



# JUSTICE FOR THE POOR?

## Unit Fines and Poor Defendants: A just solution?



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The Unit Fine system perhaps represents the clearest expression of what the Criminal Justice Act is intended to achieve: greater consistency in sentencing, the improved administration of sentences and, although less often acknowledged now than at the White Paper stage, a reduction in the use of custody. However, the central feature of the new provisions is that the level of fine will be determined by an offender's spare income as well as offence seriousness. It is intended that this should encourage the greater use of fines, particularly for unemployed offenders who, during the 1980s, became less likely to receive fines because of non-payment problems. It is important to ask, therefore, whether a greater level of fining can be achieved for poor offenders without an increase in default and committal to prison for default.

Certainly, the experimental introduction of Unit Fines in four Courts in 1988-89 resulted in fines being paid more quickly, more fines being paid in full, and fewer committals to prison for default. In all four Courts, the poorest defendants were fined less. However, there was no extension in the use of fines nor, presumably, was a greater proportion of poor defendants fined. It could also be argued that the results were achieved in part because of experimental conditions. For example, the high level of commitment of those taking part in the pilot was considered to be an important fact (Gibson 1990) but this will not be assured when the system is imposed nationwide and at a time when Courts are required to implement a range of other new provisions.

When considering the possible impact of Unit Fines on poor offenders, it is also important to take factors other than the size of fines and repayment levels into account. In a Northumbria Probation

Service study of young adult fine defaulters committed to prison, for example, it was found that 48 per cent had had payment levels less than £4 (Peggie 1989) and this study, together with a number of others also point to the importance of enforcement procedures in determining whether fines are paid or are replaced by a term of imprisonment. The studies reveal variation in enforcement practices between and within Courts, resulting in confusion on the part of defaulters. In some instances, for example, tax enforcement gave defaulters the impression that they would not be pursued, whereas in others, the imposition of suspended committal warrants at an early stage in the enforcement process signified to defaulters that the Courts lacked confidence in their willingness or ability to pay the fine in full.

It remains the case, of course, that even the most rational, consistent enforcement procedure cannot operate effectively without some measure of co-operation on the part of those fined, yet

### **the key question concerning poverty and the use of fines: whether someone on a subsistence income can be considered to have spare income**

a number of studies have shown that this is not always forthcoming. Crow and Simon (1987) for example, were prompted to ask why many offenders did not inform Courts of their changed circumstances, while in the Northumbria study it was found that a majority of those committed to prison had been returned to Court on warrant having ignored summonses or warning letters. The reason for lack of co-operation in many such cases was not that defaulters wilfully refused to pay, but that because of the burden of their debts and commitments, they felt little could be done and tried to ignore the problem for as long as possible.

Enforcement problems resulting from the poverty and competing financial pressures of many defaulters are, however, partly addressed in the new provisions. Indeed, according to the Home Office feasibility study. Attachment of Income Support could serve to reduce custodial committals for fine default by an estimated 13,000 per year at present levels. The provision is also lent support by at least one research study which found that many defaulters would themselves welcome a deduction at source of fine payments.

However, it is unclear whether Attachment of Income Support will be

workable in the case of many of those who are most at risk of being committed to prison for default. There is a certain irony in the fact that many default on payments or may commit offences in the first place because their frequent changes in circumstances - often tied to accommodation difficulties - mean that they routinely experience problems in claiming benefit. Nor can it be assumed that for those in more stable but equally impoverished circumstances an Attachment of Income Support will always be the soundest solution. Although no clear evidence exists to suggest that deduction of fines at source will result in further offending - as some critics have apparently claimed - it remains a valid concern, for if further inroads are made into disposable income in the face of competing priorities, a resort to illegal ways of making ends meet must become a possibility.

The statutory requirement that a Means Enquiry must be conducted before an Attachment of Income Support is ordered may prevent its indiscriminate use. Means Enquiries in these cases may also confirm, however, that there remains a role for specialist probation staff in the Court setting both to mediate between Court and defaulter and offer financial counselling. That a role for probation staff has not been prescribed in the new provisions reflects the lack of consideration given to the enforcement process in general in the introduction of Unit Fines.

Despite the above observations, the superiority of Unit Fines over the existing system is clear. Yet this in itself can serve to mask what must remain the key question concerning poverty and the use of fines: whether someone on a subsistence income can be considered to have spare income. The system of Unit Fines clearly assumes this but it could be argued that the answer can only be 'yes' if an absolute rather than relative definition of poverty is considered valid. It is possible, therefore that the introduction of Unit Fines, rather than leading to a marked increase in the use of fines for poor people, may confirm that what is needed instead is a just alternative for those who cannot pay.

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#### References

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