Response to Department of Justice Consultation on Fine Default in Northern Ireland

Summary

The Commission advises that an alternative to custody for fine default urgently needs to be put in place that minimises risk of breach. This response makes reference to the Commission’s advice to the Secretary of State on a Bill of Rights for Northern Ireland which recommended that “no-one shall be deprived of their liberty merely on the ground of the inability to fulfil a contractual obligation”.

Further, it is recommended that exploratory work takes place to examine whether some offences, such as non payment of television licence, could be dealt with as a civil debt rather than via the criminal justice system. Difficulties relating to adequate resource and capacity building must be addressed so that options are available that provide support and incentives to reduce the likelihood of re-offending.

Human rights standards must be adhered to and the principle of restorative justice should form a central component of any measures introduced to respond to low level offending.

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights, advising on legislative and other

1 Northern Ireland Act 1998, s.6 9(1).
measures which ought to be taken to protect human rights,\textsuperscript{2} advising on whether a Bill is compatible with human rights\textsuperscript{3} and promoting understanding and awareness of the importance of human rights in Northern Ireland.\textsuperscript{4} In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding ‘soft law’ standards developed by the human rights bodies.

2. The Commission, in previous responses, has commented on many of the issues raised by the current consultation. Most recent relevant responses to consultations include the Draft Strategy for the Management of Women Offenders; the Justice Bill; and submissions to the Prison Review Team and the Review of Community Sentences (www.nihrc.org).

**Alternative to custody for fine default**

3. The Commission’s advice to the Secretary of State on a Bill of Rights for Northern Ireland recommended that “no-one shall be deprived of his liberty merely on the ground of the inability to fulfil a contractual obligation”.\textsuperscript{5} This proposed provision incorporates the Fourth Protocol, Article 1 of the European Convention on Human Rights (ECHR) and Article 11 (International Covenant on Civil and Political Rights). While the Articles were not intended to cover fine default, many of the considerations that motivated this humane and sensible measure apply at least equally in cases where there are genuine reasons for failure to discharge a criminal penalty, rather than a civil debt or contractual obligation; for example, the sum at stake is not recovered by imprisonment, and the cost to society and to the individual of imprisonment is likely to exceed by a vast measure the original fine.

4. The distinction between TV licensing and, for example, utility billing, where non-payment is a wholly civil matter, is hard to discern other than by reference to a statute that Parliament very likely did not intend to lead to the frequent and traumatic imprisonment of defaulters, at great public expense, for short periods.

5. It is also noted that a recent Criminal Justice Inspection report,\textsuperscript{6} recommended that the enforcement of the TV licence fee should be handled by the Enforcement of Judgments Office in Northern Ireland, and not by the criminal justice system (paragraph 3.5).

\textsuperscript{2}Ibid, s.69(3).
\textsuperscript{3}Ibid, s.69(4).
\textsuperscript{4}Ibid, s.69(6).
\textsuperscript{5}NIHRC (December 2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland*, pp63-64. The male pronoun is used, as in the Protocol, to refer also to females.
\textsuperscript{6}CJINI, ‘The enforcement of fines’, March 2010
The report noted that a large number of people each year, especially women, are sent to prison for non-payment the TV licences, and proposed that this offence should be treated “by analogy with civil court judgments” and “should not be subject to imprisonment”.

6. For the above reasons, the Commission would view as a sensible option, further consideration of some offences, such as non-payment of a television licence, to be dealt with as a civil debt rather than a criminal offence.

**Supervised Activity Order**

7. Consultation first took place on legislative provision for a Supervised Activity Order (SAO) in the Draft Criminal Justice (NI) Order, 2007. The Commission in its response made reference to the statement in the accompanying Explanatory Document that the proposals are aimed at “ensuring that custody is only used for those offenders who merit it”, and welcomed the creation of Supervised Activity Orders (SAO) as an alternative to custody for fine default.

8. Supervised Activity Orders were legislated for in the Criminal Justice (Northern Ireland) Order 2008, with minor legislative adjustment only incorporated in the Justice Act 2011. However, despite a considerable passage of time since primary legislation was enacted, SAOs, or any other alternative to custody for fine default, are not yet available as a disposal even on a pilot basis.

9. It is noted (at para 9) that preparations for the pilots are being made with the Probation Service and it will be arranging the activity orders, but no timeline is provided. However, the rolling out of SAOs and resourcing thereof, appears as an option for further discussion (para 17), indicating that decisions, particularly those relating to resources, are still outstanding regarding the establishment of a community based alternative to custody for default.

10. We are aware of some concerns about the introduction of SAOs in that they may represent an ‘up-tariffing’ (that is, that a community sentence might be imposed rather than a fine). The fact that, at present, there is no alternative to custody for fine defaulters remains a serious gap in available sentencing options.

**Custodial sentence for fine default**

11. The Northern Ireland Prison Service (NIPS) Annual Report (2009-2010) shows that out of a total of 5,701 prison receptions, 1,778 were fine defaulters (1,635 males and 143 females), with prison sentences averaging four days. Figures recently obtained from the Prison Service indicate that in 2010, 186 females and 1,774 males received a custodial sentence for fine default (some on more than one occasion). This continues to represent a significant proportion
of those imprisoned and must carry significant cost implications for the NIPS in terms of staff time and resources. Adequately resourced gender-specific alternatives to custody that minimise the risk of breaches urgently need to be put in place.

12. The high rate of re-offending amongst adults who received sentences of 6 months or less has been recognised, with limited opportunities to provide any element of direct reparation to the victim, or indirect to the community. Further that “with the high cost per prisoner place”, short custodial sentences “do not provide good value for money”.  

13. Further, there are benefits of community sentences in that they provide opportunities for rehabilitation and reparation. Whilst not directly comparable, re-offending rates of those on community sentences do compare positively to those on short prison sentences.

14. The Prison Review Team, established in June 2010, by the Minister for Justice, was asked to review the conditions of detention, management and oversight of prisons. It published its Interim Report in February 2011. In the Report concerns are expressed regarding the size of the projected prison population, with the Team taking the view that “neither a more punitive penal policy nor an increase in re-offending should be assumptions underlying [the prison] estate strategy”. It is noted that in other jurisdictions “there have been recent moves towards justice reinvestment: moving resources out of prisons and into more effective alternative, preventive and resettlement work outside”.

15. The Team made reference to particular local needs within community provision in that there were “insufficient opportunities for diverting offenders from prison to appropriate mental health facilities and interventions”. It also called for action to “achieve real and measurable reductions in the fine defaulter and remand populations”, and suggested that this could include the removal of some prisoners serving short sentences for non-violent and less serious offences.

**Women fine defaulters**

16. In Northern Ireland, the recently published strategy for the management of women offenders\(^8\) acknowledged the particular impact on women in conflict with the law of issues around family relationships, children, health and well-being, addictions, history of sexual or other violent abuse, self-harming and financial and accommodation needs. Research commissioned by the NIO further

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\(^7\) DoJ Review of Community Sentences consultation para 2.39

highlighted these factors, and found that there was a requirement to "gain a deeper understanding of women’s offending behaviour and criminal justice practices" through research that takes account of the "social, political and economic context within which women live and the system operates". The research also highlighted a significant link between poverty in Northern Ireland and the "multiple problems associated with its affects including offending behaviour, and mental and physical health."

17. The female prison population in Northern Ireland is relatively small and stable, averaging approximately 45 at any one time, with a significant percentage comprising remand prisoners. However, this average figure can be misleading as a large number of women are imprisoned for very short sentences. The number of receptions into prison for 2009-10 totalled 300, Rising to 384 (with some on more than one occasion) during 2010-11. In 2009, 25 per cent of all women entering prison received a custodial sentence of three months or less.

18. Statistics show that of those discharged from an immediate custody sentence in 2007, 47 per cent of women offended within one year, compared to 38 per cent of men. Statistics also suggest community supervision is effective in reducing re-offending. In 2007, the figure for 12 months re-offending rate following a Probation Order was 20 per cent for women. Following a Non Probation Order community sentence the percentage fell to 18 per cent for women.

19. The high number of very short prison sentences for women fine defaulters and the high proportion of remanded female prisoners are two areas that urgently need to be addressed. Whilst it is important to acknowledge the extensive use of community sentences in Northern Ireland, prison should be reserved for the small number of women for whom a custodial sentence is necessary as a last resort.

20. The treatment of women in our criminal justice system engages issues of compliance with the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In July 2008, the CEDAW Committee, in its Concluding Observations on the UK’s Sixth Periodic Report, called upon the State party to "intensify its efforts to develop alternative sentencing and custodial strategies, including community interventions and

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9 NIO (January 2010) Addressing Offending by Women: A Literature Review.
11 5th Report by the United Kingdom of Great Britain and Northern Ireland to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment, para90.
services, for women convicted of minor offences”. Progress on measures taken to implement this recommendation will be under review as part of the forthcoming examination by the CEDAW Committee of the United Kingdom’s 7th Periodic Report submitted in June 2011.

21. A further consideration is the impact on the family of imprisonment. It has been estimated that imprisonment of a parent impacts on 1,500 children daily in Northern Ireland. Further that “children who have parents in prison are unquestionably a vulnerable group, yet their situation is rarely considered in state policies and practices of imprisonment and their support needs often go unaddressed”.

22. In relation to women with children, international human rights standards are clear that for mothers with babies or young children, imprisonment should only apply as a measure of ‘last resort’.

Measures to reduce fine default

23. We are aware of the recent initiatives to ensure that improved information is provided to the courts on ‘means to pay’ and the provision of additional supports which are to be welcomed. However, the impact of such measures (once they are all in place) on the numbers of fine defaulters being given a custodial sentence has yet to be ascertained. The 2010 figures are disappointing.

24. The Commission notes that the Department is considering options to address fine default that include direct deduction from benefits and earnings (para 14). Here, rights under the International Covenant on Economic Social and Cultural Rights (ICECSR) may be engaged. In particular, the right to an adequate standard of living (Article 11) and the right to social security (Article 9) must be fully considered in the Department’s consideration of options.

25. Where direct deductions may impact on a family income there should be full consideration of Article 3 of the UN Convention on the Rights of the Child (UNCRC) which provides that:

in all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

13 Children of imprisoned parents; The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011. Editors: Peter Scharff-Smith and Lucy Gampell.

14 As above

15 UN Basic Principles for the Treatment of Prisoners, 8; Council of Europe Recommendation 1469 (2000) on Mothers and Babies in Prison, adopted by the Parliamentary Assembly on 30 June 2000.
26. In acknowledging the high levels of poverty in Northern Ireland, the Executive has given a commitment to work towards the elimination of poverty as expressed in its Programme for Government 2008-11, with a key aim to work toward the elimination of child poverty. It is important that any measures introduced to address non payment of fines does not conflict with this commitment.

**Conclusion**

27. It has been acknowledged that there are a number of factors listed that contribute to men and women coming into conflict with the law, including homelessness; lack of educational attainment; unemployment; mental health issues; alcohol and substance dependencies; lack of stable family relationships and being a victim of sexual abuse or domestic violence. When such circumstances apply, short custodial sentences are unlikely to be an appropriate response to low level offending.

28. In considering options that present alternatives to prosecution and custody, human rights standards must be adhered to, and the principles of restorative justice should form a central component of any measures introduced to respond to low level offending. There is a large body of international human rights standards and conventions that support restorative justice within the criminal justice system.16

29. The benefits of community sentences have been outlined in that they provide opportunities for rehabilitation and reparation. Whilst not directly comparable, re-offending rates of those on community sentences do compare positively to those on short sentences. In 2007, re-offending rates for those on Community Service Order were 23.5 per cent; Probation Order, 24.4 per cent and Combination Order, 34 per cent.

30. In the context of attempting to reduce the numbers of those sentenced to custody for short periods, the Prison Review Team also recommended that there be an inter-departmental initiative to develop a “safer society strategy” and to “plan for investment outside as well as inside prison.” This, in our view, would allow for

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16 These include the UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules); the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); the Council of Europe Recommendation Concerning Mediation in Penal Matters; the EU Framework Decision on Restorative Justice and the Council of Europe Recommendation Concerning Mediation on Restorative Justice and the UN Economic and Social Council-endorsed Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (the Basic Principles, UN Doc. E/2002/99 adopted 24 July 2002); the Council of Europe Recommendation R(92)16 on the European Rules on Community Sanctions and Measures; the Council of Europe Recommendation R (2000)22 on improving the implementation of the European Rules on community sanctions and measures and Recommendation CM/R(2010)1 of the Committee of Ministers on the Council of Europe Probation Rules.
careful consideration of the range of interventions required to meet local needs and concerns and as such it is envisaged that the outcome of the Review Team’s final report will have an important part to play within this process.

31. Difficulties relating to adequate resource and capacity building must be addressed so that options are available that provide support and incentives to reduce the likelihood of re-offending. Human rights standards must be adhered to, and the principle of restorative justice should form a central component of any measures introduced to respond to low level offending.

32. A gender specific alternative to custody for fine default urgently needs to be put in place that minimises risk of breach. Further, it is recommended that further exploratory work takes place to examine whether some offences, such as non payment of television licence, could be dealt with as a civil debt rather than via the criminal justice system.

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