



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

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

Summary

The proposal requires a careful consideration of the rights of victims to reparation and other services, and the need to support offenders to move away from a cycle of re-offending and/or spiralling debt. There is a range of state obligations towards victims, and the rights of victims in that regard are not dependent on the ability of the state to secure all or part of the cost of redress from the offender.

The introduction of an offender levy appears to have the principal aim of making offenders more accountable for the harm which their actions cause. However, some of the benefits of a restorative approach, in terms of rehabilitation and behavioural change, are likely to be lost if compensation is not offered through a process of acknowledging harm, but is imposed by way of compulsory financial penalties on offenders that have the potential to escalate to fine default, particularly for low income groups. Victims' services need to be provided, whether or not they can be partially funded by the proposed measures.

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be

¹ Northern Ireland Act 1998, s.69(1).

taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe, United Nations and other human rights systems, and the non-binding 'soft law' standards developed by the human rights bodies.

2. The Commission is grateful for this opportunity to present its views to the Department of Justice in response to its consultation on the principle of, and proposed operational arrangements for, an Offender Levy and Victims of Crime Fund.
3. International human rights standards should provide a foundation for any governmental strategy. Care should be taken that policies designed to address the rights and needs of victims and survivors should contribute to securing the state's compliance with the binding obligations arising from human rights treaty commitments, and should, at the same time, be properly informed by the non-binding or best practice standards relating to victims, such as those developed through the United Nations, European and Commonwealth systems.
4. The Commission has conducted a considerable amount of work on the rights of victims in Northern Ireland, including the publication in July 2003 of the report, *Human Rights and the Victims of Violence*. Additionally, the Commission's work in developing proposals for a Bill of Rights for Northern Ireland includes provision for the protection of victims' rights.⁵
5. In addition to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁶ and the Commonwealth Best Practice Guidelines,⁷ the main 'soft law' standards include the Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation of Victims of Gross Violations of International Human Rights and Serious

² *Ibid*, s.69(3).

³ *Ibid*, s.69(4).

⁴ *Ibid*, s.69(6).

⁵ NIHRC (December 2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland*, p43.

⁶ Adopted by General Assembly resolution 40/34 of 29 November 1985.

⁷ Guidelines for the Treatment of Victims of Crime (2002).

Violations of International Humanitarian Law, adopted by the UN General Assembly in December 2005. The Draft Guidelines bring together in one document all the relevant mechanisms, procedures and established norms that encapsulate victims' rights while reaffirming the international legal principles of accountability, justice and the rule of law. The Draft Guidelines set out the obligation for states to respect, protect and fulfil international human rights law regarding victims, including provision for "effective remedies to victims, including reparation".⁸

6. Thus, there is a range of state obligations towards victims, and the rights of victims in that regard are not dependent on the ability of the state to secure all or part of the cost of redress from the offender. The introduction of an offender levy appears to have the principal aim of making offenders more accountable for the harm or damage which their actions cause. However, the resourcing of improvements to victims' services is an issue that is quite distinct from the restorative justice approach of enabling offenders to engage in a process that acknowledges the harm caused by their actions and, where appropriate and depending on means to pay, to provide compensation to the victim. Some of the benefits of a restorative approach, in terms of rehabilitation and behavioural change, are likely to be lost if compensation is not offered through a process of acknowledging harm and acceptance of responsibility, but is imposed by way of compulsory financial penalties on offenders. In any case, victims' services need to be provided, whether or not they can be partially funded by such measures.

Specific comments

7. At pt 2.3: The Commission welcomes the opportunity to consider proposals to improve services to victims. In acknowledging the work of the Victim and Witness Task Force, the Commission welcomes a thorough consideration of initiatives that seek to improve the victim and witness experience, and provide better services.

⁸ Section II pt 3 'Scope of the Obligation', at p5 of the Draft Guidelines. Available: http://www.iccnw.org/documents/OHCHR_Res35_Victims_Reparations_19Apr05.pdf. The present submission has also taken account of the European Convention on the Compensation of Victims of Violent Crimes (1983) and the Council of Europe's Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure (R(85) 11E of 28 June 1985).

8. At pt 2.1: Increasing sentences (either through an additional levy or increasing length of time spent in prison) may not be the best way forward to make offenders more accountable for the harm or damage they have caused to victims. Apart from financial recompense, international instruments provide for a right to remedy for victims, to include rehabilitation such as medical care, just satisfaction (which does not always involve financial redress) and guarantees of non-repetition of violations. The Commission has previously stated its preference for a strengthening of alternative or diversionary measures that address the root causes of offending and provide roots out of the cycle of re-offending, rather than recourse to additional financial penalties that have the potential to escalate to fine default, particularly for low income groups.
9. At pt. 3.7: Management of the surcharge: are estimates available as to how much revenue the proposed levy will generate annually, together with estimated costs of implementation, in particular as to the collection of the levy?
10. At pt. 4.21: Reference is made to Maghaberry and Magilligan; presumably collection of a levy from prisoners would also apply to Hydebank Women's Prison and YOC. The Commission is concerned at the proposal that those given an immediate custodial sentence will be subject to the Prison Service making arrangements to collect the levy by instalments from prisoner earnings. Reference is made to the Prison Service progressive earnings scheme where small amounts of money can be earned "in accordance with... behaviour and co-operation whilst in custody". The maximum amount of such earnings, £20, is referenced but actual earnings may, of course, be considerably less. Any negative impact upon a prisoner's earnings to purchase approved items – which may include phone calls and supplementary food items – will need to be closely monitored. This applies particularly in cases where a prisoner may not receive visits or is particularly vulnerable or at risk. Given that a prisoner's ability to earn a limited amount of money is dependent upon behaviour and cooperation (pt. 4.21), it is important that additional deductions do not adversely impact his/her rehabilitation.
11. A prisoner's wages take the form of 'rewards' paid by the administrative authority according to his/her behaviour and other criteria, rather than proper remuneration for work undertaken. Therefore, the ability to earn wages is severely restricted. The proposal that some of those earnings should

be deducted to meet the costs of the levy should also be considered in the context of the human rights standards that govern prison regimes. The European Prison Rules (105.5) state that “In the case of sentenced prisoners part of their remuneration or savings from this may be used for reparative purposes if ordered by a court *or if the prisoner concerned consents*”, rule (103.7: emphasis added). Reference is also made to a “programme of restorative justice” which may allow for a broader incorporation of restorative justice principles other than a financial penalty. It is also important to view the proposal within the wider context of Rule 26 which states that prison work should never be used as a punishment (European Prison Rules, 26.1); prisoners may also be encouraged to save part of their earnings (26.12); sufficient work of a useful nature should be provided (26.2); prisoners should be able to spend at least part of their earnings on approved articles ... and to allocate a part of their earnings to families (26.11). These concepts are also referred to in the Basic Principles for the Treatment of Prisoners (8) and Standard Minimum Rules for the Treatment of Prisoners (76.2).

12. Overall, this proposal needs further consideration as the amount earned by prisoners may vary considerably and the negative impact that weekly deductions may have upon vulnerable prisoners and staff/prisoner relations, requires further risk assessment.
13. At pt. 4.35: The proposal that young offenders should be excluded from the levy is welcomed. The Commission has previously stated that the principle of fining children should be discontinued and is not in the best interests of the child. Further, monetary penalties may become the responsibility of the young offender’s parent or guardian. Monetary penalties against a child (or an adult) living in a low-income household can create serious difficulties in terms of repayment, as compared to those living in households with a higher level of disposable income. It is important to be mindful of the very high levels of child poverty in Northern Ireland, where “one in three children – around 170,000 (38%) – goes without basic necessities because parents can’t afford them. More than 100,000 live in income poverty, one in four children (24%)”.⁹ Further, attention is drawn to Article 11 of the International Covenant on Economic, Social and Cultural Rights, which recognises the right of everyone to an adequate standard of living.

⁹ Save the Children (2007) *A 2020 Vision: Ending Child Poverty in Northern Ireland*, Annual Child Poverty Report, Belfast.

14. It is noted that the levy would apply to a wide range of court disposals and non-court based penalties. The Commission has previously expressed concern at the proposed increase to police discretion in imposing Fixed Penalty 'on the spot' fines. The current proposal seeks to further increase police powers to include imposition of a levy for all police-issued fixed penalties (at pt. 4.11). Additional information is requested as to how the PSNI would assess an offender's means to pay the proposed additional levy.
15. This concern applies to the proposals regarding the uplifting of a fixed penalty fine and its levy when registered as a court fine (i.e. where payment is not made within the stipulated suspended payment period). If a person is having difficulty in paying the original fine, careful assessment of the person's means to pay needs to be carried out prior to increasing the fine and the levy.
16. At pt. 4.10: The proposed tiered rate of levy also raises concerns about the means of an offender to pay not only the court imposed fine but the levy, and whether nothing more than poverty could result in a fine defaulter being given a custodial sentence to offset the additional levy. This is a particular concern, given that it is our understanding, that work on improving information on the means of offenders and fine payment history information to the courts is still in progress. We acknowledge, of course, that the courts take seriously their statutory responsibilities to make compensation orders wherever possible but can face problems relating to the lack of means of many offenders to make any form of recompense.
17. At pt. 4.3: The proposal that the levy can be reduced by the court in certain circumstances relating to means to pay is welcomed. However, as referred to previously, the benefits of this proposal will depend on the quality of 'means to pay' information coming before the courts.
18. Further information as to the type of supports available, and in place, to help people to pay the fine and proposed levy is requested.
19. At pt. 4.14: Where it is proposed that sentencers will be required to consider an offender's ability to pay when imposing a levy alongside another monetary order or fine disposal, clarification is sought as to whether this excludes consideration of an offender's means to pay if they are given

an immediate custodial sentence. How would the Northern Ireland Prison Service, which would be charged with collecting the levy, consider the prisoner's means to pay?

20. Further, the proposed measures for payment priority order (at pt. 4.23) and the range of circumstances outlined at pt. 4.14 that can be adopted to reduce either the levy, or the amount of fine, or the compensation order or court costs appear potentially unwieldy and difficult to administer.
21. At pt. 4.18-19: It is proposed that a mandatory requirement be placed on the courts to prevent 'lodgement' of the levy (i.e. additional period of custody to be served in lieu of payment of the fine). Again, this proposal must be closely linked to assessment of the means of the offender to pay, rather than protection of the levy's status taking priority.
22. The Commission welcomes the opportunity to contribute its views to the Offender Levy and Victims of Crime Fund consultation. However, it is suggested that it may be beneficial to incorporate the outworking of this consultation into a wider review of the criminal justice system. Thus the timing of final decisions regarding implementation or otherwise of the levy should follow consideration of the proposals emanating from the Addendum to the Programme for Government contained in the recent Hillsborough Castle Agreement. Specifically, account should be taken of those proposals relating to consideration of a comprehensive strategy for the management of offenders; establishment of a sentencing guidelines council; adequate provision of diversionary alternatives to prosecution and a review of alternatives to custody; a review of the conditions of detention, management and oversight of all prisons, and learning from international best practice in matters of criminal justice.
23. There is a perceived inconsistency in recent NIO commitments to seek to reduce custody for low-level offending, through provision of alternative disposals (e.g. Supervised Activity Orders [SAOs] which provide a non-custodial disposal for default in payment of certain fines), and the current proposal to increase financial penalties through the imposition of a levy, thus increasing the potential for a fine to escalate to a default and custodial sentence. Again, the timing of this proposal is of concern given that SAOs are not available in Northern Ireland as an alternative to custody for fine default.

24. We are also aware that, following the consultation on Fine Default in Northern Ireland, decisions were taken to undertake work to improve information to the courts on offenders' ability to pay. It may be preferable to complete this programme of work prior to final decisions being taken as to whether to introduce the levy, given that its introduction may create additional problems for offenders in meeting their financial obligations and create a situation where there may be an escalation to fine default.
25. In conclusion, the proposed implementation of the offender levy requires careful consideration of the rights of victims to reparation and other services, and the need to support offenders to move away from a cycle of reoffending and/or spiralling debt. These should not be seen as incompatible, or even competing, priorities. There is a large body of international human rights standards and conventions that support restorative justice within the criminal justice system.¹⁰ While financial recompense to the victim is an important element of this, there is also a wide range of measures within restorative practice, apart from financial recompense, that can be drawn upon to encourage offenders to acknowledge the harm caused to victims and witnesses of crime.

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¹⁰ These include the UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules); the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); the EU Framework Decision on Restorative Justice and the Council of Europe Recommendation Concerning Mediation on Restorative Justice; the Council of Europe Recommendation Concerning Mediation in Penal Matters; and the UN Economic and Social Council-endorsed Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (the Basic Principles).