of fines imposed in cases brought by the Environment Agency has generally increased between 1999 and 2002, with a decrease in 2001. In contrast, the average level of fines imposed has slightly decreased for prosecutions brought by CPS. The number of prosecutions brought by other competent bodies is too limited to identify any meaningful trends and influence over the general level and consistency of sentencing.

Cases brought by local authorities have been treated separately due to the lack of available data by way of a short questionnaire sent directly to local authorities. Responses suggested that the number of prosecutions brought by local authorities is fairly limited as, over the past four / five years, 23.2 per cent had not conducted any prosecutions at all, and 27.4 per cent had prosecuted less than 5 cases. In addition, the large majority of the cases prosecuted by local authorities related to statutory nuisance offences (more than three-quarters). A review of the Local Authorities' practice in relation to fly-tipping offences shows that a lack of time and resources to prepare cases is an important issue.

### **Conclusions**

Inconsistencies and disparities have been identified in Magistrates' and Crown Courts environmental sentencing practices, mainly in terms of regional disparities and variations over time in the average level of fines. The research also suggests that the fines are still well below the maximum possible amount that Magistrates can impose, and that other types of sentencing are rarely used. It also suggests that given the complexity and specificity of the concepts involved in environmental cases, further guidance and training should be considered not only through promotion of the existing guidance to Magistrates' Courts, but also through the development of standard procedures and formats specific to environmental offences for certain bodies who bring prosecutions for a range of different offences e.g. the local authorities, CPS.

In order to complement the existing data and taking into account the issues identified during the present research e.g. the lack of centralization and consistency in the data available, the following steps should be taken:

- More detailed research on specific offences should be carried out.
- The analysis presented in this paper should be complemented in the future in order to identify more long-term trends.
- Data on local authorities prosecutions need to be further developed, as, currently, there is no systematic collection of data on prosecutions brought by these bodies.
- The difficulties experienced during the research in contacting Magistrates and Judges could be partly overcome if it were possible to identify and engage upfront the main stakeholders involved e.g. Magistrates and Judges, the Department for Constitutional Affairs and the Home Office.

# Introduction

In view of recent concern emanating from several groups over the inconsistency and low level of fines imposed for environmental offences, the Department for Environment, Food and Rural Affairs (Defra) has commissioned Environmental Resources Management (ERM) to examine current levels of sentencing for environmental offences.

Over 90 per cent of prosecutions for environmental offences are currently brought in the Magistrates' Courts. Magistrates' Courts have the power to impose fines of up to £20,000<sup>(1)</sup> or if they feel these sentencing powers are not adequate magistrates are able to refer offences triable either way to the Crown Court where an unlimited fine can be imposed. The level of fines imposed by magistrates and judges, however, remains low and the latest data from the Environment Agency (EA) show that fines per offence in 2001/2002 averaged only £2,042. The Magistrates' Court has also the power to pass custodial sentences for up to 6 months for a single offence or 12 months in aggregate. However, they only use this power in exceptional circumstances. Finally, compensation orders are also rarely used, mainly for personal injury, loss or damage.

This research aims to establish a solid body of information on environmental fines and sentences over the past 4 years (1999-2002). This data will inform decisions on any future action to improve the consistency of sentencing for environmental offences and/or to ensure that sentencing is proportionate to the actual or risked harm of the specific offence.

The research involved collecting and analysing data on fines and other penalties for a range of specific environmental offences in order to determine if:

- Existing fines and other penalties act as a sufficient deterrent to ensure proper enforcement of environmental legislation;
- Environmental offences are consistently sanctioned geographically, by type of courts, prosecuting bodies, type of offences;
- The prosecution bodies and the courts are sufficiently trained / informed to assess the seriousness of offences and take sound decisions.

(1) In a number of instances, the maximum fine which Magistrates' Courts can impose may be lower. For example, under the Waste Management Licensing Regulations 1994, maximum fines vary according to offence (level 2 and level 5 on the standard scale i.e. respectively, £500 and £5,000).

In addition to gathering and collating statistical data, the project also involved canvassing the opinions of relevant individuals (e.g. judges/magistrates and prosecutors), through an interview process based on a structured questionnaire.

# Methodology and Data Validation

The research included two main components:

- Collection and review of statistics;
- Survey of Magistrates' and Crown Courts' practice.

The collection and review of statistics focused on obtaining a general picture of the number of cases, the level of fines per region and per prosecuting body for England and Wales. It also includes an assessment of the availability and quality of the data. The survey of Magistrates' and Crown Courts practice aimed at complementing the statistical data with some insight into prosecution and courts' practice.

## 1. Collection and review of statistical data

### Scope

*Table 2.1* defines the environmental offences that have been covered by the research on national and regional statistics.

The scope does not attempt to include all existing environmental offences. There are 12 further agencies associated with Defra that have regulatory powers, which are not covered. It has been agreed that these could fall into a further research project following the present one. It was also agreed that planning issues would be deliberately excluded from the project.

All Acts and Statutory Instruments are as amended. Key environmental offences are defined as non-compliance with these Acts.

**Table 2.1 Environmental Offences**

<b>Legislation</b>	<b>Enforcing Authority</b>	<b>Notes</b>
<b>IPC/LAPC/PPC, Air Pollution</b>		
Environmental Protection Act 1990, any offences under Part I (particularly s.6(1))	Environment Agency Local authorities	Integrated Pollution Control licensing.
Pollution Prevention and Control (England and Wales) Regulations 2000, any relevant offences (particularly reg.9(1))	Environment Agency Local authorities	PPC integrated permitting.
Clean Air Act 1993, Part I, all offences	Local Authorities	Controls on emissions of dark smoke.
Finance Act 2000, Part II and Schedule 6, all offences	HM Customs & Excise	Climate change levy.
<b>Wastewater Discharge/Water Quality</b>		
Water Resources Act 1991, s.85, s.161D	Environment Agency	Prohibition on discharge of polluting matter to controlled water without a discharge consent.
Salmon and Freshwater Fisheries Act 1975, s.4 and s.27	Environment Agency	Offences relating to pollution of certain fisheries and fishing without the relevant licence.
Water Resources Act 1991, s.24	Environment Agency	Water abstraction licensing
<b>Waste Management</b>		
Environmental Protection Act 1990, any offences under Part II (particularly s.33(1) and s.34(1))	Environment Agency Local Authorities	Waste management licensing and waste duty of care.
Waste Management Licensing Regulations 1994, any offences	Environment Agency	Requirements relating to waste management licensing, registration of waste brokers, notification of exempt activities.
Control of Pollution (Amendment) Act 1989, any offences	Environment Agency	Registration obligations for carriers of controlled waste.
Special Waste Regulations 1996, any offences	Environment Agency	Controls on hazardous waste.
Producer Responsibility Obligations (Packaging Waste) Regulations 1997, any offences (particularly reg.3(5))	Environment Agency	Obligations to register with the Environment Agency and achieve packaging waste recovery/recycling targets.
Council Regulation (EEC) No. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community (and the Transfrontier Shipment of Waste Regulations 1994), any offences	Environment Agency, Secretary of State	
Finance Act 1996, Part III, any offences	HM Customs & Excise	Landfill tax.
<b>Statutory Nuisance and Environmental Noise</b>		
Environmental Protection Act 1990, s.80(4)	Local authorities	Statutory nuisance (including certain emissions of smoke, odours and noise) abatement notice issued by local authority must be complied with.
Control of Pollution Act 1974, s.60-61	Local authorities	Construction noise notice or conditions of a noise consent must be complied with.
<b>Contaminated Land</b>		
Environmental Protection Act 1990, s.78M	Local authority, Environment Agency	Obligations relating to compliance with a remediation notice.

Legislation	Enforcing Authority	Notes
<b>Hazardous Substances</b>		
Control of Major Accident Hazards Regulations 1999, any offences (particularly regs.4-9, regs.11-12)	Environment Agency and Health and Safety Executive (joint enforcement authorities)	Notifications, reporting, emergency plans and other duties relevant to installations where hazardous substances are present.
Radioactive Substances Act 1993, any offences	Environment Agency	Responsibilities relating to the keeping of radioactive substances and discharges to the environment containing radioactive substances.
Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000, any offences	Environment Agency	Registration, labelling and decommissioning of equipment containing PCBs.
Asbestos (Prohibitions) Regulations 1992, any offences	Health and Safety Executive	Prohibition of most uses of asbestos.
Environmental Protection Act 1990, Part VI, any offences	Secretary of State (practical enforcement powers have been passed to the Health and Safety Executive for offences in laboratories) Defra responsible for offences arising out of the release of GMOs	Responsibilities relating to the release of GMOs into the environment.
Control of Pesticides Regulations 1986 SI No. 1510	Defra	Misuse of pesticides
<b>Wildlife and Habitats</b>		
Wildlife and Countryside Act 1981, all offences under Part I	English Nature	Protection of wild plants and animals. Controls on trade and possession of wild animals and plants.
Conservation (Natural Habitats, etc) Regulations 1994, any offences (particularly regs.19, 23, 39, 41 and 43)	English Nature	As above.
Badgers Act 1973	English Nature	Enhanced protection for badgers and badger sets.
EC Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein, and the Control of Trade in Endangered Species (Enforcement) Regulations 1997, any offences	Secretary of State, HM Customs & Excise	Prohibitions on unauthorised import of certain wild fauna and flora.
Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001 Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) Regulations 2002	Defra	Decisions or consents are required from the Secretary of State for various projects involving development on uncultivated land
Food and Environmental Protection Act 1985, Section 9	Defra	Dumping at sea
Forestry Act 1967	Forestry Commission / Defra	Illegal felling of trees and plant health at import

## Data Sources

A range of governmental and non-governmental agencies both with and without enforcement powers were consulted during the compilation of the database of cases. These are listed in *Table 2.2*.

**Table 2.2 Sources of Information**

<b>Governmental bodies</b>	<b>Non-governmental bodies</b>
The Environment Agency of England and Wales	TRAFFIC UK (Trade Records Analysis of Flora and Fauna in Commerce)
Her Majesty's Customs & Exercise (HMCE)	The Royal Society for the Protection of Birds (RSPB)
Health & Safety Executive (HSE)	The Royal Society for the Prevention of Cruelty to Animals (RSPCA)
Forestry Commission	Plantlife
Department of Environment, Food and Rural Affairs (Defra)	The National Federation of Badger Groups (NFBG)
Home Office	
English Nature	
Local Authorities (district and unitary councils)	

The majority of these organisations were able to provide information on recent prosecutions within the scope of their particular areas of interest or responsibility. For example, the NFBG provided some data on prosecutions under the Protection of Badgers Act (1992), whilst TRAFFIC UK provided information on CITES (COTES & CEMA<sup>(1)</sup>) cases. It should be noted that the level of detail provided by the different organisations varied greatly, with some of the bodies contacted having only provided limited data. Consequently, the detail of prosecutions held on the database varies considerably depending on the information source.

Most notably, in some cases a defendant may have been charged for several offences and prosecuted accordingly. However, the records kept by some organisations split these data out into each separate offence, whilst others provided the aggregated outcome for one single defendant for all offences. This is especially valid for some wildlife cases, where the defendant may have been prosecuted for up to 40+ separate offences<sup>(2)</sup>. In general, data provided by RSPCA, Plantlife and NFBG is aggregated, whilst data obtained from HSE, EA, Traffic International and RSPB is not.

However, taking into consideration the problems outlined, ERM have presented the data as consistently as possible by disaggregating the information where practicable e.g. when cases were reported by several data sources in different formats. In addition, about 22.5 per cent of the total number of offences have been recorded with 'no separate penalty', which means that these offences would have been taken into account when imposing a sentence although they do not have a penalty attached to them in the database. This

(1) Customs and Excise Management Act (1979) - enables CITES Regulations under Section 170. Excluded from ERM survey.

(2) For example, in one case of wild finch trapping over 40 birds were involved, with separate indictments for the same offence for each bird concerned.

should be taken into account in all average data on number of fines or other penalties. When analysing data on sentencing practices, rather than looking at the number of cases heard, we have referred to the number of offences. In such cases, we have also indicated the number of offences 'with no separate penalty' to highlight the fact that a sanction can be pronounced against a number of individual offences. Consequently, when using the database to generate figures for the average fine / cost or the length of custodial sentence, the total number of offences has been taken into account as opposed to the total number of cases<sup>(1)</sup>.

In addition, it proved impracticable to integrate information obtained from local authorities into the database due to the low level of detail and particular data quality problems encountered whilst collecting information from these sources.

In many cases, the survey revealed that a large number of local authorities are either not actively pursuing prosecutions for environmental offences, or they are not keeping detailed records of the prosecutions they have brought. In the case of the former, various reasons were established by ERM as to why this might be the case, including:

- Poor recognition by the local authority of its actual responsibilities in respect of environmental offences;
- Environmental offences are not considered a problem within their jurisdiction;
- Lack of resources for pursuing environmental offences, often coupled with a lack of support from both the authority's legal department and/or senior management.

In the case of poor record keeping, no clear reason was established as to why this might be the case, although in many instances during the data collection phase, there was often significant confusion between environment, environmental health and legal departments as to where the responsibility for maintaining records lay.

For these reasons, data for prosecutions brought by local authorities have been treated separately. In addition, as Defra and other participants to the project have shown a particular interest in the question of fly-tipping, and in particular the way these offences are handled by local authorities, the issue has been specifically examined under *Chapter 6*.

Finally, various organisations provided information on offences which related to environmentally damaging activities but fell outside the research scope. Data on these offences have not been included in the final database. Examples include firearms offences, grievous bodily harm, public order offences, forgery and counterfeiting etc., which would have been taken into account as aggravating factors during sentencing.

(1) The number of offences used to generate average data has been indicated in the graphs as  $\Sigma=N$  (see Chapter 3)

### Data storage and analysis

All the information received was converted into a bespoke database designed by ERM in a format that allows rapid data manipulation and analysis.

### Regional analysis

For the purpose of regional analysis, courts were grouped into nine regions in England & Wales.

Court jurisdictions were considered too small to be used as a spatial unit to compare trends at the regional level. Conversely, Environment Agency regions were considered to be too broad to provide a good resolution of spatial variation in sentencing. Therefore, within the framework of this research, ERM chose to divide England and Wales into nine broad regions based on county boundaries, as follows:

- London
- South East
- Eastern
- South West
- East Midlands
- West Midlands
- North West
- North East
- Wales

*Annex 1* contains a detailed list of the Courts included in each region.

### Data Validation

A partial data validation exercise was carried out, based on a limited set of statistics on environmental offences provided by the *Home Office - Offending and Criminal Justice Group*. The aim of the exercise was to provide some assurance on the quality of information held in ERM's database.

Following discussions with the *Home Office - Offending and Criminal Justice Group*, a data request was sent asking for information on prosecutions brought under the full range of offences identified in ERM's originally proposed scope (*Table 2.1*) for years 1998 to date. Although several follow-up enquiries were made no response was forthcoming and this line of enquiry was terminated. Consequently, no ready means of verifying the data received from the various organisations was available. Notwithstanding this problem, it is assumed that data received from governmental agencies (the EA, Forestry Commission etc) are likely to be complete, whilst the non-governmental data sources are likely to be less robust.

Some summary data were obtained from *Home Office* sources via direct contact and from information supplied by *Defra – Sustainable Development Unit* at project start-up. Where available, these have been compared against the ERM database (*Table 2.3*).

**Table 2.3** *ERM database compared against available Home Office statistics for 2001 data*

Data source (all 2001 data)	Act	Section	Actions proceeded against	No. resulting in fine	No resulting in CSO / CD <sup>b</sup>	Otherwise dealt with
Home Office	WCA 1981	1-1 & 1-2 <sup>a</sup>	53	23	6	2
ERM database			55	23	4	2
Error			4%	0%	33%	0%
Home Office	PBA 1992	-	9	4	-	-
ERM database			3	3	-	-
Error			66%	25%	0%	0%
Home Office	EPA 1990	34	179	106	23	-
ERM database			140	82	11	-
Error			22%	23%	52%	-

<sup>a</sup> Covered in Home Office statistics as WCA Section 1; *Protection of wild birds*, and; *Protection of nests and eggs of wild birds*.

<sup>b</sup> CSO = Community Service Order; CD = Conditional Discharge

The figures suggest that there is good correlation for most offences, but also reveals some gaps in ERM's database, as discussed below:

- **Wildlife & Countryside Act (1981), Sections 1-1 & 1-2** - there is good correlation between the total number of actions proceeded, but a 33 per cent error on the number of prosecutions resulting in a community service order (CSO). However, the total numbers involved are fairly small and are unlikely to affect the overall conclusions of the work.
- **Protection of Badgers Act (1992)** – The error in the data can be explained by the quality of information used in ERM's database (from the NFBG). The NFBG indicated that the information they gather comes largely from submissions from regional badger groups, rather than actively tracking prosecutions themselves. There is unlikely to be any simple way to resolve this difference, but because of the low number of prosecutions, the discrepancy should not affect the overall conclusions of the work.
- **Environmental Protection Act (1990), Section 34** – It is most likely that these discrepancies relate to missing Local Authority information on prosecutions. The information used in the ERM database represents the full dataset of prosecutions brought by the Environment Agency and is complete, whereas a limited dataset on prosecutions was received from Local Authorities. In order to avoid inconsistencies,

data provided by the Local Authorities has not been included in the database but treated separately (see *Chapter 6*).

The lack of additional data from the Home Office prevents any further validation. However, based on the survey undertaken, ERM believe that the database represents the most complete set of information on environmental sentencing available in the UK at present.

## **2. Survey of Court Practice**

Data obtained from the statistical analysis has been complemented by a limited survey of court practice, conducted through interviews and case studies.

Firstly, general interviews were carried out with prosecuting bodies, and other stakeholders such as non-governmental organisations involved in the preparation of the cases. These interviews focused on the day-to-day practice of these bodies and aimed at getting a general picture, based on professional opinions.

Alongside these general interviews, 12 cases were selected for detailed analysis, via case-based interviews with the respective prosecutors<sup>(1)</sup>. Both types of interviews (general and case-based) were undertaken using a structured questionnaire (see *Annex 2*). The questionnaire was used as a scope and guide i.e. the interviews were as open as possible but covered the points in the questionnaire as a minimum.

The first phase of the case-based review process involved selecting a number of cases for detailed analysis. The number of cases had to be limited to approximately ten due to time and budget constraints. The cases were selected so as to ensure a good geographical coverage and a sufficient range of cases within the scope of selected offences.

As a result, ERM selected 12 cases, with the following distribution:

- Four cases for the King's Lynn area – prosecution bodies: HSE under COMAH, CPS/Police under COTES, EA under EPA, RSPCA under WCA
- Five cases for the Southampton area – prosecution bodies: HSE under COMAH, EA under WRA, CPS/Police under COTES, City Council under EPA
- Three cases for the West London area – prosecution bodies: HMCE under COTES, RSCPA under WCA, EA under WRA.

The courts covered are:

- One urban area: London – Uxbridge Magistrates Court, Isleworth Crown Court.

(1) Interviews were conducted with prosecutors for all selected cases with the exception of those brought by the Crown Prosecution Service. ERM contacted the local CPS offices for the relevant cases, however, both declined to participate in the survey.

- One rural (semi-rural) area: King's Lynn/North & West Norfolk Area - King's Lynn Magistrates and Crown Court, Norwich Magistrates and Crown Court.
- Two coastal areas: Southampton and King's Lynn - Southampton Magistrates' Court, New Forest (Lyndhurst) Magistrates' Court; Chichester Magistrates' Court and King's Lynn as above.

ERM are aware that each case is unique and therefore it is not possible to deduce trends from individual cases. However, the review of specific cases can help to identify potential issues, and it is in this capacity that ERM undertook more detailed research into the selected cases.

ERM experienced some difficulties in the court research because of problems encountered in obtaining information and arranging contact with magistrates and judges. ERM believe it is worth raising this point as we feel that it highlights broad systemic problems associated with the availability of information on court cases and practice.

In a first stage, ERM sought a Privileged Access Agreement (PAA)<sup>(1)</sup>, which was a time-consuming procedure (about 5 months). In parallel, the questionnaire prepared for Magistrates and Judges was agreed with the Senior Presiding Judge of England and Wales<sup>(2)</sup> (see *Annex 3*). Once these agreements were obtained, ERM encountered the following obstacles:

- The PAA was not recognised by most of the Magistrates' Courts contacted by ERM;
- The court files usually do not include sentencing remarks and decisions;
- It proved problematic to talk generally about environmental sentencing because most Magistrates and Judges have only heard a very limited number of environmental cases, if any;
- Finally, despite strong support from most Court managers, the level of responses from the courts contacted in relation to case studies was very low due to a number of factors e.g. lack of time, lack of recognition of the PAA, destruction of case files, etc.

Consequently, ERM changed their approach by extending the research to additional courts.

Therefore, due to the difficulties experienced in gathering data and responses from Magistrates' and Crown courts, the analysis is mainly based on the results of the statistical analysis, discussions with different stakeholders, and one case-study focussing on a single Magistrates' Court for which ERM obtained a representative number of responses.

(1) Through the Research Unit of the Department for Constitutional Affairs (DCA).

(2) Originally Lord Justice Judge, and later Lord Justice Thomas.

# Court Practice

The analysis of the statistical data revealed a number of interesting facts summarised below:

- Regional disparities in terms of the number of offences, with the regions with the highest number of prosecutions being the ones with the lowest average penalties – as an example London Magistrates and Crown Courts have heard 235 offences against 1089 cases in Wales when the average penalty for all environmental offences is £4,812 in London area and £1,650 in Wales. The trend is similar when the data is split between Magistrates' and Crown courts.
- Low level of use of custodial sentences<sup>(1)</sup> consistent across the different regions (with only 0 to 3.8 per cent of cases resulting in imprisonment sentences – the average for England & Wales is 1.2 per cent), with a significant proportion of cases resulting in fines (68.0 per cent) and/or costs often awarded (70.1 per cent).
- The large majority of cases involving companies resulted in fines (81 to 85 per cent) when the proportion is more limited for cases involving individuals (54 to 65 per cent).
- For Magistrates' Courts, between 1999 and 2002 there is a general increase in the average size of fines (£1,979 to £2,730) and the length of custodial sentences (1.8 to 3.2 months).
- For the Crown Court, there was a general decrease in the severity of sanctions with a sharp decrease (47%) in the average amount of fine between, on one hand, the years 1999/2000 (about £8,600 during the two years) and, on the other hand, the years 2001/2002 (with an average fine of about £4,600).
- The number of offences where the Crown Court awarded costs tends to decrease between 1999 and 2002 (81 to 42 per cent), whilst it remains fairly constant for Magistrates' Courts (at around 72 to 74 per cent).
- The average level of fines imposed for pollution offences shows a general increase over the study period (although there was a decline in 2001); the average level of fines for wildlife offences increased steadily from 2000 to 2002, after a decline in 2000.

The main trends in environmental prosecutions and sentencing are presented below in 2 stages:

- Summary data showing regional variations in sentencing and by court type.
- Variation over time by offence and offender type:
  - Companies (and other legal entities) and individuals
  - Wildlife offences
  - Pollution offences

(1) Including suspended sentences

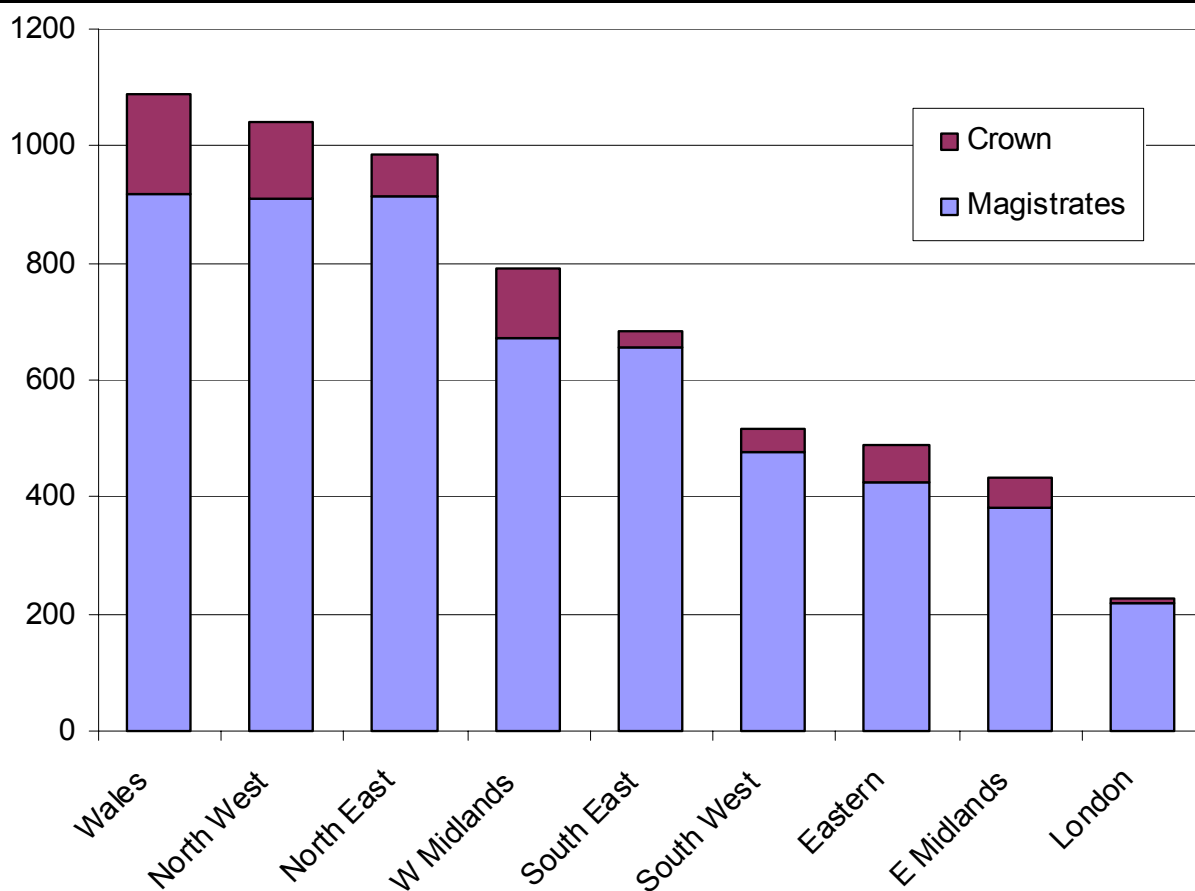
### 3. Regional Variations

This section presents summary data on general regional trends. The analysis further focuses on possible discrepancies depending on the type of courts (Magistrates Courts versus Crown Court) and variations in the severity of sanctions.

#### Summary data

The following data presents a general overview of findings for year 1999-March 2003<sup>(1)</sup> in England and Wales for all environmental offences, divided by region (as per the regional distribution defined in *Annex 1*), and split between Magistrates' and Crown Courts (*Figure 3.1* and *Table 3.1*).

**Figure 3.1 Total environmental prosecutions by court type (1999-March 2003)**  
( $\Sigma = 6283$ )



(1) Some data for 2003 are contained in the database and therefore, although incomplete, are included in the general statistics.

The data indicate that the highest number of environmental prosecutions are in Wales, the North West and North East regions, whilst the lowest numbers are in the London, Eastern and East Midlands regions (*Figure 3.1*). Similarly, the average number of cases heard **per court** is highest in Wales (23) and lowest in London (9) (based on the court breakdown shown in *Annex 1*).

The data also indicate that a high proportion of offences are heard in the Crown Court in Wales and North West, while London and the South East have a lower proportion of offences heard in the Crown Court.

*Table 3.1* describes the incidence of different sentencing outcomes in each region. The data show some regional variations in the way different types of penalties are used by the courts.

For Magistrates Courts', the data indicate that the majority of cases across all regions are sanctioned through the use of fines. The London, South East and Eastern regions have a high incidence of sentences resulting in a fine in Magistrates' Courts, whilst the North East has only 58 per cent of offences resulting in a fine.

For the Crown Court, the range in the number of offences resulting in a fine is much broader, with a range of 24 per cent in West Midlands to 80 percent in the South West.

The overall proportion of cases resulting in custodial sentences is very low relative to all other types of outcome, ranging from 0.6 per cent to less than 6 per cent across regions for all offences in both Crown and Magistrates Courts. These regional variations in the use of custodial sentences should be taken into account carefully, as the trend are based on a very limited number of offences.

The data also show that costs are awarded for the majority of offences – the highest proportion is to be found in the North West and South West region with respectively 90.2 per cent and 87.2 per cent in Magistrates Courts. On the other hand, some regions have a very low percentage of offences with costs attached, such as the North East, West Midlands and Wales<sup>(1)</sup>.

Finally, we have grouped under 'other outcomes', all other types of sentences e.g. community service order, conditional/absolute discharge, compensation, etc. These penalties are used infrequently, with the incidence of sentences resulting in other outcomes range from 4.9 per cent to 8.0 per cent in Crown and Magistrates Courts respectively.

One of the key findings of this analysis is to highlight the low level of use of custodial sentences, consistent across the different regions (1.2 per cent on average in both Court

(1) Although it should be noted that these figures may be skewed by the number of offences not receiving separate penalties.

types). On the other hand, it also reveals that a significant proportion of cases result in fines (68.0 per cent) and that costs are often awarded (70.1 per cent).

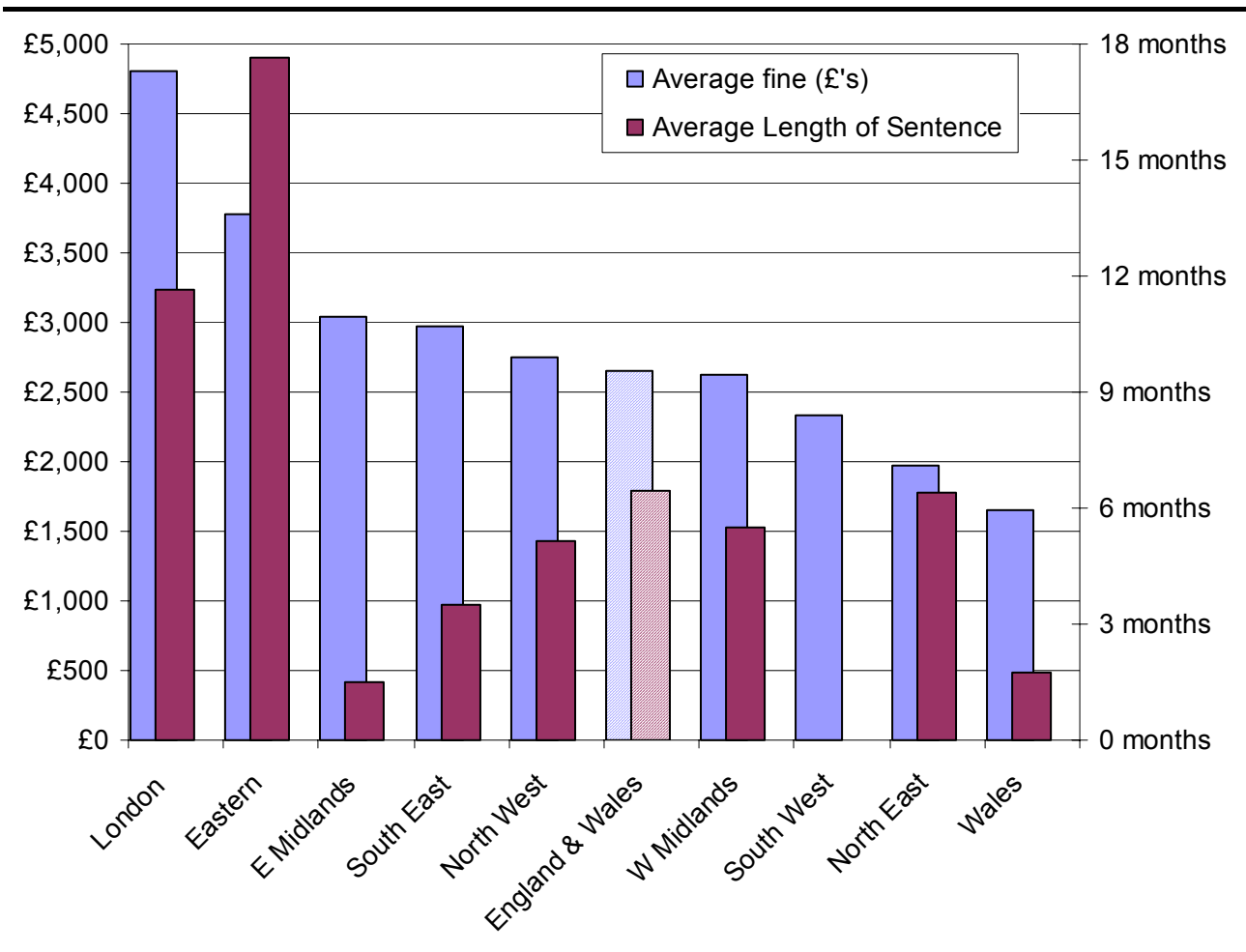
Additional analyses on the use of different types of penalty for different offence and offender types is provided in the following section, focusing on trends over time.

**Table.3.1 Summary of sentencing practices in different regions (1999- March 2003)**

Region	No. of offences		No. resulting in a fine		No. resulting in custodial sentence		No. resulting in other outcome		No. with costs									
	Crown	Mag's	Crown	Mag's	Crown	Mag's	Crown	Mag's	Crown	Mag's								
E Midlands	51	385	32	62.7%	262	68.1%	0	0.0%	2	0.5%	1	2.0%	40	10.4%	37	72.5%	269	69.9%
Eastern	60	427	46	76.7%	322	75.4%	3	5.0%	0	0.0%	1	1.7%	30	7.0%	37	61.7%	281	65.8%
London	18	217	6	33.3%	172	79.3%	8	44.4%	1	0.5%	3	16.7%	12	5.5%	6	33.3%	166	76.5%
North East	76	912	54	71.1%	530	58.1%	5	6.6%	8	0.9%	5	6.6%	67	7.3%	36	47.4%	452	49.6%
North West	131	910	65	49.6%	667	73.3%	4	3.1%	13	1.4%	13	9.9%	100	11.0%	85	64.9%	821	90.2%
South East	26	656	19	73.1%	523	79.7%	1	3.8%	1	0.2%	0	0.0%	53	8.1%	20	76.9%	563	85.8%
South West	40	476	32	80.0%	345	72.5%	0	0.0%	0	0.0%	5	12.5%	48	10.1%	24	60.0%	415	87.2%
W Mids	117	673	28	23.9%	506	75.2%	19	16.2%	5	0.7%	4	3.4%	64	9.5%	48	41.0%	434	64.5%
Wales	173	916	83	48.0%	566	61.8%	1	0.6%	3	0.3%	2	1.2%	31	3.4%	60	34.7%	640	69.9%
<b>England &amp;</b>	<b>692</b>	<b>5572</b>	<b>365</b>	<b>52.7%</b>	<b>3893</b>	<b>69.9%</b>	<b>41</b>	<b>5.9%</b>	<b>33</b>	<b>0.6%</b>	<b>34</b>	<b>4.9%</b>	<b>445</b>	<b>8.0%</b>	<b>353</b>	<b>51.0%</b>	<b>4041</b>	<b>72.5%</b>

The following figure outline the variation in the level of fines and the length of custodial sentences across regions, distinguishing between Magistrates' and Crown Courts. Interestingly, the analysis shows that, in general, the regions with the highest number of prosecutions are the ones with the lowest penalties.

**Figure.3.2 Average penalty (1999-March 2003) for all environmental offences (ALL COURTS) ( $\Sigma = 6264$ )**

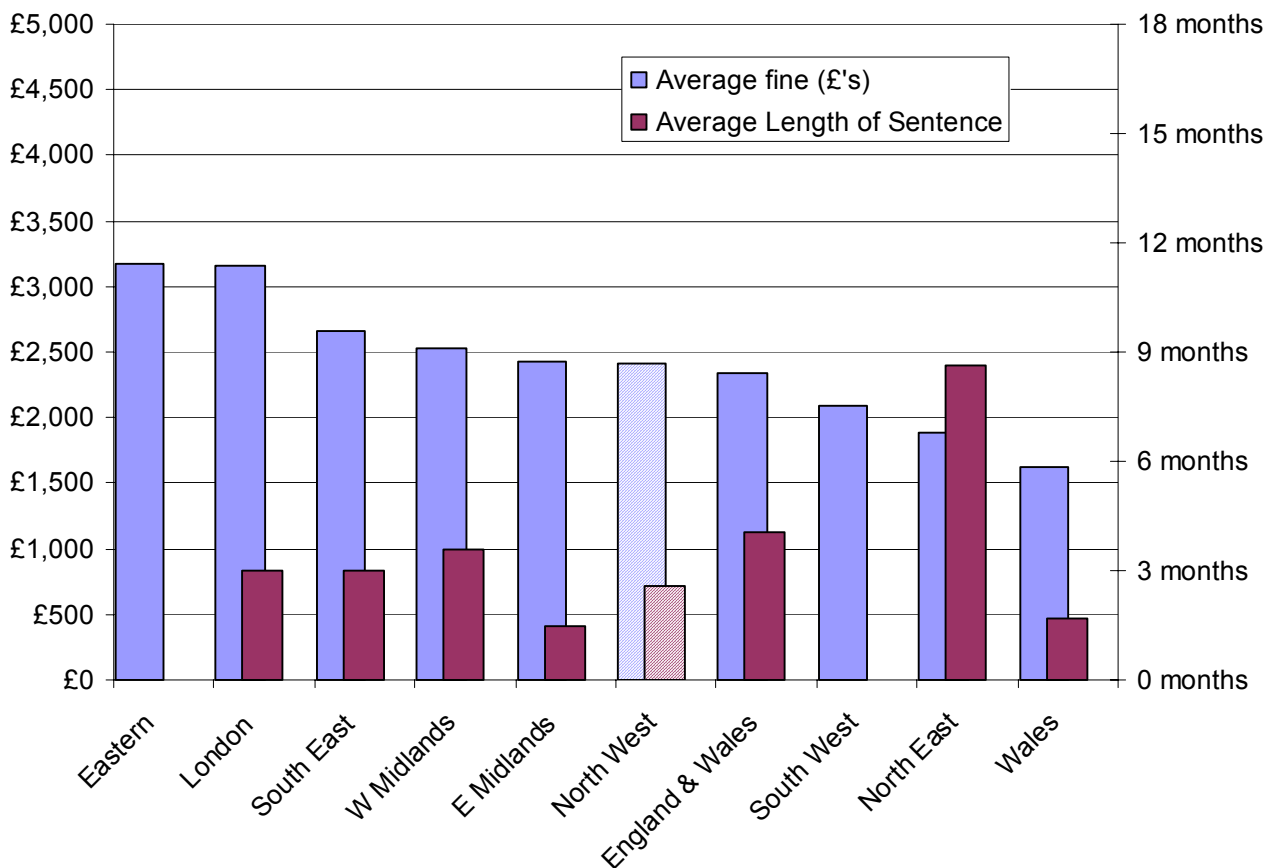


In all Courts, the highest average fines and length of custodial sentence can be found in the Greater London and the Eastern regions. The lowest average fines occur in the North East region and Wales, although whilst Wales has one of the lowest average length of custodial sentence, the North East region has a higher than average (*Figure 3.2*). The low level of fines in the Wales and the North East should be put in perspective with the fact that they have the some of the highest numbers of cases, whilst the London and Eastern regions have the lowest. Therefore, the regions with the highest number of offences have the lowest average penalty whilst the converse is true for those regions with the lowest number of offences.

## Trends by Court Type

The regional trends as identified above are similar when the data are split between Magistrates' and Crown Courts. The highest number of environmental prosecutions heard in the Crown Court are also in Wales, although again the region also has the lowest level of penalties given in both the Crown and Magistrates' Courts, with an average fine of £1,617 and £1,874 in Magistrates' and Crown Courts respectively (*Figures 3.1 to 3.4*). The Eastern region has the highest level of average fine given in Magistrates' Courts (some 36 per cent higher than the average for England & Wales), whilst it has also the highest average custodial sentences given in the Crown Court (some 110 per cent higher than the average for England & Wales). Similarly, on average, fines imposed by London Courts are almost 82 per cent higher than the average for England & Wales.

**Figure.3.3 Average penalty (1999-March 2003) for all environmental offences (MAGISTRATES) ( $\Sigma = 5572$ )**



**Figure 3.4 Average penalty (1999-March 2003) for all environmental offences (CROWN) ( $\Sigma = 692$ )**

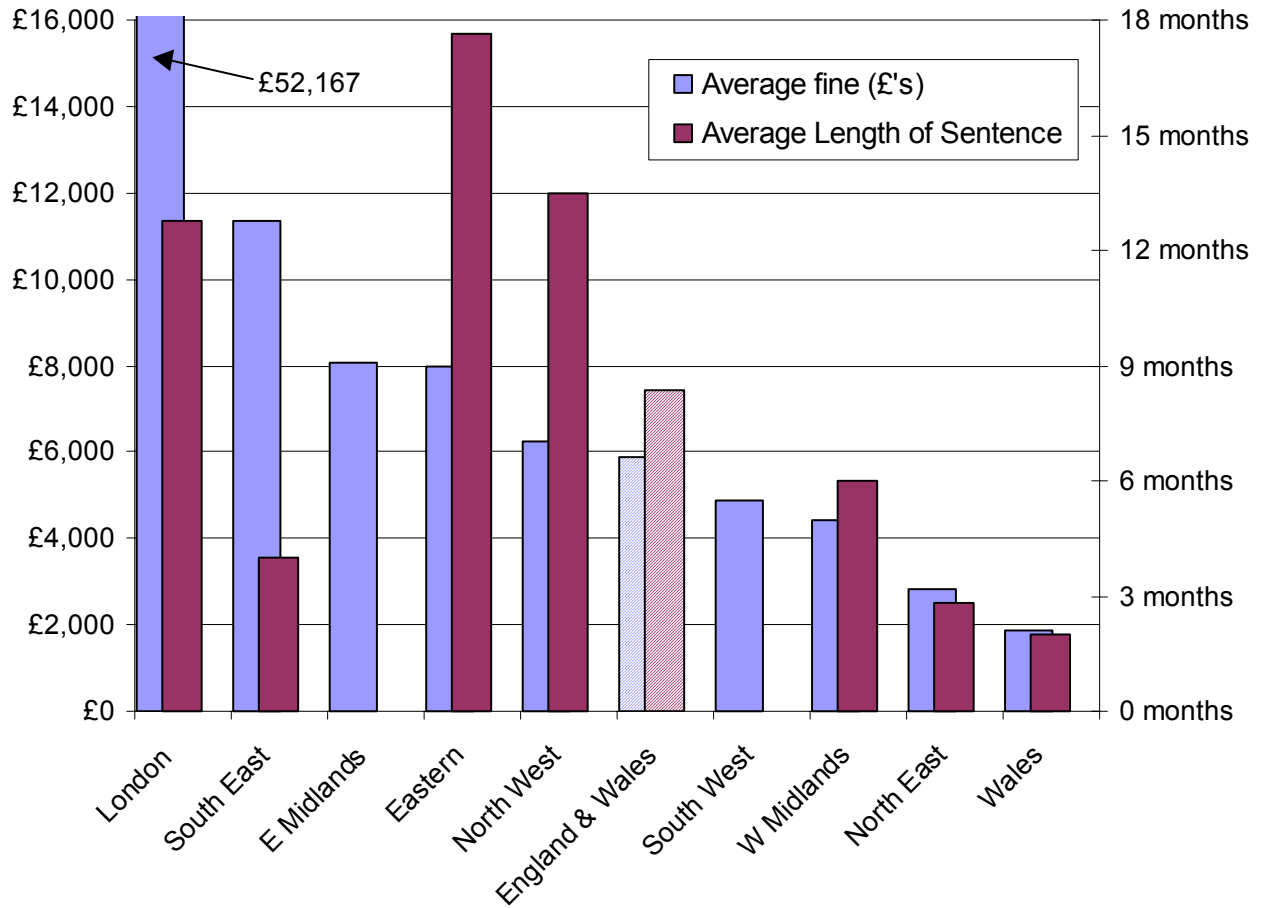
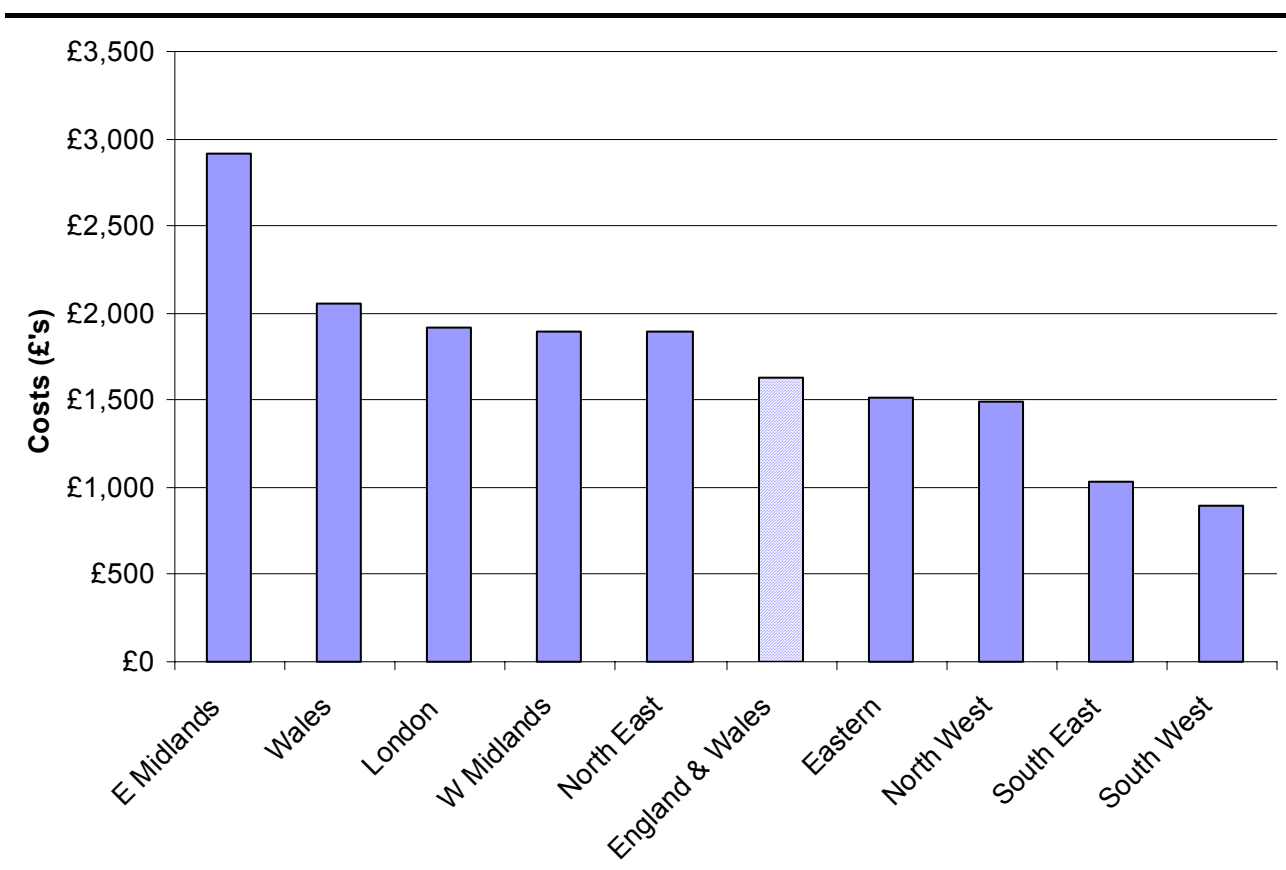


Figure 3.5 below shows that East Midlands and Wales had some of the highest figures for costs awarded, with £2,917 and £2,056 respectively. The South West region had the lowest costs awarded amongst all the regions (£900), whilst the Eastern region, despite having some of the highest penalties, was also below the national average for costs (£1,510). There are no clear relation between the level of fines or the number of offences and the level of cost awarded.

**Figure 3.5 Average costs by region (1999- March 2003) - ALL COURTS**



## **4. Changes in sentences over time**

This section has been prepared in order to show variations in the level of sentences over time, split by court, offender and offence type.

It should be noted that the number of offences sanctioned by both Magistrates' and Crown Courts increases over time (from 846 offences in 1999 to 1,802 in 2002). This trend may be partially explained by the fact that additional prosecutions have been brought under more recent legislation, which introduces new offences e.g. the Producer Responsibility Obligations (Packaging Waste) Regulations 1997.

### **Crown and Magistrates' Courts**

This section shows how sentencing practices and average sentences have varied according to court and offender type during the period under study.

### *The Use of Different Penalties*

The first two tables summarise changes in sentencing practices i.e. the use of different types of penalties, distinguishing on one hand between cases involving individuals and cases involving companies, and on the other hand, between Magistrates' Courts and Crown Courts.

This analysis does not reveal any obvious trends. The main features that can be identified are as follows:

- Between 1999 and 2002, the large majority of offences involving companies resulted in fines (from 81 to 85 per cent), whereas the proportion is more limited for offences involving individuals (from 54 to 65 per cent).
- No clear trend emerges with regard to custodial sentences, which is understandable given the very low number of cases resulting in such sentences.
- There is no clear trend as to the proportion of offences resulting in fines over time for both Magistrates' and Crown Courts.
- The Crown Court's use of penalties other than fines or custodial sentences is very limited.
- The number of offences where the Crown Court awarded costs tends to decrease over the study period, whilst it remains fairly constant for Magistrates' Courts.

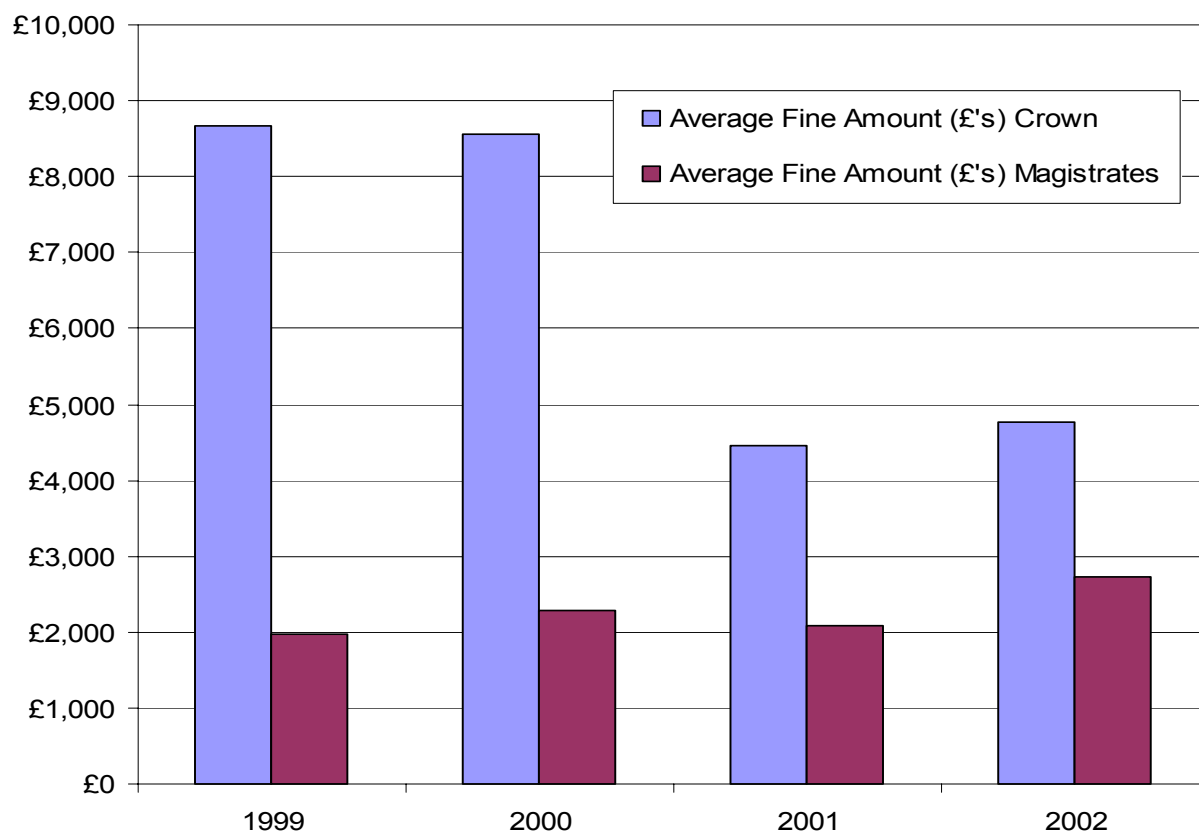
**Table 3.2** Summary of sentencing practices for Magistrates' and Crown Courts over time

Court type	Year	No. of offences	No. resulting in a fine		No. resulting in custodial sentence		No. resulting in other outcome		No. resulting in costs	
			No.	%	No.	%	No.	%	No.	%
Crown	1999	48	30	63%	0	0%	11	23%	39	81%
	2000	176	81	46%	27	15%	10	6%	91	52%
	2001	178	118	67%	9	5%	7	4%	100	56%
	2002	252	110	45%	4	1.6%	6	2%	106	43%
Magistrates	1999	798	590	74%	7	0.9%	90	11%	594	75%
	2000	1414	977	69%	3	0.2%	140	10%	1007	71%
	2001	1574	1045	66%	9	0.6%	136	9%	1124	71%
	2002	1550	1120	72%	14	0.9%	78	5%	1119	72%

*Changes in the Severity of Sentences Over Time*

The following figures show trends in the amount of fines and the length of custodial sentence over time. They distinguish between Magistrates' and Crown Courts.

**Figure.3.6** *Change in average fine over time by court type for all offences*

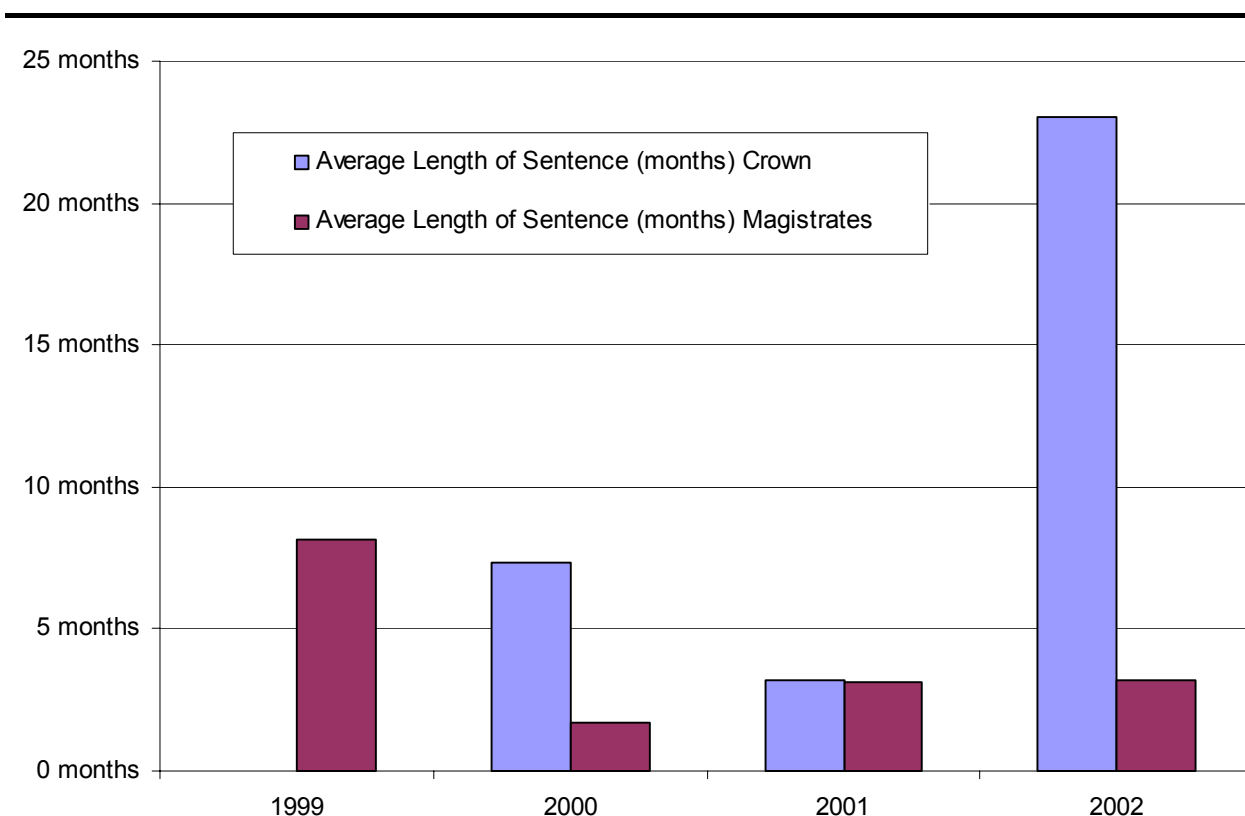


The data suggest that there has been variation in the size of average fines given by **Magistrates' Courts** over the study period, with a general increase from 1999 to 2002 (with the exception of a slight decrease of 9 per cent between 2000 and 2001) followed by a 31 per cent increase from 2001 to 2002. Despite this trend towards increasing the level of fines, the average amount stays well below the maximum, which Magistrates' Courts can generally impose (up to £20,000 for most offences).

In the **Crown Court**, the trend is the opposite, with a sharp decrease in the average level of fines between the years 1999 and 2000 (about £8,500 during the two years), and the years 2001 and 2002 for which the average fine amount is well below £5,000. As the number of cases resulting in custodial sentence also decreased after a sharp increase in 2000 (*Table 3.2*), this seems to indicate a general decrease in the severity of sanctions imposed by Crown Courts.

The following graph examines more in detail the trend in average length of custodial sentence over time.

**Figure 3.7** Change in average length of custodial sentence over time by court type for all offences



Note: All sentences relate to individual offenders only as no custodial sentences were passed for companies over the study period (see *Table 3.3*)

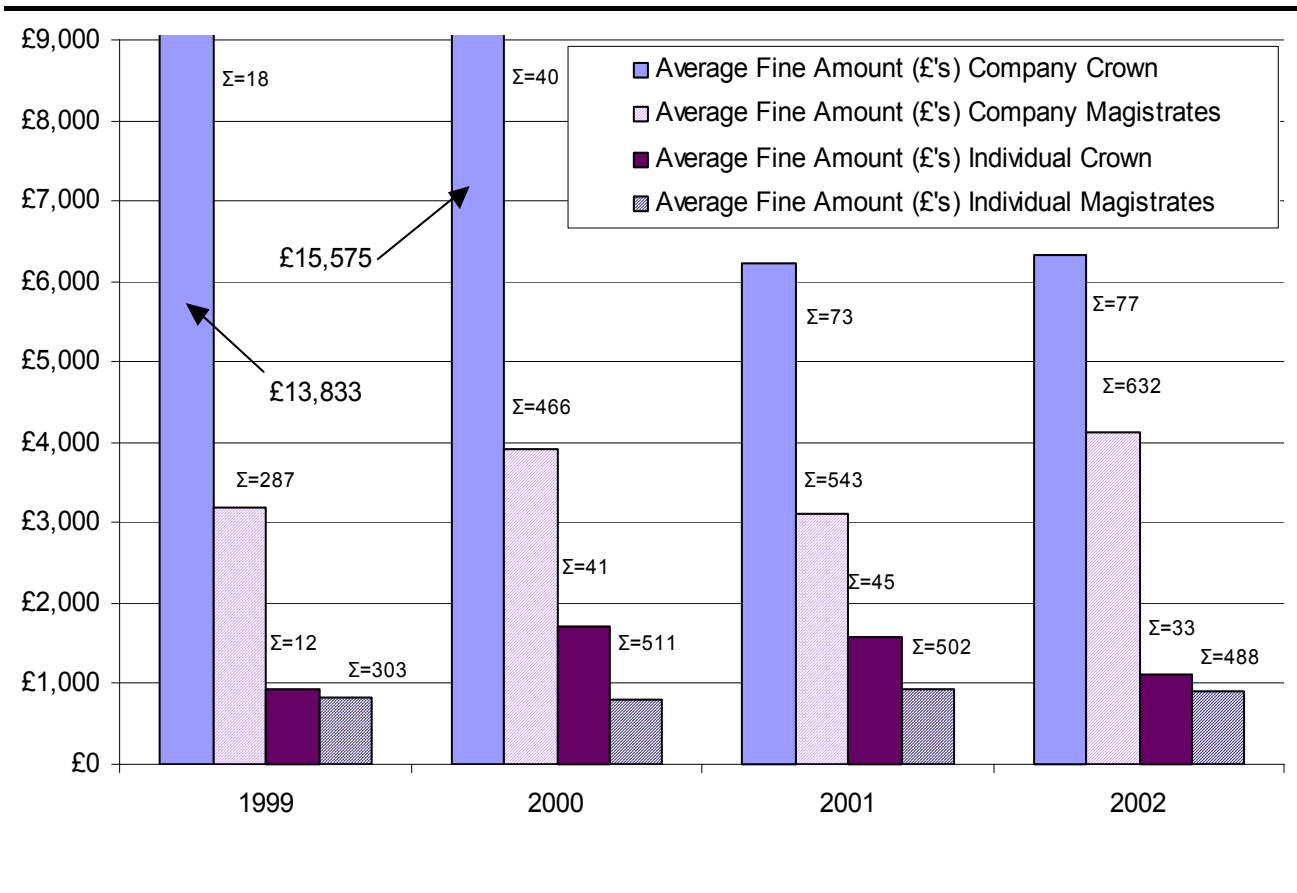
*Figure 3.7* indicates that the length of custodial sentence issued by **Magistrates' Courts** increased during the period under study, with an 86 per cent increase in the length of sentence passed between 2000 and 2001, and only a slight change in 2002. This trend should be considered along the increased number of offences for which custodial sentences have been imposed (from 5 to 14 over the research period). However, they still count for only around 1 per cent of the total number of offences heard in Magistrates' Courts (*Table 3.2*). Therefore, these figures should be taken more as an indication of the low number of custodial sentences pronounced and shouldn't be used to infer a trend.

The same remark applies to the figures for the **Crown Court** where the number of offences concerned is too low to identify any meaningful trend.

Offender type

ERM has examined in more detail the evolution in the level of fines over time, differentiating between fines imposed on individuals and those imposed on companies.

Figure 3.8 Change in fines over time by court and offender type



Level of Fines in Cases Involving Companies

The data suggest that in general, the level of fines imposed on companies by the **Magistrates' Courts** varies only slightly between £3,000 and £4,000 from 1999 to 2002. In comparison, fines imposed by the Crown Court on companies dropped significantly over the study period.

The average fines given to companies in the **Crown Court** in 2001 and 2002 were well below the level of fines given in 1999 and 2000. However, the number of successful prosecutions against companies increased over the period, rising from 625 in 2000, to 732 in 2001 and 880 in 2002. Moreover, the number of cases involving companies, heard at the Crown Court, also increased as a percentage of total prosecutions.

For statistical purposes and as a mean to highlight any underlying trend, ERM looked at the average level of fines while excluding all offences where a fine over £25,000 has been imposed<sup>(1)</sup>. Excluding these 'large' fines, the trend is similar with the following average fine amounts:

- £ 8,688 in 1999
- £ 6,703 in 2000
- £ 4,257 in 2001
- £ 4,981 in 2002

#### *Level of Fines in Cases Involving Individuals*

For cases involving individuals, the data suggest that there was a continued decrease in the average fine given in 2002 in the **Crown Court**, relative to both 2001 (30 per cent lower), and 2000 (35 per cent lower). In **Magistrates' Courts**, the trend is different, with average fines in 2002 showing only a slight reverse in the decline in 2001 (4.7 per cent lower), and remaining some 10 per cent higher than the average fine in 2000. However, the differences are only marginal, with the total range across all years of only £120 (between £826-£946).

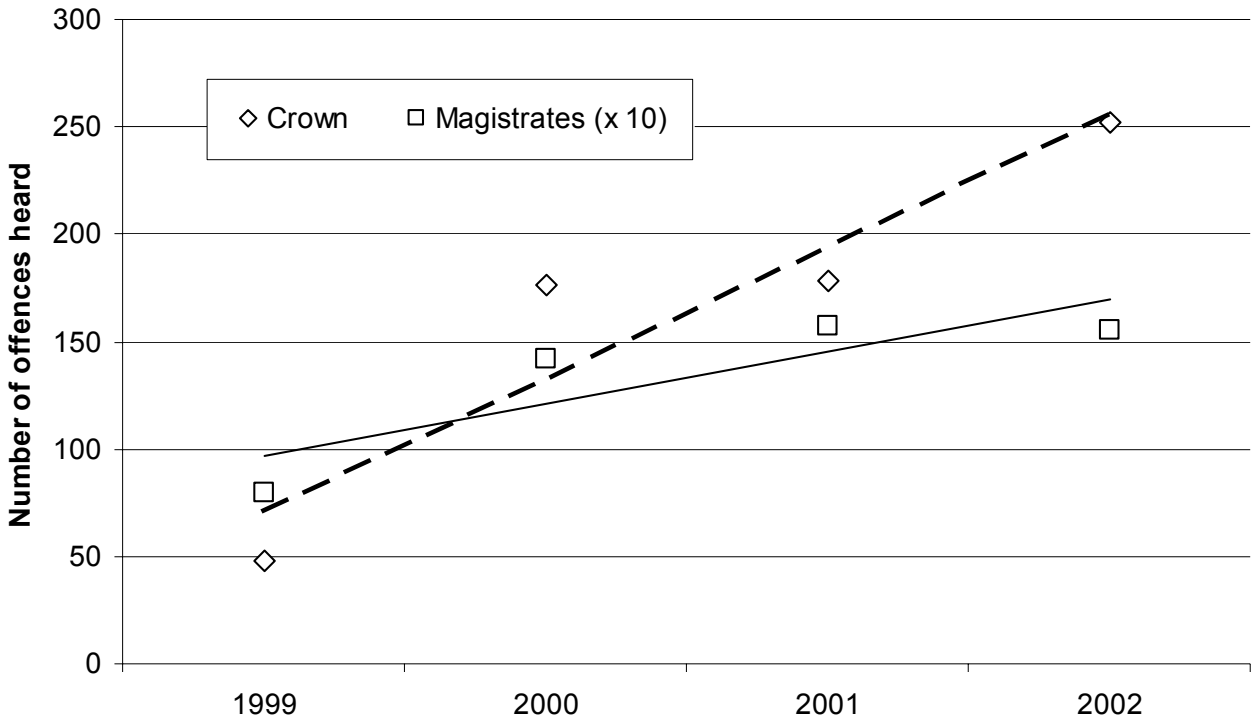
The trends identified could be the result of magistrates referring more cases triable either summarily or by indictment to the Crown Court, which could also explain why sentences have shown a decrease in the Crown Court over recent years as less serious cases are heard. This hypothesis is reinforced by the figures showing the increase in the number of cases heard in the Crown Court over recent years (*Table 3.2*), and the steeper trend in the number of offences heard in the Crown Court relative to Magistrates Court (*Figure 3.9*).

**Table 3.3** *Summary of sentencing practices for different offender types over time*

Offender type	Year	No. of offences	No. resulting in a fine		No. resulting in custodial sentence		No. resulting in other outcome	
Company	1999	359	305	85%	0	0%	5	1.4%
	2000	625	506	81%	0	0%	19	3%
	2001	732	616	84%	0	0%	15	2%
	2002	880	709	81%	0	0%	8	0.9%
Individual	1999	487	315	65%	7	1.4%	96	20%
	2000	965	552	57%	30	3.1%	131	14%
	2001	1020	547	54%	18	1.7%	128	13%
	2002	922	521	57%	19	2.1%	76	8%

(1) Cases excluded: 1999 - 3 offences (£25-60k); 2000 - 9 offences (£25-200k); 2001 - 4 offences (£30-50k); 2002 - 6 offences (£25-50k).

**Figure 3.9** Trend in number of prosecutions brought in Magistrates and Crown Courts (1999-2002)

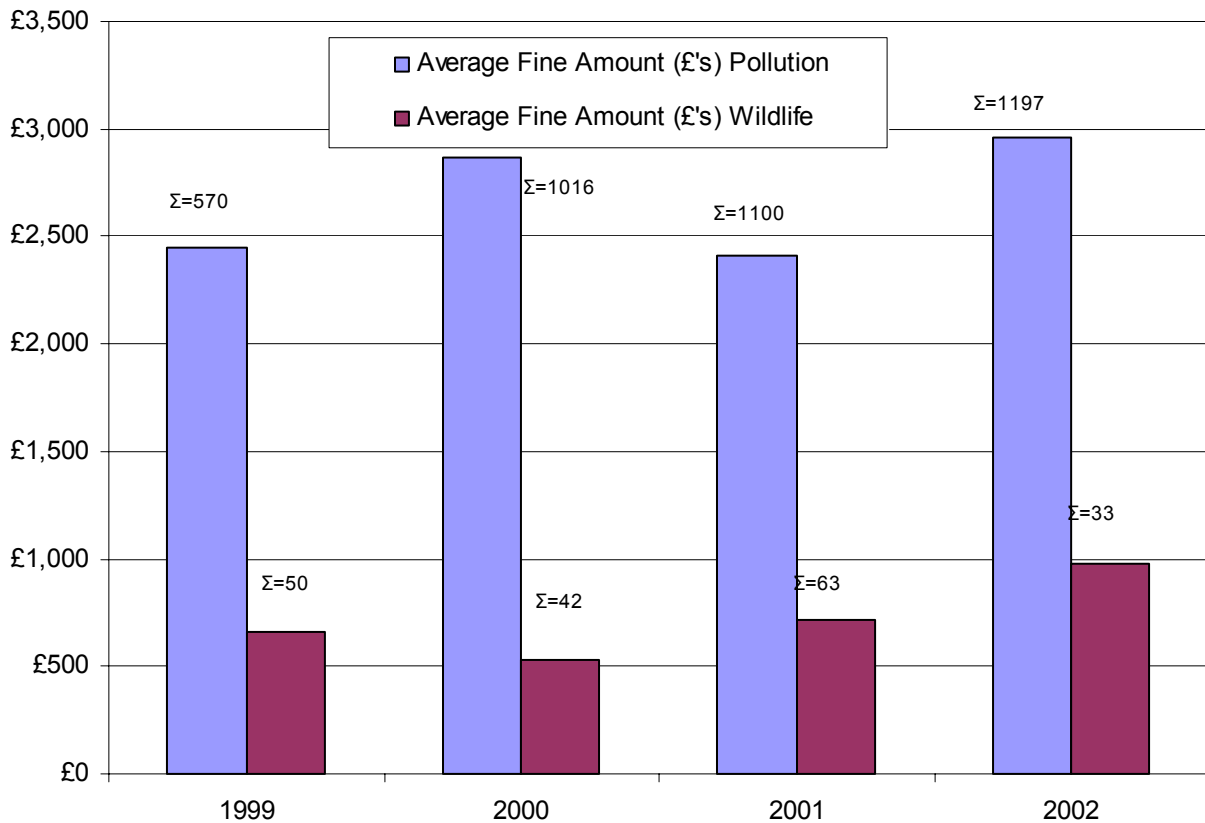


**Offence type**

The data presented in this section shows how the variations in the sentences passed during the period of study have varied according to the type of offence, namely wildlife and pollution offences (see in *Annex 4* which shows how ERM differentiates between wildlife and pollution offences). Looking at the variations in the sentences by distinguishing between different types of offences allows a clearer view of the general results, which are distorted by the large number of cases prosecuted by the Environment Agency, and also takes into account differences in the sort of factors/issues at stake e.g. legal framework, environmental damage etc.

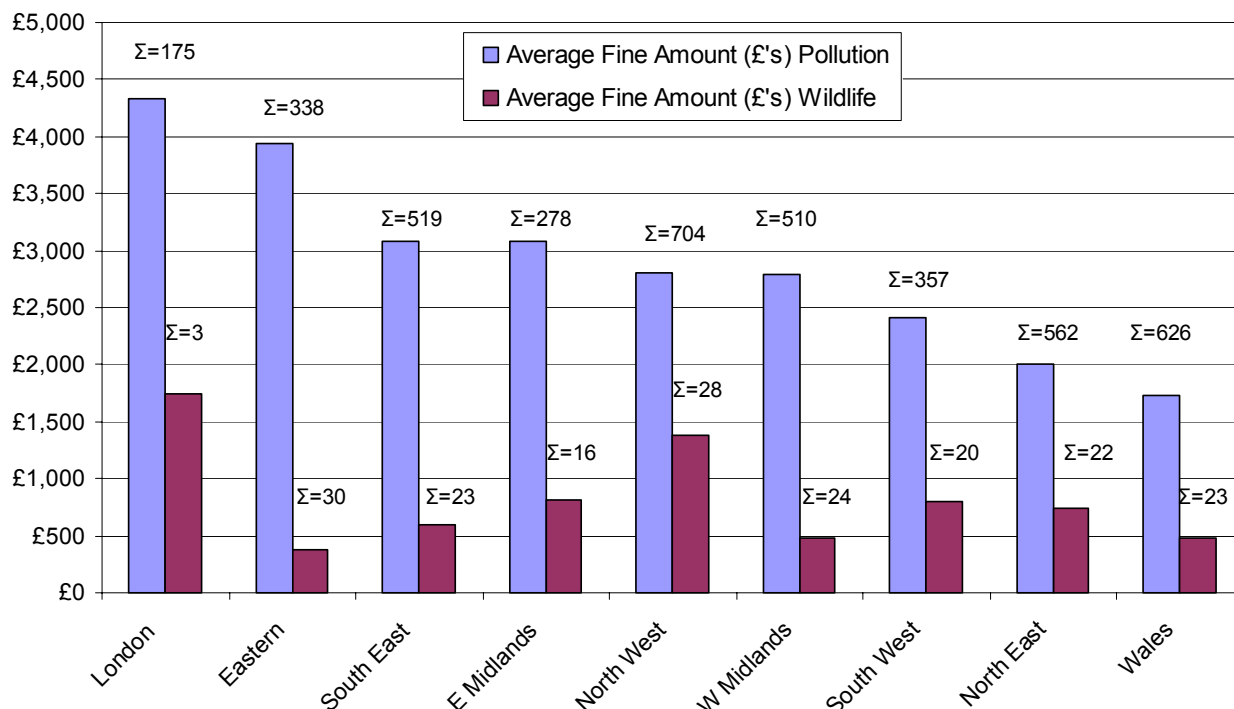
This section also shows regional variations in relation to these trends. Due to the very low number of custodial sentences imposed, we have focused only on fines.

Figure 3.10 Change in average fine by offence type over time



The trend shown for the level of fines passed for **pollution offences** (Figure 3.10) broadly mirrors the general trend in the level of fines issued by courts for all environmental offences, with a decline in 2001 compared to 2000 (by about 16 per cent), followed by a reverse in 2002 (a 23 per cent increase).

In slight contrast, the trend in the level of fines imposed for **wildlife offences** shows a steady increase from 2000 to 2001 (44 per cent) and again from 2001 to 2002 (26 per cent). This trend is not visible in the overall analysis for all environmental offences (Figure 3.3) due to the relatively small proportion of wildlife offences compared to the total number of other environmental offences (wildlife offences account for a only 7.3 per cent of all offences in the database). Furthermore, these figures should be considered with caution taking into account the broad variation in the nature of wildlife offences and in the competent prosecuting bodies (HMCE, RSPCA, Police/CPS, Forestry Commission).

**Figure 3.11** Variation in average fines by region and type of offence

The data suggest that there is no relationship between the average fines given for pollution offences and wildlife offences in different regions. In particular, whilst the trend for average fines for pollution offences broadly mirrors that for all environmental offences (*Figure 3.2*), wildlife offences tend not to follow this trend (although it should be noted the data in *Figure 3.2* include figures for 2003).

## 5. General Remarks on Court Practice

Based on the results of the statistical analysis, discussions with different stakeholders and the results of the case study presented below, a few remarks can be made concerning environmental sentencing practice in Magistrates' and Crown Courts. As the trends and issues identified vary depending on the Court category, the remarks are presented separately for respectively Magistrates' and Crown Courts.

### Magistrates' Courts

Generally Magistrates only receive a very low level of exposure to environmental offences relative to other offences. In the case study area (see below), of the 3445 cases heard per year, only 5 to 6 are likely to be environmental related cases, which could fall to any of 149 magistrates (or 3 person lay-bench). This implies that many Magistrates are unlikely to be familiar with environmental cases.

However, when hearing environmental cases, even if not familiar with the particular features of such offences, in addition to the presentation of the case by both the prosecution and the defence, the Magistrates also benefit from the advice of the justices' clerk or their legal adviser. The justices' clerks and legal advisers play a major role in supporting the Magistrates through judicial advice on, *inter alia*, questions of law, matters of practice and procedure, the range of penalties available, any relevant decisions of the superior courts or other guidelines. The justices' clerks and legal advisers will also assist the Magistrates by keeping a record of the evidence given in contested cases. This point has been underlined by prosecutors, who often consult with the Magistrates' legal adviser on the details of a case. There do not appear to be any problems for Magistrates in receiving the correct information about the legislation from prosecutors.

The large majority of the people interviewed consider that the Magistrates understand the evidence presented. Some interviewees mentioned specific cases where the environmental harm was not fully understood by Magistrates, but there is only very limited anecdotal evidence of such cases. This relates mainly to wildlife cases where it seems that the full extent of the environmental damage has not always been truly acknowledged.

The review of statistical data has shown that the average level of fines imposed by Magistrates' Courts has increased from 1999 to 2002, with a noticeable 31 per cent increase from 2001 to 2002. This confirms some prosecutors' perception that the introduction of the Magistrates' Courts Sentencing Guideline on environmental offences in 2001 has resulted in a higher level of fines. However, this general trend should be put in perspective with the analysis of regional trends, which shows that the regions with the highest number of prosecutions are the ones with the lowest penalties. This is particularly clear in relation to Magistrates' Courts. In addition, it is too early to make a meaningful assessment of the impact of the Guideline, as the research extends only to the year following its publication.

The results of the case-study (see below) suggests that over one-third of magistrates may not be aware of the Magistrates' Courts Sentencing Guideline, while a tenth although aware of their existence had never read them, and less than a quarter appeared reasonably aware of them. Surprisingly, whilst in some cases, this may be explained by the fact that the Magistrates have not been exposed to any environmental case, there is no consistent relationship between exposure to environmental cases and awareness of the Magistrates' Guideline in the responses received. The fact that a number of Magistrates seem not to be aware of them is of some concern, especially given the complexity and specificity of the concepts involved in environmental cases. Some prosecutors confirmed that magistrates with specific training understand environmental cases better and therefore have a sounder and more consistent approach. More training and information about the Guideline should be considered.

**CASE STUDY - Magistrates' Court**

Due to the low level of responses received from the judges/magistrates questionnaire, ERM were unable to make any general conclusions about court practices for handling environmental offences. However, a good response was received from one court surveyed, and we have used these to develop a case study.

In order to preserve the confidentiality of the court in question, and those magistrates who were kind enough to take the time to complete the questionnaire, we have removed any direct reference to the court.

**Court Characteristics**

The court is characterised by the following:

- the court is located in the South East of England;
- there are five courts sitting per day;
- between January and September 2003, 2548 cases were completed in the court *resulting in an average of around 283 cases per month or 3445 per year*;
- there are 149 Magistrates registered with the court *resulting in an average of just over 23 cases per Magistrate per year*;
- each Magistrate at the court sits on average for 37 half days per year;

**Relevance of the Case Study Results**

In comparison with average figures for Magistrates' Courts provided through the statistical analysis, the case study area seems fairly typical for England & Wales for the following reasons:

- the number of environmental offences handled between 1999-2003 was 13, where the average per Magistrates' Court for England & Wales was 14;
- average costs sanctioned by the court for offences heard are comparable to the total average for England & Wales (6 per cent variance)
- all prosecutions were brought by the Environment Agency (in common with many other magistrates courts in the database of cases).
- However, one major difference in the case study area as compared to others is the level of average fine imposed, which is almost 50% higher than the national average.

**Results**

Thirty-two responses were received from the magistrates sitting at the court, including a joint response from two magistrates. The responses to the 7 questions included:

- On the number of environmental offences handled:
  - 12 magistrates had not dealt with any environmental offences,
  - 9 had dealt with less than 1 a year;
  - 9 had dealt with 1 - 2 cases per year;
  - 2 had dealt with 2 - 3 cases per year;
- Of those who had sat on an environmental case(s):
  - 18 (90%) indicated that the prosecution had satisfactorily explained the legislation and environmental issues and concepts, 1 (5%) indicated that they would request clarification on those issues if required, and, 1 (5%) did not recollect;
  - 13 (65%) of those suggested that the prosecution had presented the cases in a consistent manner, whilst 3 (15%) indicated that they had not although no explanation was provided as to why this was the case;
  - 15 (75%) suggested that if a guilty plea is entered then the prosecution still presented the case satisfactorily in order to ensure sentencing can be made on all available information, whilst 4 (20%) said that they had not dealt with enough cases to comment, and 1 (5%) didn't know;
  - 14 (70%) indicated that sufficient information is given in relation to the actual environmental harm and risks posed in the case, and any damage to amenity value, although 3 (15%) indicated that in some cases this information is not always clear, was variable or had to be requested (the remainder did not answer);
- Where magistrates were asked to list what they thought the typical aggravating and mitigating factors were, of the 9 respondents who made comments in this section, the following range of factors were mentioned:
  - the period that the polluting event had continued over, and/or length of time the environment takes to recover from the damage inflicted;
  - the level of damage inflicted - e.g. number of animals killed, types of wildlife affected i.e. whether they were protected species;
  - the effects on the local [human] population;
  - any carelessness, disregard for or deliberate action against the environment, especially if this was for financial gain;
  - the size and responsibility associated with any company involved, and whether they had any training in place and/or lack of it;

- any remedial action taken by the defendant;
- whether good practice was in place or not;
- whether it was a genuine mistake or not.

A minority of the respondents indicated that they were unclear as to what the aggravating or mitigating factors may be in the case of an environmental offence.

- Of all the respondents, only 7 (22%) clearly indicated that they were aware of the Magistrates Courts' Sentencing Guideline on environmental offences, whilst a further 3 (9%) suggested that they were aware of them but had never looked at them in any detail or even seen a copy. 11 (34%) indicated that they were not aware of the guideline. The remainder failed to answer.

## The Crown Court

As discussed previously, the variation in the average fine and in the length of custodial sentences shows a general decrease in the severity of the sanctions imposed by the Crown Court over the study period. This is applicable to cases involving individuals and to cases involving companies. It is not possible in the framework of this research to draw conclusions on the causes of such a trend without further information on the details of all the cases in question. Nonetheless, this may indicate that specific guidance on environmental sentencing, as issued to Magistrates, could be developed for the Crown Court.

In the case of a non-guilty plea, as underlined by some interviewees with experience of presenting cases at the Crown Court, convincing the jury of the defendant's culpability may prove difficult. For example, in cases related to the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (CITES cases), the main difficulty is to prove that the infraction was committed knowingly and to convince the jury accordingly.

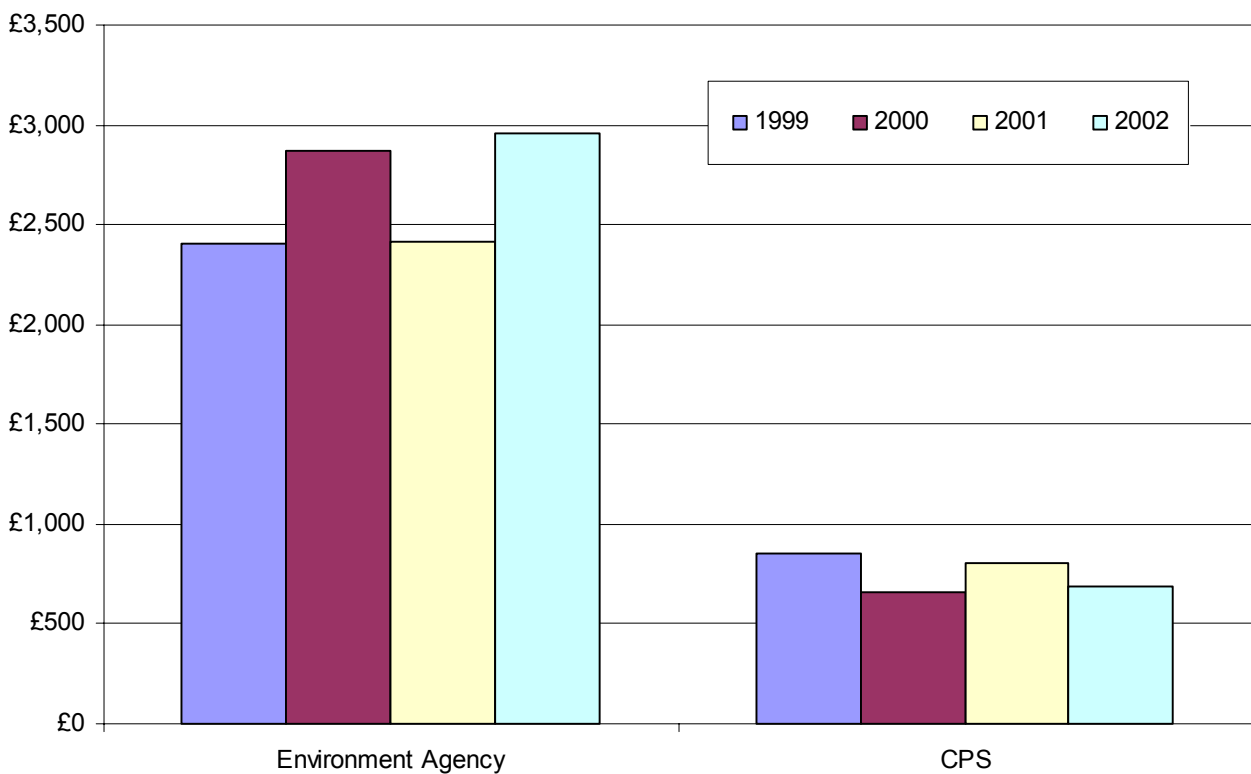
# Prosecution Practice

This section identifies main trends from a prosecution perspective. It describes changes in sentencing over time according to the prosecuting body and presents the prosecution perspective on environmental sentencing.

## 6. Summary Data: Changes in Sentences Over Time

This section shows how the level of sentencing has varied over the study period, distinguishing between different bodies undertaking prosecutions.

**Figure 4.1 Changes in the level of fines for different prosecuting bodies over time**



Notes: There is no data for HSE, Forestry Commission for the year 1999.

See Table 4.1 for number of prosecutions brought per prosecuting body. Note: ERM have removed those bodies where only a low number of prosecutions have been brought (see Table 4.1)

Also note that whilst Figure 3.9 indicates that the trend in the level of average fines for wildlife offences has shown a slight increase during the study period, the figures for the CPS has declined. The average fine figures in Figure 3.9 are strongly skewed by wildlife prosecutions brought by the Forestry Commission.

The data suggest that there are significant differences in the level of fines sanctioned between offences prosecuted by the Environment Agency and the Crown Prosecution Service (CPS) (Figure 4.1). No obvious year-on-year trends in the average level of fines

are apparent, however, the figures do suggest that the fine levels have decreased slightly for the CPS whilst the Environment Agency has increased between 1999 and 2002, although over the same period the number of prosecutions brought by the CPS has shown a general increase (*Table 4.1*).

The figures also clearly indicate that the number of prosecutions brought by the Environment Agency has increased significantly over the study period, whilst the number of private prosecutions brought by the RSPCA has declined. Other bodies show no obvious trends for the number of prosecutions brought.

**Table 4.1 Number of cases per prosecuting bodies**

Body	1999	2000	2001	2002
HSE	-	4	3	3
EA	768	1478	1620	1713
CPS	54	74	101	74
Forestry Commission	No data	12	18	3
HMCE	No data	1	1	6
RSPCA	22	25	19	7
Defra	2	-	-	-

## 7. Role and Views of the Prosecuting Bodies

This section draws on the results of the questionnaires completed by a range of representatives of different prosecution bodies.

The prosecutors usually prepare and present the cases themselves. Generally the person in charge of the investigation is supported by in-house lawyers. In some cases, external counsels are involved, in particular for complex cases or when internal resources are not available. Expert witnesses play a central role in explaining and demonstrating the significance of actual and potential environmental harm and other associated risks caused by the offence. Generally, the prosecutors have enough time to prepare the case, with the exception of the Police/CPS and the local authorities, which may lack time and resources. It should be noted that environment is not the main and unique responsibility of all these organisations. Further comments on this issue in relation to local authorities are made in *Chapter 5*.

It is unlikely that a prosecutor will put a case forward if he considers that there is not enough information / evidence relating to the actual or potential environmental harm and other associated risks. The main question relates to the effective presentation of this evidence. The majority of the interviewees underlined the importance of using pictures, plans, diagrams, even video evidence if possible, which can all help to 'bring cases to life'. In the case of pollution, biology / ecotoxicology reports are also used to explain environmental impacts. Interestingly, in some cases, the prosecution have used pictures demonstrating the *potential* harm that could have been caused by the infraction. For example, in one case involving the illegal deposit of tyres, photographs and videos were

shown in order to demonstrate the potential impact of the deposit of tyres, showing how quickly a tyre fire can spread, etc. i.e. highlighting the potential risks and damage associated with the activity. Some interviewees noted that aerial pictures could be useful to present some infractions e.g. waste deposit, devastation in cases of forestry offences involving significant harm to the landscape.

There is a general perception from interviewees that it is important to focus the presentation of the case to the Court on the main aspects and central facts in order not to overwhelm the Court with large amount of information. One interviewee mentioned that 'in some cases, it is worth trying to simplify the issues at stake'.

Most prosecutors will discuss the relevant legislation and the powers of sentencing with the justices' clerks, who will explain them to the bench. More rarely, these are directly presented to the magistrates. The justices' clerks and legal advisers play a central role in explaining to the Court their sentencing powers.

The Friskies Schedules are a valuable tool in introducing transparency and certainty as to the basis on which a sentence is passed, in particular in relation to the aggravating and mitigating factors. Friskies schedules were introduced after the new Magistrates Courts' Sentencing Guideline of 2001, which state that '*R v Friskies Petcare UK Ltd sets out important guidelines for prosecutors, defendants and the sentencing court in the event of a plea of guilty. It strongly recommends that the salient facts of the case, together with aggravating and mitigating features, should be presented to the sentencing court in the form of schedules, which should if possible be agreed in advance. There will, therefore, be no doubt about the basis on which sentence is passed, and any higher court dealing with an appeal against sentence will have the relevant facts at its fingertips. The procedure could easily be adapted to assist magistrates' courts, which have to decide whether to commit for sentence following an indication of a guilty plea on plea before venue, or in cases involving a straightforward committal for sentence. The principles apply equally to environmental offences*'.

Friskies Schedules seem to be used mainly in cases prosecuted by the EA<sup>(1)</sup>. Most interviewees from other organisations were not aware of this tool. However, when Friskies Schedules are not prepared, aggravating factors are described as part of the case presentation, and there is usually a verbal agreement between the defence and the prosecution, in particular on the significance and nature of the offence.

Most interviewees have rarely brought the polluter pays principle specifically to the courts attention. However, financial considerations are taken into account such as clean up / remedial costs, landfill tax or charges avoided, licence or permit fees avoided, profit made by offender, commercial profit. The avoided cost or economic gain from the offence is a factor generally considered in cases prosecuted by the EA or HSE, especially in cases involving companies.

(1) Friskies schedules are also used by HSE in the specific case reviewed, however, we have not determined if this is common practice.

The prosecution is usually satisfied with the level of fines, with few exceptions related to wildlife crimes where some interviewees consider that the broader environmental harm is not given sufficient consideration. There is also some evidence that, in certain waste related cases, courts may not always take full consideration of the potential financial gain from breaches of the legislation. A related issue is that very often the fine amount is below what would be expected and/or costs are not included in the sentence due to the financial position of the defendant e.g. in case of bankruptcy or lack of income. This is particularly true with regard to cases involving individuals. However, when the defendant is a company, its financial situation commonly influences the level of fine e.g. if there is a risk of job losses in case the fine is too high.

One EA prosecutor commented that she would use a wider range of charges, where available, against the same, or related defendants as justices sometimes seem reluctant to commit to the Crown Court for a single charge, or alternatively they themselves seem more prepared to give a significant fine where several charges are involved.

# Local Authorities

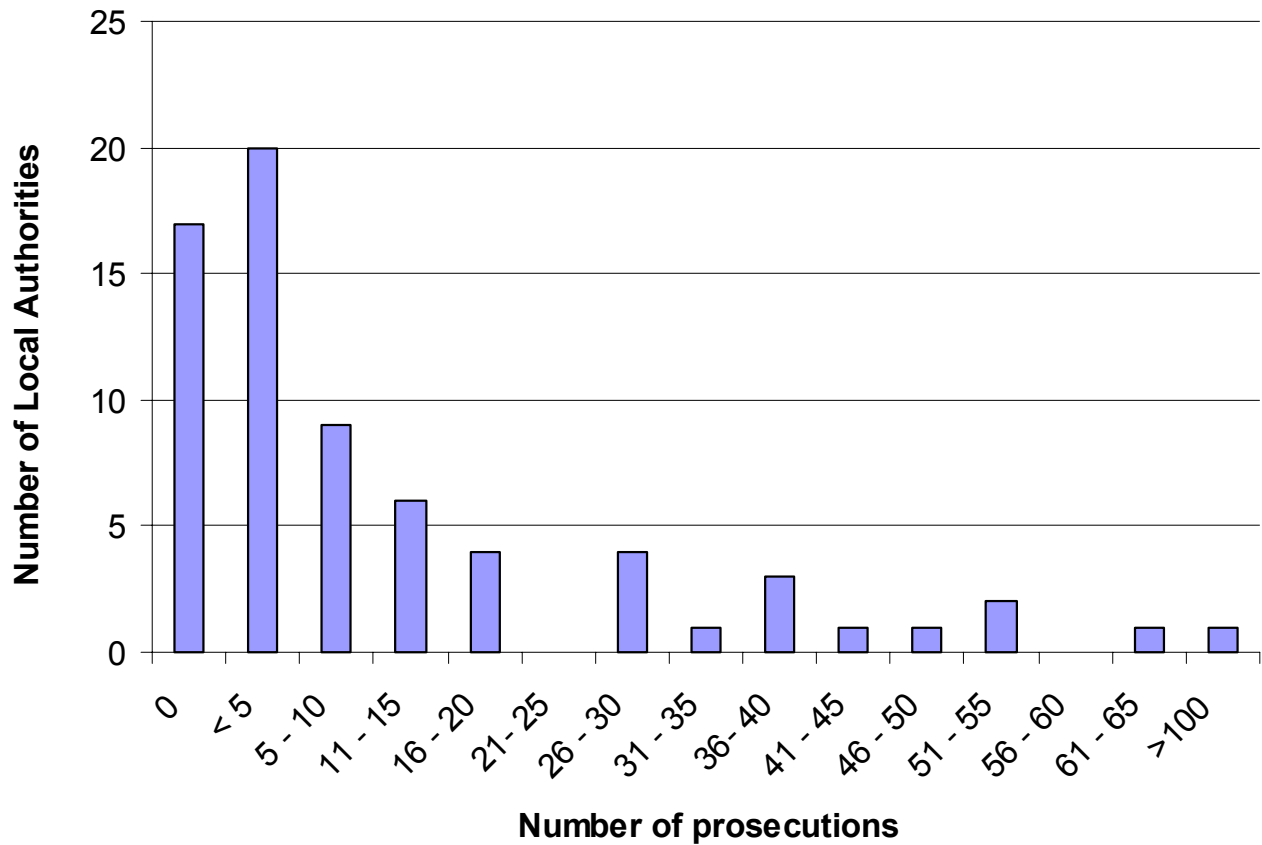
## 8. Summary Data on Local Authorities

As mentioned previously, it has not been possible to obtain systematic and consistent data from the local authorities. This is mainly due to the fact that data on prosecutions by local authorities are not centralised. However, some conclusions can be drawn from the results of the questionnaire sent to local authorities (see *Annex 5*). However, because only 73 local authorities participated the survey, the figures are not fully representative and only limited general trends can be identified.

The environmental offences local authorities have power of prosecution for include:

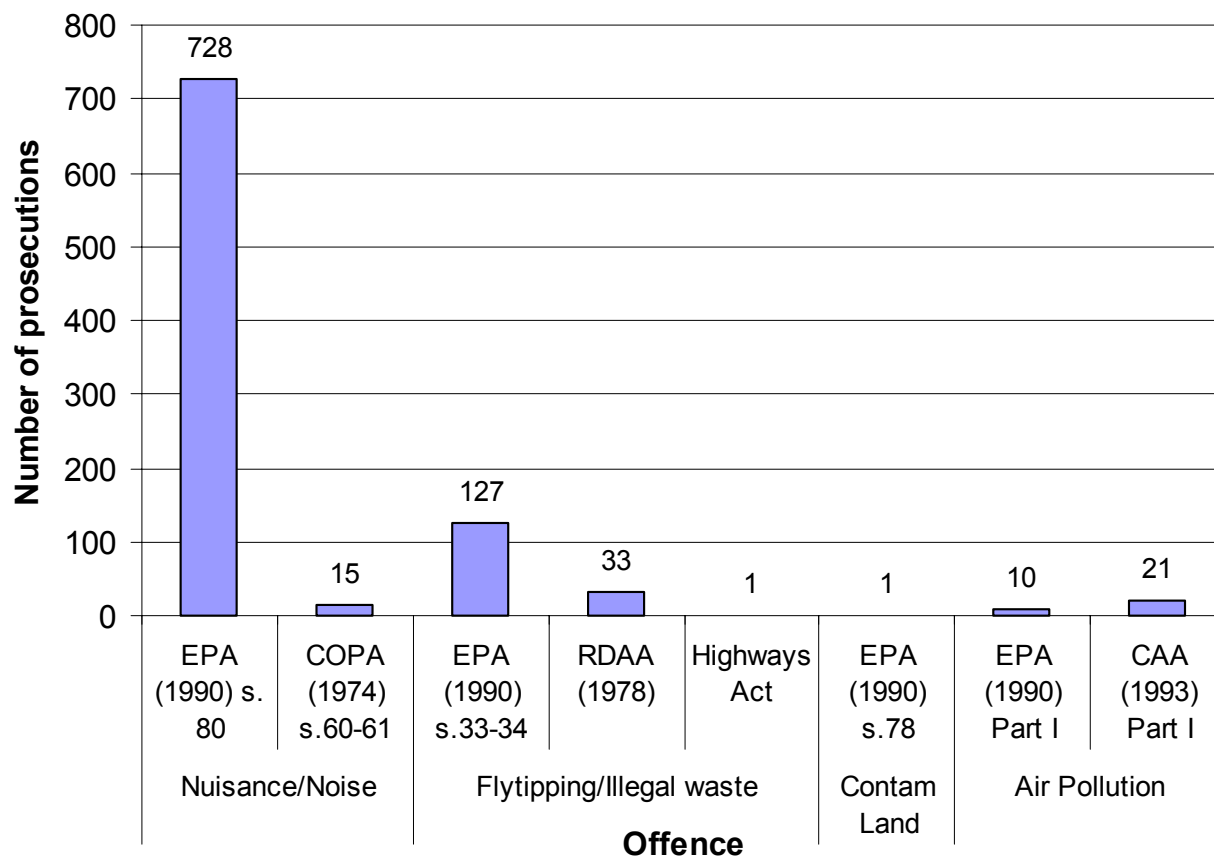
- Environmental Protection Act (1990) s. 80
- Control of Pollution Act (1974) s. 60-61
- Environmental Protection Act (1990) s. 33-34
- Refuse Disposal Amenity Act (1978)
- Highways Act
- Environmental Protection Act (1990) s. 78
- Clean Air Act (1993) Part 1

**Figure 5.1** Number of environmental prosecutions brought by Local Authorities in the last 4.5 years (ERM survey, based on 73 LAs)



The data clearly indicates that the number of prosecution per local authority is fairly limited as, over the last four and a half years, 23.2 per cent have not conducted any prosecution at all, and 27.4 per cent have prosecuted less than 5 cases.

**Figure 5.2 Offences for which Local Authorities have brought prosecutions (based on 73 LAs)**



The large majority of cases prosecuted by local authorities relates to statutory nuisance offences (EPA(1990)s.80) as these offences count for 78 per cent of the cases prosecuted by the local authorities. Although far less frequent than prosecutions for statutory nuisances, prosecutions related to fly-tipping (EPA (1990) s.33-34) are also relatively frequent (14 per cent). In the framework of this research, it was not possible to identify any trends over time as the data provided by the local authorities covered the last three years without differentiating the number of prosecutions for each year.

Interviews of local authorities in relation with the case studies and fly-tipping offences (see next section) showed that the lack of time and resources to prepare the case is an important issue. In particular, it has been noted that local authorities often are short of legal support in preparing cases. In order to tackle this issue, the development of guidance and common format could be considered.

## 9. Specific Issue: Fly-Tipping

### Background

Fly-tipping is an issue high on the agenda. According to the EA, fly-tipping has steadily increased since 1996, with a 19 per cent rise between 2001 and 2002. The ENCAMS Fly-Tipping Study 2003 reveals that fly-tipping is seen as a significant or major problem by 73 per cent of local authorities, in line with an actual increase in the amount of fly-tipping.

This trend is likely to intensify in the coming years due to new restrictions on waste disposal and the requirement to treat all waste before disposal. These new requirements will lead to a significant escalation in the cost of waste disposal, and consequently may result in an increase of fly-tipping as a means of avoiding disposal costs.

The Government is already trying to tackle this issue through different initiatives, aimed at reinforcing local authorities enforcement powers:

- Under the Anti-Social Behaviour Bill, local authorities will be assigned new powers to tackle fly-tipping as well as noise and other nuisances. With regard to fly-tipping, the Bill grants power to waste collection authorities to stop, search and seize vehicles which they suspect have been used for the illegal deposit of waste when, at present, only the EA has the power to do so. In addition, the Bill gives new power of direction to the Secretary of State or Welsh Assembly, enabling them to issue directions to the EA and the waste collection authorities with regard to priorities for abatement efforts against fly-tipping.
- Under the Environmental Protection (Duty of Care) (England) Regulations 2003, the local authorities have been granted the power to request waste consignment transfer notes.

### Prosecution and Sentencing in Fly-Tipping Cases

ERM has examined the issue of fly-tipping from a prosecution/sentencing perspective. Our conclusions are based on the responses to a questionnaire sent to local authorities (see *Annex 5*). The detailed results of the survey are provided in *Annex 6*. We have focussed on two main issues:

- Are local authorities aware of the Protocol on Fly-Tipping and do they apply the matrix set in the Protocol with regard to the distribution of responsibilities between them and the EA?
- What are the obstacles faced by local authorities when prosecuting fly-tipping offences?

## **Awareness of the Protocol on Fly-Tipping**

The Protocol on Fly-Tipping was agreed between the Local Government Association and the Environment Agency in 1998. The Protocol describes the duties and powers of local authorities and the EA in respect of fly-tipping. Both the EA and the local authorities may instigate legal proceedings against fly-tipping, in particular under Section 33 and 34 of the EPA 1990. Section 33 gives power to prosecute in the case of the deposit of waste on unlicensed land and to prosecute the owner of a vehicle (or the person in control of it) if that vehicle has been involved in fly-tipping. Section 34 enables the prosecution of all offences under the Duty of Care. Local authorities can also prosecute under other pieces of legislation e.g. Refuse Disposal (Amenity) Act 1978 [littering] and the Highways Act 1980 s. 3-5 [fly-tipping obstructing public highways].

In order to co-ordinate EA and local authorities responses to fly-tipping, the EA has developed a response matrix defining when the EA intervenes, based on the waste types and volumes and the location. Under the voluntary agreement, the local authorities are responsible for less significant fly-tipping incidents involving non-hazardous wastes, when the EA concentrates on serious incidents – notably involving hazardous wastes.

In addition, the local government and the EA committed to share information on fly-tipping, in particular, information relating to prosecutions (name and addresses of person(s) prosecuted, the offence(s) they were convicted of, the dates of the offence(s), the penalty(ies) imposed and the Court(s) of conviction).

However, local authorities do not always apply the Protocol. Out of the 73 local authorities that answered ERM's questionnaire, only around 33 per cent referred to the Protocol or the matrix when asked how they determine if a fly-tipping case is their (Local Authority) or the Environment Agency's responsibility. However, this figure should be read taking into account the fact that over 44 per cent did not answer the question. Another 7 per cent referred to the location / nature of the waste as being a factor determining whether they decide to prosecute i.e. is it on council land? Is it hazardous? – 15.7 per cent said they would often contact the EA before making any decisions. Three respondents answered that local authorities are responsible for domestic waste or waste deposited by an individual while EA would be responsible for commercial wastes.

According to the data collected, it appears that local authorities rarely prosecute. Out of 73 local authorities answering ERM's questionnaire, 51 (70 per cent) have not prosecuted any fly-tipping case between 1998 and 2003. Out of the 19 local authorities, which have prosecuted, 8 were satisfied with the outcome of the prosecution, while another 8 were not. In particular, 5 local authorities indicated that they considered the fines too low.

This situation is symptomatic of the existing confusion as to who is responsible for prosecuting fly-tipping incidents. The fact that some local authorities are more active than others leads to inconsistency between different regions, with the subsequent risk that fly-tipping activities will be transferred to areas where the enforcement of the legislation is less stringent.

**Obstacles to Prosecution by Local Authorities**

Lack of sufficient evidence is quoted as one of the main reasons preventing prosecution by local authorities. As an alternative to prosecution, some local authorities favour the use of fixed penalty notices or prefer to solve the case by talking directly to the offender e.g. sending letters of warning or agreeing with the offender that he pays for the waste removal. Other obstacles mentioned by the local authorities include the lack of a dedicated enforcement officer or the lack of support from the Authority's legal services.

Some authorities have an active policy with regard to fly-tipping. For example, the Blaenau Gwent CBC has a policy to prosecute fly-tipping cases whenever there is sufficient evidence, and has appointed two enforcement officers (ex-police officers) to specifically investigate environmental crime. As a result, there have been 7 successful prosecutions under Sections 33 and 34 of the EPA 1990 in the last 18 months.

There are some regional inter-agency partnership initiatives, which have shown good results in improving fly-tipping prosecutions. For instance, in 2002, the EA, in partnership with Milton Keynes Council and Thames Valley Police, has conducted a large operation targeted at fly-tipping, enabling the EA to pursue five prosecutions. Similar operations have taken place in Bradford, Yorkshire. In Birmingham, the EA, the City Council and the police have cooperated within the framework of the operation Cleansweep targeted at catching illegal waste operators through a series of roadside checks.

There was also a significant level of anecdotal evidence received from discussions with Local Authority officers that a shift in policy on fly-tipping prosecutions is emerging, with many individuals indicating that senior management within the Authority are allocating more resources and support for pursuing prosecutions for these types of infractions.

# Conclusions

The study has provided partial answers to the research questions, although some aspects would need further investigation and the answers to others, as per the comments below, are likely to include some gaps and uncertainties.

The results should be considered carefully, taking into account the following drawbacks:

- Magnitude and frequency effect: as the number of environmental cases is very limited, and each case is specific with many variables as to the magnitude and frequency of cases, the results may be easily distorted by one or two atypical cases e.g. with a very high fine.
- A number of issues linked to the data format e.g. the database is structured by offences rather than by cases.
- The limited timeline: the research covers only 4 years.
- The differences in nature between environmental cases (variety of prosecuting bodies, legislation, issues).

## ***Are environmental offences consistently sanctioned geographically, by type of courts, prosecuting bodies, type of offences?***

The review of the trends in environmental sentencing between 1999 and 2002 shows some inconsistencies.

Geographically, the study has revealed significant variations across regions in relation to the number of environmental cases and the level of average penalty, with the regions with the highest number of prosecutions being the ones with the lowest penalties. There are different potential causes to such a trend, *inter alia*:

- a difference in Courts' and/or prosecutors' approach from one region to another: it should be noted that the prosecutors' approach is generally very well standardised with the exception of local authorities. Another issue may be that as the degree of concern regarding environment may be different from one region to another, the level of resources available to prosecutors may vary.
- differences in the level of enforcement, the nature of offences, the financial situation of offenders, etc.

The analysis by types of courts has shown different trends in the levels of penalty between Magistrates' Courts, which experienced a general increase over the study period, and the Crown Court, which showed a general decrease in the severity of sanctions imposed. The analysis of the database per prosecuting body suggested that there was a general increase in the average level of fines imposed from 1999 to 2002, with the exception of cases prosecuted by the Police/CPS.

The review of trends per type of offences has distinguished broadly between pollution and wildlife offences, showing for both a slight increase over the study period with reverse trends for the years 2000 and 2001.

However, these results should be considered carefully as the trends have been analysed for only 4 years<sup>(1)</sup>. It would be advisable to carry out further validation and complement the survey in coming years.

***Are the prosecution bodies and the courts sufficiently trained / informed to assess the seriousness of offences and take sound decisions?***

Given the complexity and specificity of the concepts involved in environmental cases, further guidance and training should be considered. In 2000, the Sentencing Advisory Panel's issued its first advice to the Court of Appeal. The Panel then proposed to issue sentencing guidelines on environmental offences. However, the Court of Appeal has not approved the guidance, which has been taken up by the Magistrates' Association and incorporated in the Magistrates Court Sentencing Guidelines in 2001. It should be underlined that the guidelines are very general and do not include any figures in the form of a typical range of fines for specific offences. At this stage, it is too early to assess the effectiveness of the new Guidelines, as they were issued less than 2 years before the end of the period covered by the research. The research has shown that a number of Magistrates seem not to be aware of the Magistrates' Courts Sentencing Guideline on environmental offences, suggesting that further awareness raising activities are needed.

Representatives of prosecuting bodies confirmed that magistrates with specific training understand environmental cases better and therefore have a sounder and more consistent approach. It was also made clear that further training / guidance would also be advisable for some prosecuting bodies themselves, in particular local authorities. This could be provided through the active promotion of the comprehensive toolkit *Costing the Earth*, launched by the Magistrates' Association in November 2002. The toolkit includes general guidance on sentencing criteria along with many case-studies. Finally, the availability of standard procedures and formats specific to environmental offences could be a useful tool in ensuring a consistent and comprehensive processing of the cases at the prosecution stage.

***Do existing fines and other penalties act as a sufficient deterrent to ensure proper enforcement of environmental legislation?***

The identification of repeat offenders was not possible under the current research because of the sheer number of cases and because of the way the database was set up - it was not possible to distinguish between multiple offences and repeated offenders without analyzing each of the 6000+ individual entries in the database. Such an exercise would require significant additional resources.

(1) For some offences, it was not possible to obtain data before for all years under study, and in particular, in many cases prosecuting bodies do not have data from before 1999 (see Table 4.1).

## Recommendations

In order to complement the existing data and taking into account the issues identified during the present research e.g. the lack of centralization and consistency in the data available, the following steps should be taken.

Regarding the statistical data:

- More detailed research on specific offences should be carried out, as trends may be distorted by variations related to one specific type of offences and these should be identified. For example, the number of and level of fine for packaging offences increased significantly between 1999 and 2002; there has only been one prosecution brought for GMO offences which resulted in large fine relative to others issued in Magistrates' Courts.
- The collected data should be complemented in the future. As earlier underlined, the research focused only on the last 4 years, which is a relatively short period. Besides, the extension of the study would allow assessing the impact of the 2001 Magistrates Courts' Sentencing Guideline and the Magistrates' Association guidance *Costing the Earth*.
- The data on local authorities prosecutions needs to be complemented as well. At present, there is no systematic collection of data on prosecutions brought by local authorities. This constitutes a significant gap in the data as we estimate the number of Local Authorities' prosecutions to be about 1,000 per year.

Regarding Courts' practice:

- The difficulties experienced during the research in contacting Magistrates and Judges could be partly overcome if it were possible to identify and engage with the main stakeholders upfront e.g. Magistrates and Judges, the DCA and the Home Office.

Annex 1

Regional breakdown of  
Prosecutions: *List of  
Courts*

Regional breakdown of prosecutions – *list of courts*

Region	Counties	Name of court	No of Offences
East Midlands	Northamptonshire	Boston Magistrates	2
	Leicestershire	Bourne Magistrates	1
	Derbyshire	Buxton Magistrates	3
	Lincolnshire	Caistor Magistrates	3
	Nottinghamshire	Chesterfield Magistrates	37
		Corby Magistrates	2
		Daventry Magistrates	5
		Derby Crown Court	18
		Derby Magistrates	17
		East Retford Magistrates	3
		Gainsborough Magistrates	6
		Glossop Magistrates	10
		Grantham Magistrates	2
		Hinckley Magistrates	37
		Ilkeston Magistrates	30
		Kettering Magistrates	5
		Leicester Crown Court	3
		Leicester Magistrates	27
		Lincoln Crown Court	20
		Lincoln Magistrates	24
		Long Sutton Magistrates	4
		Loughborough Melton-Belvoir Magistrates	22
		Mansfield Magistrates	13
		Market Harborough Magistrates	3
		Matlock Magistrates	1
		Melton Mowbray Magistrates	17
		Newark Magistrates	21
		Northamptonshire Magistrates	20
		Nottingham Crown Court	10
		Nottingham Magistrates	18
	Sleaford Magistrates	8	
	Spalding Magistrates	6	
	Swadincote Magistrates	5	
	Towcester Magistrates	15	
	Wellingborough Magistrates	8	
	Worksop Magistrates	10	

## Annex 1

## List of Courts

Region	Counties	Name of court	No of Offences
Eastern	Bedfordshire	Basildon Crown Court	5
	Cambridgeshire	Basildon Magistrates	1
	Essex	Bedfordshire Magistrates	8
	Hertfordshire	Cambridge Magistrates	2
	Norfolk	Chelmsford Crown Court	12
	Suffolk	Colchester Magistrates	24
		Cromer Magistrates	15
		Ely Magistrates	16
		Epping Magistrates	6
		Fakenham Magistrates	9
		Grays Magistrates	17
		Great Yarmouth Magistrates	19
		Harlow Magistrates	5
		Hemel Hempstead Magistrates	5
		Hertford Magistrates	9
		Huntingdon Magistrates	21
		Ipswich Magistrates	13
		Kings Lynn Magistrates	24
		Lowestoft Magistrates	6
		Luton Crown Court	13
		Luton Magistrates	19
		Mildenhall Magistrates	4
		Norwich Crown Court	8
		Norwich Magistrates	8
		Peterborough Crown Court	7
		Peterborough Magistrates	19
		Southend Magistrates	19
		St Albans Crown Court	15
		St Albans Magistrates	56
		St Edmundsbury Magistrates	9
		Stamford Magistrates	1
		Stevenage Magistrates	12
		Sudbury Magistrates	12
		Swaffham Magistrates	10
	Thetford Magistrates	14	
	Watford Magistrates	2	
	Wisbech Magistrates	8	
	Witham Magistrates	34	

Region	Counties	Name of court	No of Offences
London	Greater London	Acton Magistrates	7
		Barking Magistrates	2
		Barnet Magistrates	4
		Bexley Magistrates	6
		Bexleyheath Magistrates	8
		Brent Magistrates	15
		Brentford Magistrates	14
		Bromley Magistrates	10
		Camberwell Green Magistrates	3
		Croydon Crown Court	3
		Croydon Magistrates	21
		Ealing Magistrates	1
		Enfield Magistrates	8
		Feltham Magistrates	1
		Greenwich Magistrates	5
		Haringey Magistrates	3
		Havering Magistrates	7
		Highbury Corner Magistrates	8
		Horseferry Road Magistrates	2
		Isleworth Crown Court	7
		Kingston upon Thames Magistrates	8
		Marylebone Magistrates	1
		n/a	3
		Richmond Upon Thames Magistrates	11
		Snaresbrook Crown Court	3
		South Western Magistrates	3
		Southwark Crown Court	3
		Stratford Magistrates	9
		Sutton Magistrates	14
		Thames Magistrates	6
		Uxbridge Magistrates	26
		Waltham Forest Magistrates	3
		Wimbledon Magistrates	7
		Wood Green Crown Court	1
		Woolwich Crown Court	1
		Woolwich Magistrates	4

## Annex 1

## List of Courts

Region	Counties	Name of court	No of Offences
North East	Northumberland Tyne & Wear Cleveland Durham Humberside South Yorkshire North Yorkshire West Yorkshire	Alnwick Magistrates	1
		Barnsley Magistrates	33
		Beverley Magistrates	20
		Bishop Auckland Magistrates	1
		Bradford Crown Court	16
		Bradford Magistrates	49
		Bridlington Magistrates	6
		Brough Magistrates	5
		Calderdale Magistrates	4
		Castleford Magistrates	21
		Chester-Le-Street Magistrates	6
		Consett Magistrates	14
		Dewsbury Magistrates	3
		Doncaster Crown Court	6
		Doncaster Magistrates	6
		Driffield Magistrates	5
		Durham Crown Court	12
		Durham Magistrates	22
		Gateshead Magistrates	54
		Goole Magistrates	7
		Gosforth Magistrates	3
		Grimsby Magistrates	6
		Guisborough Magistrates	9
		Halifax Magistrates	17
		Harrogate Magistrates	17
		Hartlepool Magistrates	40
		Hexham Magistrates	8
		Houghton-Le-Spring Magistrates	12
		Huddersfield Magistrates	12
		Keighley Magistrates	28
		Kingston Upon Hull Magistrates	15
		Leeds Magistrates	117
		n/a	2
		Newcastle-upon-Tyne Crown Court	22
		Newcastle-upon-Tyne Magistrates	12
		Newton Aycliffe Magistrates	5
		North Tyneside Magistrates	12
		Northallerton Magistrates	9
		Peterlee Magistrates	6
		Pickering Magistrates	12
		Pontefract Magistrates	10
		Pudsey Magistrates	6
		Richmond Magistrates	3
		Rotherham Magistrates	22
		Scarborough Magistrates	10
		Scunthorpe Magistrates	24
SE Northumberland Magistrates	33		
Selby Magistrates	2		
Sheffield Crown Court	2		
Sheffield Magistrates	80		
Skipton Magistrates	5		
South Tyneside Magistrates	4		
Sunderland Magistrates	28		
Teesside Crown Court	18		
Teesside Magistrates	18		
Wakefield Magistrates	19		
Wetherby Magistrates	4		
Whitby Magistrates	1		
York Magistrates	46		

## Annex 1

## List of Courts

Region	Counties	Name of court	No of Offences
North West	Cheshire	Accrington & Hyndburn Magistrates	68
	Merseyside	Barrow-In-Furness Magistrates	3
	Greater Manchester	Birkenhead Magistrates	2
	Lancashire	Blackburn, Darwen & Ribble Valley Magistrates	38
	Cumbria	Blackpool Magistrates	54
		Bolton Crown Court	5
		Bolton Magistrates	26
		Burnley & Pendle Magistrates	21
		Burnley Crown Court	22
		Bury Magistrates	6
		Carlisle Crown Court	7
		Carlisle Magistrates	16
		Chester Crown Court	44
		Chester Magistrates	8
		Chorley Magistrates	4
		Ellesmere Port & Neston Magistrates	2
		Furness & District Magistrates	12
		Fylde Magistrates	4
		Halton Magistrates	6
		Huyton Magistrates	26
		Kendal & Lonsdale Magistrates	6
		Lancaster Crown Court	5
		Lancaster Magistrates	8
		Leigh Magistrates	2
		Leyland Magistrates	26
		Liverpool Crown Court	15
		Liverpool Magistrates	60
		Macclesfield Magistrates	17
		Manchester City Magistrates	25
		Manchester Crown Court	1
		Merseyside	1
		n/a	3
		North Sefton Magistrates	25
		Northwich Magistrates	18
		Oldham Magistrates	14
		Ormskirk Magistrates	34
		Pennine (Reedley) Magistrates	14
		Penrith & Alston Magistrates	23
		Preston Crown Court	30
		Preston Magistrates	50
		Rawtenstall Magistrates	3
		Rochdale, Middleton & Heywood Magistrates	29
		Sale Magistrates	13
		Salford Magistrates	22
		South Cheshire Magistrates	26
		South Sefton Magistrates	16
		St Helens Magistrates	27
	Stockport Magistrates	21	
	Tameside Magistrates	4	
	Wallasey Magistrates	1	
	Warrington Crown Court	2	
	Warrington Magistrates	27	
	Whitehaven Magistrates	4	
	Wigan Magistrates	39	
	Wigton Magistrates	1	
	Wirral Borough Magistrates	37	
	Workington Magistrates	10	
	Wyre Magistrates	11	

## Annex 1

## List of Courts

Region	Counties	Name of court	No of Offences
South East	Surrey	Aldershot Magistrates	10
	East Sussex	Amersham Magistrates	1
	West Sussex	Andover Magistrates	6
	Kent	Arundel Magistrates	9
	Hampshire	Aylesbury Crown Court	2
	Isle of Wight	Aylesbury Magistrates	1
	Oxfordshire	Basingstoke Magistrates	4
	Buckinghamshire	Berkshire Magistrates	4
		Bicester Magistrates	2
		Bracknell Magistrates	9
		Brighton Magistrates	2
		Buckingham Magistrates	2
		Camberley Magistrates	3
		Canterbury Crown Court	3
		Canterbury Magistrates	1
		Chichester Magistrates	2
		Crawley Magistrates	4
		Dartford Magistrates	2
		Didcot Magistrates	5
		Dorking Magistrates	14
		Dover Magistrates	13
		East Berkshire Magistrates	1
		Eastbourne Magistrates	30
		Eastleigh Magistrates	10
		Fareham Magistrates	24
		Folkestone Magistrates	3
		Guildford Crown Court	6
		Guildford Magistrates	27
		Hampshire Magistrates	3
		Hastings and Rother Magistrates	29
		Henley-on-Thames Magistrates	1
		High Wycombe Magistrates	4
		Horsham Magistrates	18
		Lewes Crown Court	4
		Lewes Magistrates	28
		Lyndhurst Magistrates	18
		Maidenhead Magistrates	12
		Maidstone Magistrates	54
		Margate Magistrates	12
		Medway Magistrates	16
		Mid Sussex Magistrates	12
		Milton Keynes Magistrates	36
		n/a	2
		Newbury Magistrates	19
		Newport, IoW Magistrates	11
		Oxford Crown Court	9
		Oxford Magistrates	13
		Portsmouth Magistrates	11
		Reading & Sonning Magistrates	16
		Redhill Magistrates	4
Sevenoaks Magistrates		27	
Sittingbourne Magistrates		12	
Slough Magistrates		10	
Southampton Crown Court		2	
Southampton Magistrates		30	
Staines Magistrates	15		
Thame Magistrates	2		
Tunbridge Wells Magistrates	8		
Wantage Magistrates	10		
Witney Magistrates	2		
Woking Magistrates	15		
Worthing Magistrates	19		
(blank)	6		

Region	Counties	Name of court	No of Offences
South West	Dorset	Axminster Magistrates	1
	Wiltshire	Barnstaple Magistrates	11
	Somerset	Bath Wansdyke Magistrates	16
	Avon	Bideford Magistrates	6
	Gloucestershire	Blandford Magistrates	10
	Devon	Bodmin Magistrates	24
	Cornwall	Bournemouth Crown Court and County Magistrates	2
		Bournemouth Magistrates	35
		Bridgwater Magistrates	18
		Bridport Magistrates	3
		Bristol Crown Court	10
		Bristol Magistrates	13
		Camborne Magistrates	16
		Cheltenham Magistrates	14
		Chippenham Magistrates	27
		Cirencester Magistrates	1
		Coleford Magistrates	1
		Cullompton Magistrates	14
		Devizes Magistrates	5
		Dorchester Magistrates	2
		Exeter Crown Court	10
		Exeter Magistrates	17
		Exmouth Magistrates	2
		Flax Bourton Magistrates	5
		Frome Magistrates	2
		Gloucester Crown Court	5
		Gloucester Magistrates	12
		Honiton Magistrates	11
		Launceston Magistrates	11
		Liskeard Magistrates	20
		Minehead Magistrates	1
		n/a	2
		Newquay Magistrates	1
		Newton Abbot Magistrates	6
		North Avon Magistrates	4
		Okehampton Magistrates	13
		Penzance Magistrates	11
		Plymouth Crown Court	1
		Plymouth Magistrates	18
		Poole Magistrates	3
		Salisbury Crown Court	2
		Salisbury Magistrates	8
		Sherborne Magistrates	2
		Stroud Magistrates	2
		Swindon Magistrates	15
		Taunton Crown Court	8
		Taunton Magistrates	13
		Tavistock Magistrates	4
		Tiverton Magistrates	4
		Torquay Magistrates	6
	Totnes Magistrates	7	
	Trowbridge Magistrates	13	
	Truro Crown Court	2	
	Truro Magistrates	9	
	Wareham Magistrates	3	
	Wells Magistrates	7	
	Weymouth Magistrates	9	
	Wimborne Magistrates	9	
	Woodspring Magistrates - Weston-Super-Mare	2	
	Yeovil Magistrates	9	

Region	Counties	Name of court	No of Offences
West	West Midlands	Aldridge Magistrates	6
Midlands		Atherstone Magistrates	14
		Birmingham Crown Court	5
		Birmingham Magistrates	135
		Bridgnorth Magistrates	3
		Burton-Upon-Trent Magistrates	4
		Cannock Magistrates	16
		Coalville Magistrates	22
		Coventry Magistrates	55
		Droitwich Magistrates	22
		Dudley Magistrates	23
		Hereford Magistrates	28
		Kidderminster Magistrates	30
		Leamington Magistrates	2
		Leominster Magistrates	10
		Ludlow Magistrates	6
		Market Drayton Magistrates	12
		Mid Staffordshire (Rugeley) Magistrates	1
		n/a	4
		Newcastle-Under-Lyme Magistrates	26
		Nuneaton Magistrates	8
		Oswestry Magistrates	5
		Redditch Magistrates	11
		Rugby Magistrates	3
		Shrewsbury Magistrates	1
		Solihull Magistrates	9
		Stafford Crown Court	10
		Stafford Magistrates	17
		Stoke-on-Trent Magistrates	5
		Stourbridge Magistrates	11
		Stratford-Upon-Avon Magistrates	25
		Sutton Coldfield Magistrates	6
		Tamworth Magistrates	2
Telford Magistrates	28		
Walsall Magistrates	31		
Warley Magistrates	6		
Warwick Crown Court	33		
West Bromwich Magistrates	39		
Wolverhampton Crown Court	23		
Wolverhampton Magistrates	26		
Worcester Crown Court	46		
Worcester Magistrates	25		

## Annex 1

## List of Courts

Region	Counties	Name of court	No of Offences
Wales	Powys	Aberdare Magistrates	26
	Dyfed	Abertillery Magistrates	5
	Clwydd	Aberystwyth Magistrates	18
	Mid Glamorgan	Ammanford Magistrates	3
	South Glamorgan	Bangor Magistrates	10
	West Glamorgan	Barry Magistrates	17
	Pembrokeshire	Blackwood Magistrates	1
	Gwynedd	Bridgend Magistrates	129
	Gwent etc.	Caernarfon Magistrates	7
		Cardiff Crown Court	67
		Cardiff Magistrates	63
		Cardigan Magistrates	5
		Carmarthen Crown Court	18
		Carmarthen Magistrates	42
		Cwmbran Magistrates	14
		Denbigh Magistrates	24
		Dolgellau Magistrates	10
		Gowerton Magistrates	2
		Haverfordwest Crown Court	1
		Haverfordwest Magistrates	18
		Holyhead Magistrates	27
		Lampeter Magistrates	9
		Llandovery Magistrates	9
		Llandudno Magistrates	7
		Llanelli Magistrates	74
		Llangefni Magistrates	3
		Llwynypia Magistrates	46
		Machynlleth Magistrates	4
		Merthyr Tydfil Crown Court	2
		Merthyr Tydfil Magistrates	20
		Mold Crown Court	46
		Mold Magistrates	3
		n/a	2
		Neath Magistrates	74
	Newport Crown Court	3	
	Newport Magistrates	29	
	Newtown Magistrates	8	
	Port Talbot Magistrates	39	
	Prestatyn Magistrates	3	
	Pwllheli Magistrates	9	
	Swansea Crown Court	36	
	Swansea Magistrates	93	
	Tenby Magistrates	8	
	Tredegar Magistrates	1	
	Welshpool Magistrates	6	
	Wrexham Magistrates	46	
	Ystradgynlais Magistrates	4	

Annex 2

General and Case-  
Based Interview  
Guideline  
Questionnaire

## Interview Guideline Questions: Prosecutors

### General questions

1. Who prepares and presents for the prosecution, e.g. in-house lawyers, external lawyers?
2. Do you usually get support from other organisations, e.g. NGOs? If so, which ones and what form does this support take? And, does it have a significant effect on how you present the case?
3. When you prosecute cases do you have sufficient time to prepare before the hearing?
4. Is there usually any/sufficient evidence/information relating to the actual or potential environmental harm and other associated risks caused by the offence(s) on the file?
5. Is a 'Friskies Schedule' usually prepared and given to the court? If so, what aggravating features are generally included?
6. Where a Friskies Schedule is not drawn up were you able to inform the court of any factors that in the prosecution's opinion demonstrated the actual or potential environmental harm – if so, can you give examples? (e.g. reduction in quality value; period and extent of degradation of a water course; repeated offending)
7. How frequently is the "polluter pays" principle specifically brought to the courts attention/and or any other financial considerations? (e.g. benefit or savings made by the offender)
8. Are some cases complex/difficult to present? Are graphics/photos shown to the court? Is the legislation explained to the court including their powers of sentence?

### Questions for specific cases

1. Who prepared and presented for the prosecution, e.g. in-house lawyers, external lawyers?
2. If other parties were involved in preparation for the case, can you outline the extent of their involvement and what skills or experience they brought to the case?
3. When you prosecuted the case had you had sufficient time to prepare it before the hearing?
4. Was there any/sufficient evidence/information relating to the actual or potential environmental harm and other associated risks caused by the offence(s) on the file?
5. Was a 'Friskies Schedule' prepared and given to the court? If so, what were the aggravating features?
6. If a Friskies Schedule was not drawn up were you able to inform the court of any factors that in the prosecution's opinion demonstrated the actual or potential environmental harm – if so, what were they? (e.g. reduction in quality value; period and extent of degradation of a water course; repeated offending)
7. Was the "polluter pays" principle specifically brought to the courts attention/and or any other financial considerations? (e.g. benefit or savings made by the offender)
8. Was the case complex/difficult to present? Were graphics/photos shown to the court? Was the legislation explained to the court including their powers of

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**General questions**

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9. How well do you think the evidence presented, particularly issues such as environmental harm, is understood by the magistrate/judge?
10. Did you usually consider the penalty imposed to be reasonable or not?
11. What are the main difficulties you encounter when gathering evidence, preparing and presenting a case?
12. Have any case experiences you have had led you to change your approach in preparing and presenting cases? If so, why and in what way?

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**Questions for specific cases**

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sentence?

9. How well do you think the evidence presented, particularly issues such as environmental harm, was understood by the magistrate/judge?
10. Did you consider the penalty imposed to be reasonable or not?
11. What were the main difficulties you encountered when gathering evidence, preparing and presenting the case?
12. If a similar case came up today, would you change your approach in preparing and presenting the case compared with last time? If so, why and in what way?
-

Annex 3

Questionnaire for  
Judges and  
Magistrates

## Interview Questions: Judges

*Interview Guidelines* – It is appreciated that no magistrate/judge can discuss any individual case and therefore the interviewer will not expect magistrates/judges to refer to any particular case in answering questions.

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### **General**

1. How many environmental cases are you dealing with yearly on average?

### **Presentation of the cases at trial**

2. Does the prosecution usually explain in a satisfactory manner:

- the legislation,
- any environmental issues/concepts

3. Are these usually understood by the jury? Which aspects of environmental cases are the most difficult to explain to the jury?

4. Do different/the same prosecuting bodies present cases in a consistent manner? To the best of your knowledge, have you experienced any regional disparities in the way in which cases are presented by the same prosecuting body?

### **Sentencing**

5. If the defendant enters a guilty plea, does the prosecution still present the case sufficiently clearly as to ensure sentencing can be made on all the available information?

6. Are you given sufficient information in relation to the actual or potential environmental harm and risk or reduction in amenity value so as to assist you in assessing the seriousness of the environmental offence?

7. Are you prepared to discuss, in general terms, factors that you consider to be aggravating or mitigating in an environmental case? If so, what do you consider in general terms these to be? You are not being asked about own approach to sentencing or the use of particular penalties, but are being asked in general terms what you consider the aggravating and mitigating factors are.

### **Guidance**

8. Are you aware of the Magistrates Association Guidance on the Sentencing of Environmental Offences ('Costing the Earth'), or the Sentencing Advisory Panel's Guidelines to the Appeal Court on Sentencing for Environmental Offences? Do you think such guidance would be useful to Crown Court?

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## Interview Questions: Magistrates

*Interview Guidelines* – It is appreciated that no magistrate/judge can discuss any individual case and therefore the interviewer will not expect magistrates/judges to refer to any particular case in answering questions.

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### **General**

1. How many environmental cases are you dealing with yearly on average?

### **Presentation of the cases at trial**

2. Does the prosecution usually explain in a satisfactory manner:
  - the legislation,
  - any environmental issues/concepts
3. Do different/the same prosecuting bodies present cases in a consistent manner?

### **Sentencing**

4. If the defendant enters a guilty plea, does the prosecution still present the case sufficiently clearly as to ensure sentencing can be made on all the available information?
5. Are you given sufficient information in relation to the actual or potential environmental harm and risk or reduction in amenity value so as to assist you in assessing the seriousness of the environmental offence?
6. Are you prepared to discuss, in general terms, factors that you consider to be aggravating or mitigating in an environmental case? If so, what do you consider in general terms these to be? You are not being asked about own approach to sentencing or the use of particular penalties, but are being asked in general terms what you consider the aggravating and mitigating factors are.

### **Guidance**

7. Are you aware of the Magistrates Association Guidance on the Sentencing of Environmental Offences ('Costing the Earth'), or the Sentencing Advisory Panel's Guidelines to the Appeal Court on Sentencing for Environmental Offences?
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Annex 4

## Classification of Offences

Legislation	Notes
<b>IPC/LAPC/PPC, Air Pollution</b>	
Environmental Protection Act 1990, any offences under Part I (particularly s.6(1))	POLLUTION
Pollution Prevention and Control (England and Wales) Regulations 2000, any relevant offences (particularly reg.9(1))	POLLUTION
Clean Air Act 1993, Part I, all offences	POLLUTION
Finance Act 2000, Part II and Schedule 6, all offences	POLLUTION
<b>Wastewater Discharge/Water Quality</b>	
Water Resources Act 1991, s.85, s.161D	POLLUTION
Salmon and Freshwater Fisheries Act 1975, s.4 and s.27	POLLUTION
Water Resources Act 1991, s.24	POLLUTION
<b>Waste Management</b>	
Environmental Protection Act 1990, any offences under Part II (particularly s.33(1) and s.34(1))	POLLUTION + FLYTIPPING
Waste Management Licensing Regulations 1994, any offences	POLLUTION
Control of Pollution (Amendment) Act 1989, any offences	POLLUTION
Special Waste Regulations 1996, any offences	POLLUTION
Producer Responsibility Obligations (Packaging Waste) Regulations 1997, any offences (particularly reg.3(5))	POLLUTION
Council Regulation (EEC) No. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community (and the Transfrontier Shipment of Waste Regulations 1994), any offences	POLLUTION
Finance Act 1996, Part III, any offences	POLLUTION
<b>Statutory Nuisance and Environmental Noise</b>	
Environmental Protection Act 1990, s.80(4)	NOISE
Control of Pollution Act 1974, s.60-61	NOISE
<b>Contaminated Land</b>	
Environmental Protection Act 1990, s.78M	POLLUTION
<b>Hazardous Substances</b>	
Control of Major Accident Hazards Regulations 1999, any offences (particularly regs.4-9, regs.11-12)	POLLUTION
Radioactive Substances Act 1993, any offences	POLLUTION
Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000, any offences	POLLUTION
Asbestos (Prohibitions) Regulations 1992, any offences	POLLUTION
Environmental Protection Act 1990, Part VI, any offences	POLLUTION
Control of Pesticides Regulations 1986 SI No. 1510	POLLUTION
<b>Wildlife and Habitats</b>	
Wildlife and Countryside Act 1981, all offences under Part I	WILDLIFE
Conservation (Natural Habitats, etc) Regulations 1994, any offences (particularly regs.19, 23, 39, 41 and 43)	WILDLIFE
Protection of Badgers Act 1973 & 1992	WILDLIFE
EC Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein, and the Control of Trade in Endangered Species (Enforcement) Regulations 1997, any offences	WILDLIFE
Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001	WILDLIFE
Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) Regulations 2002	WILDLIFE
Food and Environmental Protection Act 1985, Section 9	WILDLIFE
Forestry Act 1967	WILDLIFE

Annex 5

## Questionnaire for Local Authorities

## Questionnaire for Local Authorities

**Environmental  
Resources  
Management**

Eaton House  
Wallbrook Court  
North Hinksey Lane  
Oxford OX2 0QS

Telephone 01865 384 800  
Facsimile 01865 384 848  
Email [post@erm.com](mailto:post@erm.com)  
<http://www.erm.com>

### General Information

Authority name:	
Respondent name:	
Address:	
Telephone Number:	
Email:	

### Information on Prosecutions

Can you provide the number of prosecutions you have brought between 1998 and 2003 for the following environmental offences [please, distinguish between offences]:

- Statutory nuisance and Noise:**  
Environmental Protection Act 1990, s. 80 (4)  
Control of Pollution Act 1974, s.60-61
- Fly tipping/illegal waste disposal**  
Environmental Protection Act 1990, s. 33 & 34  
Other relevant law eg. Refuse Disposal (Amenity) Act 1978; Highways Act 1980 s. 3-5
- Contaminated Land:**  
Environmental Protection Act 1990, s.78M
- Air Pollution:**  
Environmental Protection Act 1990, any offence under Part I (particularly s. 6 (1)  
Pollution Prevention and Control (PPC integrated permitting)  
Clean Air Act 1993 Part I, all offences

### Information on flytipping prosecutions

On the basis of which criteria would you decide to prosecute a case of flytipping?	
How do you determine whether this is your (Local Authority) or the Environment Agency's responsibility?	



## Annex 5

## Questionnaire for Local Authorities

How many prosecutions have you brought for flytipping between 1998 and 2003? What were the outcomes? [not relevant if this has been answered to under the general question on prosecutions]	
Were you satisfied with the way the Magistrates handled the case?	
If there were no prosecution, what are the reasons?	
In particular, do you handle fly-tipping cases in another way?	

Thank-you for you assistance in completing this questionnaire.

Annex 6

Results of Local  
Authority  
Questionnaire

### Results of Local Authority Questionnaire Survey

These results presented below are a summary of responses received from the questionnaire in Annex 5.

Responses were placed into general context by ERM based on typical answers as shown below:

		Total	70 <sup>1</sup>
Question	Typical answers	Response	per cent
<b>1. Criteria (Sufficient evidence)</b>	<i>Able to obtain sufficient evidence</i>	31	44.3%
	<i>Enforcement Policy based on Concordat Principles</i>	9	12.9%
	<i>n/a</i>	5	7.1%
	<i>other/no response</i>	25	35.7%
<b>2. Responsibility (Matrix; Council land only)</b>	<i>Fly-tipping Matrix</i>	23	32.9%
	<i>Contact EA/type of material (i.e. EA for hazardous, LA for non-hazardous)</i>	11	15.7%
	<i>Council land/type of material</i>	5	7.1%
	<i>n/a</i>	8	11.4%
	<i>other/no response</i>	23	32.9%
<b>3. FT prosecutions</b>	<i>No. of LAs who've brought prosecutions for fly-tipping</i>	19	27.1%
	<i>No. of LAs who've NOT brought prosecutions for fly-tipping</i>	51	72.9%
<b>4. Outcomes</b>	<i>successful</i>	12	17.1%
	<i>n/a</i>	51	72.9%
	<i>other/no response</i>	7	10.0%
<b>5. Satisfied</b>	<i>Yes</i>	8	11.4%
	<i>Not always</i>	3	4.3%
	<i>Fines too low</i>	5	7.1%
	<i>n/a</i>	34	48.6%
	<i>other/no response</i>	20	28.6%
<b>6. Reasons for non-prosecution</b>	<i>Insufficient evidence</i>	19	27.1%
	<i>Lack of resources</i>	5	7.1%
	<i>No offences (recurring or serious enough).</i>	3	4.3%
	<i>n/a</i>	27	38.6%
	<i>other/no response</i>	16	22.9%

<sup>1</sup> 3 received after analysis completed and were not incorporated into the results