



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (No. 2) Bill: NIACRO

5 November 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Sammy Douglas
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Ms Bronwyn McGahan
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Olwen Lyner	NIACRO
Mr Barry McMullan	NIACRO

The Chairperson (Mr Ross): I welcome Ms Olwen Lyner and Mr Barry McMullan from NIACRO. The session is being recorded by Hansard and will be published on the website in due course. I think that you have been informed already that we are going to deal with this in a different section. Perhaps you would make some comments on Part 1, and after any questions we will move onto Part 2.

Ms Olwen Lyner (NIACRO): Thanks for inviting us here today. I am the chief executive of NIACRO; and Barry McMullan coordinates our welfare rights service for individuals and families affected by the justice system. We appreciate the opportunity to submit written evidence and to be here today.

You will know that our organisation has worked for more than 40 years to reduce crime and its impact on people and communities. We work with adults, children, young people, families and communities while also seeking to influence policy and practice on the basis of our experience of delivering services. The nature of our work means that we work with people who have offended, young people and adults who are at risk of offending, their families, and victims of crime or antisocial behaviour.

In general, we welcome the proposals outlined in the Bill and its overall direction. I will address the fines element first. We especially welcome the introduction of civilian fine collection officers and the establishment of a statutory footing for the ombudsman. However, in our evidence today we will highlight some points for consideration, and we want to raise three key concerns with you.

First, in Part 1, on the collection of fines, we want to reiterate our firm belief that defaulting on the payment of a fine imposed for a minor or civil matter should never result in imprisonment. We believe that there is a range of alternatives to custody and, indeed, fines, including, but not limited to, the

supervised activity orders for which there has been a pilot. Those would be more effective in terms of cost and, ultimately, in reducing reoffending. Secondly, there is a need to consider the impact of fines and any collection processes imposed, such as deduction from benefits payments or attachment of earnings on the families of debtors. This is a particular concern for us because many families that we deal with are on low incomes.

NIACRO's position on Part 1 has consistently been that defaulting on the payment of a fine imposed for a minor matter should not result in imprisonment. It is clearly a disproportionate punishment, and, given that prison was not deemed to be an appropriate outcome from the court in the first place, it almost acts to frustrate the court's original intention. Given the high financial and personal cost of imprisonment, it is not an effective solution to non-payment. We know from the evaluation — I am sure that you have had it shared with you — of the supervised activity pilot that not having the means to pay or too short a time to repay are among the general reasons why people do not repay. There needs to be an opportunity to find a manageable repayment schedule for a fine imposed, such as a gradual repayment scheme, which is already in place — where welfare payments are overpaid there is a mechanism to have them returned. We have examples of good practice here that we could apply to the situation that would not frustrate or thwart the collection process.

However, we are not convinced that imposing a fine will always give us the desired outcome of reducing offending. We believe that many people who receive fines need to be offered an appropriate intervention that addresses some of the root causes of why they have got to where they are. We all know that minor offending, which can result in a fine, can often escalate to more serious offending over time. Therefore, moving to a voluntary, or otherwise, engagement on a programme of practical support might be a more effective method of early intervention to divert somebody away from the criminal justice system, which is what we say we all want in terms of the strategic framework for reducing offending. This moment of engagement over the offence should be an opportunity to provide some level of support.

For a number of years, NIACRO has offered an accredited programme, run by Barry, called Managing Money Matters, which supports people to manage their money more effectively and improve their financial capability, independence and stability. Referrals to such programmes as that would, in fact, be more meaningful for many who receive fines. We know that it works for motoring offences as well as for alcohol management.

Our written submission refers to the impact on families of imposing a fine. The Bill contains proposals to recover fines by deducting money from benefit payments through attachment of earnings orders or bank account orders. If that is how it is to go forward, we recommend that a full means test needs to be carried out in advance of any of those powers being implemented to ensure that family members and dependants are not unfairly impacted on by this process. The test should exclude child benefits or child tax credits to protect the finances that were originally intended for the child.

We have repeatedly raised the notion that what we call a silent sentence is imposed on the partners and families of those who go through the criminal justice system. Without any robust protection, we see that these measures could result in further financial and mental stress for family members, many of whom are already struggling. A sizeable deduction from an already low income may exacerbate the situation, leading to further offending. Moreover, as already stated, it does very little to address the underlying issues that led to the offence or the default.

If you wish to stick to the first section, I will stop there and answer questions, then we can move on to the other one.

The Chairperson (Mr Ross): Thank you. I have one quick question before Patsy's. You stated in relation to clause 9 that it is inappropriate and unnecessary to imprison those who have fines of less than £500. I have sympathy with that. I think that the criminal justice system has to ask itself whether prison is the best way of dealing with minor offences. However, what about those who repeatedly default on fines? Do we not need prison as a last resort for those who repeatedly do not pay their fines even when they are offered the chance to?

Ms Lyner: You might wonder why a judge continues to give something that clearly is not getting the response that he is looking for. So, I think that you have a fair point in relation to that. However, I do not think that we should be saying that you can pay your way out of a fine by being able to do four to five days in prison, with all the associated costs. I do not think that that sends a strong message that something has to be paid back.

Mr McGlone: Thanks very much for that and it is great to see you again. Before I come onto a point that hit me just this week in the constituency office, will you talk me through Managing Money Matters? How does it fit in with people who find themselves in debt, and how can it be used as a method to collaborate with the courts to ensure that people do not wind up in jail for exactly what you mentioned, Olwen?

Mr Barry McMullan (NIACRO): The first point is that people default on fines because they do not have money. If you are a single man in receipt of £73 a week in jobseeker's allowance, it is highly unlikely that you will have any disposable income at the end of the week. So, I think that it is ridiculous for a court to impose a £300 fine and expect that person to pay it within 28 days. Inevitably, the person will take the option of going to prison for four or five days at a cost. Meanwhile, the underlying issues or causes are not addressed. There may be alcohol or other addiction issues or poor money management. However, those underlying issues are not being picked up, and that is what we are asking for: early intervention through another diversionary channel and money management.

We have been delivering Managing Money Matters for about four years; we piloted it in another guise in 2011, and it has evolved into Managing Money Matters. It is an Open College Network (OCN) accredited course level 2. Many of the people whom we have brought onto the course in the past three or four years have had no great love of education or doing programmes or courses, but they have stuck with it. We cover things such as budgeting skills, income maximisation and financial capability. It is about improving their skills to manage money; it is about looking at needs against wants and making better choices when it comes to money. Over the four years, 171 people were put through the course and 145 achieved accreditation.

Mr McGlone: I am trying to see whether there is any formal link between you and the judicial system — the courts or anything like that — or whether that is something that you do anyway.

Mr B McMullan: It is a course that we have been offering in prisons and in the community to families —

Mr McGlone: Has it got into the psyche of the courts whereby judges are saying, "This is something that could be done."

Ms Lyner: No, but it could be used as an extra to the supervised activity order. That is how you would structure it. We have had those discussions, but we have not had any progression.

Mr B McMullan: It is part of the menu.

Mr McGlone: Have you had those discussions with the judiciary?

Ms Lyner: In the review of supervised activity orders and other issues, we offered it as an option to help to address the underlying issues behind offending.

Mr McGlone: Anything that addresses repeat offending and keeps people out of jail is welcome.

I listened to you talk about child tax credit and child benefit and how they should be protected. That is grand up until debt is owed to the tax credit people. As you probably know, after a period they hand the debt over to a debt collection agency, which buys the debt. It could become very tricky to protect one over the other when the debt is owed to the tax credit people.

We had a case recently, and we were very fortunate in that the debt collection agency was amenable enough when we rang them, and hopefully it will work out OK for the person concerned. I am thinking of other people when the debt is owed. How can you protect against the debt not being collected whenever the person to whom the debt is owed is the likes of the tax credit people? How can your range of protections help someone on a low income whose debt has been handed over to a debt collection agency? Not everybody, with the best will in the world, thinks, "I need to get intervention on this", especially if they are told, "We need money from you very quickly" and there are people on the phone putting them under a lot of pressure.

Mr B McMullan: Was it HM Revenue and Customs (HMRC)?

Mr McGlone: Yes.

Mr B McMullan: Did they pass the debt to a private debt collection agency or to Debt Management?

Mr McGlone: No, they offloaded the debt.

Mr B McMullan: We advocate, as good practice, to meet your debtor early to find out the reasons why you cannot repay the debt. Part of that is about setting up repayment schedules that the person can afford to maintain. As I said, there is no point in the court or anybody else saying, "You have to pay £300 in 14 days" when they do not have a snowball's chance in hell of doing so. It is about sitting down and following a common-sense approach, doing a proper means assessment, and working out what the person can afford to repay.

Mr McGlone: Should this be determined as good practice in collaboration with the Court Service and people like that?

Ms Lyner: Yes.

Mr McGlone: That goes back to your original point.

Ms Lyner: Absolutely.

Mr B McMullan: It is about early intervention: find out the underlying causes and problems and then find out the best person to intervene to help the person.

Mr McGlone: Thanks very much for that.

The Chairperson (Mr Ross): I remind Committee members to turn their phones off. We have had four incidents today, which is a record. At least practise with discretion.

Mr Douglas: Thank you for your presentation. Have you had any discussions with your colleagues in England or Wales about the proposals that you have come across? I ask because Michael Gove said last night that he wants to reduce prisoner numbers, as there are some 85,000 prisoners in England and Wales alone.

On your proposal to reduce the prison population, have you any idea of the numbers that we could be talking about?

Ms Lyner: I think that Michael Gove's statements are to be welcomed. Even in the early days of looking at alternatives to fines and how we might do better in Northern Ireland, we looked at other models, particularly at the Scottish model. We have all contributed to where we are at the moment, but, if we were to look back perhaps eight or 10 years ago, we would have seen an annual rate of fine defaulters of about 3,000. We are currently sitting at around 250 or 300. We have made huge strides. All the work that people have done has raised the point that, if people do not have the means to pay, offering that as a sentence is not as helpful as it should be. We are reducing that.

The impact of supervised activity orders and other options is all positive. What we need is for people to recognise that they have done something wrong and that there needs to be some restitution or some outcome as a consequence. However, if the choice is to buy your way out of trouble or to make a contribution back to society, we would obviously prefer to see the contribution made, particular if the money is going to default. We have looked at things, Sammy, and, in that respect, these are positive developments. The reduction in numbers going through is truly significant.

Mr Douglas: On a recent visit to Maghaberry with the Justice Committee, I asked whether there were prisoners who were fine defaulters, and there were. I thought that imprisoning people with serious criminals for failing to pay paltry fines could mean that they could end up learning the skills of those criminals while in there.

Ms Lyner: You often find that when people who go in because they have defaulted on small fines prison staff themselves end up paying the fines to move those folk back out again.

Mr McCartney: Thank you very much. Apologies for not being here for your presentation, but I have read your report. How should the courts deal with fines and supervision orders? I am sure that if someone was fined £50 and could not pay, you want a way to prevent that. You do not want it to become a supervision order unnecessarily either because the punishment might be seen as too severe or the cost of supervision for a £50 fine is not good either. How do we get round that issue of people who cannot pay? Is there something that we could explore that would offer a suitable means of recompense without even being monetary?

Ms Lyner: I am thinking of the model that Barry suggested. Fifty pounds is a very modest fine, but that does not mean that the crime that was committed did not cause someone anguish. However, a more appropriate outcome might be a very small element of an activity order or something to do with money management or something else appropriate.

Undoubtedly, we want to do something that provides people with the marker that says that this is the moment to consider change in what they are doing. We have to have those moments, but we do not have to make it any more than that. A small fine such as that would come off the record very quickly. Undertaking a course that would make you think about your behaviour would be every bit as useful, we believe, as a small fine.

Mr McCartney: I suppose that, in the main, it is usually the solicitor who brings someone's personal circumstances to the attention of a judge or magistrate. Are you suggesting at clause 12 that it should also be a matter for the court to help in sentencing?

Ms Lyner: We believe that that should be able to be done at court, yes.

Mr McCartney: So, that would become part of the sentencing programme. OK. Just in relation to the Prisoner Ombudsman, I notice that —

The Chairperson (Mr Ross): We are going to move on to Part 2.

Mr McCartney: Sorry, apologies.

The Chairperson (Mr Ross): That neatly fits in. There are no other questions on Part 1, so we will move on to Part 2.

Ms Lyner: If I can just say a couple of things about that, we welcome the move to place the office and role of Prisoner Ombudsman on a statutory footing. In this period of reform in the Prison Service, it is more important than ever that there is an independent Prisoner Ombudsman to address concerns raised by those affected by the prison system throughout and beyond this process of change. The Bill will give the ombudsman the statutory footing to investigate complaints and deaths in custody, which is absolutely right. However, more often than not, a death in custody is inextricably linked to the healthcare provision that a person experiences while in prison. Giving the Prisoner Ombudsman responsibility for investigating healthcare could provide some consistency. If that is not to be the case, it is essential that there are clear time-bound protocols for two-way communications between the ombudsman and those involved in the health investigation.

Further, we know from our service users that it can be a confusing picture for those in prison and their relatives to know which is exactly the right body to go to to lodge a complaint. Indeed, beyond the scope of this, across the justice system's agencies, there is a range of opportunities, ways and channels for complaints. We want to see the information processed by all the oversight bodies working across criminal and youth justice systems — the Prisoner Ombudsman, the Assembly Ombudsman and others — being collated in some way to allow those of us who have an interest to see where all the complaints and issues are being addressed. There are so many places where those could be lodged that it would be easy to miss the overall trends.

To close, we welcome the opportunity to be here today and to raise the three issues that we have; two in relation to Part 1 and the issue around making sure that there are good workable and timely protocols between the ombudsman's office and healthcare in particular. Perhaps protocols would also have an impact on the delivery of education and skills services.

Mr McCartney: I welcome the broad comments that they should be put on a statutory footing. I think that most of us are of that opinion. In paragraph 4(2)(d) of schedule 3, in relation to the person being convicted of a criminal offence while in post, you believe that there should be a robust risk assessment.

Ms Lyner: Yes. That is in line with everything that our organisation believes.

Mr McCartney: If someone were given six months' imprisonment, what would you say there?

Ms Lyner: We have had discussions with most members of the Committee at some stage about what minor and old convictions are. It is unlikely that a prison sentence would be expunged, but, again, it is all to do with desistance, and also whether the sentence was conditional or whether it was served. It says "robust", which means that we cannot easily answer it; we just cannot say yes or no to one thing. Jim Gamble mentioned context earlier. That is also important.

Mr McCartney: The schedule envisages a person being removed while in post. If someone gets a six-month sentence, are you saying that, on release, they should be reconsidered for the post?

Ms Lyner: It is likely that something will have emerged from somebody's past. That is how it would happen.

Mr McCartney: So it is not about their removal while they are in post?

Ms Lyner: Again, it would depend on the context.

The Chairperson (Mr Ross): One of the issues raised with us previously was concern over the independence of the office of Prisoner Ombudsman, given how they are appointed and funded. Do you have any concern or views on that?

Ms Lyner: It is interesting. It is something that we explored before we came to see you. It is possibly easier to say, "Deliver on independence" than to think about how you would have an independent structure. Would an option be to look at where the Assembly Ombudsman is funded from, which is through OFMDFM? It is likely to involve a process of budget reallocations. That means that there would still be some involvement in its relationship with the Executive. At this stage, we are not uncontent with the process.

The Chairperson (Mr Ross): There are no other questions. Thank you both very much.