

## **CAJ's submission no. S368**

# **CAJ's submission to the Department of Justice (Northern Ireland) on Fine Default in Northern Ireland: A consultation**

**November 2011**

### ***What is the CAJ?***

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**Submission to the Department of Justice (Northern Ireland)**  
**on “Fine Default in Northern Ireland: A Consultation”**  
**November, 2011**

**Committee on the Administration of Justice (‘CAJ’)**

The Committee on the Administration of Justice (‘CAJ’) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law. CAJ welcomes the opportunity to respond to the present consultation.

The consultation is about how the Department of Justice (‘the Department’) intends to reduce the high numbers of persons who are being imprisoned for not paying fines.

**Summary:**

- Whilst the high costs associated with imprisonment are clearly a consideration for the Department, CAJ would also like to see an emphasis on the human rights principle that imprisonment should be reserved for more serious offences;
- Under direct rule, a strategy was adopted in 2008 to reduce imprisonment for fine defaulters and whilst the Department regards this as very successful, the numbers of persons imprisoned for fine default has increased in recent years;
- A number of new initiatives are currently being brought forward (‘information initiative’ and ‘fine payment record systems’) and ‘Supervised Activity Orders’ are now ready for piloting;
- The Department is now consulting on new related measures aimed at: ‘targeting the fine’; ‘encouraging payment’; and ‘dealing with default’ as well as administratively establishing a new fine collection service;
- CAJ provides comments on the detail of the above proposals as well as drawing attention to concerns in relation to the Department’s equality screening.

## Background:

CAJ previously responded to a consultation on this issue carried out by the Northern Ireland Office (NIO) in 2008.<sup>1</sup> Our primary concern was the need to adopt a rights-based approach to the criminal justice system, particularly in the provision of alternatives for fine defaulters. By this we mean that the deprivation of liberty (imprisonment) should be reserved for more serious offences and used as a measure of last resort. CAJ therefore urged the prioritisation of the identification of alternatives to imprisonment for dealing with fine default.

Subsequently CAJ highlighted, in a 2010 report on prisons, the problems associated with the imprisonment of fine defaulters.<sup>2</sup> As the Department is aware, there has been a raft of inspections and reports that have made criticisms and suggested recommendations with regards to the Prison Service. It will suffice to highlight here that the resource burden placed on the Prison Service by large numbers of short-term inmates imprisoned for fine defaults is detrimental to the system in general as well as to those subject to the measure. The recent report of the Prison Review Team highlighted the problems associated with the imprisonment of fine defaulters:

...the prison population in Northern Ireland is inflated because of the number of fine defaulters and remand prisoners it holds. Half the women committed to Hydebank Wood in the last year were sent there for fine default. This is simply unacceptable. It does nothing to address the needs of offenders or society, and makes prisons much more difficult to run, with significant resources needing to be devoted to the crucial early processes of committal and assessment. Nor does it do anything to deal with the actual problem of people who are either too poor to pay a fine, or who can avoid payment at the further public expense of a couple of days in prison.<sup>3</sup>

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<sup>1</sup> CAJ Submission S221 'Consultation on Fine default in Northern Ireland', November 2008

<sup>2</sup> 'Prisons and Prisoners in Northern Ireland: Putting Human Rights at the Heart of Prison Reform' (Belfast, CAJ 2010)

<sup>3</sup> 'Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of all Prisons' Prison Review Team, Final Report, October, 2011, p. 29

In light of these longstanding and well- documented problems, CAJ is keen to emphasize the principle that imprisonment should be considered as a measure of last resort for fine default.

CAJ has welcomed a number of broader initiatives in relation to the criminal justice system since devolution that have attempted to develop a more holistic and localised approach to issues in Northern Ireland. It is positive to see that the Department of Justice is reconsidering its strategy in this area and seeking to develop a new approach to the issue.

The Department notes that the previous strategy involved introducing a ‘fine collection system’ whereby Courts’ alert persons of the consequences of fine default and provide advice to them. Despite pointing to the success of the scheme the Department concedes the number of persons going to prison for fine default (over 5000 in the last three years) is increasing and more people are going to prison for default than for more serious criminal offences.

The Department outlines two recently launched initiatives by the Northern Ireland Courts and Tribunals Service. Firstly an ‘information initiative’ whereby defendants are advised of the options for paying fines and encouraged to complete and return a ‘means enquiry’ form which provides details of their income and outgoings. The second is a ‘fine payment record’ that allows the sentencer to review fines and payments and assess a person’s suitability for a fine. In addition the Department states that Supervised Activity Orders introduced under the Criminal Justice (NI) Order 2008, which allow a fine defaulter to undertake community based activities instead of imprisonment, are also now ready for piloting.

### **Equality Duty:**

CAJ is concerned that obligations under the statutory equality duty have not been appropriately considered in relation to this consultation. CAJ was informed by the Department that the equality screening document was not finalised when the proposals were put out to consultation. This document was subsequently only made available mid-way through the original consultation process. Whilst ultimately the consultation period has been extended to reflect this, it is difficult to draw any conclusion other than that this exercise has been conducted more as an afterthought rather than in a manner whereby it could actually inform the eventual policy proposals. CAJ urges the Department to ensure that the equality duty is a core part of Departmental policy development.

The present equality screening document argues that all section 75 categories will benefit from the proposals, but adds that men will particularly benefit as they make up the majority of fine defaulters. Despite the monitoring duties under section 75 there appear to be continuing information gaps in relation to the exercise. For example, it would be reasonable to explore the potential for greater impacts in relation to the imprisonment of persons with dependants. The absence of data should not lead to an assumption that there is no differential. However, the exercise appears to do this by stating and concluding that “No specific data or evidence to suggest a differential impact from statistics on current fine defaulters.” Despite data gaps some conclusions can be drawn from the information provided which can inform tailored early intervention and prevention initiatives. For example overall data on ‘age’ seems limited only to record whether persons received in prisons are over or under 21. However, data provided on motoring offences, which constitute 83% of offences attracting a fine, indicates that over 50% were aged 18-30.

CAJ wishes to draw attention to the potentially serious impacts of imprisonment on some groups, particularly where alternative non-custodial measures could be used. Such impacts can be counterproductive to the reform and rehabilitation of offenders and can contribute to trapping persons in cycles of marginalisation. We draw particular attention to the impact on young people that avoidable imprisonment can have on their family relationships and education. A similar effect is noted on those with dependents, or those who care for others. In relation to the imprisonment of women, the Prison Review Team have drawn attention to various issues, such as that:

Women in prison are very likely to be main or sole carers of children and much less likely than their male counterparts to be able to rely on someone else to keep home and family together if they are imprisoned: studies suggest that nine out of ten men in prison are able to rely on their children being cared for by their partner, whereas this is true for only a quarter of women.<sup>4</sup>

The Prison Review Team also draw attention to the fact that a large number of women are:

...drawn into prison because of fine default. As our interim report noted, half the women committed to Hydebank Wood in 2010 were

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<sup>4</sup> ‘Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of all Prisons’ Prison Review Team, Final Report, October, 2011, p. 67

there for fine default, and at our most recent visit, six of the 52 women held there were fine defaulters. This amounts to criminalising poverty: very often women go to prison because they cannot afford to pay the fine.<sup>5</sup>

In circumstances such as these, it is therefore vital that equality considerations inform a policy framework so that the particular circumstances of groups are taken into account.

### **Proposal: ‘Targeting the fine’**

One strand of the Department’s proposals is to prioritise targeting fines. This largely relates to the aforementioned ‘information initiative’ improving the data available to assist in the sentencing decision as to whether fines are appropriate.

CAJ welcome the commitment to ensuring that the targeting of fines is appropriate. In terms of encouraging more participants to supply information to the court, CAJ advocates an increase in the use of the information initiative and suggests that legal representatives, the Citizens Advice Bureau and others who may offer advice to individuals to whom the initiative is applied are continually reminded of its existence and purpose. Equally members of the judiciary should be cognisant of the need to request that such information be provided and the need to consider that information fully before imposing a fine. Whilst the ‘means enquiry form’, which is served together with summons or charge documents is a useful tool in the process, consideration should be given to whether it should still be incumbent on the judiciary, if they are considering imposing a fine, to request such information if it has not yet been provided by those defendants who attend court. This scheme also presumes a level of literacy; the Department may need to consider alternative methods of obtaining this information from those with limited literacy skills.

CAJ supports the idea of addressing some offences with alternative measures. One option discussed by the Department is to assess whether fine default in some cases, such as fines due to non-payment of television licences should be pursued as a civil debt as opposed to a criminal matter. CAJ agrees that this option should be subject to further research as to its implications.

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<sup>5</sup> As above, p. 69

## Proposals to encourage payment:

The Department proposes a number of measures to encourage payment. These are:

- Examining learning from other jurisdictions (including options for fines to be paid before leaving court);
- Allowing officials to amend terms of payment of a fine (e.g. arrange an extension or payment by instalments);
- Introduce an incentive to pay early by offering a discount;
- Introduce powers to directly deduct monies from wages or benefits.

CAJ welcomes the dissemination and discussion of ideas from other jurisdictions and has no difficulty with the first two proposals above. In relation to the option of paying a fine before leaving court we note this is being presented as an option rather than an obligation given the instalment or later payment options may be more realistic for individuals on low incomes or others who may have difficulty in paying immediately.

CAJ also does not oppose the provision of incentives for early payment but shares the cautious approach taken in the consultation proposals. CAJ would have concerns that such a measure could in practice only benefit those who have the greatest means and may not be a practical option for others. Therefore, this proposal may not provide an incentive that reduces default for all. To mitigate against this there may be the potential for this scheme to operate on a means tested basis. For instance, one option could be a discount offered in percentage terms, related to the means of the person who has to pay.<sup>6</sup>

Courts routinely consider the means of defendants in relation to assessing whether the defendant qualifies for assistance under the Criminal Legal Aid scheme. If a court is satisfied that the defendant's means are insufficient enough that they should qualify for legal aid, then a higher percentage

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<sup>6</sup> There is also the risk that the possibility of a discount could be used to justify the routine imposition of higher levels of fines than are appropriate for the specific offence or the means of the offender, on the grounds that a discount will be offered – this could be counterproductive to the aim of reducing default.

discount could be applied to the fine imposed on them. However, it is also worth noting that the means of a defendant are not the only criteria upon which their suitability for assistance by criminal legal aid is assessed. The court also considers whether it is desirable, in the interests of justice, that the accused should have free legal aid. In making the overall assessment, the court also has regard to a number of other principles.<sup>7</sup> It is noted in the proposals that most of those going to prison are being imprisoned for non-payment in respect of relatively minor offences. Most of those imprisoned are for motoring offences, such as driving without a licence or insurance. In practice, it may be unlikely that a person would qualify for legal aid where they are charged with motoring offences. Even if the person's means are insufficient, the court may consider that it is not in the interests of justice for the person to qualify for legal aid, as the offence is not in itself serious enough that on conviction a custodial sentence is possible. The reality however, acknowledged by the Department, is that a custodial sentence is possible as a result of a person defaulting on payment of a fine imposed. Therefore, CAJ would propose that even if a person does not meet the criteria for legal aid, there should still be an obligation on the court to consider whether the defendant's means entitle them to a higher percentage discount from the fine imposed upon them. Given the commitment to 'targeting the fine' displayed by the Department in its proposals and through tools such as the 'means enquiry form', CAJ would encourage that a similar commitment be displayed in considering the means of a defendant in incentivising early payment.

The final proposal relates to powers for direct deduction from wages or benefits of fines. On the face of it this is a coercive measure rather than one that 'encourages' payment, although the consultation does cite research that the threat of approaching an employer can encourage persons to pay. Whilst such deductions are not as serious as imprisonment and noting the Department's assurances of the need for safeguards in relation to deductions from benefits, CAJ would draw attention to the possibility of such an approach carrying its own risks of exacerbating a cycle of marginalisation contrary to the aims of rehabilitation and prevention of re-offending. CAJ therefore urge further exploration of the implications of such an approach.

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<sup>7</sup> These are: where the offence is serious enough that on conviction a custodial sentence is possible; there is a possibility of loss of livelihood or damage to reputation; there is a substantial question of law to be argued; and that the accused is unable to understand the proceedings (e.g. does not speak English or is mentally ill). Taken from:  
<http://www.courtsni.gov.uk/enGB/Services/LegalAid/LAImpactTest/Pages/Thelegalaidimpacttest.aspx>  
last accessed 8th November, 2011

## Proposals for dealing with default:

CAJ welcome the commitment to exercise flexibility and discretion in relation to the enforcement of fine defaulting in different circumstances, such as when persons have genuine difficulties in paying compared to those persons who wilfully refuse to pay. A number of proposals are put forward for 'enforced compliance' which include using 'distress warrants' (to seize property), vehicle seizure for motoring offences, use of Supervised Activity Orders (providing for community-based alternatives to custody) or providing for longer prison sentences for fine default as a deterrent to default.

In relation to the final option, as noted above, CAJ has concerns about the proportionality of the use of prison as a method of addressing fine defaulters. CAJ is therefore opposed to the extension of periods of detention and the changing of the system so that default periods are served consecutively. Unless there is a convincing evidence base indicating that increased periods of detention will actually provide a deterrent for fine default, it may also be counterproductive to the aim of reducing the number of persons in prison for the same and the associated costs.

In relation to the seizure of possessions, whilst again not as serious as imprisonment, the implications of sending in bailiffs for the forcible removal of possessions can also bring its own set of risks and problems.<sup>8</sup> Of all of the options presented, CAJ prefer further exploration of the introduction of community-based alternatives to imprisonment through Supervised Activity Orders. We note that the Prison Review Team have expressed serious concerns at the failure to fully explore this option as an alternative to imprisonment for fine default:

It is, in our view, indefensible that the opportunities to provide supervised activity orders as an alternative to custody for fine default, provided in the Criminal Justice Order 2008, have not been taken up. Pilot projects, which the PBNI had been ready to operate in the Lisburn and Craigavon areas, were deferred. There is now a proposal for a pilot in Craigavon alone. This is insufficient. There should be two additional pilots, in higher- density areas, reporting in 2012, with a view to rolling it out to other areas by 2013.<sup>9</sup>

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<sup>8</sup> The consultation document already lists a number of other problems with this proposal including difficulties in establishing the ownership of items and the low value gathered at sale. Equally, where an individual has dependents, and the items may be used by the dependents, seizure may not be appropriate. Similar considerations apply with regards to vehicle seizure and clamping.

<sup>9</sup> 'Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of all Prisons' Prison Review Team, Final Report, October, 2011, p. 29

CAJ would encourage the Department to reconsider its approach to piloting the Supervised Activity Order in light of these concerns. CAJ would question why the exploration of Supervised Activity Orders has been so delayed, given that the NIO previously indicated that it would begin to phase in the Supervised Activity Order during 2009/10 and then continue this roll-out across Northern Ireland from April, 2010 onwards.<sup>10</sup> Further exploration of this option should occur and should be conducted in a full and thorough manner in order to assess whether Supervised Activity Orders are an efficient response to dealing with the problem of fine default.<sup>11</sup> CAJ would welcome further information on the potential operation of Supervised Activity Orders than has been provided in the consultation proposals.

### **Proposal to establish new civilian fine enforcement body:**

The Department sets out that fine collection and enforcement is currently undertaken by the Courts and Police. It proposes to transfer this to a new civilian fine collection and enforcement service either ‘within a justice agency or as a civilianised arm of the police’ or which will ‘be delivered by the private sector’. CAJ has concerns regarding the implications of the privatisation of fine collection and enforcement. Whilst the human rights obligations on the state should extend to those carrying out public functions, in practice the lines of accountability can become blurred, standards can be compromised, as can the regulation of coercive powers which have been transferred to private actors.

Furthermore whilst CAJ acknowledges the cost of fine collection and enforcement, the cost-benefit case for transferring this service does not seem to have been clearly made. The development of a new civilianised service will presumably incur substantial costs. It is not clear whether this cost would be recouped in savings by removing fine collection and enforcement from the criminal justice system. This may be exacerbated if the service is placed in the private sector and an additional cost allowance for profit needs to be incorporated.

Committee on the Administration of Justice, Ltd  
14<sup>th</sup> November 2011

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<sup>10</sup> ‘Fine Default in Northern Ireland: A Consultation Summary of Responses and Way Forward’ Northern Ireland Office, October, 2009, p. 18

<sup>11</sup> CAJ notes the further recommendation of the Prison Review Team that the 2008 Order should be amended and strengthened to include a presumption in favour of a Supervised Activity Order, or distraint of income for those who can afford it following the roll out of the Order in 2013. CAJ would have concerns, for the reasons outlined above, regarding the possibility of a statutory presumption in favour of a distraint of income.