



NIACRO Response

**Call for Evidence on the Justice No. 2 Bill
and Proposed Amendments**

Date: 18th September 2015



working to reduce crime and its impact on people and communities

Committee Clerk
Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BT4 3XX

18th September 2015

Dear Christine,

I enclose NIACRO's response to the Committee for Justice Call for Evidence on the Justice No. 2 Bill and Proposed Amendments.

NIACRO is a voluntary organisation which has been working for more than 40 years to reduce crime and its impact on people and communities. NIACRO provides services for, and works with, children and young people, families and adults, whilst working to influence others and apply our resources effectively. Our policy comments are based on both our experience of delivering services and feedback from our service users.

NIACRO receives funding from, and works in partnership with, a range of statutory departments and agencies in Northern Ireland, including criminal justice, health, social services, housing and others. We welcome the opportunity to comment on this consultation.

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

Olwen Lyner
Chief Executive



Part 1: Collection of Fines

General Comments

NIACRO welcomes the opportunity to respond to this part of the Bill. We provided a response to the Department's previous consultations on Fine Default in November 2011 and on Fine Collection and Enforcement in June 2014.

NIACRO's position is that defaulting on the payment of fines, imposed for minor offences or for civil matters, should not result in imprisonment. It is estimated that a four day committal in prison costs £3,000 per person, and that doesn't include the financial and emotional cost to families and children. We know of examples of people being imprisoned for not paying a fine as little as £5 or £10. The cost of sending people to prison for such minimal amounts seems grossly disproportionate to the cost of the original fine. We were disappointed that the practice of imprisoning those who default on fines was reinstated in the past year and we welcome this Bill's proposed move away from custodial sentences for fine default.

Furthermore, we believe that many of the people who currently receive fines for such matters should, as an alternative, be offered appropriate intervention, on a voluntary basis, at an early stage and be diverted out of the criminal justice system all together. Conscious of the impact that having a criminal conviction can have on access to a range of services (employment opportunities, insurance cover, education etc.), it is important that society does not impose penalties which can have far reaching negative consequences and which could be regarded as disproportionate to the seriousness of the original offence.

We also welcome the proposal to appoint civil servants as Collection Officers as an alternative to police officers; we agree this role should be fulfilled by a civilian based collection service.

Our comments on some specific clauses are outlined below.

Clause 4 – additional powers where collection order made

Regarding proposals to recoup fines by deducting the money from benefits payments, attachment of earnings order, interim bank account orders or bank account orders, NIACRO recommends that a full means test is conducted to assess the impact of such a measure not just on the debtor, but on any dependents. We are concerned that the deduction or freezing of such monies could negatively impact on the debtor's partner and children, particularly given that in the case of an interim bank account order, there is no requirement to inform the debtor of this action in advance. NIACRO has frequently outlined the impact of the 'Silent Sentence' on families and children who are negatively affected when a family member becomes involved with the criminal justice system; where that family member is the main income earner, this 'Silent Sentence' can include financial stress, exacerbating an already stressful and tense period for partners and families. We therefore recommend that any financial assessment takes account of all of the individual's responsibilities, including his/her dependents. In addition, there is a need to consider the impact on a person's existing Standing Orders and Direct Debits if implementing an attachment of earnings order or deductions from benefits, especially the response from utility providers who may withdraw services if payment is not maintained. This may actually increase the incidence of default. There are therefore particular concerns about interfering with bank accounts of people on low income and/or with dependants.



Proposals to improve fine collection and prevent fine default must recognise the choices that individuals will make depending on their particular circumstances and acknowledge the difference between those who wilfully do not pay, and those who cannot pay due to their financial circumstances. Positive measures such as extending the time available to pay, facilitating a mechanism to pay in instalments and issuing reminders are useful in reducing default. We recommend that the option to complete a Supervised Activity Order (SAO) should not just be an alternative to custody for a judge passing sentence, but should also be an alternative to the fine itself.

Clause 9 – powers of court on referral of debtor’s case

This clause states that “the responsible court may issue a warrant committing the debtor to prison in default of the outstanding amount”. NIACRO is opposed to using prison as a punishment for fine default for minor offences; given that clause 19 states the provisions in this chapter relate to fines amounting to less than £500, we believe it is inappropriate and unnecessary to imprison those who default on sums of this value, particularly given the high cost of imprisonment and lasting impact to the person and their family.

We believe that SAOs are a more appropriate measure for those who default on fines of less than £500. We recommend that completing an SAO should be purposeful and relevant to the individual’s situation, and that it should contribute to desistance from future offending behaviour. For example, if an individual is experiencing difficulty managing money, they could be directed to participate in a Managing Money Matters accredited programme, such as that delivered by NIACRO. Similarly, if a person has been fined for an alcohol related offence, which is common, they could be directed to complete an Alcohol Awareness programme. If merited, where the amount of the fine is higher (£300 - £500), they may also be expected to attend regular sessions in the community and voluntary sector which can provide information and advice across the wide spectrum of health, accommodation, employment, citizenship, etc.

We believe the vast majority of people who can afford to pay a fine are likely to do so in preference to completing an SAO.

Clause 12 – enquiries into debtor’s means / Clause 13 – attachment of earnings order

As above, we recommend that the court may also request information about the individual’s dependents and relevant financial commitments before making an application for deductions from benefits or earnings. This is to ensure that the family of the debtor is not unfairly penalised.

Clause 24 – supervised activity orders

As indicated above, NIACRO welcomes the ability for courts to impose SAOs instead of custodial sentences and we welcome the increase of the amount to £1,000.

Clause 25 – restriction on detention of children for default in paying fines etc.

NIACRO welcomes the removal of custody as an option for children who default on fines. However, we wish to reiterate that we do not believe fines are an appropriate disposal for children. Fines do not address the underlying causes of offending behaviour at any age and in the case of children, the impact of this disposal is more likely to be felt by the young person’s parents and family. This view is supported by the Children’s Law Centre.

Instead, we believe that diversionary measures for children should be promoted for young people involved in minor offences. Such measures will do more than a fine to address the offending behaviour, prevent its further development, and divert young



people away from the criminal justice system and the lasting negative impact of criminal records.

Part 2: The Prison Ombudsman for Northern Ireland

General Comments

NIACRO welcomes the opportunity to respond to this part of the Bill. We provided a response to the Department's previous consultations on this issue in April 2014, which incorporated feedback from our service users following consultation on their experience of engaging with the Ombudsman during their time in custody.

As stated in our previous response, we support the principle of an independent statutory footing for the Prison Ombudsman for Northern Ireland. However, we are disappointed that some points we made in our earlier response have not been included in this Bill.

These recommendations include:

- The Prison Ombudsman role should be subject to an appointment process that is distanced from the Department of Justice to ensure independence, contrary to the appointment process outlined in Schedule 3 of the Bill;
- Schedule 3 (2d) states that the Ombudsman may be removed from office if that person has been convicted of a criminal offence. We recommend this criterion is removed as it is both illogical and incompatible with a desistance approach. This blanket policy contains no element of risk assessment or consideration of the relevance of the offence to the post. We recommend that instead, robust risk assessment is applied to applicants with a criminal conviction to ensure fair recruitment and compliance with best practice;
- We welcome that the Bill includes provision for timely reporting in specified areas. We recommend reports are published on all investigations and that these are made publically available. Furthermore, we recommend that the Office should have a duty to publish trends, analysis and other associated data on an annual basis – perhaps within the annual report provided for in Schedule 3 – to ensure findings of investigations are not viewed in isolation but contribute to a broader understanding of issues in prisons and emerging themes, problems and solutions; and
- We recommend that handling complaints and investigating issues or deaths relating to the actions of the Youth Justice Agency, Juvenile Justice Centre and Probation Board are also incorporated into the role of the Prison Ombudsman, with reference to other appropriate bodies with responsibility for the safety and wellbeing of children in custody.

Our comments on some specific clauses are outlined below.

Clause 30 – Complaints

We welcome the inclusion of dealing with complaints in the stated main functions of the Ombudsman. We recommend that the remit for Ombudsman investigations into complaints is extended to the Juvenile Justice Centre/Youth Justice Agency, Probation Board NI, and in relation to tasks carried out by staff employed by other agencies on behalf of the Prison Service.

Given the role of the Patient Client Council in handling complaints relating to healthcare in prisons, we recommend that the complaints procedures of both the Prison Ombudsman and the Patient Client Council are harmonised and have effective two-way



communication systems in place, to ensure that end users can access complaints procedures effectively and their concerns are heard by the appropriate body.

Further to Subsection (3a) of Clause 30, we recommend that prisoners on remand are explicitly included in the list of persons entitled to make a complaint.

Further to Subsection (6), we are concerned that some complaints may be disregarded without due consideration. In determining if a complaint is “frivolous, vexatious or raises no substantial issue”, we recommend that there is robust accountability to ensure subjective views do not prevent complaints from being taken seriously. This could include clear guidelines for the Prison Ombudsman – developed in consultation with relevant stakeholders including voluntary and community organisations and service users – and an independent monitor for a selection of cases. We also recommend that a list of types of complaints disregarded is kept and published in the annual report, and that this is made publically available.

Finally, further to Subsection (8) that the Ombudsman “may at any time re-open a deferred investigation”, while we understand and welcome the need for this provision, we suggest a mechanism is introduced to ensure the principles of timeliness is upheld and that time-sensitive complaints are addressed quickly and appropriately.

Clause 31 – report of investigation of complaint

We welcome the duty placed on the Department to respond to recommendations within the report on an investigation into a complaint within 28 days. We recommend that these reports and the subsequent Departmental response are made publically available to ensure transparency and communicate the work of the Prison Ombudsman.

Clause 32 – investigations into deaths in custody

We welcome the inclusion of investigating deaths in custody in the stated main functions of the Ombudsman. Again, we recommend the scope of this remit is extended to juvenile custody.

As has been the practice recently, we recommend that the scope of this area is extended to include investigations into near deaths in custody and that this is reflected in the Bill.

Further to Subsection (4), we recommend that a mechanism is introduced to ensure the principle of timeliness is upheld and that time-sensitive complaints are addressed quickly and appropriately.

Clause 33 – report on investigation into death

We welcome the duty placed on the Department to respond to recommendations within the report on an investigation into deaths within 28 days. We recommend that these reports and the subsequent Departmental response are made publically available to ensure transparency and communicate the work of the Prison Ombudsman.

Clause 34 – investigations requested by the Department

We welcome this provision and the inclusion of the Juvenile Justice Centre at Subsection (2a). We recommend the Centre is included in all areas of the Ombudsman’s remit under clauses 30 and 32, with reference to other relevant bodies with responsibility for young people in custody.



Clause 35 – report on investigations under section 34

We welcome that the Ombudsman must report in writing the outcome of investigations conducted under Clause 34. We recommend that, as stipulated in Clauses 31 and 33, the Department must respond to recommendations within the report within 28 days. We further recommend that these reports and the subsequent Departmental response are made publically available to ensure transparency and communicate the work of the Prison Ombudsman.

Clause 36 – Powers of Ombudsman

We welcome this statutory reassurance of the Ombudsman's powers of entry and access to documents. We also welcome the inclusion of the JJC and other premises alongside prisons.

Part 3: Miscellaneous

Clause 41 – Lay Visitors

We welcome the extension of scope of lay visitors to all police stations in Northern Ireland.

Clause 43 – Early removal from prison of prisoners liable to removal from UK

We welcome that a prisoner can only be removed from the UK in the circumstances outlined with his/her agreement. We recommend that appropriate translation services are provided where necessary and that the family of the prisoner are engaged with regarding any proposed move to ensure there is full understanding of the consequences of consenting to removal. To that end, legal professionals must also be trained in and informed of this provision.