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UNIVERSITY OF CALIFORNIA,
IRVINE

The Imprisonment of Criminal Fine Defaulters in Ireland

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

Doctor of Philosophy

in Criminology, Law and Society

by

Sharon Farrell

Dissertation Committee:
Professor Susan Turner, Chair
Professor John Dombrink
Professor Henry Pontell

2014

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ACKNOWLEDGEMENTS

While a PhD student can often feel like the dissertation is a lone process, it is very much not. Since the beginning of my time as a graduate student through to the final hurdles many people have played a part. Really way more than I could begin to thank.

First and foremost my committee, without whom this would never be complete, must be acknowledged. My advisor and Chair Susan Turner has been my constant advocate from the early days when I was her teaching assistant, through work as a graduate researcher at the Centre for Evidence Based Corrections, and now getting me to the finish line. She has always had my back and guided me in the most thoughtful and inspiring way. Under her tutelage I never missed a deadline, no mean feat for a graduate student, and organization became my byword. One of the many skills I will take forward with me. Thank you for having faith in me. My committee members John Dombrink and Henry Pontell have been thoughtful in their feedback and guidance, always allowing me to take the lead in how I wanted to proceed with my project. Thank you both for your ongoing support. I would also like to mention Mona Lynch for the guidance she gave me through the preliminary stages of this study and for helping me get this study off the ground, thank you.

I am indebted to the Department of Criminology, Law and Society, from the faculty to the administration staff. I have learned so much from many of you. My cohort especially, as we all make our way to the finish line. I know when we all started together this point seemed so distant, and yet here it is. Thank you Trish especially for somewhere to sleep and Sonya for the feedback on my work. I will take with me many friendships from my time as a graduate student, too numerous to mention.

My friends and family have all been a constant source of support, and I particularly remember those I lost along the way. Friends from my Cal days and those I've made along the way have all contributed to my sanity during this process, although they may have also contributed to a loss of some brain cells, all in the name of getting through this process of course. Donna especially, my childhood pal, thank you for always being there for me. My family, although far away, have encouraged and supported me. I hope I have made them proud, and I am sure one day my mother will figure out what it is I actually do!

This study would not have happened without all those who participated. Many people gave their time and contacts readily to me. While many must remain anonymous, they know who they are. Thank you so much, I can never fully express how appreciative I am. John Lonergan, thank you also for being so willing to speak freely with me, your input brought a unique perspective to this work. Professor Ian O'Donnell from UCD, I want to thank you especially for your time and guidance. Your experience and guidance on conducting research in Ireland was invaluable and helped me navigate some of the more rocky patches. Fr. Peter McVerry thank you for being so welcoming and open. You do the most amazing work in Dublin with disadvantaged populations, you are truly an inspiration.

Last but not least, the most important person to thank is my husband Eoghan. He has been my partner for almost twenty years and has supported me so graciously through my academic career. Without him this experience would not have happened. He carried me through the deep lows and celebrated with me the highs. He is my best friend and without him by my side this experience would have been worthless. Thank you my love.

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ABSTRACT OF THE DISSERTATION

The Imprisonment of Criminal Fine Defaulters in Ireland

By

Sharon Farrell

Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2014

Professor Susan Turner, Chair

In 2013, 12,489 people in Ireland were committed to prison under sentence, and 8,121 (65%) of these individuals were committed to prison for the non-payment of a court ordered fine. That year was not unique. In fact, the last eight years have seen a continued increase in the number of people incarcerated for the non-payment of fines. The underlying issues that fuel the increase in the imprisonment of fine defaulters in Ireland are unknown. The present study explored individual experiences and interactions of fined offenders with the criminal justice system in order to identify barriers to compliance. By drawing on instrumental and normative models of compliance identified in the literature, and by utilizing data gathered from 40 in-depth interviews and 103 questionnaires with offenders who have paid fines as well as offenders who have defaulted on fines, the following research questions were addressed: (1) What role do financial means play in fine default? (2) Are there other factors working in opposition to or in tandem with financial means? (3) Are there practices within the criminal justice system that inhibit or facilitate the enforcement and payment of fines? (4) Do offenders perceive the criminal

fine process as fair and equitable, and what impact do those perceptions have on shaping compliance / noncompliance? (5) Is imprisonment the primary deterrent factor among those who pay their fine, or are there other factors that influence compliance? The research revealed that while affordability plays a primary role in whether a fine is paid or not, other legal and extralegal factors also contribute to fine default, such as personal and family needs, forgetfulness or low priority, and the inability to negotiate and understand the criminal fine system. Overall there was a general sense of unfairness and dissatisfaction with the system—a dissatisfaction that was fairly consistent among both those who paid and did not pay their fines. Also, it would appear that for many, prison is not a deterrent factor when it comes to the enforcement of fines and for those who do pay, the fear of prison is not the primary reason for compliance.

Chapter 1: Introduction

In 2013, 12,489 people in Ireland were committed to prison under sentence,¹ and 8,121 of these individuals—or 65% of the sentenced population—were committed to prison for the non-payment of a court ordered fine (Irish Prison Service, 2013). That year was not unique. In 2012, 8,304 people were committed for the non-payment of fines and accounted for 61.4% of the total number of people committed under sentence (Irish Prison Service, 2012). In fact, the last eight years have seen a continued increase in the number of people incarcerated for the non-payment of fines. If the imprisonment rate continues at the pace of previous years, 2014 incarceration rates for the non-payment of a fine will equal or come close to those of 2013. These figures show the failure to pay a fine is one of the principal routes into the Irish prison system.

The fine is also the most widely used non-custodial criminal sanction in Ireland. In 2013, 21% of all District Court cases—74,202 cases in total—were disposed of with a standalone fine. This figure is consistent with previous years (Courts Service, 2013). However, while roughly the same percentage of cases each year are dealt with by issuing a fine, the number of people imprisoned for defaulting on their payments is rising. Importantly, while overall Irish incarceration rates are increasing, when the fine defaulters are subtracted from the figures, the incarceration rates appear more stable and in fact have decreased in recent years (see Figures 1 and 2).

¹ Committals under sentence exclude those awaiting trial, being held under immigration law, and those being held for contempt of court. There are no separate holding centers for any of these categories and they are all held within the main prison system. The total prison population was 15,735.

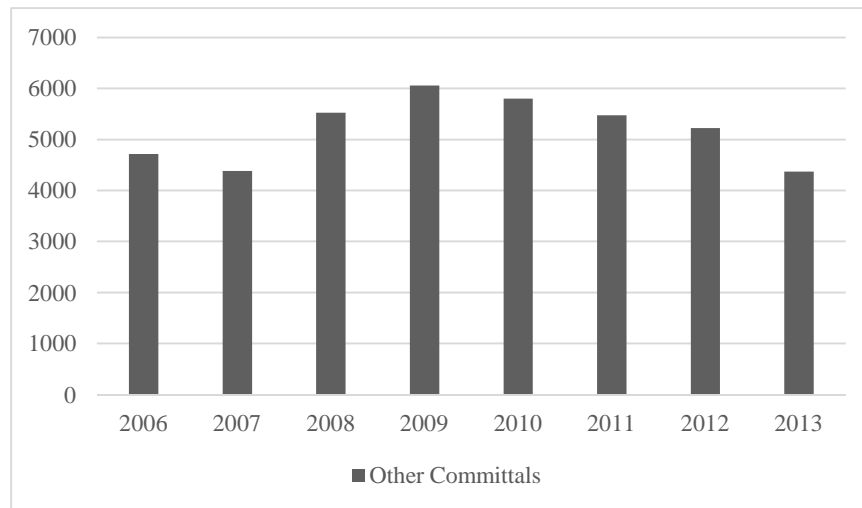


Figure 1. Committals to prison for all other offenses (excluding fine default). Adapted from Prison Service Annual report by Prison Service, 2006-2013.

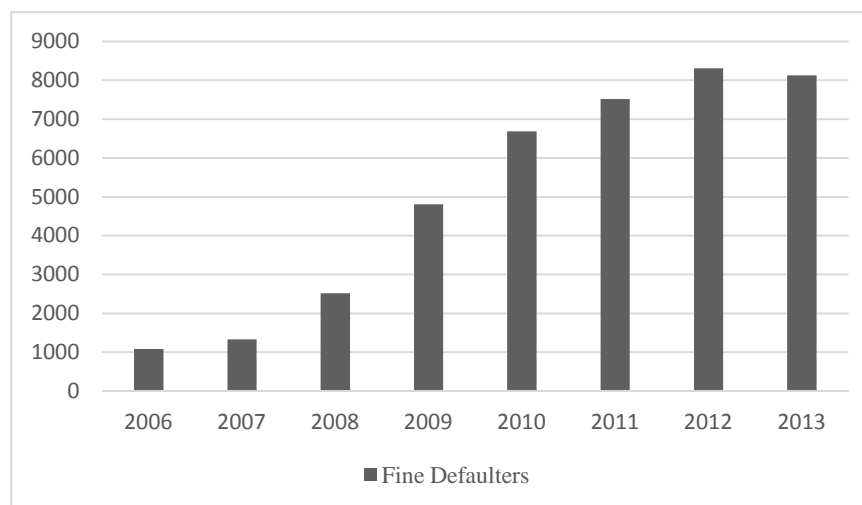


Figure 2. Committals to prison for fine default. Adapted from Prison Service Annual report by Prison Service, 2006-2013.

These alarming rates have drawn attention and articles frequently appear in newspapers running headlines such as “Prisons Full of People Unable to Pay Fines” (Gealbain, 2012), and Ministers are interviewed by journalists and talk radio hosts. A common deflection on the part of the government is to point to the daily figures of fine defaulters in prison rather than to the overall numbers incarcerated for the year. For example, in July of 2014, when the Justice &

Equality Minister, Frances Fitzgerald, was asked during a parliamentary questioning about the figures, she responded:

I can advise . . . the proportion of persons in custody for non-payment of fines at any time is a minute fraction of the overall prisoner population. To illustrate this point on 15 July 2014, 5 prisoners or 0.1% of the prison population of 3,978 fell into this category.²

Although what the Minister says above is true—that the daily percentage of the prison population incarcerated for fine default can be small, and that the typical default term is often less than seven days—it does not take away from the fact that the overall annual admission figures are quite large, and that a vast number of people are being incarcerated for an offence where incarceration was not originally deemed an appropriate sanction. The appropriate sanction for what are mostly minor and non-violent offenses is a fine (Dept of Justice, 2012), and yet more and more offenders end up incarcerated every year for non-payment—even if only for short periods of time.

The Irish government has been slow to respond to the imprisonment of increasing numbers of fine defaulters. Even when the figures were much lower than they are today, sufficient concern had been raised in a number of reports, including one by the Expert Group on the Probation and Welfare Service (1999) as well as one issued by Redmond (2002) to the Department of Justice & Equality, both of which stressed the ineffectiveness of the current system. Specifically, the report by the Expert Group on the Probation and Welfare Service (1999) took the view that imprisoning fine defaulters raised serious issues, which include that the original offense did not merit imprisonment; those of lesser means are impacted the most;

² This is a preliminary figure that was given by the Minister for Justice & Equality in response to a written parliamentary question on July 16 2014 (Fitzgerald, 2014).

imprisoning fine defaulters stresses an already overcrowded prison system; the fine never gets paid; and finally there are large costs involved with incarceration. The Irish government finally addressed the inappropriateness of imprisoning fine defaulters and introduced a bill, The Fines Act 2010, passed in 2010. The Fines Act introduced a series of changes and alternatives to prison for nonpayment of fines with the goal of reducing the number of people incarcerated for nonpayment of fines. However, at the time of this writing, only one tenet of this act has been implemented—that the judge must take into account the defendant’s financial situation before setting the fine. It should be noted, however, that the consideration of an offender’s ability to pay is not a totally new requirement under Irish law. Section 43 of the Criminal Justice Administration Act 1914 (as reflected in Order 23, rule 4 of the District Court Rules 1997) states:

A court of summary jurisdiction, in fixing the amount of any fine to be imposed on the offender, shall take into consideration, among other things, the means of an offender so far as they appear or are known to the court.³

So while the new Act purports to make changes, this one tenet in particular is merely a rewording of a requirement that was already in place. An additional Bill was recently introduced to once again address the issue, The Fines (Payment and Recovery) Act of 2014, but this act has also yet to be implemented.

Problem Statement & Research Questions

The underlying issues that fuel the increase in the imprisonment of fine defaulters in Ireland are unknown. Media stories on fine defaulters usually focus on those who go to prison because they are too poor to pay, and they suggest that the rise in imprisonment of fine defaulters is reflective of the increase in unemployment rates since the economic crash (Lally, 2009). It is

³ SI No 93 of 1997

difficult to place such stories in context because of the lack of data reporting on offenders' financial status at the time of sentencing and because of the almost complete lack of information on defaulters who go to prison. Available data for those imprisoned for fine default simply state that their imprisonment is due to the failure to pay a fine. No information is given on the amount of the fine, when it was imposed, or more importantly, why it was imposed. The Prison Service annual report categorizes fine defaulters apart from other prisoner categories, however, demographics are presented for the entire prison population. As a result, it is impossible to parse out the details relevant to just fine defaulters. Additionally, there is no data on the financial or employment status of those who do pay, so it is impossible to state if there is a direct causal relationship, or merely a slight correlation, between financial means and paying a fine. What is known with regard to the amount of fines is what is laid out in Statute. That is, the maximum fine that can be imposed is €5,000⁴ with a maximum term of 30 days for default.⁵

The use of criminal fines in Ireland relies solely on imprisonment as a method to ensure compliance. Many other jurisdictions still reserve the right to incarcerate an offender for fine default—although usually only as a last resort when all other available methods have been exhausted (McDonald, Greene, & Worzella, 1992). Other jurisdictions outside of Ireland, employ alternative enforcement strategies or policies, such as paying by installment, working programs, confiscating property, and garnishing wages or social welfare payments (Einat, 2004). In many jurisdictions, imprisonment is only utilized if the court is convinced that the offender has the money to pay the fine and that his or her nonpayment is deliberate (McDonald, et al., 1992). Ireland, however, does not have any other methods of enforcement available as of yet, and thus prison is the de facto recourse for nonpayment.

⁴ Fines Act (2014) Part 2, Section 3

⁵ Fines Act (2014) Section 19

Many criminal justice policies designed to maximize compliance with the law focus on the use of external threats as the primary means of deterring non-compliance. In the case of criminal fine enforcement in Ireland, the external threat is imprisonment. This mechanism of enforcement is premised on the belief that offenders will pay their fine because they fear the legal and social effects of being imprisoned. An alternative view of compliance is based on moral obligation, commitment, or attachment. This view contends that people will obey the authorities because they feel a sense of social obligation rather than because they fear the threat of punishment. This view is also distinct in that it emphasizes voluntary compliance as opposed to coerced compliance. These alternative perspectives of compliance are referred to as “instrumental” and “normative” views, respectively (Hough, Jackson, & Bradford, 2013; Tyler, 2006b; Tyler, Rasinski, & Griffin, 1986). The present study explored individual experiences and interactions of fined offenders with the criminal justice system in order to identify barriers to compliance. By drawing on instrumental and normative models of compliance identified in the literature, and by utilizing data gathered from in-depth interviews and questionnaires with offenders who have paid fines as well as offenders who have defaulted on fines, the following research questions were addressed:

Main questions: (1) What are the main barriers to compliance in the payment of criminal fines in Ireland? (2) How do offenders negotiate these barriers in a bid to avoid imprisonment for default?

Sub-questions: (1) What role do financial means play in fine default? (2) Are there other factors working in opposition to or in tandem with financial means? (3) Are there practices within the criminal justice system that inhibit or facilitate the enforcement and payment of fines? (4) Do offenders perceive the criminal fine process as fair and equitable, and what impact do

those perceptions have on shaping compliance / noncompliance? (5) Is imprisonment the primary deterrent factor among those who pay their fine, or are there other factors that influence compliance?

Significance of Study

This study is important for several reasons. First, the little we do know about fine defaulters in Ireland comes from either government reports or government sanctioned reports. No study has sought to understand the effects of imprisoning people for the non-payment of fines from the offenders' perspective, or how that experience colors their view of the criminal justice system and the role it plays in their compliance. In other words, the voices of fine defaulters are rarely solicited or heard. Second, this study not only adds to the body of literature on fines but also adds to the research on compliance. While certain areas of compliance have been well researched, especially in relation to taxation and corporations, understanding why some offenders comply and some do not is still a growing area of inquiry, particularly in Ireland. The research on compliance that does exist in Ireland is focused almost exclusively on terrorism and policing in Northern Ireland (Edwards, 2011; Lafree, Dugan, & Korte, 2009).

Finally, this study has important implications for justice policy. Ireland has recently suffered one of the most severe economic downturns in the European Union (EU) and has been embroiled in a major banking crisis that has seen Ireland topple from its position as the poster child for development in Europe to once again being the perennial "poor cousin" looking for handouts from the EU (Giblin, Kennedy, & McHugh, 2013; Kirby, 2010; Whelan, 2014). Austerity measures focused on the criminal justice system are the talk of the day, and many of these criminal justice policies are premised on the idea that compliance is secured by the threat of sanctions (Nagin, 1998; Tyler, 2008). However, such instrumental measures can be costly and

ineffective (Hough, 2012; Jackson et al., 2012). Hough (2012) argued that in times of austerity, building trust, legitimacy, and compliance through procedurally fair methods will allow authorities to achieve more with less resources. Further, the Irish government is frequently criticized by leading Irish criminologists for lacking an evidence-based approach to policy formation and instead employs a symbolic approach to policy (Ian O'Donnell, 2008; Rogan, 2013). By understanding how imprisoned fine defaulters are impacted through their contact with the criminal justice system, policy makers have the chance to identify more fiscally sound measures to ensure compliance.

Chapter 2: Literature Review

This study aimed to understand the barriers to fine compliance in Ireland. Specifically, the researcher sought to understand how the experiences and attitudes of fined offenders may have impacted levels of default. In order to carry out the study a review of the literature was required throughout the data collection, analysis, and synthesis phases. This chapter presents an overview of the issues that informed this study. These issues are divided into: (a) the fine as a sentencing option, (b) an overview of fine use in Ireland, (c) the problem of fine default, (d) the issue of compliance, and (e) the conceptual framework used in the study.

The Fine as a Sentencing Option

Before discussing the shortcomings of the criminal fine approach it is important to understand what a fine is and its goal as a sanction. A fine is the payment of a sum of money, imposed by the courts as a form of punishment when other types of punishment are not deemed appropriate. It also incorporates the penal functions of retribution, deterrence, and rehabilitation (Hillsman & Mahoney, 1988; McCormack, 2007). According to Caldwell (1965), fines are popular because they have three main advantages over other types of punishment. Specifically, fines are tied to an economical system that not only costs less to administer than other punishments but is also a source of revenue for the judicial system; fines lack the stigmatization of other forms of punishment, both for the offender and the family; they can help avoid some of the consequences of imprisonment, such as losing employment or access to children; and fines can be used as a type of punishment, not only against individuals, but also against entities such as companies that violate laws (Caldwell, 1965). Additionally, research has found that fines can lead to lower rates of recidivism than either probation or a suspended sentence (Lappi-Seppälä, 2008; Walker, Farrington, & Tucker, 1981).

Despite the advantages of criminal fines, their effectiveness as a viable criminal sanction rests on the court's ability to collect them and to employ effective measures of enforcement if necessary (Hillsman & Mahoney, 1988). None of the penal aims of a fine can be achieved if the fine is not collected (Walker & Padfield, 1996). When a prison sentence is handed down to a fine defaulter it is seen not only as a failure of the enforcement system, but also as a failure of the fine as a penal measure (Casale & Hillsman, 1986). Research suggests that failure to pay fines is common-place (Weisburd, Einat, & Kowalski, 2008), and enforcement is seen as the weak link in the fining process (Tomer Einat, 2004).

Monetary penalties are an important sentencing option in Ireland and in many other countries. In Western Europe, for example, fines are the primary criminal penalty (Ruback & Bergstrom, 2006). Almost 66% of all cases in the United Kingdom, which includes England and Wales, were disposed of with only a fine for the year 2011-2012 (Ministry of Justice, 2012). Australia also favors the use of the fine, with almost 70% of offenders receiving a fine in 2009 (Martire, Sunjic, Topp, & Indig, 2011). U.S. judges have also increased fine use, both as a standalone penalty and used concurrently with other penalties (Rosenthal & Weissman, 2007).

Despite widespread emphasis on fines, collection of payment is difficult and collection costs often outweigh the amount of the fine (McCormack, 2007). In the United Kingdom it is estimated that it costs £91 to collect an £80 fine (Great Britain Home Office, 2006). It is difficult to say exactly the costs involved in fine collection in Ireland as multiple agencies are involved. The Court Service annual report of 2013 reported a collection rate on fines of 76%, but it does not state the costs involved in collection, or at what stage the fines were paid (i.e., within the number of days allocated by the court or if further time and measures were required to extract payment) (Courts Service, 2013). The annual prison service report does however state the annual

cost of incarceration, which in 2013 was €65,542 (Irish Prison Service, 2013). If a fine defaulter is incarcerated for at least one day, the minimum cost incurred is €180, which excludes all other costs up to that point (i.e., court costs, police costs etc., after which the fine is written off).⁶ The Irish Penal Reform Trust has estimated that imprisoning fine defaulters, even for short periods of time, costs the State over €2 million in court, police, and prison resources every year (Irish Penal Reform Trust, 2014).

An Overview of Fine Use in Ireland

The fine as a sanction has existed in Ireland since early medieval times, where the early system of law was considered restorative rather than retributive—i.e., it was more concerned with the payment of compensation for harm done and for the regulation of property than as a form of punishment (Kelly, 1988). Although the legal system has vastly changed since those times, the fine as a sanction still plays a prominent role in today's legislative system.

The District Court is the main court of summary jurisdiction in Ireland. The District Court deals with non-violent offences where there is no right of trial by judge and jury, and where the maximum penalty is 12 months imprisonment. Fines are most often imposed within this court. While technically there is only one District Court, in reality, and for administrative purposes, it is split into the Dublin Metropolitan Court and 25 other regional District Courts that cover the areas outside of Dublin. The District Court includes 36 judges, and at least one is assigned to each regional court. The rest are assigned to Dublin.

Many of the cases prosecuted at the District Court level are considered minor and non-violent offences, consisting of public order offenses, drug-related crimes, theft, minor sex offenses, and road traffic offenses. Unpaid on-the-spot offenses, including litter offenses, street

⁶ The author of this study submitted a request to the Department of Justice & Equality for a breakdown in the costs of fine collections but was advised that this information was unavailable.

trading, offenses prosecuted by Government departments and other State agencies, are also prosecuted at the District Court. All offenses are prosecuted on behalf of the Director of Public Prosecutions (DPP),⁷ either by a lawyer representing the DPP or by a member of An Garda Síochána.⁸ For all offenses, the offender can be represented by either his or her own lawyer or by a public defender. When an offender is sanctioned with a fine the judge has discretion on how long to give the offender to pay the fine, with a minimum of fourteen days, per statute.⁹ There is no clear indication of the maximum time allowed to pay. If the fine is not paid within the required period of time, it defaults into a specific number of days spent in prison. The number of days, within a specific range as set out in statute, is also at the judge's discretion.¹⁰ The number of days is determined at the time of sanctioning, and it can range from five days to one month, depending on the seriousness and classification of the offense. For example, a Class E fine, such as public drunkenness, is subject to a maximum amount of €500 or five days imprisonment in default.

A report carried out by Redmond (2002) outlined the process that follows once an offender has defaulted. The Court prepares a warrant for the commitment of the offender to prison for the required time. Once the warrant is signed by a judge it is sent to the local Gardaí to be executed. If the offender does not reside in the local jurisdiction, the warrant has to be sent on to the jurisdiction of the offender's last known address. If the warrant has not been executed within six months, it must be returned through the same channels to be reissued by the judge. The warrant-issuing process can be drawn out, expensive to the administer, and it is not

⁷ The DPP is the agency responsible for prosecuting crime in Ireland. Only they can decide if a case can be prosecuted and no other person, or body, including the Government, can tell them to prosecute a case.

⁸ An Garda Síochána is the Irish police force, which is always referred to by their Gaelic name, and often shortened to "Gardaí."

⁹ Fines Act 2010, Part 2, section 3

¹⁰ Fines Act 2010, Part 2, section 3

necessarily straight forward. When the warrant is finally executed, the offender is brought to prison to serve his or her sentence. See figure 3 for an overview of the stages in the fine system.

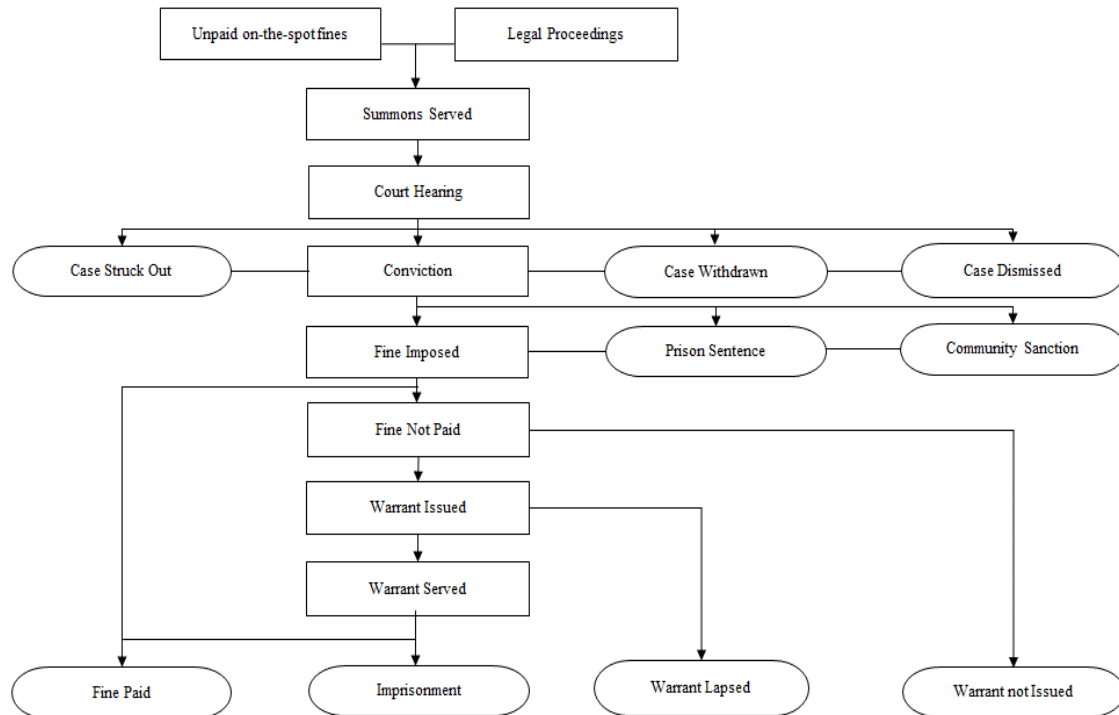


Figure 3. Overview of stages in the fine system. Author's image.

The Day Fine System

Although Ireland does not operate a day fine or unit fine system, it is worth considering briefly in comparison to the current system in operation in Ireland. Ireland's fine system is referred to as a standard scale system, whereby criminal penalties have a maximum set level in legislation against a prescribed index (i.e., a maximum fine is set for each category of offense and is applied to all offenders) (Law Reform Commission, 1991). Day fines, also known as unit fines, are set by the judge to be proportional to the severity of the offense while also being equitable and fair in consideration of the economic circumstances of the individual offenders. The calculation of the fine is a multiple step process: First, the number of fine units is determined based on the severity of the offense with no consideration given to the offender's ability to pay.

Second, a valuation of units is made based on the offenders income (income is the net amount an offender makes minus certain fixed expenses, taking into account number of dependents, living expense etc.). Finally, the number of day fine units is then multiplied by the unit valuation to determine the amount of the fine to be imposed (Turner & Petersilia, 1996).

A number of European countries, including Finland, Sweden, Denmark, Switzerland, Croatia and Germany, make extensive use of the day fine system while other countries, specifically South American countries such as the Dominican Republic, Panama, and Colombia, employ a variation of day fines (Zedlewski, 2010). The United Kingdom briefly implemented a unit fine system in 1992 but abandoned it after just seven months. Although findings from pilot projects were positive, it is unclear why the system was abandoned with many observers citing negative media coverage and an overly literal application of the system by judges who did not support the system and sought a way to undermine it (Tonry & Lynch, 1996). Ireland has not ignored the day fine system as a possible alternative to the current standard system. A report by the Law Reform Commission (1991) with the goal of evaluating viable fine systems for Ireland, concluded that:

because of what one might consider to be the peculiar circumstances of this jurisdiction, two difficulties of more stubborn mien present themselves. One is practical, relating to the ascertainment of the means of offenders; the other is constitutional, being the problem of the relationship of a day fine system with the regime of summary trial and trial on indictment. (p. 64)

Essentially, the report concluded that the implementation of a day fine system would be repugnant to the constitution due to the varying provisions for the trial of minor and non-minor offenses. Minor offenses can be tried summarily at the District Court while for most non-minor

offenses a jury is required. A Supreme Court decision in *The State (Rollinson) v Kelly* suggests that the maximum fine for an offense is an important indicator of the minor and non-minor status of an offense.¹¹ As such, a variable fine amount could determine the status of an offense rather than the severity of an offense, and it could subsequently leave the court open to constitutional challenges.

When successfully implemented, the day fine system shares many of the benefits with the standard fine system in that it diverts offenders from more expensive forms of punishment while still maintaining a level of punitiveness (Tonry & Hamilton, 1995). It also shares many of the weaknesses. Specifically, it requires a robust collection and enforcement mechanism. The administration can be costly, particularly in relation to defaulters, and coercion is often required to elicit payment (Zedlewski, 2010). One distinct advantage of the day fine system over the standard system, however, is that it achieves both proportionality and equality when sentencing offenders of different means, a tenet that the standard fine system distinctly lacks.

The Problem of Fine Default

While many researchers focus on evaluating mechanisms of fine enforcement (Weisburd, et al., 2008; Young, 1989), several have asked why people fail to pay their fines in the first place and, more specifically, which fined offenders failed to pay. One such study, the only one conducted in Ireland, was carried out by Redmond (2002) on behalf of the Irish Department of Justice, Equality, and Law Reform. In this study, Redmond interviewed 22 fined offenders, who were in prison at the time for default, with the goal of identifying their reasons for nonpayment. While all the offenders in the study reported that they did not have the financial means to pay their fines, many of them also raised other issues that may have impacted their default. These included not knowing that they had an outstanding fine, being confused about what they needed

¹¹ *The State (Rollinson) v. Kelly* (1984) I.R. 248 (Supreme Court)

to do to pay the fine, forgetting to pay the fine, and not wanting to pay the fine. While Redmond's report was purely descriptive, it does present some possible explanations for fine default beyond that of financial ability. The lack of means is a salient issue for those Redmond interviewed, with almost one-third of fined offenders described as living on or below the poverty line.

An earlier U.K. study conducted by Casale and Hillsman (1986), which examined four English magistrates' courts, sought to identify which fined offenders were the most likely to pay—both voluntarily and following enforcement efforts. They found that those from wealthier neighborhoods were more likely to pay voluntarily than those from poorer neighborhoods. If the fine was set within an offender's means, however, there was no difference between offenders from poorer neighborhoods and wealthier neighborhoods. When enforcement strategies were employed they found similar results: Those from wealthier neighborhoods were more likely to pay, but if the fine was set within an offender's means there was no difference between offenders from poorer and wealthier neighborhoods. Examining the characteristics of those most likely to pay, either voluntarily or following enforcement actions, Casale and Hillsman found that women and steadily employed males were the most compliant, followed by students and pensioners. A possible explanation for compliance in these groups, posited by Casale and Hillman, is that they are generally traceable and vulnerable to threat. They do not move around much; they are easily traceable through their job or university, and they have the most to lose should they end up being imprisoned. Those found to be at highest risk for nonpayment were the unemployed. However, within the unemployed group, first time offenders, or those with minor criminal records, were likely to pay eventually. Those most likely to end up imprisoned for nonpayment were

unemployed recidivists, defined as those with four or more past convictions, whether the fine amount was within their means or not.

A later U.K. study, carried out on behalf of the Home Office by Moxon and Whittaker (1996), interviewed 188 incarcerated fine defaulters in England and Wales in July, 1995, with the goal of identifying ways to more effectively collect fines while reducing the over reliance on imprisonment. Other than not being able to afford the fine, the most common reasons for nonpayment were: preferring to go to prison, changing of circumstances since fine imposed, confusion about the process, family difficulties, or forgetfulness. Refusal to pay on principle accounted for less than 3% of defaulters. The results also revealed that 80% of the offenders had more than one outstanding fine, and 20% had six or more. One particular finding relevant to the current study found that two-thirds of the offenders had served a previous custodial sentence, and the researchers argued that for such people imprisonment for fine default may not be a particularly strong deterrent.

It should be noted that in the U.K., at the time of the Moxon and Whittaker (1996) study, other enforcement methods were available to the authorities, such as reminder notices, installment plans, and attachment of earnings/benefits. Prison was the enforcement tool of last resort. Prior to the publication of these findings, a court decision was made which stated that, prior to imprisoning an offender for fine default, the court had to show why all other enforcement options either had not been utilized or had failed. The impact of this decision resulted in the number of people imprisoned for fine default being halved within a year (Redmond, 2002).

In a more recent study, Raine, Dunstan, and Mackie (2004), drawing on research of over 2000 cases of fine default conducted by the British Home Office, explored some of the realities

associated with financial penalties with a particular emphasis on who pays, who fails to pay, and reasons for nonpayment. They observed that while

each and every default case has its own particular narrative and set of underlying circumstances . . . it is immediately clear that default is not a simple problem, nor one for which any one strategy or response is always likely to be effective or appropriate. (p. 520)

Contemporary policy, they pointed out, regards default as a further offense deserving of further punishment, thus compounding the problem. They argue, however, that fine default is subject to other perspectives beyond the willful disregard of the expectation of the court, and they see default as a symptom of several other issues. These issues are as follows:

- Unsupported or inappropriate law or its application
- Poor initial decision making by the courts
- Inadequate communication of the courts' expectations about payment
- Inadequate supervision and oversight of the payment process
- Inappropriateness of a financial penalty for poorer offenders

What is particularly evident in Raine et al.'s (2004) research is that default is not necessarily just the offender's problem; rather, it is also for the courts to bear some of the responsibility for the issues of fine default. Raine et al. contended that it is only by looking beyond default as a willful disregard of a court order that a case can be made for a differential approach to the non-payment of financial penalties.

A report carried out by Fox (2003) on behalf of the Department of Justice in Victoria, Australia, while not directly concerned with the criminal fine, has relevance for this study. Fox sought to understand individual experiences and interactions with the penalty infringement

enforcement system in Victoria and to identify reasons for compliance or non-compliance. The penalty infringement enforcement system is an administrative system for issuing tickets for minor offenses such as speeding and traffic violations. The system relies on the offender's voluntary compliance in accepting their liability for paying the ticket instead of depending upon a court order, and risking a higher penalty, to pay the ticket. Fox identified multiple reasons why offenders failed to pay their tickets including denial of offense, a belief that a ticket was not justified for the offense, resentment, frustration and anger, forgetfulness, and not wanting to pay. Lack of means was less frequently given as a reason for nonpayment. The study also found a high level of legitimacy in the law among those who complied and paid the tickets, with 85% saying they would try to obey the law even if they thought it was unfair. A high level of perceived unfairness and injustice of procedures and outcomes was found among those who did not pay their ticket and ended up in court. Specifically, the study found that only 28% of those who ended up in court believed the amount of the fine to be fair as opposed to 44% of those who paid. Fox points out that overall perceptions of the fairness of the system are dependent on experience with it, which accounts for those going to court having a lower perception of fairness with regard to processes for objecting to a fine, methods of detection, as well as the amount of fines. Fox argues that "instilling the public with a sense of the legitimacy and fairness of [the] infringement notice system represents a normative approach to enhancing compliance. The instrumental approach is based on deterrence. The two approaches should be balanced" (p.118).

The Issue of Compliance – Instrumental & Normative Approaches

Instrumental. Traditional criminal justice policies, which are designed to maximize compliance, are based on the assumption that individuals are primarily interested in personal gain and loss, and that they obey the law to avoid punishment (Nagin, 1998). This instrumental

view assumes that offenders will make rational assessments about the costs and benefits of their behavior. Consequently, compliance occurs when the costs outweigh the benefits of non-compliance.

In Ireland, the success of the criminal fine system relies on the deterrent effect of prison as it is the only enforcement tool available to the authorities to ensure payment of fines. This mechanism of enforcement is premised on the belief that offenders will pay their fine because they fear the legal and social effects of being imprisoned (Kilcommins, O'Donnell, O'Sullivan, & Vaughan, 2004). Prison is what gives the sanctions their 'bite.' Many other countries still reserve the right to incarcerate an offender for fine default, although usually only as a last resort when all other available methods have been exhausted. Instead, many countries employ alternative enforcement strategies or policies, such as paying by installment, working programs, confiscating property, and by garnishing wages or social welfare payments (Einat, 2004). In some cases, imprisonment is only utilized if the court is convinced that the offender has the money to pay the fine, and that his or her nonpayment is deliberate (McDonald et al., 1992). In Ireland, however, there are no preliminary tools to utilize, and imprisonment is the default enforcement mechanism.

Traditionally, deterrence theory is concerned with the prevention of offending or re-offending through the use of punishment. However, it can present a useful framework through which to analyze the issue of fine default. Broadly speaking, punishment can deter offense or re-offense in one of two ways. First, by increasing the certainty of punishment, offenders may be deterred by the risk of being apprehended, or, second, by increasing the severity of punishment, offenders can weigh the consequences of their actions and decide that the risk of punishment is too severe. However, research concludes that increasing the certainty of punishment, rather than

the severity of punishment, has a stronger deterrent effect (Nagin, 2013; Wright, 2010). Kleiman (2009) also argues in favor of the certainty principle over the severity principle as he contends that offenders are concerned with the immediate future and that delayed punishment has little relevance to the original crime. However, according to Andrews and Bonta (2010), delayed punishment may still be effective with certain people, particularly those that are future-oriented and good at self-monitoring, and yet Andrews and Bonta do recognize that many offenders are impulsive and often underestimate their chances of being punished, resulting in little connection between offenses and future punishment.

Weisburd et al. (2008) reported that the threat of incarceration is a powerful incentive to paying court-ordered fines. Their finding was the result of research conducted in New Jersey, where probationers were assigned to a program designed to increase payment of fine and restitution sanctions through a combination of intensive probation, community service, and threats of probation revocation and incarceration. The treatment group was found to have a significantly higher rate of compliance than those on regular probation (the control group). A second treatment group was also included in the study. This group's intervention was the threat of prison for noncompliance as opposed to the treatment conditions. This group also had a higher rate of compliance than the control group, but no significant difference was found between this group and the original treatment group. On further comparison, the researchers concluded that the threat of imprisonment component of the original treatment group was responsible for the observed effect, and that the intensive supervision and community service did not add to the threat of incarceration.

In an analysis of the Weisburd et al. (2008) study, Nagin (2008) pointed out that “consistent with the ‘certainty’ principle, the common feature of both treatment conditions in

Weisburd et al. was a high certainty of incarceration for failure to pay the fine” (p. 40). It is important, Nagin noted, that for fines to be effective sanctions, the threat of incarceration for nonpayment is necessary. This finding is similar to Zimring and Hawkin’s (1973) contention that, for a sanction to be effective, it must be applied with a high degree of certainty.

In their study Weisburd et al. (2008) emphasized that without the actual imposition of incarceration the deterrent effect would be lost quickly. That is, it is not sufficient to threaten incarceration; the threat must be followed through with. However, following through with all threats of incarceration also leads to increasing numbers of individuals incarcerated for relatively minor offenses, leading to costs that far outweigh the benefits obtained. Some researchers have speculated that increasing the use of incarceration for minor offenses could lessen the stigma around incarceration (Hirschfield, 2008). As Nagin (1998) highlighted, “for an event to be stigmatizing it must be relatively uncommon” (p. 22), and that “if a policy increases the proportion stigmatized, the deterrent effect is less likely to be sustainable” (p. 23). In essence, the more common a prison record becomes, the less threatening it becomes as a form of punishment. In line with that argument, and relative to fines, it is quite possible that imprisonment for fine default is less stigmatizing as it has become more common and therefore less of a deterrent to defaulters.

While the threat of punishment ensures compliance to a degree, the instrumental perspective has been criticized for several reasons (Tyler et al., 1986). For example, the use of external threats and rewards is costly and time consuming. When applied to the criminal fine system, it involves the use of police time, the further use of court time to issue warrants, and the use of prison resources. There is also the financial loss from the unpaid fine. The more serious

shortcoming, however, is the failure to explain why people fail to pay criminal fines despite the certainty of further action.

Normative. In contrast to the instrumental view, the normative model suggests that compliance is based on a sense of moral obligation, commitment, or attachment, rather than on a fear of punishment (Bottoms, 2001; Tyler et al., 1986). It emphasizes the belief that laws should be obeyed because obeying the law is the right thing to do. The normative model relies on voluntary compliance as opposed to coerced compliance. It contends that people will obey the authorities because they feel a sense of social obligation rather than because they fear the threat of punishment. Central to the normative model are concepts of *legitimacy* and *procedural justice*.

Legitimacy. Drawing on Weber's (1968) writings on authority and the social dynamics of authority, Tyler (2003) defined legitimacy as, "a quality possessed by an authority, a law, or an institution that leads others to feel obligated to obey its decisions and directives" (p. 308). This obligation is linked both to instruments of reward or coercion and to non-instrumental properties of the authority that lead people to feel obliged to obey. When authorities are deemed to have legitimacy, people will follow their rules and decisions voluntarily out of obligation and not out of fear. As Tyler (2006a) pointed out, "it is widely agreed that authorities benefit from having legitimacy and find governance easier and more effective when a feeling that they are entitled to rule is widespread within the population" (p. 377). In fact, in a recent government white paper, the Irish Department of Justice, Equality, and Law Reform (2011) put forward issues of legitimacy, fairness, and credibility as essential components to an effective criminal justice system:

In order to have ongoing public support and trust, criminal justice systems need to operate in a rule-based and accountable fashion. Arbitrary, corrupt or oppressive measures will ultimately undermine the authority and credibility of the system and, in turn, the rule of law generally. The Irish criminal justice system is founded on Constitutional and common law principles of fairness and respect for individual liberty, and, in particular, the right to a fair trial and a presumption of innocence. (p. 5)

Procedural justice. One of the antecedents to legitimacy is procedural justice. According to research (Tyler, 1997; Tyler & Lind, 1992), people who feel that they have been treated fairly by an authority, regardless of the decision or outcome, are more likely to perceive that authority as being legitimate and to follow and accept its decisions. This stands in contrast to the instrumental model of compliance already discussed, which is predicated upon the threat of punishment (Tyler, 1990). Scholars point out that deterrence is generally found to have little influence over people's behavior, and that it has little impact over future adherence to the law (MacCoun, 1993; Tyler & Jackson, 2012). In essence, compliance with the law and with legal authorities is greater when people can believe in both the fairness and legitimacy of the law and the authority that enforces it. In other words, a system perceived as fair and legitimate is more effective in encouraging fine compliance than one that relies on threats of punishment to influence behavior (Lind & Tyler, 1988).

The concept of procedural justice was first introduced into socio-legal research by Thibaut and Walker (1975) to refer to the perception of treatment during decision-making processes. Since then, a growing body of research that supports procedural justice theories has identified a number of specific elements that influence an individual's perception of the fairness

of a process (Lind & Tyler, 1988; Paternoster, Brame, Bachman, & Sherman, 1997). These elements are:

Representation – the extent to which individuals believe they have an opportunity to both present their case and to have their opinions heard and considered.

Consistency – when individuals believe that their treatment is consistent over time *and* that it is consistent with how others are treated in similar circumstances.

Impartiality – when decision makers are perceived as honest and treat individuals in an unbiased manner.

Accuracy – an individual's perception regarding the ability of authorities to make decisions based on reliable and valid information.

Correctability – the ability of individuals to appeal their decisions.

Ethicality – an individual's perception of respectful and dignified treatment by legal authorities (Lind & Tyler, 1988).

The presence of each of these components is believed to increase legitimacy and compliance with authorities. According to Tyler (2006b), people will forgive an unfavorable outcome if they believe that the process leading to the decision was fair. That is, when people feel that the law has treated them fairly and respectfully, regardless of the outcome, and when they feel they can trust both the people in authority as well as their motive, they are more likely to comply with these institutions (Tyler & Huo, 2002). When applied to the context of criminal fines, it could be assumed offenders will pay, even if they do not agree with the amount of the fine, as long as they believe the decision was made in a just and fair manner. Additionally, the manner in which those in authority treat people can influence compliance. For example, if officials behave unreasonably—i.e., they do not follow expected procedures or processes, or treat people in an

unfavorable manner—it may negatively impact compliance (Tyler & Lind, 1992). This is particularly relevant in the context of criminal fines, as it highlights the influence that interactions with judges, court workers, and police officers may have on fined offenders' compliance. The underlying assumption of the theory is based on the non-instrumental criteria of the individual's perceptions of authoritative bodies, such as the criminal justice system.

Since Tyler's (1990) early work on procedural justice, a growing body of research has provided empirical support for the concept. Much of this work focuses on public perceptions, particularly pertaining to policing, or crime victims (Hinds & Murphy, 2007; Huo & Tyler, 2001; Laxminarayan & Pemberton, 2014; Murphy & Barkworth, 2014; Tyler, 2001, 2006b), but there is a growing awareness of the need to understand procedural justice from those who have had the most contact with the criminal justice system, i.e., the offenders. As Tyler and Jackson (2012) noted, it is important to understand how sensitive offenders are to issues of procedural justice and how these issues shape their behavior.

One notable study along these lines examined the relationship between procedural justice and spousal assault (Paternoster et al., 1997). The research found that offenders who were arrested, and perceived low levels of procedural justice, were more likely to commit future acts of spousal assault than those who perceived high levels of procedural justice, whether they were arrested or not. They also found that being detained in jail had an adverse effect on perceptions of procedural justice.

A more recent study conducted by Tatar II, Kaasa, and Cauffman (2012) examined the association between the perceived procedural injustice of court experiences with attitudinal, emotional, and behavioral outcomes among incarcerated young adult females. They found that those participants who perceived that they had been treated unfairly by the courts responded

negatively, both emotionally and behaviorally. They also noted that the length of incarceration aggravated the psychological effects of perceived procedural injustice but did not impact levels of perceived injustice. They posit this finding as a safety issue for both staff and offenders, as over time it can lead to worsening behavioral issues despite the fact that the longer an offender is incarcerated the more opportunity they should have to engage in treatment and rehabilitative services. Tatar II et al. also stress the importance for the justice system to “recognize that perceived injustice, especially concerning one’s own court experiences, is harmful for the individual” (p. 289).

In order to discover if theories of procedural justice and legitimacy hold in countries with a different political and historical background than the United States, Reisig, Tankebe, and Mesko (2014) conducted a study utilizing survey data from 683 young adults in Slovenia. Their results reveal that perceptions of police legitimacy are highly influenced by procedural justice judgments and that legitimacy in the police leads to compliance with the law. They concluded that “these specific findings indicate that the process-based model of regulation generalizes well to a post-socialist country such as Slovenia” (p. 270). In essence, these findings concur with Beetham’s (1991) argument that all societies have an underlying structure of legitimacy even though the context may differ.

Achieving compliance through instrumental measures can be expensive and is not always effective. Despite effectiveness, studies have shown that many criminal justice practitioners exhibit resistance when confronted with suggestions to move away from the traditional model (MacCoun & Reuter, 2001). Tyler (2006b) argued that, through fairness and perceived fairness, change is possible, and that, by treating individuals with respect and incorporating elements of procedural justice into their methods, a viable alternative to punitive punishment can be realized.

Conceptual Framework

A conceptual framework, Miles and Huberman (1994) explain, is a product that “explains . . . the main things to be studied—the key factors, concepts, or variables—and the presumed relationships among them” (p. 18). As such, the conceptual framework for this study was developed by drawing on the relevant literature, theory, and operational aspects of the Irish fine system. The framework plays a central role throughout the study and is particularly important during the final analysis as it becomes the foundation for the coding scheme.

The goal of qualitative research is to gain insights into people’s opinions and attitudes that could not be discerned through quantitative methods (Frankfort-Nachmias & Nachmias, 2007). For this reason, a conceptual framework was adopted as the “the researcher’s map of the territory being investigated” (Miles & Huberman, 1994, p. 20). Utilizing a conceptual framework allows the researcher to narrow the focus of the study, and it provides boundaries for the “who” and the “what” that will or will not be studied. The conceptual framework also helps shape the research design and informs the research questions. As such, it acts as a guide for data collection, as well as for the analysis of the data and the interpretation of the findings.

The framework for this study was established on the premise that offenders who receive a criminal fine in Ireland have beliefs, attitudes, and perceptions that impact their levels of fine default. Each initial category was directly derived from the reviewed literature and ultimately the final research questions. These categories included system oversight, finances, personal obstacles, fairness/equality, and prison/deterrence. The final conceptual framework is included as Appendix A and a model is illustrated in Figure 4.

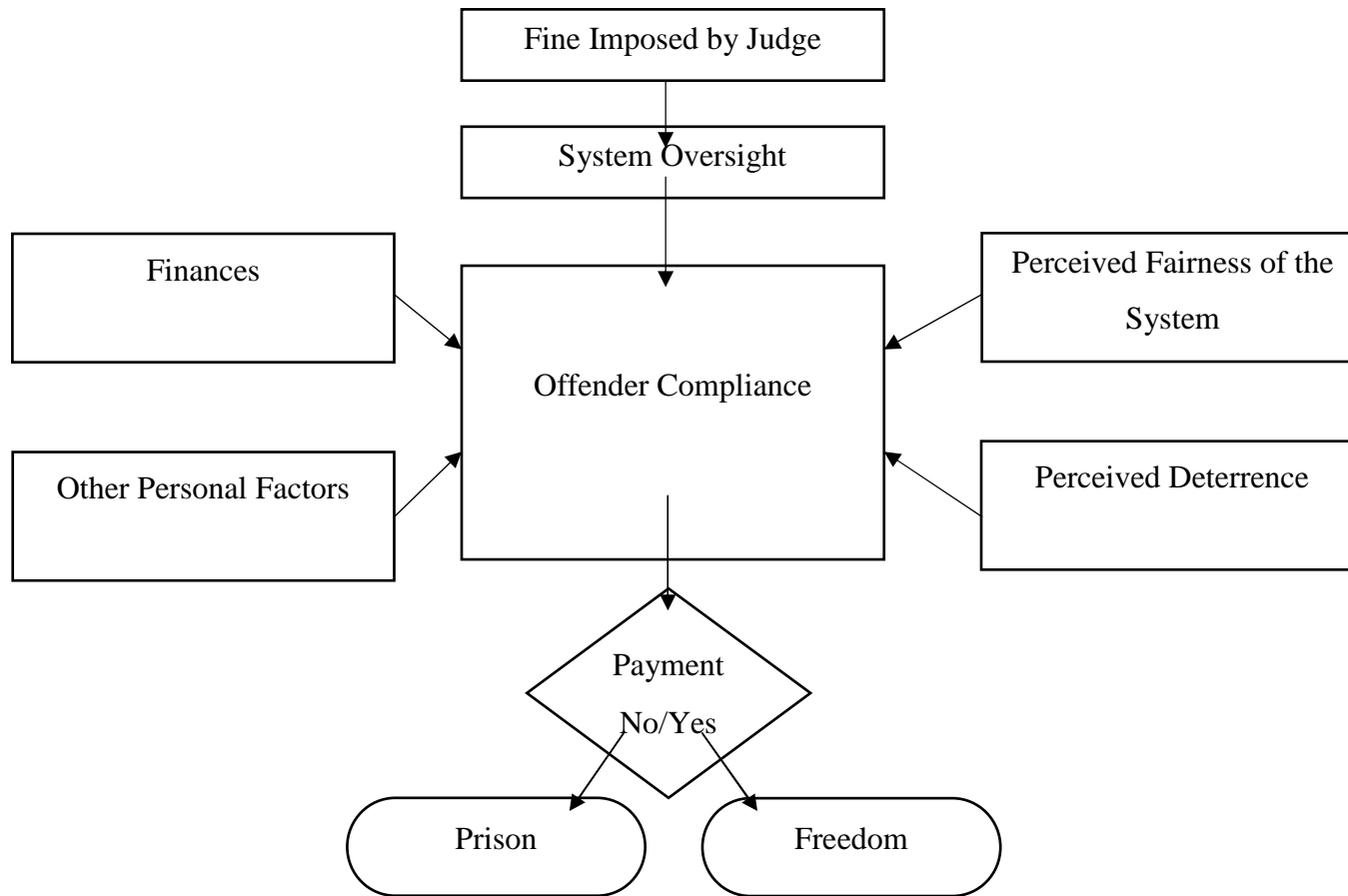


Figure 4. Conceptual map. Author's image.

Chapter Summary

This chapter looked at the fine as a sentencing option as well as discussing its use in Ireland. An overview of the relevant literature related to fine default from Ireland, the U.K., and elsewhere was presented. The issues of compliance and deterrence were also discussed at a theoretical level. Finally, a brief discussion of how a conceptual framework is developed was given.

Chapter 3: Methodology

This qualitative study aimed to understand the barriers to fine compliance by examining the experiences and attitudes of fined offenders in Ireland. The study filled a “gap in the knowledge” (Walliman, 2006, p. 30), and helped contribute to understandings of how practice and policy influence levels of fine default.

This research was guided by two primary questions and five sub-questions. These questions were as follows:

Main questions: (1) What are the main barriers to compliance in the payment of criminal fines in Ireland? (2) How do offenders negotiate these barriers in a bid to avoid imprisonment for default?

Sub-questions: (1) What role do financial means play in fine default? (2) Are there other factors working in opposition to or in tandem with financial means? (3) Are there practices within the criminal justice system that inhibit or facilitate the enforcement and payment of fines? (4) Do offenders perceive the criminal fine process as fair and equitable, and what impact do those perceptions have on shaping compliance / noncompliance? (5) Is imprisonment the primary deterrent factor among those who pay their fine, or are there other factors that influence compliance?

This chapter describes the study’s research methodology and includes discussion on the following areas: (a) rationale for a qualitative approach, (b) description of the research sample, (c) summary of type of information collected, (d) overview of research design, (e) method for data analysis and synthesis, (f) ethical considerations, and (g) trustworthiness of the findings.

Rationale for Qualitative Research Design

Qualitative research, as defined by Strauss and Corbin (1990) is, “any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification” (p. 17). Qualitative research allows the researcher to explore complex phenomena—such as thought processes and decision making—that are difficult to study through quantitative methods (Corbin & Strauss, 2008). The purpose of this study was to explore the individual experiences and interactions of fined offenders within the criminal justice system. Through the use of qualitative methods a researcher can learn about the experiences of individuals and groups from their perspective and in their words. It allows the researcher to explore a perspective that would not be possible through other methods.

Merriam (1988) outlined multiple assumptions that are inherent in qualitative research that were also considered for this study. She stated:

Qualitative research assumes that there are multiple realities—that the world is not an objective thing out there but a function of personal interaction and perception. It is a highly subjective phenomenon in need of interpreting rather than measuring. Beliefs rather than facts form the basis of perception. (p. 17)

In the researcher’s view, these assumptions fit well with the study. Only through the use of qualitative methods can the rich data necessary to address the research question be elicited.

The Research Sample

The population of interest for this study included all individuals over the age of 18, both male and female, who had received a criminal fine in Ireland. While the primary group of interest were those who had not paid their fine, those who received a fine and paid it were used as a comparison group. Utilizing a comparison group allowed a baseline for fine payers to be

developed. The sampling procedure was purposive in nature: Subjects were sought who had defaulted on fines in the past as well as those who had received a fine and paid it. According to Merriam (1988) the needs of qualitative research are best met when utilizing purposive sampling as purposive sampling is, “based on the assumption that one wants to discover, understand, gain insight; therefore one needs to select a sample from which one can learn the most” (p. 48).

Purposive sampling allows the researcher to choose a sample based on the particular knowledge the participants possess to allow the most detailed understanding and exploration of the concepts and themes under study (Ritchie, Lewis, Nicholls, & Ormston, 2013). For the purpose of this study, it was believed that only those with the direct experience of receiving a fine could provide the knowledge needed to answer the proposed research questions.

Access to subjects is often a challenge in the social sciences—particularly in criminology where the topic of research is often considered sensitive in nature. For this reason “gate keepers” were initially utilized, and subsequently, a snow-balling strategy was employed. A snow-balling strategy, also referred to as “network sampling” (Patton, 2002), relies on participants to refer other individuals whom they know to have received a fine.

Prior to the beginning of data collection, contact was established with several key people with knowledge and experience in the area of interest, and who were known to have direct access to possible participants for the study. These key people (gatekeepers) consisted of a barrister, a Chaplain, a journalist, and a Junior Minister. Two of these key players were already known to the researcher while the other two contacts were made through common acquaintances. These gatekeepers were asked to distribute a recruitment flyer among those they knew to be potential subjects (Appendix B). The author also set up a website that contained the same wording as the recruitment flyer, and the site was also used as a method of recruitment. As the data collection

got underway numerous other contacts were established and solicited to distribute the recruitment flyer and / or the website information. These contacts ranged from workers in the not for profit sector, as well as solicitors, politicians, and community workers. Many organizations, such as the Irish Penal Reform Trust and the Free Legal Advice Centers (FLAC), posted the information on their online bulletin boards and social media sites in order to help recruit participants. Permission was also sought and approved from the Irish Probation Service to solicit their community-based projects and programs in distributing the research information. They posted paper flyers in their drop-in centers and also published the information and contact details in their bulletins.

Part of this study also involved interviews with legal players involved in the criminal fine process. These players included police officers, prison officers, barristers, solicitors, and court workers. Access to these participants was also achieved through the gatekeepers and through personal contacts the researcher had in the Irish legal field. A recruitment flyer was not used to solicit any of these participants. Instead contact was made through personal introductions, both through email and in person.

Sample size. As the goal of qualitative research is not to generalize to a larger population but rather to gain an in-depth understanding of the phenomenon of interest, sample sizes are generally smaller than those in quantitative studies. A point of diminishing returns can often be reached very quickly with a qualitative sample, wherein more interviews will not produce any new data (Mason, 2010). When conducting in-depth interviews, Creswell (2012) recommends a sample size between five and 25. A sufficient number of participants was recruited for this study: 103 participants completed the questionnaire and 40 participants were interviewed.

Information Needed to Conduct the Study

In order to answer the research questions multiple types of information were needed. This information fell into several categories and came from different sources: contextual, demographic, perceptual, and theoretical.

The contextual information consisted of the background information and inner workings of the criminal fine system. Some of this information came from formal documentation outlining the legal requirements of the fine system as well as recent relevant Bills passed in order to improve the system. Other contextual sources of information included courtroom observations as well as interviews with legal players (Appendix F).

The demographic information and fine information pertaining to participants was gathered as part of a questionnaire (Appendix C). The goal here was to develop more than just a picture of the people who received criminal fines—i.e., their gender, age, education, etc.—but also to gather information about the type of crimes that receive a fine, the amounts of the fines, the time given to pay the fines, and the order of prison time in default.

The perceptual information is often the most critical information for a qualitative study. This information, while not necessarily factual, includes the information that participants perceive as factual. It allows participants to describe their experiences, to talk about factors that influenced their decisions, and to discuss the development or change in their attitudes. In-depth interviews are the source of this rich and detailed material (Appendix E). When analyzed this material can offer insights into people's opinions and attitudes that would not be available through other research methods (Frankfort-Nachmias & Nachmias, 2007).

Theoretical information comes from a review of the literature, which was particularly important in developing the conceptual framework, and again while the data analysis was being

conducted. As ideas and concepts began to emerge during the analysis, the literature provided support for the interpretation and synthesis of the ideas drawn from the data.

Overview of Research Design

Concerned with the validity of data, qualitative researchers often employ multiple methods of data gathering in order to reduce the likelihood of misinterpretation. Using multiple data sources helps to increase the validity and scope of the findings, and it allows the researcher to determine the credibility of the information and whether it matches reality. This method of triangulation is important to obtain an in-depth understanding of the phenomenon under study. According to O'Donoghue and Punch (2003) triangulation is a, "method of cross-checking data from multiple sources to search for regularities in the research data" (p. 78). In order to provide rigor and depth to this study multiple data methods and sources were utilized.

Data collection took place over a four month period between September and December 2013. The researcher also made a month-long trip to Ireland in June 2013 to conduct some ground work and to establish connections and to garner support with the initial gatekeepers. Some of the courtroom observation was also conducted during the same period.

Phase 1 – Questionnaire

A detailed questionnaire was used to collect data from fined offenders (Appendix C). The 76 item questionnaire was designed to collect profile data and to develop a larger picture of fined offenders in Ireland. Not all participants were required to answer all questions. The maximum number of questions answered was 66 and the minimum was 54. It included a combination of multiple choice questions as well as open-ended questions that sought to tap into personal experiences and perceptions. One advantage of using a questionnaire upfront was that it was unobtrusive, relatively easy to administer and manage, and allowed the researcher to collect

information from a wider audience than could be reached through interviews alone. It was also a beneficial tool to solicit participants for a follow up in-depth interview. In total 103 completed questionnaires were collected.

Both an electronic and a paper format of the questionnaire were developed. Both formats had identical questions. The purpose of this was twofold: electronic questionnaires allowed a wider audience to be reached quicker, whereas the paper questionnaires would ensure that those who did not have access to computers were not excluded from the study. At the end of the questionnaire each of the participants were asked if they would be interested in a follow-up interview. Fifty-two participants in total agreed to an interview.

Electronic version of questionnaire. An online web service, *Survey Monkey*, was used to administer the electronic questionnaire.¹² Once the survey is created online, a link is used to bring the user directly to the first page of the survey (the authorization page). This link was embedded in the website, created specifically for this study, in order to solicit participants. The link to the website was included in all requirement materials. It allowed interested parties to link directly to the survey without having to contact the researcher directly. All information collected utilizing this method is anonymous. While the online format provided ease of access to the survey, it also resulted in multiple people beginning the survey and then abandoning it—either because they were not eligible to participate, or because they were no longer interested in participating. In total, seven surveys were deleted before analysis began as they were incomplete (i.e., no usable information had been input).

The online survey was designed using skip patterns. Therefore, the way in which a question was answered dictated the creation of the next question. It also meant that participants

¹² Survey Monkey is an online site that allows you to create your own personalized survey. It also provides a link to the survey which you can then include in your recruitment flyer etc.

did not need to trawl through questions that were not relevant to them, and it allowed all participants to start at the same point (i.e., a separate web link was not needed for those who paid their fine and those who did not). The average completion time was 15 minutes. Sixty-two completed usable surveys were gathered using this method.

Confidentiality was key for those who completed the electronic questionnaire. The researcher did not want to collect personal details as part of the questionnaire, so a method was devised to ensure confidentiality while still allowing the researcher to read the individual's completed questionnaire prior to the interview. Participants who were willing to participate in a follow-up interview could either contact the researcher by telephone or by email to schedule a convenient interview time. In order to associate the proper questionnaire with the participant, a random number was generated at the end of the survey, which the willing participant could then quote to the interviewer.¹³ This allowed the researcher to read the questionnaire in preparation for the interview.

Since there was a text box at the end of the survey soliciting further comments, multiple participants left their contact details for the researcher to contact them. As the researcher checked the surveys everyday these could be deleted as soon as the researcher recorded the details. No contact information was saved by the researcher beyond its intended use. No interview took place more than a week after the questionnaire had been completed, and the majority took place within 48 hours.

Paper version of questionnaire. The paper version was designed for those without access to computers or who had a preference for the paper format. The paper questionnaires were all administered directly by the researcher. This version was also designed in such a way that the

¹³ Numbers above 100 were used as numbers below 100 were being used for the paper questionnaires. This ensured a number would not be used twice.

same questionnaire could be used for both groups, with built in skip patterns that required the participant to skip to certain questions or pages depending how they answered. None of the participants voiced any problems understanding the questionnaire, and on average they completed it in 20 minutes. Forty-one completed usable surveys were gathered using this method.

In order to administer the paper questionnaire, the researcher traveled to various locations to collect the data. In most cases several questionnaires were administered at once, but on several occasions only one questionnaire was administered due to scheduling issues. Data was collected in multiple locations across the country including at community centers, drop-in Probation Services offices, Free Legal Aid Centers, coffee shops, and, in one instance, a participant's home. The researcher had permission to attend all locations data was collected.

As the researcher personally administered the paper questionnaires scheduling of follow-up interviews was much less complex. When a time was scheduled for the follow-up interview it was written on the paper questionnaire along with a unique number. This way no identifying information was needed and the same number was recorded at the beginning of the taped interview. All but two of the interviews took place within an hour and at the same location after the questionnaire was completed. The researcher had enough time to go over the questionnaire and make notes before the interview. The two that did not take place within the hour took place the next day and at the same location.

Phase 2 – Interviews

The interview was the primary method for data collection in this research. According to Creswell (2003), in-depth interviews have the potential to capture a person's perspective of his or her experience that would not be possible by utilizing other methods. Not only do interviews

elicit rich descriptions, they also allow the researcher to probe for additional information and to clarify statements. For the purpose of this study, the goal of the interview was to build and expand upon data already collected from the individual's questionnaire. Having already reviewed the participant's questionnaire, the researcher could focus on issues that were most relevant to the study's overall research questions. While an interview schedule was devised in advance (Appendix E), the information from the questionnaire allowed the researcher to tailor and adjust the questions for each interviewee. Further, as the research advanced and data analysis began, this flexibility allowed the researcher to address any issues that become more salient. According to Patton (2002), "a qualitative design needs to remain sufficiently open and flexible to permit exploration of whatever the phenomenon under study offers for inquiry" (p. 255).

Of the 52 participants who agreed to an interview only 40 were interviewed, 23 who had completed the questionnaire electronically and 17 who had completed paper questionnaires. All 52 were not interviewed either because of scheduling issues or because of data saturation. On average interviews lasted about one hour, and one interview lasted roughly 90 minutes.

All interviews were conducted at locations convenient to the interviewee. Two interviews were conducted by telephone due to scheduling difficulty for one and remote location for another. All participants were asked for permission to audio record the interview, which was given in all but one instance. Instead of a recording, detailed notes were taken during this interview.

A total of eight interviews were conducted with legal players. None of these participants were known to the researcher in advance. In order to ensure a representation of the people involved in the fine system in Ireland, interviews were solicited from a wide group of people, including judges, court workers, and police officers, etc. The final legal group interviewed

included two police officers, one barrister, two solicitors, two prison officers, and one former prison governor. As these contacts were all made through personal introductions, scheduling was less complex but often more difficult to arrange due to workloads. All arrangements were made by email or telephone. No personal contact information was retained beyond its intended use. Two of these interviews took place at coffee shops, and the rest took place at the participants' work locations. Permission was given to record six of the interviews. Detailed notes were taken during the other two interviews. On average these interviews lasted about 90 minutes.

Interviews with the legal players were non-structured and mostly open-ended. An interview guideline was prepared in advanced which could then be individualized for each interview (Appendix F). Interviews began by identifying the area of the criminal justice system participants were involved with and for how long. From there they were asked to describe their experience with the criminal fine system as well as for their perspectives on the present state of the criminal fine system. All of these participants spoke very freely about their roles and their thoughts and very little probing was required. All of the participants had a vast amount of experience in the area of interest (from 8 to 42 years), and the researcher was quickly able to build up a picture of how the criminal fine system works on a day-to-day basis.

Phase 3 – Courtroom Observations

A total of 35 hours of courtroom observations were conducted at the Irish District Court. A total of eight hours were conducted at two provincial courthouses while the remaining 27 hours were conducted at three Dublin Metropolitan courthouses. Only notes were taken during observations. No audio recordings were made, and no identifiable information or individual case outcomes were recorded. The purpose of the observations was to gain an understanding of the courtroom work group and their interactions, and not to focus on any one individual.

Observations were only carried out in adult courts that were open to the public. No permission was required to attend and take notes.

After each day of observation, the researcher read all field notes made that day and summarized them. This was also an opportunity to reflect upon the notes and to find relationships between the research questions, the questionnaire, and the interview responses and to begin grouping them into categories for further analysis. The observations also allowed the researcher to clarify or substantiate participants' statements about courtroom procedures and processes.

Phase 4 – Document Review

The document review was ongoing prior to data collection through to data analysis. The documentation ranged from formal documentation, such as summonses to parliament debates and Bills relating to fines. Annual prison reports and statistics were also utilized as were newspaper articles relevant to the research. The goal of the document review was to provide context within which the fined offender must function. It allowed the researcher to gain knowledge of the criminal fine system, the rules and the procedures that must be followed, and to contextualize them to the experiences of the fined offender.

Method for Data Analysis and Synthesis

Data analysis for this study began early during the data collection period and continued throughout and following completion. The questionnaire data was separated into qualitative and quantitative data (comment questions). The quantitative data was exported into excel and analyzed from there. No statistical analysis was performed on the data. All qualitative data was organized, coded, and analyzed through the use of NVivo 10, a qualitative data analysis software tool. NVivo does not conduct analysis for the researcher but rather provides a vehicle for

managing and analyzing data. Data gathered from the fined offenders and legal players were analyzed separately as these groups constituted two different populations. The data from the fined offenders were also split up into separate groups: those who had been to prison and those who had not. Those that had not been to prison were divided into two further groups: those who had paid their fine and those who had not. While these groups were deemed separate groups within the population of interest, there was a lot of cross comparison between the groups during analysis.

A hybrid process of deductive and inductive analysis was used to interpret the raw data. Utilizing this approach allows the researcher the opportunity to develop alternative or additional explanations for the subject under study, should they arise, and thus allows a better understanding of the phenomenon in question to be gained. As Patton (2002) argued:

sometimes . . . qualitative analysis is first deductive or quasi-deductive and then inductive as when, for example the analyst begins by examining the data in terms of theory-derived sensitizing concepts or applying a theoretical framework developed by someone else . . . After, or alongside this deductive phase of analysis, the researcher strives to look at the data afresh for undiscovered patterns and emergent understanding. (p. 454)

Analysis within NVivo begins with the reading of data and the development of nodes. Nodes are essentially the containers for concepts, topics, and themes within the source material. Nodes can be linked in tree-like structures that allow codes and categories of data to be broken down into sub-categories or linked concepts. The initial nodes were developed a priori and outlined in the conceptual framework. As the analysis got underway more nodes were created based on the ideas, conceptions, and meanings etc. that began to emerge in the data. The final product of the

analysis included major categories related to the conceptual framework as well as extracts from the data illustrating these categories.

Ethical Consideration

In any research study, protection of participants and their data is of vital importance (Frankfort-Nachmias & Nachmias, 2007). Prior to the beginning of this study approval was granted to carry out this study under the guidelines of the University of California Irvine's Institutional Review Board (IRB). Although no serious ethical threats were posed to any participant, this study employed multiple safeguards to ensure both the rights and protection of the participants.

Verbal consent, as approved by IRB, was obtained from all participants for both questionnaires and interviews. At the beginning of each questionnaire participants received a study information sheet that included information about the research, the procedures used to protect their confidentiality, and information on their right to refuse to answer any questions or withdraw their participation at any time (see Appendix D). The study information sheet was the landing page for the electronic questionnaire. A participant was required to hit an "accept" button at the end of the study information page in order to proceed with the questionnaire. Participants also had the option to exit if they so decided at this stage. For those who participated in a follow-up interview the same procedure was followed once again with regard to the study information sheet and consent.

No identifying information was gathered either during the questionnaire stage of the research or during the follow-up interview stage. Any contact information that was obtained for the purposes of arranging data collection—i.e., administering paper questionnaires or arranging interviews—was kept on a password protected computer and was deleted immediately after it

was no longer needed. Access to the electronic questionnaire was password protected, and every 24 hours the survey was accessed and completed surveys were downloaded. Once they were downloaded to a password protected computer they were deleted from the online software. Tracking of IP addresses was disabled on the online software *Survey Monkey*. All interviews were transcribed and subsequently deleted. At no time did anyone except the researcher have access to any data or contact information.

Legal players were offered the same protections as all other participants, and the same precautions were taken to ensure their rights and protection. One of the legal players agreed to waive his anonymity. The former Governor of Ireland's largest prison, Mr. John Lonergan, is a well-known figure in Ireland, and it would have been difficult to keep his identity anonymous. Prior to his interview this issue was discussed with him, and he expressed his willingness to proceed with the interview. He gave his permission to have his name included, and he allowed for the use of direct quotations for the purpose of this research. His data was protected in the same way as all other participants.

Trustworthiness

Guba and Lincoln (1998) argued that the trustworthiness of qualitative research should be assessed differently than quantitative research, and that in order to establish trustworthiness in qualitative research, each of the following issues need to be considered: credibility, transferability, dependability, and confirmability. Multiple strategies can be utilized in order to achieve the criteria outlined above, several of which were followed in this study. The strategies included were: triangulation, member checking, audit trail, and thick descriptions.

Credibility. Assuring the credibility of the findings involved ensuring that the participants' perceptions of themselves matched the researcher's portrayal of them. Essentially,

according to Tracy (2010), the findings should be plausible and believable in that they express a reality that could be true. Triangulation is one of the primary strategies utilized to ensure this kind of credibility. The use of multiple kinds of data from multiple sources also allowed the researcher to cross-check and compare the data and triangulate it.

Member checking was an additional strategy used to ensure credibility. As data analysis was ongoing, member checks were done to confirm the information and themes that were emerging. Many of the participants gave permission for further contact following interviews, and this permission was utilized for checks. Member checks were also a useful tool for fact-checking with legal players when contrary information was provided by participants.

Transferability. While not as generalizable as quantitative studies, qualitative findings can still be transferred to contexts beyond the immediate research. By describing phenomenon by way of thick, rich descriptions one can evaluate the extent to which the conclusions drawn can be applied to other contexts (Guba & Lincoln, 1998). These thick descriptions can become a vehicle to communicate a realistic picture to the reader, and they allow readers to decide whether similar processes would work in their own settings.

Dependability. According to Lincoln and Guba (1985) dependability “seeks means for taking into account both factors of instability and factors of phenomenal or design induced change” (p. 299). Showing that the processes and the procedures used to collect and analyze data can be tracked is necessary for dependability (Patton, 2002). In order to show dependability the researcher created an audit trail. According to Merriam (1988), the audit trail allows for transparency. This trail tracked the procedures the researcher followed and the rationale for the choices made. It also included journaling and creating memos of how the data was analyzed and interpreted.

Confirmability. Ensuring that the findings are the result of research and are not shaped by bias creates confirmability (Lincoln & Guba, 1985). It is important for the researcher to manage his or her personal bias, and to this end the researcher, as part of the ongoing journaling for the audit trail, participated in reflexivity. This involved reflecting on decisions made and the reasons for same. While it is difficult for a qualitative researcher to achieve complete objectivity, it is important to realize this limitation, and to illustrate how his or her data can be traced back to earlier decisions and ensures the data is the result of research and is not the result of the researcher's subjectivity (Lincoln & Guba, 1985). Triangulation of data sources is also a useful tool in ensuring confirmability as it allows the researcher to examine the consistency of the data (Patton, 2002).

Chapter Summary

In summary, this chapter provided a description and rationale for the methodology chosen for this study. It also detailed the research sample and described the information required in order to complete the study. The data collection process, as well as the data analysis, was described, and issues of ethics and trustworthiness were also discussed.

Chapter 4: Findings

The goal of this chapter is to present the key findings obtained from 103 detailed questionnaires, 40 in-depth interviews with fined offenders, and eight interviews with associated legal players. The first section presents a picture of fined offenders in Ireland using data gathered primarily from the questionnaire. Each subsequent section is guided by specific research questions. These sections rely on data gathered from the interviews with fined offenders, and they emphasize allowing participants to speak for themselves. Representative quotations are used to capture both the complexity and the richness of the subject matter. Where appropriate, data from the questionnaires, interviews with legal players, and documentation is used to support and solidify the discussion. The sections, which follow the key components of the conceptual framework, are outlined as follows: (a) a picture of fined offenders, (b) ability to pay, (c) other contributing factors, (d) criminal justice practices, (e) fairness of the system, and (e) prison as a deterrent.

A Picture of Fined Offenders

Very little official data is available on those individuals who receive a fine in court or those who are imprisoned for default. Official reports present only the numbers for how many people receive a fine annually and how many people are imprisoned for nonpayment. Data on the types of crimes that receive a fine are also available, but there is no data on fine defaulters who have not been imprisoned. Some analysis of the available data is discussed in Chapter 1. While the data collected for this study was drawn from a small sample size of 103, it nevertheless presents a snapshot missing from the available data of those who receive a fine in Irish courts. Table 1 presents the demographic information for those who completed a questionnaire (n=63) as well as those who completed a questionnaire and participated in a follow up interview (n=40).

Table 1
Demographic Characteristics of Sample (%)

	Questionnaire Only	Questionnaire & Interview	Total
	n=63	n=40	n=103
Gender			
Male	71.43	75.00	72.82
Female	28.57	25.00	27.18
Age			
Range	18-67	21-51	18-67
Mean	34.60	35.95	34.99
Mode	32.00	32.00	32.00
Ethnicity			
White	95.24	100.00	97.09
Asian	1.59	0.00	0.97
Other	3.17	0.00	1.94
Marital Status			
Single	49.21	40.00	45.63
Living with Partner	15.87	35.00	23.30
Married	17.46	20.00	18.45
Divorced/Separated	12.70	5.00	9.71
Widow/Widower	4.76	0.00	2.91
Education Level			
Primary	3.17	10.00	5.82
Some Secondary	38.10	42.50	39.80
Completed Secondary	23.81	25.00	24.27
Some 3rd Level	19.05	15.00	17.48
Completed 3rd Level	7.94	5.00	6.80
Some Graduate School	3.17	0.00	1.94
Completed Graduate School	4.76	2.50	3.88
Employed at time of Sentencing			
Employed	49.21	37.50	44.66
Unemployed	50.79	62.50	55.34
Location*			
Dublin	36.51	62.50	46.60
Outside Dublin	63.49	37.50	53.50

Note. Author's table.

* 24 of 26 counties were represented at least once

Table 2 presents data collected relevant to the fine itself. Other pertinent information that has been collected relative to the fines is presented and discussed in the appropriate sections of this chapter.

Table 2
Details of Fines

	Questionnaire n=63	Questionnaire & Interview n=40	Total n=103
Amount of Fine (Euro)			
Mean	474	593	509
Mode	275	500	275
Range	20-2500	50-3000	50-3000
Time to Pay (Weeks)			
Mean	8.39	12.17	9.87
Mode	4	12	4
Range	1 - 26	1 - 26	1 - 26
Could not Recall	4.76%	2.50%	3.88%
Time Since Fine			
2 years or less	52.38%	80.00%	63.11%
2 years to 5 years	25.40%	20.00%	23.30%
Greater than 5 years	3.17%	0%	1.94%
Could not Recall	19.05%	0%	11.65%
Payment of Fine			
Paid Fine	38.09%	30.00%	34.95%
In Default (no action yet)	22.22%	30.00%	25.24%
Went to Prison	39.68%	40.00%	39.81%
Offense			
Road Traffic Offenses	30.16%	22.50%	27.18%
Public Order	20.63%	25.00%	22.33%
Drug Possession	14.29%	7.50%	11.65%
Larceny/Robbery	19.05%	25.00%	21.36%
Assault	0%	5.00%	1.94%
Other*	15.87%	15.00%	15.53%

Note. Author's table.

* Includes offences such as litter offences, street trading and offences prosecuted by Government Departments and other State agencies such as An Post (Television License)

Ability to Pay

There is little doubt that the financial means of fined offenders play a part in whether a fine is paid or not. However, this study found that fine payment involves more than simply having the means to pay for a fine. Only 34.85% (36) of the sample actually paid their fine. Of those only three said they could afford to pay the fine, and 13 thought they would be able to pay the fine within the allotted time given. Only 15 people paid their fine on time. Since the Fines Act 2010 was implemented in 2011, the court has been obliged to consider a person's financial circumstances in determining the amount of the fine. Specifically, section 14(1) states, "where a court imposes a fine on a person, the effect of the fine on that person or his or her dependents (sic) is not significantly abated or made more severe by reason of his or her financial circumstances" (Office of the Attorney General, 2010, p. 11). As noted, however, there was already a requirement in Irish law to consider an offender's ability to pay, so this requirement is not totally new. Despite this injunction, a major theme that arose in this study is that little regard to a person's ability to pay is given on the day in court. As one participant pointed out:

Once they know you have legal aid they already know you can't pay. It is all automatic so you don't get to tell them. I think they ignore that anyway. The person before me was working and he got the same amount of fine as me for the same offence. So it doesn't make a difference really.

Another participant did try to let the judge know he could not afford to pay; however, as he explained, the appeal was a futile exercise:

They never give you a chance in court to explain that you haven't the money. It is very fast and they are trying to get you in and out as quick as possible. I tried to tell the judge I was in arrears on my rent as well but I didn't get the chance. He didn't even ask if I was working. He probably just assumed I wasn't.

While many courts disregard the offender's ability to pay, some judges do take the offender's financial abilities into consideration. 16 out of 103 participants reported that they had been asked about their financial circumstances, though these questions were usually limited to asking no more than if fined offenders were employed or not, and there appears to be no practice to establish any evidence in this regard. For example, there is no request for proof of income nor any mention of living expenses during the trial process—a circumstance observed by the researcher and research participants alike. During a hearing, the defendant rarely speaks and, under normal circumstances, either the defendant's solicitor or barrister will answer if the judge asks about the financial context. The solicitor or barrister will often try to slip in whether his client is working or not, but this usually seems to be in an effort to mitigate the punishment from a much harsher sentence such as incarceration, down to a fine, rather than to lessen the amount of the fine. If it looks like a client might go to prison, the goal appears to be to try to establish his or her good credibility, i.e. that he or she has a job and that prison would mean the offender would lose it. As one barrister explains:

Our job is to make sure they don't go to prison. So basically, getting a fine is a win. The fact that they can't afford to pay doesn't really come into it. It is more a case of they didn't get sent to prison. Of course they may end up there anyway, but that has nothing to do with me, my job is done on the day. That's just how the system works.

Interviewees stated that there is no room for negotiation for the amount of the fine or for the length of time for repayment. While the judge has a maximum fine he can set for a particular crime, it is at his discretion to set the amount and the time to pay within the guidelines. One interviewee describes a discussion with a judge that left her confounded:

I was asked if I would be able to pay a fine and I said no. I had accepted in my mind that I was probably going to have to do a bit of time and that the judge would probably give me a few weeks or a month at most. I was up for soliciting, so the judge knew I was a prostitute. Anyway, when I said I wouldn't be able to pay a fine, the judge didn't even look at me and just said €500 within 30 days. It just didn't make sense. I mean you don't want to grow up and become a prostitute but sometimes your circumstances just lead you to it, and there was the judge basically saying now go back on the street and get the money to pay the fine or you will go to prison. Where is the sense in that?

Even without the ability to negotiate terms, some offenders were able to pay their fines, but this does not mean that those who did pay their fines could actually afford to do so. It is often assumed that those who fail to pay their fines do so because they cannot afford to, and, conversely, those who pay their fines do so because they can. However, it is apparent that this is not necessarily the case since many of the participants in this study that did pay their fines expressed that they could not really afford to do so and suffered undue hardship as a result. Again, only three of the participants in this study expressed that they could afford to pay the fine. According to one interviewee:

I couldn't afford the fine, and I knew that at the time, but what can you do.

Anyway, my mother was there and she said she would pay it. She told my solicitor that and he told the judge that if I got a fine my mother was going to pay it. So the judge knew I wasn't paying, but they don't care about that. I was lucky my mother was there, plenty of people don't have anyone to help them out. The judge anyway was happy someone was paying, but really my mother was being punished for what I did. My mother paid a fine for my aunt last year as well. So now she has paid two fines but she has never gotten a fine herself.

Another interviewee described how she borrowed the money to pay her fine, at the last minute, in order to prevent her imprisonment:

The guards came to the door one Saturday morning and told me they would be back on Monday to bring me to prison if I didn't pay. Now this was about a year after I got the fine and I hadn't heard anything from them since then. Anyway, I was ready to go to prison, as I thought I would be out in a few hours anyway, but my sister was afraid that I would lose the kids and that their father would try and use it against me. So she loaned me the money which she had to borrow from a friend.

While a fine is intended to punish the perpetrator of a crime, it is the one sanction where it does not matter who actually bears the brunt of the punishment. For example, community service or incarceration specifically punishes the individual. Even though it can be argued that family members are also punished as a result of an incarceration, no family member can go to prison in place of the actual offender. However, it is possible for someone to pay a fine for someone else. Of the 103 participants of this study, 27 reported that someone else, either a

family member or friend, offered to pay their fine or part of it. Six people stated that they refused the offer. In total, of the 36 people in this sample who paid their fine, 21 received financial help to pay for it.

The ability to pay the fine within a specified time period, and specifically to pay it in one lump sum, was also problematic for many of the participants. The Fines Act 2010 contains a provision to allow for installment payments on a fine, but that provision was never implemented. New legislation recently passed in the form of the Fines (Payment and Recovery) Bills 2014 also includes a provision for payment by installment, and yet at the current time there is no estimation of when this provision will be implemented. As a result, at this time all fines must be paid in full with no allowance to pay in installments. For many offenders, the idea of a lump sum payment seems insurmountable, and as a result they discount even trying to pay it. So while some offenders say they cannot afford to pay the fine, what they are really saying is that they cannot afford to pay in one lump sum. One interviewee explained:

I tried to pay part of the fine but they won't accept that. They want all of it not part of it. All in one go or they won't accept it. I can't pay all that in one go. €200 is a lot of money to be handing out in one go. I thought when he said three months to pay he meant that I could pay it off in the three months, but that's not what he meant. I didn't know that you can't pay it in parts. If I could have done a bit of it every week it wouldn't seem so bad. When they said the whole thing I just said forget about it. They can take me to prison.

One interviewee explained how he tried to save the money to pay:

So for the first few weeks I was putting something by. I gave it to my girlfriend to hold onto. The problem is though when something comes up and you need the money well its' there and you're going to use it. So I think it was one of the kids needed something, or one of the bills came in, so I just said to the girlfriend use the money I was saving for the fine. I didn't bother trying to start again, I mean why? Something else is going to come up. Might as well just accept it.

One interviewee was successful in saving for and paying off the fine, but he was definitely the exception within the sample population:

I had to save some money each week as they wouldn't take it in installments. That was really hard because I'm not good at saving and the money is there and then there is something else you need it for. It would have been better if they took it each week.

While many participants thought they were not given enough time to pay their fine, the length of time to pay is not a hard and fast deadline. However, not all offenders were aware of this, and for many it was through their own experience, or the experience of others close to them, that they discover this. As already reported, only 15 of the 36 individuals who paid their fine actually paid it on time. The average fine amount among those who paid on time was €306 with an average of 7.2 weeks to pay. There is no penalty or repercussion for late payment, and payment is accepted right up until an offender is about to be incarcerated for non-payment—i.e. as a person is being arrested to be taken to prison they can still pay the fine and be released. One interviewee described her situation:

The police came to my job to arrest me. I didn't even know I had a fine. They said I was fined in my absence for littering about a year ago. I was able to call my husband who came to the prison with the money. He had to borrow it from his boss as we didn't have that kind of money lying about. Thankfully the prison officer didn't process me when I told him my husband was on the way with the money. So at least I didn't get a prison record.

Another interviewee also paid his fine at the last minute to avoid prison: "I didn't pay the fine until the police finally came to pick me up on a warrant which was nearly a year after I got the fine. I had forgotten all about the fine to be honest."

Having the financial ability to pay a fine is a primary factor in whether it is paid or not. However, many of those who do pay their fine still have to overcome obstacles in order to do so. While some report having financial help, others miss rent, mortgage payments, or do not pay other bills, and a few save until they have the full amount. Whether people pay or not, affordability is a major factor in both groups, yet it appears to have very little impact on a judge's decision when a fine is being set. For example, the smallest fine amount among the sample was for €50 with 30 days to pay, while the largest fine was €3000, also with 30 days to pay. The offenses for which the fines were incurred were drastically different, hence the disparity in amount, but the length of time to pay is at the judge's discretion. Both offenders reported that they were not asked about their ability to pay at the time of sentencing, but both reported they were employed at the time. Neither of these offenders paid their fine within the 30 days. The offender with the larger fine still had not paid at the time this research was conducted and was currently in default.

Other Contributing Factors

While the issue of finances was one of the most apparent reasons for the nonpayment of fines, several other themes also arose quite frequently. Of the 103 participants, 27 reported that paying the fine was not a priority for them. For many people who receive a fine, especially those for whom this is not their first fine, they know that it can often take a significant amount of time for action to be taken for nonpayment. With that in mind, many people put payment to the back of their mind as they felt they had more pressing issues to deal with. One interviewee explained:

It was right before Christmas so it wasn't a priority for me. I thought I might eventually pay it, but I kind of put it to the back of my mind and forgot about it. It could take years before they come looking for the money so why worry about it.

Even those people who did pay their fines expressed that it was not a priority. Of those who noted that fine payment was not a priority, many said it only became one when the Gardaí called with a warrant for their arrest. One interviewee described what happened:

I was just getting into the car one morning to head to work and I see the guards turning up. I had no idea why they were there. To be honest, I got a bit worried, I thought something might have happened to one of the kids. They said they were here to pick me up for not paying a fine. I'd forgotten all about the fine. I think it must have been well over a year since I got the fine. I wasn't working at the time so I just put it out of my head. Anyway, I had a job on that morning so I had to pay. It was only €100, so I told the guard I would go to the bank machine and get the money and drop it off at the station. He was fine with that so that is what I did.

Several participants explained that ill health, family circumstances, and living conditions were all reasons why their fine was not a priority. For many people who pass through the

criminal justice system issues of addiction, disorganized lifestyles, and homelessness are often prevalent. One interviewee commented, “well I was homeless at the time I got the fine, and well I have a bit of a problem with the drink, so you know well priorities really.” One Garda who spends a lot of his time at the District Court attempted to give some insight into the thinking of some of the offenders. While he expressed that the court had a duty to give some sort of sentence, he expressed his dissatisfaction with the amount of fines being given to many of the defendants:

If you wake up in the morning with no roof over your head, or wondering if you can feed your kids today or even where your next fix is coming from, how highly do you think these people are going to rate paying a fine on their list of priorities? For most it won't even be on their radar. The judge knows this when he is giving out fines. It is a futile exercise. But of course it doesn't fall on the court to worry about these people not paying, it is us that have to try and chase them down and bring them to prison. Do you think I want to take some young single mother to prison for not paying a fine?

The Garda's thoughts align with those of the former Governor of Mountjoy Prison, John Lonergan. Lonergan explained that many fine defaulters live day to day, and for some survival is their biggest priority. Those who have a home and children still prioritize survival way above paying a fine. Bills accumulate, rent has to be paid, and children need to be fed. Even if someone has a job, and it is assumed they can pay, there is often a lot more going on than we realize. He explained:

This really relates back to having the money to pay. Yes, someone might have the money to pay, but they may have a lot of other things to pay also. Do they choose between having the electricity cut off, and paying a fine? They know they can put the fine on the long finger. Let's face it, everyone knows the guards won't be knocking on your door after your 30 days to pay has expired, but your electricity will get turned off. So it slips down the list of priorities. Next month something else gets priority. Even if the judge considers whether a person is employed or not that really tells them nothing. Asking income is ridiculous without asking about outgoings. Rent, mortgage, kids etc. Fines need to be related to a person's ability to pay otherwise it keeps slipping down the list of priorities until in some cases it is forgotten about.

Several participants reported that they did not pay the fine because they forgot about it. In reality, just as Lonergan described, they forget because it is not a priority. More pressing issues push it to the back of their mind until it is forgotten. One participant explained:

I completely forgot about the fine. It was for not having tax on the car. I got the tax all taken care of but I forgot about the fine. We had a new baby and with one thing and another I just forgot about it.

The above participant went on to say that he still had not paid the fine, and it was only because of this study that he had now remembered it. He jokingly went on to comment, "I should probably pay it now that you've reminded me, before I forget again."

Criminal Justice Practices

Practices and policies within the criminal justice system presented problems for many participants. A lack of clarity and a distinct disorganization of the system led to much frustration

not just among the offenders but also among the legal players. While on paper the fine system seems straight forward and a relatively easy sanction to utilize, in practice things are very different. One particular source of disorganization stems from responsibility for the management of the fine system, which is spread across multiple agencies but falls primarily to the Courts Service and on the Garda Síochána. No individual or organization has overall responsibility for the system; instead individuals and units within these agencies have responsibility for different operational aspects of it. The Prison Service only becomes involved at the very end. As John Lonergan points out:

One of the big issues for the prison is that the guards and the courts are the instigators. Not the prison at all. So the guards turn up with these people at the prison gates and the prison has to deal with them. The courts and the police have been ineffective and then it gets passed on and becomes the prison's problem.

Notification of court date. For many people, the system fails in the early stages. Several participants reported never receiving a court summons and were therefore not present in court the day they received the fine. One interviewee described how an unpaid littering fine from the local authority resulted in his arrest. This was the first knowledge he had of an outstanding court fine:

I got a litter fine from the council which I didn't agree with. I tried to dispute it but had no luck there so decided I'd let it go to court and fight it there. But I never received the summons and so the judge just fined me in my absence. I don't know why I didn't receive it. I live in a house with flats so maybe it just got lost among the junk mail for the building, but I never got it. Anyway, when the guards turned up and took me to Mountjoy that was the first I knew of it. I told the guard I was never in court and he said it happens all the time.

Another interviewee, who was not present in court, described how he had the good luck of what he described as a “fairly decent guard.” This particular offender was expecting a summons, but due to his unstable living conditions he moved around on several occasions. He was fined in his absence but accepted that this was justified:

I wasn't in court on the day, but I think the outcome would have been the same. I mean I did the crime. Anyway, I bumped into one of the guards a few weeks later and he asked me why I wasn't in court. I told him I didn't get the summons. He told me to drop by the station and he'd give me the details. So I knew about it then. It probably happens all the time, and I'm not really sure what they are supposed to do, but at least he let me know.

Another interviewee was not as fortunate and as a result was incarcerated for seven days:

I wasn't in court so didn't know I had been fined. I had moved address so I may have got the summons at the old address but wouldn't know. The first I knew about any of this was when the guards came to my door to arrest me for the warrant. This was for defaulting on the fine. I knew absolutely nothing about this. The guards told me I had a fine for €1000 and that I could pay it now or I would have to go to prison for seven days. I told them I didn't have it so they took me to Limerick prison.

Day of court. Of course being in court does not make the process any less frustrating. Confusion was a very salient theme for many in this study, and for many people, especially first timers, the court can be a very intimidating and busy place. The District Court in particular moves at an extremely fast pace and involves many different players. Having spent many hours observing the District Court the researcher can concur with this sentiment. For example,

offenders are only notified if their case will be heard in the morning or afternoon court session. The order of the hearings is pinned to the courtroom door before the session begins. As a result they must report at the beginning of the assigned session. The courtroom fills up with those awaiting their hearing and with the offenders' friends and family as well. All the Gardaí waiting on their cases to be heard are also present, as are the other legal players, such as solicitors, and barristers. As observed by the researcher:

The noise level is high and there is constant activity. People are continuously walking in and out of the court room, chatting loudly and answering their phones. It is often difficult to hear what is being said. While the legal players do have the use of microphones, they only appear to use them sporadically. The court clerk appears to be the only one that uses the microphone consistently when she is calling a case. Although due to the noise levels in the room it is often in vain and goes unheard.

One of the solicitor's explained that he had missed cases being called numerous times: "often you will have multiple cases being heard during the session which means multiple clients, you can be discussing something with one when another is called and just miss it." The researcher observed a similar circumstance:

A case was called and the defendant explained that his solicitor had just gone outside. The judge declared that he was not waiting and the case would be heard on another date. Moments later the solicitor came in and apologized and explained that he had been with another client. The judge still refused to hear the case and moved on.

This is a frustrating scenario for the client and the solicitor. One interviewee explained that missing his case resulted in him losing two days of work. He explained that, as a taxi driver, if he was not out in his taxi he was not earning any money. When he turned up on the second day he was told his case had been dropped. He expressed his frustration:

I was in the court one day, and was waiting with my solicitor. He had to go outside to have a quick briefing with another client and my case got called. I told the judge that my solicitor was just outside but he said no we'll have to reschedule and move on. With that my solicitor came back in and the judge wouldn't hear it. I had to come back another day. The guy was nuts. The case was about my insurance, which I had proof of, so my solicitor was only looking to get the case dropped. He handed the paper to the clerk to give to the judge but he wouldn't take it. He insisted on rescheduling. A week later I turn up with the same judge and before my case is called my solicitor is told it was dropped. End of story. Two days wasted with no work and I still had to pay my solicitor for the two court days.

Follow-up procedures. Many participants reported issues with the system after the court date. Several thought they could pay their fine in installments, while several others expressed that they did not know how to pay the fine or that the process to pay was confusing. While the process to pay in and of itself is straight forward, it appears that the follow-up system is rather protracted and is often where the confusion lies. After the court day an offender will usually receive a Notice of Imposition of Penalty (fine notice), which is then followed-up with a Final Notice (reminder). Several participants reported that they did not receive any notices from the court about their fine, and as a result they did not know what they needed to do. From the courts

perspective, however, the judge's decision on the day is the official notification, and, whether you receive a follow up notice or not, you are still obliged to pay the fine within the time specified on the day the judgment was made. District Court Rules state:

Where a penalty has been imposed by the Court, the Clerk shall send a notice (Form 23.1 Schedule B) to the accused stating that such penalty has been imposed, the amount thereof and the time within which the same is to be paid. Such notice may be sent by ordinary letter post addressed to the accused at his or her last known or most usual place of abode. The failure of the Clerk to comply with the provisions of this rule, or any omission from or misstatement in the notice shall not in any way prejudice the issue by the Court of any warrant.¹⁴

One interviewee commented, "I haven't received anything from the courts yet telling me what to do, so I'll just wait until then and see what happen." For this person in particular 10 months had passed since his court date, and it was perhaps a little naïve to still be waiting on a notice. When further prodded he admitted that, "if they want the money that badly they will come looking for it. I'm not running to them with it."

With some offenders there is a "wait and see" approach, while others are shocked when the guards do finally turn up—in some cases after a prolonged period of time. One person commented, "I thought they had forgotten about it because nearly a year had gone by. You don't expect it to take that long, you expect to get a letter or something, but the guards just turned up with a warrant."

Extension to pay. Another area that caused confusion is the ability to appeal for an extension to pay. If a person does not have the money to pay a fine by the due date they can make an appeal to the court for extra time. Of the 103 participants in this study, only five

¹⁴ District Court Rules, Part 2, order 23, section 11

reported that they were aware that there were resources available to them if they could not pay the fine within the specified time period, and only one person reported utilizing the extension successfully. This is a significant finding since 76 participants reported that they had not been given enough time to pay the fine. One interviewee commented:

I didn't have enough time to pay the fine. I mean €250 is a lot for me to come up with in one month. But there is nothing you can do about it. If you don't pay it within that time you could be arrested.

When asked about the extension one of the Garda pointed out that, as far as he was aware, it was rarely utilized, and most people assume that whatever happens on the day of the court case is the final statement on the matter. He pointed out:

Most people are not really aware of the processes and don't realize that they have resources available to them. The extension of time to pay is one of them. I think sometimes people think well I won't be able to pay in that amount of time so then they don't bother. They don't try to figure out what they can do to help themselves.

While the ability to apply for an extension appears to be a valuable but little known tool, one really does need to consider its worth in light of how the system works at present. Many of the participants reported a great deal of time passing between receiving the fine and a warrant being issued—in some instances beyond the one year mark, way beyond the time period given to pay the fine. A fine can be paid anytime up until an offender is lodged at the prison, and even then if they can gather the funds they can hold off being processed. There is no penalty for late payment. In effect, the system, due to its inefficiency, grants offenders an extended penalty-free

period in which to pay their fines. As a result, applying for an extension appears to be a futile exercise.

Serving warrants. One other criminal justice practice that was controversial among the participants was how the arrest warrant was served to fine defaulters. The methods utilized tended to boil down to one of two options: Either the offender was picked up on the warrant with no advance notice, or a member of the Gardaí notified the offender that a warrant had been issued for their arrest, thereby giving them notice to pay. Of the 41 participants who were incarcerated for nonpayment of a fine, just under 50% reported that they had advance notice from the Gardaí that a warrant had been issued for their arrest.

How the warrant is served appears to be a local issue as opposed to a system-wide procedure. The serving officer also appears to have discretion in the method utilized. One Garda gave his opinion of the situation:

It really depends on what is going on that day. Serving warrants for fines will often be low down on the pecking order, but sometimes a duty Sergeant will get a bit of a bee in his bonnet about the buildup of warrants and decide that today is the day to clear the backlog. So that is it. Out you go and pick them up. Now if I go to pick someone up and let's say it's a mother at home with her kids, well I'm not going to take her in there and then. If she doesn't have someone to mind the kids I'm going to have to call Social Welfare. You don't want to do that. In that case I'll let her know I'll be back and give her time to either come up with the money or make arrangements for the kids. But not all Gardaí will be as accommodating.

Several participants felt that the Gardaí used the outstanding warrants to their advantage. Two interviewees specifically felt that, although the Gardaí knew where they lived all along, and could have served the warrant at any time, instead they waited:

I was heading down to the club for a game of snooker and had my cue with me. Now it was in a case so I wasn't swinging it in my hand or anything. Anyway, the guards stopped me and tried to say I was carrying a weapon and searched me. I had nothing on me and I think they knew they would have a hard time proving the cue was a weapon. Anyway, you should have seen the delight on their faces when they realized I had an outstanding fine. So they arrested me and took me to Mountjoy.

Another participant described how a neighbor had called the police to his house one night because of noise, at which point the warrant was issued:

The guards turned up one evening after the neighbor called and they just issued their warrant there and then. They started off saying they had a complaint about the noise but then started talking about the fines. So they arrested me. Of course the neighbor was delighted and it looked like the police had arrested me because of the noise. Made them look like they were actually doing something.

Not knowing when the arrest warrant is going to be issued, or more importantly *where* the warrant will be issued, caused a lot of anxiety among participants. Some felt that, due to the long periods of time elapsed between being issued the fine and receiving the warrant, perhaps the fine had been forgotten about, while others described it "as a weight hanging around my neck." Many of the participants who already knew they were not going to pay the fine just wanted to get it over with and move on. As one participant described:

If the judge had given me a few months in prison on the day, or community service, I'd be done with it by now. Instead, I can't pay the fine and the threat still hangs over me. I'll be going to prison eventually but I just don't know when. It will be whenever the guards decide.

Other participants described a more compassionate approach from the Gardaí. One interviewee in particular was a student at the time the Gardaí came to execute the warrant:

The guards turned up to arrest me but I had to go into college that day. Anyway, I told them I was on my midterm break next week and could they leave it until then. They were good enough about it and said they would. They never came back, and that was about three months ago. Who knows when they'll turn up again?

Penal warrants for the non-payment of fines expire if they have not been served within six months. The Gardaí then have to apply for the warrant to be reissued with an explanation of why it was not served and what was done to try and serve it. Not having time to serve warrants due to work load does not seem like an appropriate reason, but one member of the Gardaí explained that it is often the case that they are just too busy, and the judges know this. If they get the right judge, however, they can easily get them reissued.

He went on to explain that many warrants are never reissued and the whole case gets dropped—often times because they cannot locate the defaulter, who may have moved to another jurisdiction. There does not appear to be a distinct deadline by which the Gardaí must issue a warrant, the result of which is many defaulters still waiting to be picked up despite having defaulted well over a year or two ago, in some cases. One participant commented, “the prisons

are so overcrowded and it takes so long for them to follow up on the fines it is easier to take your chances and not pay. They never do anything with most fines.”

It would appear that for many people the operation of the fine system is problematic both prior to and post receiving a fine. Some fall foul of the system before they even get started—e.g., by not receiving a court summons—while others express confusion about paying or a lack of knowledge of available resources. The serving of warrants also appears to be a grey area, and for many this unknown is what causes the greatest frustration in the process. These are all areas that should be a straight-forward aspect of the fine process, but emerge for many as a road block to fine payment.

Fairness of the System

Concepts related to issues of fairness, legitimacy and procedural justice, derived from the literature, were incorporated into the questionnaire. These concepts were explored in more depth during the interviews. Also, by interviewing a group that paid their fines along with a group that did not, the study was able to explore if these groups differed in their attitudes about the fairness of the criminal justice system, and if these attitudes had an impact on fine payment. The concept of fairness was examined on two levels. First it was examined in relation to an individual’s own case and second in relation to the criminal justice system overall. To understand the individual’s own case, multiple questions were posed using a five point Likert scale. These questions were not statistically analyzed and were instead used as a guide to further explore the issues in the interviews. The mean scores and standard deviations (SD) are presented in Table 3.

Table 3
Concepts of Fairness

Question	Paid Fine (n=36)		Unpaid Fine (n=67)	
	Mean	SD	Mean	SD
How happy were you with the outcome of your case?	1.84	1.10	2.28	1.17
Do you think you were treated in a fair and biased manner by:				
The Judge	1.97	1.17	2.46	1.21
The Prosecution	1.84	0.86	2.15	1.04
Solicitor/Barrister	3.79	1.08	3.59	1.04
Police	1.58	0.81	1.76	1.08
Do you think you were treated in a respectful and dignified manner by:				
The Judge	2.58	1.28	2.79	1.20
The Prosecution	2.55	1.23	2.38	1.09
Solicitor/Barrister	3.73	1.14	3.59	0.99
Police	1.93	1.21	1.76	1.23

Note. Author's table.

Looking at Table 3 you can see that there is not a large difference between those who paid their fine and those who did not, and it is not surprising that solicitors/barristers came out as the most favorable—after all they were working on the defendant's side. One interviewee commented, “my solicitor was great, he was really trying to push my side. The judge was really rude to him though, which I thought was out of order.” It also appears that those who paid their fine were in fact the least happy with the outcome on the day in court. Several comments from interviewees may clarify why this was the case. One interviewee who did not pay his fine explained:

I mean I suppose I got off lightly when you think about it. I thought I was looking at doing some time, or a much bigger fine at least, so even though I couldn't afford the fine I kind of got off o.k. in the end. I was happy enough with how it turned out.

Another shared similar thoughts:

I'll put my hands up to it. I mean I did it, so I deserved to get something. It could have been a lot worse so I was fairly happy to be walking out that day with just a fine.

Many participants expressed how deeply upset they were with the outcome of the day but still paid their fines. One interviewee explained that, on her day in court, she felt the judge was not even listening. She felt he had already made up his mind and was just going through the motions: "I felt I wasn't there to be proven innocent or guilty, I was just there to be sentenced. I mean the judge was alright, he wasn't rude or anything, just a bit indifferent." When asked why she did not appeal even though she was so upset, she responded:

I didn't think there was much point to keep dragging this out. I mean you have to appeal really quickly and I'm not even sure how to do it. I suppose they're banking on that. I just wanted to put the whole thing behind me and move on. You can never win against these people.

The issue of fairness and bias came up frequently, particularly in the interviews. One trend that became salient was that an interviewee would start talking about the unfairness towards them on the day of court, but would then put this unfairness into the larger context of the criminal justice system:

The judge just listened to what the copper had to say, and was not even paying attention to me or my solicitor. I felt it was really unfair. The whole system is unfair, liberty taking I would say. Everything is totally in the officer's favor, the judge's favor, and the courts favor. The whole system is a joke.

Comments such as these occurred over and over. Participants expressed their unhappiness with how things turned out in their particular case, but ultimately they blamed the criminal justice system as a whole. Calling the system a “joke” became a very familiar refrain.

When it came down to the interviews, and especially with regard to thoughts on the overall workings of the criminal justice system, there was no real difference between those who paid their fine and those who did not. There was a real sense of indignation about how the system was working and about the government’s inaction on the matter. Many referred to the recent economic crash and the recent banking crisis, and they expressed how helpless they felt. One interviewee explained:

I think this whole system has gone beyond a joke. The country is a joke. The politicians are laughing at us little people. They will send some old lady to prison for not paying her T.V. license yet if you’re a banker and fleece the country well that’s just fine. It’s just not right what they are doing to people.

Another expressed similar thoughts:

The amount of people you see in the courts getting fines is unbelievable, and for stupid things. And then they all go to prison for stupid things because they couldn’t pay the fine. The judge already knows they won’t be paying it. Of course now if you were in with the politicians you’d have no problems. They all look after their own.

Participants expressed that they had no faith in the system, and that they had grown disenfranchised by its current mode of functioning. Many expressed that the government was doing nothing to fix the system and instead was wasting the taxpayer’s money. Many believed that imprisoning people for the nonpayment of fines was the most unfair aspect of the current

fine system. Only one participant thought it was fair to imprison someone for the nonpayment of a fine. All others expressed that it should only be used as a last resort and that other methods of enforcement should be utilized, such as installment payments or community service.

Overall there was a general sense of indignation about the amount of money that it cost to imprison someone for default, especially given that the costs of imprisonment usually outweighed the amount of the fine. Several participants expressed a similar sentiment to the following:

The government really needs to think about this, it is a terrible waste of money. It costs more money than the fine is worth and then you don't even have to pay the fine. It just costs the taxpayer more money.

This thought was echoed by another participant:

I don't think the taxpayer even realizes what's going on. Do you think they know that people are being escorted up to Mountjoy every day just to be turned back around, and then not even pay the fine? Some of these fines aren't even very big. All that police time, prison officer time and for what? Absolutely nothing. The government is allowing the abuse of the system.

Many defaulters openly admitted that they were taking advantage of the overcrowded prison situation to avoid paying their fines, and yet despite this admission they were still aggrieved by the costs that were being incurred. They felt that the government was wholly responsible for this situation and that the waste of money was typical of current government practices:

Why would anyone bother paying a fine, if you know nothing is going to happen?

Yeah, they'll go through the motions of bringing you to prison but you'll be out in a few hours. I've no idea how much all that would cost but I bet it is more than the fine. Of course they keep saying they are doing something about it, but nothing ever happens. The government just pays lip service.

Several participants were aware that the government had made moves towards amending the fine system, but they also expressed their displeasure at the non-implementation of the changes. One participant who paid her fine commented, "I've heard them talking for years about passing this Bill and that Bill to improve the fines, but nothing changes. They say they haven't got the resources to actually do anything." This participant was referring specifically to the ability to pay fines in installments—a section of The Fines Act 2010, which would allow offenders to pay fines in installments over a one year period. This system has not been implemented because the government has not yet allocated the resources to install the necessary computer software to deal with the payments.¹⁵ One interviewee who was familiar with this provision of the Act expressed his thoughts:

The government doesn't have the money for the computer system, which I think they estimate would cost nearly a half million yet they have the money to issue warrants, have the guards execute the warrants, have the guards escort people to prison, have prison officers process them through the system, and all for a measly fine. Oh and then guess what, the fine doesn't get paid. They have the money for that alright.

In general, while participants expressed a general discontent with their day in court, they overwhelmingly expressed their dissatisfaction toward the criminal justice system and the

¹⁵ Dail Debate, Sept 26 2013 – Fines (Payment and Recovery Bill) 2013: Second Stage

government. There was a general sense that the current system was broken and that the government was doing little to try to fix it. Even those that paid their fines felt that the system as it stood was fueling the rise of incarceration:

I understand why someone wouldn't pay. Especially if you've already been inside, you have nothing to lose. The government is making it easy. They wonder why more and more people are going to prison ever year, yet they are the ones letting them out in a few hours. I bet if these people had to stay in for the full term they wouldn't be so willing to go. But who can blame them for taking advantage. I would have too if it wasn't for my current circumstances.

Prison as a Deterrent

The most unexpected finding of the study was how little impact the threat of prison had for many people. In fact, for some, prison has become what one participant termed the "easy option." The reason prison has become the "easy option" is the surprising way the prison system deals with fine defaulters. Of all the participants in the study who were incarcerated, only one person was detained for the full period the judge had ordered. All other participants were usually out within 24 hours. For some this is a better option than paying the fine. As John Lonergan remarked:

Prison overcrowding is half the reason so many people are going into prison for fine default. It doesn't seem logical until you realize that most of them are being released in a matter of hours, so why not? They don't have to pay the fine then, and in some cases multiple fines.

When an offender is arrested he is taken to prison, and the Gardaí who escort the offender must remain with them—and they often have picked up multiple offenders—until they are processed into the prison system. One prison officer described the process:

Every day the Gardaí bring in multiple fine defaulters. Sometimes a van full if they have been rounding them up. We never know who is coming so we just have to deal with them as they arrive. So depending on how busy we are will depend on how long they are in for. We try to process them as quickly as possible, but if we are dealing with other things or shifts are changing it can take longer. Once we process them the decision is then made to give them temporary release.

Sometimes they can be out in a couple of hours depending on how busy we are.

Multiple interviewees described a similar scenario to that outlined by the prison officer. Many questionnaire participants also made comments to a similar effect. The system of temporary release for fine defaulters has become so ingrained that many take a casual attitude towards it:

I got stopped in the street for an unpaid fine and they brought me to Mountjoy. When the police handed me over to the prison officers they laughed. I ended up spending about five or six hours in the place. That's it. Sure where would they put me? They have no room. It's a total joke and everyone knows it.

Another commented:

Everyone that has fines just goes to prison for a few hours for not paying. That is what everyone does. I think it was four hours they kept me the last time. I had a couple of fines for about €1000 and that was that. All the fines were wiped out in the few hours. Why would I even bother trying to pay?

Those with the most cavalier attitude towards going to prison are often the ones that have been there before and know the system. One interviewee described her most recent incident:

I was in court that day and I saw one of the Gardaí that I knew. He said to me that he had an outstanding warrant for me for fines and did I want to just get it sorted today. He knows I have kids so he was probably thinking that I didn't have them with me so this would be a good time. So I said o.k. I was back home in a few hours, sure no one even missed me. The kids weren't even home from school.

Many participants described that their intention was always to go to prison. They believed paying the fine was a waste of time. As one person pointed out, "it would take me longer to earn the money than I would spend in prison."

And it was not just the reoffenders that were willing to go to prison. In recent years many more people have been willing to take the risk of going to prison given what they have learned about the system. One participant commented, "everyone else is doing it, why should I pay?"

Another first timer explained:

I had never been in prison in my life. But I was willing to take the chance. I had accumulated a few fines for traffic offences and I knew this would get rid of them. I've had it hanging over my head and I just wanted rid of it. I'd been told I would be out in a few hours, but I still felt I was taking a bit of a risk. But it was worth it. I've a clean slate now, all the fines are gone.

Many other participants made similar comments about the ease of going to prison instead of paying the fine, both in the interviews and in the questionnaire responses, and this refrain was not unique to those who just went to prison. Multiple offenders who are currently in default but

have not had a warrant served yet explained that they are just waiting to be picked up to go to prison. One interviewee even went so far as to try and expedite the process:

I went up to the station one day and just asked them if they could take me now.

The guard on duty just laughed at me. He told me to go home and not to be annoying him. That was about three months ago. I'm still waiting on them. They are probably dragging it out now just to annoy me.

While it may be assumed that those who paid their fines did see prison as a deterrent, this may not necessarily be the case. Several participants reported that they only paid their fine because it was inconvenient to go to prison at the time the warrant was served:

I didn't care about going to prison. In fact I had made up my mind not to pay, but the day the guard came to serve the warrant I was at the farm on my own. My brother who I run the farm with was gone for the day and wouldn't be back until the next morning. You can't leave the animals on their own that long. So I just said to the guard I'll run up to the bank and get the money and drop it off at the station. I was disgusted. I really didn't want to pay.

Others reported paying their fine because family members put pressure on them or because they were afraid of losing custody of their children or losing their job. Others did not want other people to find out. Some were done with having the fine hanging over their heads. Of the 36 participants who reported paying their fine, only five reported that they paid because they did not want to go to prison.

The system of temporary release currently in place appears to have taken away the fear of prison—and not just for those who have been there before. Lonergan sums up the impact this current system has had:

Prison is not a deterrent. The fine is supposed to be the carrot and prison is the stick. But that doesn't work here. It is too overcrowded. So prison is not a deterrent because they know they won't be locked up. They will be out in a few hours and never make it past the waiting room. Overcrowding undermines the value of prison. Knowing you will get out because of overcrowding undermines the use of prison. Most of the general public would be terrified of going to prison, but for many, more and more it would seem, there is no terror. Many of these people have nothing to lose.

It would appear that for many offenders the fine as a sanction has lost its bite.

Conclusion

This chapter presented the key findings uncovered in this study. The findings were presented according to the conceptual framework and research questions and incorporated data from the questionnaires, interviews, and observations. As is typical in qualitative research, extensive use was made of participant quotations in order to allow participants to express their thoughts and opinions in their own words as well as to capture the richness and complexity of the subject. Descriptive statistics from the questionnaire were often used to support a finding.

The findings can be summed up as follows:

(1) Affordability plays a primary role in whether a fine is paid or not, and yet those who do pay often still have to overcome major obstacles in order to do so. Despite this, the ability to pay appears to have little impact when the amount of a fine is being set.

(2) Other factors often get in the way and can impede a fine being paid. Many people have more pressing obligations and a fine often lies low on their list of priorities. However, for

some, not paying is a simple case of forgetfulness, which, again, one could interpret as seeing the fine as a low priority.

(3) The operation of the criminal justice system is problematic for many people. A lack of clarity and a distinct disorganization of the system presents many obstacles. Many reported falling foul of the system at different stages, yet others reported utilizing these failures as a way to delay the inevitable payment or imprisonment.

(4) Overall there was a general sense of unfairness and dissatisfaction with the system—a dissatisfaction that was fairly consistent among both those who paid and did not pay their fines.

(5) It would appear that for many prison is not a deterrent factor when it comes to the enforcement of fines. The current system of releasing defaulters on temporary release has taken the bite out of the sanction. For those who do pay, the fear of prison is not the primary reason for compliance.

Chapter 5: Discussion

The goal of this study was to understand how the experiences and attitudes of fined offenders may have impacted levels of fine default. The study sought to illustrate the complexities involved in the criminal fine process by exploring offenders' perceptions of their interactions with the criminal justice system. This is the first in-depth study in recent years to explore how the experiences and attitudes of fined offenders influence levels of default. The previous chapter presented the findings of this study by organizing the data into categories derived from the conceptual framework and research questions to produce a readable narrative. The emphasis on qualitative research was not used to determine any single causal explanation but rather to understand what the findings and implications are and mean from the offenders perspective. This chapter reframes the participants' narrative into a structured and integrated response to the research questions, and in doing so it also takes into consideration relevant literature and theory.

The chapter is outlined as follows: (a) finances and personal barriers to compliance, (b) criminal justice practices that influence compliance, (c) fairness of the system, (d) recommendations, and (e) limitations and future research.

Finances and Personal Barriers to Compliance

It is evident that finances play a role in whether a fine is paid or not. However, this study also reveals that fine payment is a very complex issue and that many other issues, besides the evident financial ones, work in tandem and often play a role in fine compliance. In other words, it is too simplistic to state that those who pay a fine do so because they can afford to and that those who do not pay cannot afford their fine. What was strikingly different between the two groups was that failure to pay was often the result of rational, economic prioritizing. For some

people, finding the money to pay a fine was low on their list of priorities whereas for others it was a much larger priority, and thus the role of prioritization revealed itself to be just as important as financial means when it comes to fine re-payment.

Past studies of fined offenders have focused almost exclusively on those who defaulted on payment and in agreement with the current study, those reports found that financial ability ranked high among reasons for default (Casale & Hillsman, 1986; Moxon et al., 1996; Raine et al., 2004; Redmond, 2002). However, by failing to include those who paid their fine as a comparison group, it was often assumed in these studies that finances play no role, or at least a lesser role, among that group. What the current study adds to this discussion is that finances are not the sole determiner of fine payment, and that some individuals are more motivated than others to find ways to overcome the difficulties they face. For example, it is evident from the findings that some people just give up as soon as they receive the fine. As one offender commented, “I couldn’t afford the fine and I knew I was never going to pay it, so why worry about it.” Conversely, other offenders did all they could to pay, and sometimes that involved borrowing money, prioritizing payment over other activities, or saving the money until payment became possible.

Congruent with findings reported by Raine et al. (2004), the current study identified poor decision-making at the hand of the courts—e.g., the inappropriateness of financial penalties given to some offenders—as contributing to the problem and as adding to the likelihood of default. Despite passage of the 2010 Fines Act, which requires the court to consider an individual’s financial means when imposing a fine, it appears that many courts fail to do so. Further, even in instances when the courts do attempt to take financial means into consideration, it appears that they do so in only a superficial manner. For example, the assumption that an

individual's employment status equates to their ability to pay revealed itself to be an incorrect and short-sighted method for evaluating an offender's financial means. Albrecht (2013) proposes the 'net income' as a standard for computing fines, wherein the judge takes into account the net income of an offender less daily living expenses of the offender and his dependents.

Ireland is a country that operates a welfare system and thus offenders, even when unemployed, still receive some type of income and support. However, the ability to pay also needs to consider other financial commitments such as rent, dependents, etc. There is no systematic way for a judge to know whether an offender can pay without additional evidence being presented at the time the case is reviewed. Such evidence, which often takes the form of offender self-reporting, may not be accurate or truthful and it certainly impinges upon the court's time. For example, in this study, one interviewee reported that, when asked if he could afford to pay, he told the judge "yes" even though he could not. He feared he would receive a prison sentence if he did not answer "yes" to the question.

Despite the fact that a judge is obliged to consider ability to pay, it is clearly not a priority in the decision making process when a fine is being set. As there is no clear guidance on how to correctly discern ability to pay, this failure is not necessarily the judge's fault. Without a clear standard to determine an offender's ability to pay there is no legitimately consistent way to make an assessment, and unfortunately decisions must be made at the time of the hearing. Naturally, every judge is different, and, as reported by many of the participants in this study and as evidenced by the researcher, punishment may largely depend upon the judge presiding on that day. Again, without a clear set of standards, it comes down to the judge's discretion, and this discretion does not always swing in the offender's favor. Thus many offenders are left with fines they are unable to pay.

Criminal Justice Practices that Influence Compliance

Similar to findings reported by Raine et al. (2004), this study found that the issue of fine default is not just the offender's problem but is rather a more complex issue that involves problems with the criminal justice system more generally. As Raine et al. pointed out, fine default goes beyond the willful disregard of a court order and instead describes default as a symptom resulting from multiple issues. As noted above, some of these issues are related to an individual's financial means, but others appear as issues related to the overall operation of the criminal justice system.

Along these lines, one notable finding of this study was the ways in which the mechanism of Temporary Release (TR) is utilized by the prison system. Temporary release, which has been in effect in Ireland since the 1960s, was never intended to be used as a safety valve to address the issue of prison overcrowding. Rather, it was used to release prisoners for short periods during their incarceration on compassionate grounds (T. O'Malley, 2010). However, within the current system, TR has become an essential tool in assisting the prison authorities in dealing with the influx of prisoners, many of whom are there as a result of fine default. Due to an overburdened prison system, the capacity to punish is severely reduced, as evidenced by the continued use of TR. Drawing on Pontell's (1978, 1985) system capacity model, he makes the argument that a system's resources are integral to a system's ability to punish. Pontell states (1978) that "part of the legal apparatus (courts and prisons) which generates and applies negative sanctions to criminals commands limited resources, and these resources do not increase proportionately to increases in the volume of work to be done" (p. 9). It became apparent early on in this study that many of the fined offenders were aware that TR was used to relieve issues of overcrowding and that fine defaulters were almost guaranteed that they would be given temporary release. As a

result of this widespread knowledge, many of the participants in this study admitted taking advantage of the TR system. In fact, to some degree it appears that use of this tool was actually fueling the increase in default numbers. In effect, the criminal justice system, due to its capacity constraints, was enabling fined offenders to default with little to no consequences.

The threat of prison for fine default is premised on the assumption that offenders make rational assessments about the costs and benefits of their behavior. However, when the threat of prison is taken out of the equation, it leaves little for many offenders to consider. Essentially, they are left with two options: pay the fine or go to prison for a few hours and then have the fine wiped away. For many offenders in this study the choice was easy. They chose prison, albeit in name only. The utilization of temporary release takes away the fear of prison, and fear of prison is, ultimately, the only reliable way to ensure repayment of fines. As it stands, the Irish criminal fine system relies entirely on the threat of imprisonment to deter offenders from defaulting on their fines.

The issue of fine default can thus be viewed from a deterrence theory perspective. Deterrence theory relies primarily on two principles: the *severity* of punishment and the *certainty* of punishment. Among the two, researchers have found that it is the certainty of punishment, rather than its severity, that has the greatest effect on deterrence (Nagin, 2013; Wright, 2010). By utilizing temporary release almost across the board for fined offenders, the Irish criminal justice system has taken away the certainty of punishment. Many of the offenders in this study, even at the early court stage, knew that by receiving a fine they were essentially getting off without a punishment. The certainty of having to serve the full time for fine default was extremely low, and this seem to be common knowledge especially among the repeat offenders. As one interviewee pointed out:

I was hoping I would get off with a fine really. I mean I wasn't going to pay it and then when they brought me to prison I'd be let out straight away. Now if I'd been given a sentence on the day I would have had to do a bit of the time, I mean they won't let you out the door straight away with that. But with a fine you are in and out, sure everyone knows that.

The criminal fine is the most widely used sanction in the Irish District Court, so the chances of an offender receiving a fine are quite high. As witnessed by the researcher, there were many days when every sanction imposed in the court room was a fine. However, when there are no repercussions for default, the impact of the sanction is lessened. This is consistent with findings from Weisburd, Einat, and Kowalski's (2008) study, which found that the threat of incarceration was a powerful incentive to paying court-ordered fines. As discussed by Nagin (2008), however, it was not the threat of imprisonment but rather the certainty of being imprisoned for non-payment that was the contributing factor in the study. The threat of imprisonment was effective due to the certainty principle, i.e. that there was a high certainty that the threat would be followed through on. In a much earlier work, Zimring and Hawking (1973) also identified this caveat of enforcing sanctions. They contended that for a sanction to be effective it was essential that it be applied with a high degree of certainty. Kleiman (2009), in his book *When Brute Force Fails* also argues in favor of punishments that are swift and certain, and he points out that offenders are not rational actors and make cost-benefit analyses based on the here and now. As such, it is essential for offenders to know a sentence will be imposed consistently and quickly in order for a sanction to be effective. The current study revealed that the Irish criminal justice system does not impose prison sentences with the level of certainty required to ensure fine payment.

It would appear that due to the low certainty of punishment for fine default, many offenders in this study make a conscious choice not to pay. After all, as they are regularly processed through the system without consequence, there is no real threat. However, some did report that they knew they were taking a chance by choosing prison, but they appeared to think prison was worth it. Choosing prison is not necessarily a unique phenomenon. In a study of an Intensive Supervision Program (ISP) in Oregon, in which offenders were diverted from prison to ISP, Turner and Petersilia (1996) had eight of the 36 offenders deemed eligible for ISP choose prison instead. They argue that prison may not be as punitive as some other sanctions, particularly if an offender has been incarcerated in the past. They also suggest that “a prison sentence may not be as stigmatizing when an offender returns to the community as it once was” (p. 31).

This brings us to one other factor that needs to be mentioned as an important driver of fine payment—the threat of a prison record. As one participant remarked, “it is bad enough that I have a criminal record now, without adding a prison record to it.” While the threat of a prison record was important to some, this threat was the exception rather than the rule. For most participants, acquiring a prison record did not appear to be an issue, and when discussed with interviewees it hardly registered as a concern for them. After all, Ireland has no ‘check the box’ requirement for employment, such as operates in many U.S. states.¹⁶ There is also a new Bill due to be enacted shortly in Ireland called The Criminal Justice (Spent Convictions) Bill 2012, which will allow for crimes that carry a non-custodial sentence, as well as crimes that carry less than one year of imprisonment to be expunged from an offender’s record after a period of three to seven years (depending of the severity of the crime), provided that the offender does not commit

¹⁶ An employer can ask about convictions if it relates to the specific conditions of employment, e.g. a position for a driver can ask about driving record.

any further offenses within that time period.¹⁷ What this essentially means for imprisoned fine defaulters is that they may eventually have this prison record expunged if they commit no further offenses.

It also became apparent that if a person had already defaulted once, then they would often continue to do so as many pointed out that they no longer had anything to lose. With the implementation of the Criminal Justice (Spent Convictions) Bill 2012 that thinking may change. This current attitude is hardly surprising, however. In their study of recidivism in Ireland, O'Donnell, Baumer, and Hughes (2008) found that persons who were imprisoned for defaulting on a fine were two times more likely to be re-imprisoned than those who received an immediate sanction of imprisonment (85% versus 42%). However, O'Donnell et al. did not go as far as trying to offer an explanation for this, but they did point to the policy implications for this finding and stressed the importance of finding a solution to the growing issue of imprisoning fine defaulters. As they pointed out, "the cost savings would be considerable" (p. 138).

As John Lonergan commented, many people who go through the criminal justice system in Ireland are only concerned with the here and now. For some, there is no stigma attached to imprisonment, and there is even less stigma with regard to a prison record. The long term implications of a prison record are of little concern. Even though fine defaulters spend very little time in prison, usually not even making it past reception, they are still officially processed into the prison system and are in effect creating a prison record if they did not already have one. More than one interviewee in this study did not appear to be aware of that. They seemed to be of the naïve view that since they had not spent any time in prison that they would have no record. It was only when asked what they thought was happening—i.e., when they were being fingerprinted and photographed—that they appeared to put any thought into the issue. Only one

¹⁷ See Office of the Houses of the Oireachtas (2014) for details of the bill.

participant appeared to be concerned as he had thoughts about immigrating to Canada, and he then admitted he had not thought through his decision to go to prison rather than pay his fine. Most participants expressed views similar to those discussed by Nagin (1998), who examined the implications of criminal justice policies that lessened the stigma of incarceration. By increasing the number of people being stigmatized by a policy—in this instance, imprisonment for fine default—the effect of the sanction becomes less threatening.

The fact that so many fined offenders get to this stage in the criminal fine process points to the failure of the fine as an effective sanction. The criminal fine system does not function as one complete system, and this leaves room for multiple grey areas, confusion, and disorganization. This comes as no surprise since in 2000 the Comptroller and Auditor General, on behalf of the Department of Justice, Equality, and Law Reform, conducted a Value for Money Examination of the fine system. It found widespread flaws across the board (Purcell, 2000). Specifically, the report found that there was no overall co-ordination or management of the fine system, and as a result the fine system did not work as intended.

The report also suggested a lack of accountability for the overall performance of the system as well as for individual components, and that it was too easy for managers in one area to attribute problems and deficiencies to another area (Purcell, 2000). With three major branches of the criminal justice system involved in the fine system—The Courts Service, An Garda Síochána, and The Prison Service—there is ample room for failures where breakdowns in one area have major impacts on another area. The findings of the current study also reflect these issues. Many participants reported being tripped up by the system at various stages, as well as not knowing what was going on in their process. From beginning to end, the process is laborious and dragged out, and it often results in an offender having a fine hanging over them for extended

periods of time. Many reported being able to take advantage of the process due to the inefficiencies, and many more reported unnecessary anxiety and frustration as a result of them.

The Purcell (2000) report also made recommendations to the Department of Justice, Equality, and Law Reform, which called for “a coordinated and well thought out plan for the whole fine system . . . if its effectiveness is to be properly managed” (p. 41). Despite this recommendation, little has changed, and two Bills have been signed into law, in 2010 and in 2014, to address the fine system, but no significant changes have been made, and the number of imprisoned persons continue to rise. As recently as July 2014, the United Nations Human Rights Commission expressed concern for the continued imprisonment of fine defaulters in Ireland, and it called for an end to this practice and for the State to fully implement the Fines (Payment and Recovery) Act of 2014 to provide alternatives to incarceration for fine default (Irish Penal Reform Trust, 2014).

Fairness of the System

The Irish criminal fine system utilizes the instrumental model of compliance, which is predicated on the threat of punishment, i.e. imprisonment for failure to pay. However, as evidenced by the present study, this is not always a successful model. Additional research suggests that a normative model, based on legitimacy, is a more effective method to ensure compliance (Bottoms, 2001; Tyler et al., 1986). This model suggests that people are more likely to follow rules and directives when they deem the issuing authority as legitimate. This study incorporated concepts of legitimacy, fairness, and procedural justice, derived from the literature, in order to understand if any of these elements influenced fined offenders.

There was an overwhelming sense among the participants that the system was broken, and that the government was doing very little to fix it. This in turn resulted in a negative overall

opinion of the criminal justice system. This perceived illegitimacy is also related to the issues already discussed, and together they compound to create a high number of fine defaulters. Based on the literature, then, it is expected that those who paid their fines would also have a more favorable opinion of the system and that this opinion influenced their fine payment. However, by including both people who paid and did not pay their fines, this study showed that perceived legitimacy did not impact fine repayment. Although there is a growing body of literature that supports the concept of legitimacy and procedural justice, much of it focuses on public perceptions, and as a result there is a dearth of research that speaks directly to the offender (Hinds & Murphy, 2007; Huo & Tyler, 2001; Tyler, 2001, 2006a). Also, it should be noted that most, if not all, of the research in this area is quantitative in nature, which is opposed to the qualitative method of this study. As a result, the current study allowed for a more in-depth look at key concepts—including normativity, legitimacy, deterrence, and others—in order to understand the role they play.

Thus although it is clear that normative concepts of compliance have little impact on fined offenders in Ireland, it is also the case that, despite negative opinions about the criminal justice system, many people still comply and pay their fines. One reason for this is that extralegal factors—e.g., employment, family circumstances, wanting to move on, etc.—appear to be more influential than how someone feels they were treated by a judge or by the system as a whole. Because this study found little difference between those who paid and those who did not, as well as an overwhelmingly negative opinion of the criminal justice system, it is difficult to know whether a more positive opinion—e.g., a feeling of legitimacy in the system—would have a more positive influence on payment. Changes in the criminal fine system, followed by further studies on the topic, may produce more positive results.

Recommendations

What is clear from the findings of this study is that each case of default tells a unique story, and that each narrative provides a different set of circumstances that lead to default. There is not one clear reason that has contributed to the number of people defaulting on fines but rather a multitude of issues and circumstances that lead to default. Some of these issues are attributable to the offenders themselves and the decisions they choose to make (or not to make). Others are attributable to the workings and inadequacies of the Criminal Justice System. For policy purposes, however, it is issues with the Criminal Justice System that can and should be addressed.

By passing Bills in a bid to deal with the increasing number of people being imprisoned for fine default, the Department of Justice & Equality, through its failure to implement change, is making merely slim overtures to address the issue. Such changes are nothing more than symbolic gestures. In the meantime, The Irish Penal Reform Trust has estimated that imprisoning fine defaulters, even if only for a few hours, costs the State over €2 million in court, police, and prison resources every year (Irish Penal Reform Trust, 2014). One of the main tenets of both the 2010 and the 2014 Bills is the implementation of an installment system to allow offenders to pay their fines over a 12-month period. This has not been implemented due to the associated funds, estimated at €400,000, that are needed to install necessary computer software to deal with installment payments. Without implementing this part of the latest bill, the other improvements to the criminal fine system, which would only come into effect if an offender defaulted on their installments, cannot be implemented. These include a return to court for default, attachment of earnings, recovery orders, and community service. The Department of Justice clearly needs to fully commence the Fines Act 2014 in order to begin to bring to an end the costly and damaging

system that is in place today. Few would argue that the investment of €400,000 in a computer software package is a small price to pay if it means subjecting less people to the current practices. In a 2003 British Home Office Report, the authors of the report pointed to installment payments as being beneficial not just for the courts but also for the offenders, and they argued that for many offenders it is an essential mechanism to ensure some level of payment, as payment by lump-sum is almost impossible for many offenders (Mackie, Raine, Burrows, Hopkins, & Dunstan, 2003).

While paying fines in installments may not be the complete answer to the current problems with Ireland's fine system, it is an important first step. However, not everyone thinks installment payments are a good idea. For example, Young (1989) interviewed Sheriffs in three cities in Scotland and found that many disliked the installment system as they felt it diluted the immediate effects of the punishment by diminishing the punitive nature of the sanction, and at the same time it also prolonged the response to the original offence. This is similar to findings by Searle (2003) who surveyed judges in New Zealand. The same concerns with the installment systems were considered negatives of the overall fine system. As it stands in Ireland, however, the punishment system is already diluted—whether it be through the drawn out court process or due to the uncertainty of punishment due to default. Many offenders in the current study reported that their cases lasted longer than a year, and some even lasted multiple years. Paying by installments over a 12-month period may lessen the length of this process.

The ability to pay still needs to be a consideration when a judge is setting a fine in order for the sanction to be effective (P. O'Malley, 2009). Although that feature is already in place in Ireland, it is clearly not being utilized as it should be. A method of establishing an offender's ability to pay, similar to those utilized in the day fine system (Albrecht, 1987) needs to be

implemented beyond just asking an offender if they are employed or not. A formal process needs to be put in place in order to assess an offender's means efficiently. Even with the implementation of the Fines Act 2014 there will still be people who will not pay their fine. In these instances prison will still be the final act of enforcement. As long as temporary release is used, however, some will still use prison as the more attractive option and will avoid paying their fine.

Limitations

This study endeavored to understand the issue of fine default from the perspective of the fined offender. Also included in this study were several legal players involved in the criminal fine system, or aspects of it, who were able to give their perspectives and thoughts. What was omitted, however, were the views and perspectives from District Court judges. This omission was not by choice. Several judges were solicited for their participation, but none chose to be involved. An understanding of the rationale for setting fines and also for the use of fines despite the high number of people defaulting, would have allowed for another layer of inquiry in this study. One notable study along these lines conducted in Israel examined the perception of judges toward the fine as an effective sanction and found that, while many judges assumed most fines were not paid, they still continued to enforce them as they believed them to be appropriate sanctions regardless of their enforceability, particularly for minor offenses (Einat, 2008). In a similar study on District Court judges in New Zealand, Searle (2003) concluded that judges consider that despite the disadvantages of fines—e.g., the offenders of limited means and the difficulties with enforcement—the fine is still an appropriate, quick and easy to use sanction while still achieving its main goal of punishment. An understanding of the perceptions of Irish District Court judges could certainly add to the literature.

Further, as with all qualitative research, there is a lack of external validity—an inability to generalize findings to other groups, populations, or individuals—since the words represent only those of participants who participated in this study. While the concepts may be generalizable and applicable outside of the current sample, it is never the goal of qualitative research to generalize the results, and as such the findings are limited to those who participated in this study.

Future Research

While the findings of this study are particular to a time and place, they do present a baseline for future research in Ireland. If the Irish government fully implements the Fines Act 2014, it will allow for a comparison study to be conducted. Attitudes and perceptions may change particularly with regard to the fairness of the system. As stated, many participants, including those who paid their fine and those who did not, perceived the system to be broken and had an overwhelmingly negative opinion of the criminal justice system as a whole. It is difficult to know whether a more positive opinion—e.g., a feeling of legitimacy in the system—would have a more positive influence on payment. Changes to the criminal fine system may produce more positive results.

The introduction of installment payments may also present a further avenue of study. The Irish Criminal Justice system is in a unique position to test the effectiveness of installment payments as a fine enforcement tool. A well conceived study has the possibility to test the utilization of installment payments and the impact it may have on the number of people defaulting on fines, thus adding to the literature of best practices in fine enforcement.

Conclusion

The goal of this research was to understand the barriers to fine compliance by examining the experiences and attitudes of fined offenders in Ireland and to contribute to understandings of how practice and policy influence levels of fine default. By drawing on instrumental and normative models of compliance identified in the literature, and by utilizing data gathered from in-depth interviews and questionnaires with offenders who have paid fines as well as offenders who have defaulted on fines, the following research questions were addressed:

Main questions: (1) What are the main barriers to compliance in the payment of criminal fines in Ireland? (2) How do offenders negotiate these barriers in a bid to avoid imprisonment for default?

Sub-questions: (1) What role do financial means play in fine default? (2) Are there other factors working in opposition to or in tandem with financial means? (3) Are there practices within the criminal justice system that inhibit or facilitate the enforcement and payment of fines? (4) Do offenders perceive the criminal fine process as fair and equitable, and what impact do those perceptions have on shaping compliance / noncompliance? (5) Is imprisonment the primary deterrent factor among those who pay their fine, or are there other factors that influence compliance?

The findings can be summed up as follows:

(1) Affordability plays a primary role in whether a fine is paid or not, and yet those who do pay often still have to overcome major obstacles in order to do so. Despite this, the ability to pay appears to have little impact when the amount of a fine is being set.

(2) Other factors often get in the way and can impede a fine being paid. Many people have more pressing obligations and a fine often lies low on their list of priorities. However, for

some, not paying is a simple case of forgetfulness, which, again, one could interpret as seeing the fine as a low priority.

(3) The operation of the criminal justice system is problematic for many people. A lack of clarity and a distinct disorganization of the system presents many obstacles. Many reported falling foul of the system at different stages, yet others reported utilizing these failures as a way to delay the inevitable payment or imprisonment.

(4) Overall there was a general sense of unfairness and dissatisfaction with the system—a dissatisfaction that was fairly consistent among both those who paid and did not pay their fines.

(5) It would appear that for many prison is not a deterrent factor when it comes to the enforcement of fines. The current system of releasing defaulters on temporary release has taken the bite out of the sanction. For those who do pay, the fear of prison is not the primary reason for compliance.

(6) Overall it can be said that while normative methods of compliance may influence some individuals, instrumental methods influence others in their compliance, as each case involves a unique individual set of circumstances. Due to the utilization of temporary release however, it is clear that the instrumental method of compliance, i.e., prison, is no longer an effective tool against many fine defaulters. Given the unfairness and dissatisfaction with the criminal fine system however normative methods may have also been weakened.

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Appendix A: Conceptual Framework

Finances

Employed/unemployed

Dependents

Monthly Income

Amount of fine/time to pay

Personal Obstacles

Outgoings

Changes in circumstances

Lack of understandings

System Oversight

Initial summons

Court/judge

Solicitor/Barrister

Police/Arrest

Prison

Fairness/Equality

Representation

Impartiality

Accuracy

Correctability

Ethicality

Prison/Deterrence

Previous experience

Knowledge of other's experience

Expectations of prison

Implications of going to prison

Appendix B: Recruitment Flyer

My name is Sharon Farrell from the Department of Criminology, Law and Society at the University of California in Irvine. I am currently working on a research project on the imprisonment of criminal fine defaulters in Ireland. The purpose of this study is to examine the procedures and processes of the criminal fine system, and to understand what impact, if any, they have on those who are sanctioned with a criminal fine.

During the course of this study it is my intention to conduct both surveys and in-depth interviews with subjects that have been formerly incarcerated for fine default, those that have received a fine and paid it, as well as legal players from all parts of the criminal justice system that fine defaulters come into contact with. All interviews will be completely anonymous, and no identifying information will be collected. It is anticipated that surveys will last no longer than 20 minutes, and interviews will last no longer than one hour. All surveys and interviews will be conducted at locations that are convenient to the interviewee.

Any help in this endeavor will be very much appreciated. Should you or anyone you know wish to participate in this research I can be reached at the telephone number or email address below. Many thanks.

Sharon M Farrell MA

Dept of Criminology, Law & Society

University of California Irvine

Email: farrells@uci.edu

Tel: 086 663 0207

Appendix C: Questionnaire

1. *What is your gender?* M ☐ F ☐
2. *In what year were you born?* _____
3. *What is your marital status?*
Single ☐ Married ☐ Widow/Widower ☐ Divorced/Separated ☐ Living with Partner ☐
4. *What is the highest level of education you have completed?*
Primary ☐ Some Secondary ☐ Finished Secondary ☐ Some College ☐ Finished College ☐
5. *What is your usual occupation?* _____
6. *What is your nationality?* _____
7. *What is your ethnic or cultural background?* _____
8. *What county do you live in?* _____
9. *What did you receive the fine for? (If you have received more than one fine just tell me about your most recent one).* _____
When did you get the fine? _____
10. *How much were you fined?* _____
11. *What percentage of your monthly income did the fine represent?*
Less than 25% ☐ 25%-50% ☐ 51-75% ☐ Above 75% ☐
12. *How long were you given to pay the fine?* _____
13. *Were you asked for any information about your financial means in advance of your court appearance or when you were in court?* Yes ☐ No ☐
If yes, what financial information were you asked for? _____
14. *At the time you received the fine were you:*
Unemployed ☐ in part-time employment ☐ or full-time employment ☐
15. *At the time you received the fine were you receiving state benefits?* Yes ☐ No ☐
If yes, what kind of state benefits were you receiving? Choose all that apply.
Unemployment ☐ Disability ☐ Lone Parent ☐ State Pension ☐

16. *At the time you received the fine were you the sole caregiver for anyone?* Yes ☐ No ☐
If yes, who were you the sole caregiver for? _____

17. *At the time you received the fine did you have any other outstanding fines?* Yes ☐ No ☐

If you answered yes above please answer the following:

How many outstanding fines did you have? _____

What were the outstanding fines for? _____

How much did the outstanding fines total? _____

18. *At the time you received the fine were you:*

Living Alone ☐

Living with Family ☐

Living with a Friend ☐

Living at a Shelter ☐

Homeless ☐

Other _____

19. *Were you or your solicitor/barrister asked if you would be able to pay the fine within the specified period of time?* Yes ☐ No ☐

20. *Overall, do you think your ability to pay the fine was considered at anytime during your case?* Yes ☐ No ☐

21. *When you were given the fine did you think you would be able to pay it within the specified period of time?* Yes ☐ No ☐

22. *Did you have the opportunity to let the court know if you could not pay the fine?*
Yes ☐ No ☐

23. *Did you think the amount of the fine was fair?* Yes ☐ No ☐

24. *Do you think you were given enough time to pay the fine?* Yes ☐ No ☐

25. *Overall, were you happy with how things turned out that day in court?*

Very happy ☐

Somewhat happy ☐

Neutral ☐

Somewhat unhappy ☐

Very unhappy ☐

26. On a scale of 1 to 5, where 1 equals very unfair and biased, 2 equals somewhat unfair and biased, 3 equals neutral, 4 equals somewhat fair and unbiased and 5 equals very fair and unbiased, please answer the following:

	1	2	3	4	5
Do you think you were treated in a fair and unbiased manner by the judge?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do you think you were treated in a fair and unbiased manner by the prosecutor?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do you think you were treated in a fair and unbiased manner by your solicitor/barrister?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do you think you were treated in a fair and unbiased manner by the police?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

27. On a scale of 1 to 5, where 1 equals very disrespectful and undignified, 2 equals somewhat disrespectful and undignified, 3 equals neutral, 4 equals somewhat respectful and dignified and 5 equals very respectful and dignified, please answer the following:

	1	2	3	4	5
Do you think you were treated in a respectful and dignified way by the judge?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do you think you were treated in a respectful and dignified way by the prosecutor?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do you think you were treated in a respectful and dignified way by your solicitor/barrister?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do you think you were treated in a respectful and dignified way by the police?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

28. Do you think the judge reviewed all the necessary evidence when making a decision in your case? Yes ☐ No ☐

29. *What do you think a judge considers when he is deciding a case such as yours?*

Choose all that apply: Social Status ☐

Employment Status ☐

Neighbourhood ☐

Age ☐

Other ☐

30. *Do you think it is fair to fine someone if they cannot afford to pay?* Yes ☐ No ☐

31. *Did you try to pay the fine or part of it?* Yes ☐ No ☐

32. *How easy was the process to pay the fine? Choose the appropriate box.*

Easy ☐ Somewhat easy ☐ Neutral ☐ Somewhat difficult ☐ Difficult ☐

33. *Did any family or friends offer to pay on your behalf?* Yes ☐ No ☐

If you answered yes above please answer the following:

Who offered to pay and why? _____

Did you refuse their offer? _____

Why did you refuse their offer? _____

34. *Do you know of anyone who received a fine and did not pay it?* Yes ☐ No ☐

If you answered yes above please answer the following:

What happened to them? _____

Did you think the same thing would happen to you? Yes ☐ No ☐

35. *Were your financial circumstances any different after the court case?*

They got worse ☐ They were the same ☐ They got better ☐

36. *If you could not pay the fine were there any resources available to you to appeal the amount of the fine?*

None that I knew of ☐

Yes, but I did not use them ☐

Yes, and I tried to use them but was unsuccessful ☐

Yes, and I used them successfully ☐

37. *What kind of pressures did getting this fine cause you? Choose all that apply.*

Medical problems ☐

Financial pressures ☐

Family disagreements ☐

Employment Problems ☐
Other (please specify) _____

38. *Did you go to prison for not paying your fine (even if you were released immediately answer yes to this question)?* Yes ☐ No ☐

STOP – If you answered YES to the above questions please skip to question 44, if you answered No move on to question number 39.

39. *Did you pay the fine on time?* Yes ☐ No ☐

If you answered no above please answer the following:
Why did you not pay the fine on time? _____

Were there any consequences for not paying on time? Yes ☐ No ☐

If you answered yes above please answer the following:
What were the consequences? _____

40. *Did you ever consider not paying the fine?* Yes ☐ No ☐
If you answered yes above please answer the following:

Why did you change your mind? _____

41. *What financial obstacles did you have to overcome to pay the fine? Choose all answers that apply.*

I could afford to pay ☐
I had to borrow money ☐
I did not pay other debts ☐
Other (please specify) _____

42. *Did you pay the fine or did someone pay on your behalf?*

I paid the fine ☐
A family member paid on my behalf ☐
A friend paid on my behalf ☐
Other (please specify) _____

43. *What would have happened if you could not afford to pay the fine and had to go to prison?*

Lost job ☐
Lost custody of children ☐
Separated from partner ☐
Lost State benefits ☐
Lost housing ☐
Other (please specify) _____

STOP – Because you paid your fine the following questions are not relevant to you. Continue now to question 63.

44. *What financial obstacles would you have needed to overcome in order to pay the fine?*

Choose all answers that apply.

Borrow money ☐

Not pay other debts ☐

Take on extra work ☐

Other (please specify) _____

45. *Why did you not pay the fine? Choose all answers that apply.*

Did not have the money ☐

Did not agree with the amount ☐

Forgot about it ☐

Not a priority ☐

Did not know about the fine ☐

Would rather go to prison ☐

Other (please specify) _____

45. *Did you understand fully why you were being arrested when you were arrested for fine default?*

I had no idea why I was being arrested ☐

Yes I fully understood why I was being arrested ☐

I had an idea that it would probably happen ☐

Other (please specify) _____

46. *How long were you in prison for?* _____

47. *How many days had the judge originally ordered you to go to prison if you did not pay your fine?* _____

48. *Were you released from prison early?* Yes ☐ No ☐

If you answered yes above please answer the following:

Why were you released early? _____

49. *Were you kept in prison longer than the judge ordered?* Yes ☐ No ☐

If you answered yes above please answer the following:

Why were you kept in longer? _____

50. *How long had passed between the time you received the fine and when you were imprisoned?* _____

60. *Do you think it was fair that you went to prison for not paying a fine?* Yes ☐ No ☐

61. *What kind of pressures did going to prison have on you and your family? Choose all answers that apply.*

It led to medical problems ☐

Family arguments ☐

Loss of employment ☐

Loss of custody of children ☐

Benefits were cut ☐

Loss of housing ☐

Split with spouse or partner ☐

Other (please specify) _____

62. *On a scale of 1 to 5, where 1 equals very disrespectful and undignified, 2 equals somewhat disrespectful and undignified, 3 equals neutral, 4 equals somewhat respectful and dignified and 5 equals very respectful and dignified, please answer the following:*

	1	2	3	4	5
Do you think you were treated in a respectful and dignified way by prison staff?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

63. *Was this the first time you ever received a court ordered fine?* Yes ☐ No ☐

If you answered yes above please answer the following:

Did you pay those fines? Yes ☐ No ☐

What happened in those cases when you did not pay? _____

64. *Did you have to overcome similar obstacles as you did paying the latest fine?* Yes ☐ No ☐

65. *How did your experiences in the past when you received a fine compare to this experience? Choose the most appropriate answer.*

Similar ☐

Somewhat similar ☐

Neutral ☐

Somewhat different ☐

Completely different ☐

66. *Do you think someone being charged with a similar offense as you would receive the same sentence?* Yes ☐ No ☐

67. *Do you think it is fair to fine someone if they cannot afford to pay?* Yes ☐ No ☐

68. *Do you think it is fair to send someone to prison for not paying a fine?* Yes ☐ No ☐

69. *How often do you think people actually go to prison for not paying fines?*

Very often ☐

Somewhat often ☐
Don't know ☐
Not very often ☐
Never ☐

70. *Do you think Ireland's current economic situation has impacted the number of people defaulting on fines?* Yes ☐ No ☐

71. *Do you think the current economic situation impacted your ability to pay your fine?*
Yes ☐ No ☐

72. *What other options should be available to people who cannot afford to pay fines?*
Choose all that apply.

Pay in installments ☐
Community Service ☐
Seizure of property ☐
Deducting fines from wages or benefits ☐
Other (please specify) _____

73. *If any of the above options had been available to you would you have utilized them?*
Yes ☐ No ☐

74. *If you were to receive a fine again in the future how to you think you might handle it based on this experience?*

I would deal with it in the same way ☐
I would pay the fine as soon as possible ☐
I would ignore it ☐
I would go to prison ☐
Other (please specify) _____

75. *Have you ever been in prison in the past either for the nonpayment of fines or for any other reason?* Yes ☐ No ☐

76. *Is there anything else you think I should know about the criminal fine system in Ireland?*

Appendix D: Study Information Sheet

*University of California,
Irvine*

Study Information Sheet

The Incarceration of Criminal Fine Defaulters in Ireland

Lead Researcher

Sharon M Farrell MA

Department: Criminology, Law & Society

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- You are being asked to participate in a research study about criminal fines in Ireland. We want to understand your experience with criminal fines and the impact they had on you.
- You are eligible to participate in this study if you have received a fine as a criminal sanction in Ireland. You are also eligible to participate if you are a legal player in the criminal justice system that has contact and interacts with those receiving a fine as a criminal sanction. You must be over 18 years of age to participate.
- The research procedures involve participating in a survey and possibly a follow up interview. The survey should last no more than 20 minutes, and should you choose to participate in the follow up interview that should take no longer than 1 hour.
- There are no possible discomfort(s) associated with this study.
- There are no direct benefits from participation in the study. However, this study may explain the impact being imprisoned for the non-payment of a criminal fine may have on an individuals' perception of the criminal justice system.
- Participation in this study is voluntary. There is no cost to you for participating. You may refuse to participate or discontinue your involvement at any time without penalty. You may choose to skip a question.
- No identifying information will be gathered from the survey.
- With your permission, the interview will be audio recorded. No identifiable information will be gathered either by audio or on paper. The audio recording will be stored on a password-protected computer until it has been transcribed, which will take place within 24-72 hours. You can ask for the audio recorder to be switched off at any time during the interview. You will not be associated with the interview transcripts in any way.
- You will not be paid for your participation in this research.
- The research team, authorized UCI personnel, and regulatory entities, may have access to your study records to protect your safety and welfare. Any information derived from this

research project that personally identifies you will not be voluntarily released or disclosed by these entities without your separate consent, except as specifically required by law.

- If you have any comments, concerns, or questions regarding the conduct of this research please contact the researcher listed at the top of this form.
- Please contact UCI's Office of Research by phone, (949) 824-6662, by e-mail at IRB@research.uci.edu or at 5171 California Avenue, Suite 150, Irvine, CA 92617 if you are unable to reach the researchers listed at the top of the form and have general questions; have concerns or complaints about the research; have questions about your rights as a research subject; or have general comments or suggestions.

Appendix E: Interview Guide for Fined Offenders

1. Can you describe to me your day in court?

Prompts – Fairness/bias (based on answers in survey)

- Respectfulness (based on answers in survey)
- Problems that arose in court

2. You stated in the survey that you were fined _____ amount, which you did/did not pay. Can you tell me about the obstacles that you had to overcome in order to pay/ would have to overcome?

Prompts – based on survey answers talk about: time to pay, ability to pay, personal obstacles, understanding what you needed to do to pay.

3. From beginning to end how easy/difficult was the system to navigate?

Prompts – Talk about difficulties experienced, comments in survey.

4. What are your thoughts about going to prison for the non-payment of a fine?

Prompts – You did/did not go to prison, can you talk me through your experience.

Adjust for those who did not go and paid their fine – fear of prison etc.

Adjust for those who have not yet paid their fine – thoughts on going to prison etc.

5. If you got a fine again in the future how do you think you would deal with it based on your past experiences?

Prompt – discuss answers from survey, go to prison, try to pay off etc.

6. Talk about distinct issues individuals may have highlighted in the survey if not already covered.

Appendix F: Interview Guide for Legal Players

1. Can you tell me about your role with the criminal fine system?

Prompts – Specific job and length of time in role. Contact with fined offenders.

2. Can you describe to me your experience working with the criminal fine system?

Prompts – frustrations, difficulties.

3. Can you tell me how you think the system has changed since you have been involved?

Prompts – Has it got better/worse? Role of new legislation.

4. Can you tell me about the pressures you experience in your role due to the increased number of defaulters in recent years?

Prompts – Adjust question for specific roles, e.g. ask about prison crowding, back logs in serving warrants etc.

5. What do you see for the future of the criminal fine system?

Prompts – changes in legislations – for the better/worse. How will they impact your role?