

CAJ's submission no. 260

CAJ's Commentary to the

Department of Justice's

Offender Levy and Victims of Crime Fund

Consultation

May 2010

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.

Offender Levy and Victims of Crime Fund Consultation
Criminal Policy Unit
Department of Justice
Massey House
Stoney Road
Belfast BT4 3SX

27 May 2010

Dear Sir/Madam,

Re: Offender Levy and Victims of Crime Fund: A Northern Ireland Consultation

Thank you for inviting the Committee on the Administration of Justice (CAJ) to present our views on *Offender Levy and Victims of Crime Fund* consultation. As you will know, CAJ is an independent non-governmental human rights organisation that was established in 1981. CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

It is vital that a healthy and accessible criminal justice system adequately balance the rights of victims with the rights of the accused. To do so, provisions that do not undermine the fairness of the judicial process must be in place.

Whilst in principle CAJ agrees with the proposal to create an offender levy and a victim of crime fund so as to deliver better services to victims, section 2.3-2.8 is vague as to how the funds will be used to deliver better services to victims. Reference is made to the *Victim and Witness 5 Year Strategy – Bridging the Gap*, and the consultation document states 'that revenue accumulated from the levy [will be] used primarily to support initiatives which

improve service delivery' (section 2.5) and 'to improve those areas identified by a new cross-cutting victim and witness experiential survey' (section 2.6) and to provide 'small grants to complement the work of victims' groups working within the community' (section 2.7). It would be helpful if details regarding 'service delivery' were made explicit and it would have been helpful if the consultation had been published along with the detailed proposal for the victims of crime fund.

In general CAJ agrees with the notion of having alternatives to prosecution, but is concerned at the proposal to apply the levy to the Fixed Penalty Fine (section 4.5) given that the offences which would warrant a Fixed Penalty Fine are not specified (in this consultation document, the *Alternatives to Prosecution: A Discussion Paper* (March 2008) or in the *Summary of Responses to Alternatives to Prosecution: A Discussion Paper* (October 2009)). As such, it is difficult to respond as to whether the levy would be appropriate to apply to Fixed Penalty Fines.

We also agree with the proposal to permit the courts to reduce the levy where the offender has insufficient means to pay (section 4.13) and that a reduction of the levy should only apply when accompanied by a compensation order. However, that the court in certain circumstances may reduce the levy (or fine) depending on the offender's financial means and ability to pay the levy raises the question as to how the court will make this determination. It would appear that clear procedures are needed to be set out for the courts to follow whilst permitting the judge or magistrate (or other individuals who may impose the levy) a degree of discretion so as to not further marginalise defendants who already have financial problems.

The consultation document states that it will be proposed that it would not be possible for the levy to be lodged in lieu of payment (section 4.19) but *can* be expunged when the court has placed a Supervised Activity Order (SAO) in lieu of prison custody for non-payment (section 4.27). It is not clear whether it is possible for levy defaulters to still be imprisoned, particularly given that the Criminal Justice (Northern Ireland) Order 2008, which creates the SAO, has yet to be enacted. It is vital that timely safeguards are put into place to ensure that the creation of the offender levy and victims of crime fund do not counteract alternatives to prosecution measures which aim to decrease the number of people incarcerated for fine defaulting. *Fine Default in Northern Ireland: a Consultation Summary of Responses and Way Forward* states that it is the government's intention to 'reduce the number of defaulters going to

prison'.¹

In accordance with the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985), we agree that offenders should pay compensation to victims and that government should endeavour to establish, strengthen and expand available national funds. We therefore agree that any statutory priority payment order should safeguard the allocation of payments to victims and, in principle, the victims of crime fund prior to a fine or court fees (section 4.23).

In relation to the question of whether the rate of the levy should be uplifted alongside the value of the fixed penalty for non-payment within the stipulated time (section 4.26), CAJ believes that prudence needs to be taken by the courts when determining whether non-payment has been because of the offender's inability to pay or other reasons. Moreover, similar proposals were made in relation to fine default were but widely supported 'as respondents surmised that an offender who had intentionally defaulted was unlikely to pay an increased fine'.²

CAJ would object to the vague proposal to allow the application of the levy to Fixed Penalty Notices which are introduced by other government departments in order to deal with certain low-level criminal offences outside the courts (section 4.42) on the grounds that the examples given are not consistently applicable to victims and, by default, the proposed victims of crime fund (for example, the consultation document states (section 4.41) that the Department of Environment may introduce Fixed Penalty Notices for offences such as graffiti, fly-tipping and noise offences; it would appear to be more appropriate for a correlating levy fund relating to conservation or community safety).

We commend the proposal that the levy will apply only to adults (section 4.35). Application of fines and levies to minors, most of whom are the financial responsibility of their parents, would seemingly have a disproportionate impact on families living in deprived communities given that rates of crime are generally higher in areas of social and economic disadvantage in Northern Ireland. The impact on single-parent families may also be a consideration.

The consultation document acknowledges that 'as the levy would attach to existing disposals there would consequently be a greater impact on young

¹ Northern Ireland Office. *Fine Default in Northern Ireland: a Consultation Summary of Responses and Way Forward*. October 2009.

² Ibid.

males than any other Section 75 category because they form the largest grouping in the offending population' (section 5.2). The section 75 duty requires that where differential impact is identified, consideration be given to measures which would help mitigate against this impact. In addition, although the consultation document continues on to say that 'an initial pre-policy equality screening has not identified any other Section 75 impacts at this stage' it is also worth bearing in mind the differential gender incidence of fine default.³ As such CAJ would suggest that the decision not to Equality Impact Assess these proposals should be revisited, so as to more fully inform the development and potential consequences of the policy.

We thank you for permitting us to respond to the consultation and look forward to the Department's response.

Sincerely,

Jacqueline Monahan
Criminal Justice Programme Officer

³ For example, a Criminal Justice Inspection has reported that although 'the absolute number of female defaulters is small in comparison to male defaulters [...] it is a significant part of the female prisoner population...Forty per cent (1222) of the 3080 female receptions recorded between 1997 and 2007 were for fine default compared to 30% (17274) of the 57300 male receptions' Criminal Justice Inspection. *The Enforcement of Fines*. March 2010.