

POVERTY PENALTIES IN THE UNITED KINGDOM

Shadow Report Submission to the United Nations Human Rights Committee For the United Kingdom Review

Submitted by:

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February 5, 2024

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I. Background

States frequently impose fines and other financial sanctions on individuals through their criminal justice systems. Unless these sanctions are scaled to defendants' financial circumstances, they over-penalize people living in poverty both directly and by triggering additional sanctions. These "poverty penalties" can have devastating impacts on low-income people. In "Poverty Penalties as Human Rights Problems," published in the *American Journal of International Law* in July 2023, Professor Galbraith and a team of researchers detailed the use of harmful poverty penalties in criminal justice systems around the world—from inadequately scaled fines to fixed court costs to the use of imprisonment as a penalty for unpaid fines—and discussed their implications for human rights.¹ This submission extends that analysis to the United Kingdom.

Poverty penalties raise serious human rights concerns. Unless fines are carefully scaled to defendants' financial circumstances, they will over-penalize those who are less wealthy, raising concerns of property-based discrimination under Article 26 of the International Covenant on Civil and Political Rights.² The effects of poverty penalties can fall especially heavily on racial minorities and other vulnerable groups, raising further concerns under Article 26.³ Poverty

¹ Jean Galbraith, Latifa AlMarri, Lisha Bhati, Rheem Brooks, Zachary Green, Margo Hu & Noor Irshaidat, *Poverty Penalties as Human Rights Problems*, 117 AM. J. INT'L L. 397 (2023).

² See International Covenant on Civil and Political Rights art. 26, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

³ See Galbraith et al., *supra* note 1, at 409-11, 432.

penalties also raise grave concerns regarding Article 9’s prohibition against arbitrary detention in countries where imprisonment is imposed on fine defaulters who lack the means to pay.⁴ In recent years, many human rights bodies have begun to pay attention to poverty penalties,⁵ and we hope that this Committee will do the same.

II. Poverty penalties in the United Kingdom and their consequences

The United Kingdom has made significant progress in diminishing poverty penalties. Between 1995 and 1997, fine defaulters imprisoned in England and Wales decreased by 70% and have continued to drop from the 1997 figures, with only 118 such imprisonments occurring in 2019.⁶ The Criminal Justice Act 2003 “mandates sentencers to take into account the offender’s financial circumstances” for fines.⁷

The use of poverty penalties nonetheless remains a concern. Fines and fees contribute to the criminalization of homelessness.⁸ Other commonly discussed poverty penalties include the recent increase of the Victim Surcharge⁹ and criminal sanctions for TV license non-payment.¹⁰ Beyond these examples, unpaid fines can lengthen incarceration periods, increase the challenge of resettlement after prison, and sometimes give rise to incarceration, especially in Northern Ireland. The discussion below elaborates on some of these concerns.

A. Fines create added burdens for prisoners in England and Wales

A 2016 inspection of “Through the Gate,” the UK’s then flagship prison rehabilitation program, noted how short-term prisoners “arrived in prison with financial difficulties,” including

⁴ See International Covenant on Civil and Political Rights art. 9, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); Galbraith et al., *supra* note 1, at 429-30.

⁵ The UN Human Rights Council recommended the review of disproportionate fines and incarceration for an inability to pay in its 2012 Guiding Principles on Extreme Poverty and Human Rights. See Galbraith et al., *supra* note 1, at 425. Additionally, multiple special rapporteurs have highlighted excessive fines and fees in the United States, Australia, Cambodia, and Russia, and the Committee on the Elimination of Racial Discrimination has questioned France about excessive fines against the Traveler community. See *id.* at 425-26.

⁶ *Story of the Prison Population: 1993-2012 England and Wales*, MINISTRY OF JUST. 18 (Jan.

2013), <https://assets.publishing.service.gov.uk/media/5a7cc70040f0b6629523bc15/story-prison-population.pdf>;

Prison Receptions: 1990 to 2020, Tables A2.1i & A2.1ii,

https://assets.publishing.service.gov.uk/media/62694ebfe90e0746c4313713/Receptions_2021.ods; see also Valsamis Mitsilegas & Foivi Sofia Mouzakiti, *Day (Unit) Fines in England and Wales*, in *DAY FINES IN EUROPE: ASSESSING INCOME-BASED SANCTIONS IN CRIMINAL JUSTICE SYSTEMS* 195, 213 (Elena Kantorowicz-Reznichenko & Michael Faure eds., 2021).

⁷ Mitsilegas & Mouzakiti, *supra* note 6, at 212.

⁸ UK councils, police, and social landlords can petition for injunctions to prevent anti-social behavior, which often fall on the vulnerable and can lead to fines or prison. Ben Stanford & Rona Epstein, *Now, More Than Ever, the Penalisation of Poverty Must Stop*, CTR. FOR CRIME AND JUST. STUD. (Mar. 12,

2021), <https://www.crimeandjustice.org.uk/resources/now-more-ever-penalisation-poverty-must-stop>.

⁹ *Delivering Justice for Victims: Consultation Response*, MINISTRY OF JUST. 11 (May 2022),

<https://assets.publishing.service.gov.uk/media/628cd2168fa8f55624b69cbe/delivering-justice-for-victims.pdf>. This increase will disproportionately impact offenders from marginalized communities. *Victim Surcharge Increase*, MAGISTRATES ASS’N 1 (June 2022), <https://www.magistrates-association.org.uk/publication/victim-surcharge-increase/>.

¹⁰ See, e.g., Martin Evans, *BBC Licence Fee ‘Criminalising Poverty’ as 1,000 People a Week Prosecuted for Failing to Pay*, THE TELEGRAPH (March 14, 2023), <https://www.telegraph.co.uk/news/2023/03/13/bbc-licence-fee-criminalising-poverty-1000-people-week-prosecuted/>.

court fines.¹¹ Prisoners who have these financial burdens face particular challenges (that are not shared by their wealthy counterparts). Some prisoners add days to their sentence in exchange for having their fines settled.¹² Long-term prisoners often received no advice on dealing with their fines and other debts until just before their release, leaving them with “no time left to contact creditors or courts” before they were released from prison.¹³

The UK government has since instituted revised resettlement services.¹⁴ Unfortunately, subsequent reports suffer from an absence of discussion around court fines.¹⁵ At best, the reports broadly discuss the provision of “finance, benefits, and debt” services to prisoners, but it is unclear if these services only concern consumer debt.¹⁶ Even so, only 35% of prisoners in the pre-release context¹⁷ and around half of prisoners in the post-release context have sufficient finance, benefits, and debt services for resettlement.¹⁸ Pre-release prisoners were often “unaware” of support,¹⁹ and post-release, such support was not provided in most probation regions.²⁰

In addition, while the UK tracks imprisonments where the initial offense is fine default, “there is no available data on how many people default on a fine, are given another [non-custodial] order . . . which they also fail to comply with, and are ultimately given a custodial sentence for what was initially a finable offence.”²¹ This gap in fine default data requires further attention to determine whether it informs “the high number of short custodial sentences” in England and Wales.²²

¹¹ *An Inspection of Through the Gate Resettlement Services for Short-Term Prisoners*, CRIM. JUST. INSPECTORATES 3, 23 (Oct. 2016), <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2016/09/Through-the-Gate.pdf>.

¹² *Id.* at 24. We are not aware of data on how many prisoners add days to their sentences in order to eliminate their fines.

¹³ *An Inspection of Through the Gate Resettlement Services for Prisoners Serving 12 Months or More*, CRIM. JUST. INSPECTORATES 22 (June 2017), <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2017/06/Through-the-Gate-phase-2-report.pdf> (noting that “[t]his added to the number of problems prisoners had to face in the early days after release”).

¹⁴ See Matthew Cracknell, *Comment Piece: The Inspection of Offender Management in Custody—New Resettlement Policy, Same Old Problems*, 70 PROB. J. 298, 299-300 (2023) (describing the major shifts in UK resettlement policy over time).

¹⁵ See *A Process Evaluation of the Enhanced Through the Gate Specification*, MINISTRY OF JUST. (2020), <https://assets.publishing.service.gov.uk/media/5f75a3d2e90e0709cb5c454b/evaluation-of-the-enhanced-through-the-gate-specification.pdf>; *Offender Management in Custody – Pre-release*, HM INSPECTORATE OF PROB. & HM INSPECTORATE OF PRISONS (Nov. 2022), <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/11/OMiC-joint-thematic-inspection-report-v1.0.pdf> [hereinafter Pre-release]; *Offender Management in Custody – Post-release*, HM INSPECTORATE OF PROB. & HM INSPECTORATE OF PRISONS (Mar. 2023), <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2023/03/A-thematic-inspection-of-Offender-Management-in-Custody-%E2%80%93-post-release-v1.01.pdf> [hereinafter Post-release].

¹⁶ See, e.g., Post-release, *supra* note 15, at 10, 19.

¹⁷ See Pre-release, *supra* note 15, at 39.

¹⁸ See Post-release, *supra* note 15, at 19.

¹⁹ See Pre-release, *supra* note 15, at 40.

²⁰ See Post-release, *supra* note 15, at 19.

²¹ Jay Gormley, *Fines: A Review of the Sanction, Its Use and Operation, and Research Evidence*, SENT’G ACAD. 2 (Nov. 2022), <https://www.sentencingacademy.org.uk/wp-content/uploads/2023/08/Fines-A-review-of-the-sanction-its-use-and-operation-and-research-evidence-1.pdf>.

²² *Id.* at 2.

B. Northern Ireland incarcerates too many fine defaulters

After a 2021 examination of fine default strategy in Northern Ireland, the Chief Inspector of Criminal Justice stated that there are “still too many people being committed to prison for short periods of time for failing to pay a fine.”²³ Although alternative sentencing mechanisms, such as Supervised Activity Orders, have been explored for persons who are too poor to pay their fines, such mechanisms have been significantly underutilized.²⁴

Looking at the numbers, in 2022 to 2023 Northern Ireland had an average of 6 persons in prison on any given day due to fine default and a total of 109 imprisonments that year due to fine default and other non-criminal receptions.²⁵ Northern Ireland thus imprisons about as many fine defaulters as do England & Wales each year, despite having less than one thirtieth of the population of England & Wales. “The duration of sentence is dependent upon the amount of the unpaid fine and ranges from one week where the default is £200 or less, to ten years where the default exceeds £1 million.”²⁶

III. Call to Action

We urge the United Kingdom to do the following to address poverty penalties:

- a. Gather quantitative and qualitative data on how court fines, costs, and surcharges affect criminal defendants, including those who are incarcerated.
- b. Increase support services to assist both incarcerated prisoners and probationers in the reduction of unpaid fines while tracking the sufficiency of those services.
- c. Reduce reliance on overly punitive fines—and especially reduce the use of imprisonment for defaulting on fines—in Northern Ireland.

IV. Conclusion

We appreciate the Committee’s attention to this issue. If there are further questions regarding the information presented, please contact Jean Galbraith at +1 (215) 746-7824 or at jgalbraith@law.upenn.edu.

²³ *A Review of the Impact of Current Fine Default Strategy and Services*, CRIM. JUST. INSPECTION N. IR. (Sept. 7, 2021), <https://www.cjini.org/TheInspections/Inspection-Reports/2021/July-September/Effective-Penalty-Enforcement>.

²⁴ *Id.* (noting that, between June 1, 2018 and November 30, 2020, only 0.1% of fine default referral hearings resulted in Supervised Activity Orders, whereas 59% resulted in committals to prison).

²⁵ *The Northern Ireland Prison Population 2022/23*, DEPT. OF JUSTICE 8 fig. 2, 16 fig. 9 (Oct. 2023), <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Northern-Ireland-Prison-Population-2022-23.pdf>. Annually, this was an increase from the low of 60 that occurred in 2020-2021 in the height of the pandemic. *Id.* at 16 fig. 9.

²⁶ *Id.* at 28.