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THE ENFORCEMENT OF FINES AS CRIMINAL SANCTIONS:
THE ENGLISH EXPERIENCE AND ITS RELEVANCE TO AMERICAN PRACTICE

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ABSTRACT

This report presents findings from a study of four English magistrates' courts with respect to strategies for setting and enforcing criminal fine sentences. It complements earlier research on the use of fines in American criminal courts conducted by the Vera Institute and the Institute for Court Management (Hillsman et al., 1984). The principal source of empirical data for the current study are samples of cases from three urban and one town magistrates' courts that target offenders convicted of non-trivial offenses who were at risk of being sentenced to a term of incarceration and who, because of their poverty, were at risk of non-payment if fined as an alternative sentence. Quantitative case record data are augmented by extensive qualitative data obtained from interviews with court and other criminal justice system personnel and with civilians involved in fine enforcement and from observation of all aspects of the fining process. The qualitative data focus particularly on the two most coercive fine enforcement techniques used in England--distress (seizure of property) and committal to custody for fine default.

The data suggest that fines are near the core of English sentencing policy, including their use as the courts' major alternative to imprisonment; they are used frequently for non-trivial offenses and for offenders characterized by prior offense records and limited financial means. The data suggest further that, in setting fine amounts, magistrates emphasize the severity of the offense and do not always review thoroughly the information available to them on offenders' means. Thus, the total fine amounts set are often high and inconsistent with offenders' means; this is evident especially when the total financial penalty imposed by the court (and referred to as "the fine") includes restitution payments.

Overall, the empirical evidence collected supports the basic assumption underlying the sentencing system--that fines, when set rationally in relation to means as well as offense severity, can be collected from offenders, even when they are poor. Voluntary payment and the degree of success courts have eliciting payment are directly related to the size of the fine obligation imposed and the degree of the compatibility with an offender's means. Courts with the most successful fine enforcement strategies are those that use short terms for payment (rather than longer installment plans), and that identify non-payment swiftly and react rapidly and personally with a steady progression of responses characterized by mounting pressure and increasing threat of more coercive techniques: first the seizure of property (distress) and, only then, committal to custody. The research also shows that courts rarely exhaust the enforcement options available to them before they resort either to the most coercive (and most costly) enforcement device--

committal to prison--or to writing-off the fine as uncollectable. In particular, many courts fail to try distress, despite a recent increase in its use in England, and its apparent effectiveness. Distress, as do other enforcement techniques, works primarily by threat rather than by the actual seizure and sale of property.

The study makes a series of policy recommendations for American courts interested in expanding their use of fines or in improving current fine collection and enforcement activities. The recommendations also suggest ways English magistrates' courts might improve their own operations to further enhance the credibility of this important sanction. The recommendations focus on the need to professionalize fine administration and to rationalize decision-making processes, especially by centralizing the responsibility for fine enforcement; by experimenting both with a day-fine system of setting fines in relation to offense severity and offender means and with distress as an enforcement device; and by expanding options available to the court when committal to custody for default appears the only remaining means of ensuring the fine sentence is enforced.

ACKNOWLEDGEMENTS

The current research on fine enforcement in England grows organically from a broader, exploratory study of fining in American criminal courts completed by Vera in 1984. The study of American practice was stimulated initially by the National Institute of Justice, which has provided primary financial support for both projects. Therefore, we wish particularly to thank Bernard Auchter and Cheryl Martorana of the Adjudication Division of NIJ for their encouragement and substantive contributions during the course of this research, as well as for their willingness to sponsor a study conducted far from home. We anticipated at the outset that the magistrates' courts in England would be a strategic research site, providing timely, policy-relevant information not readily available from American sources. The Vera Institute's ten years of action research in England, conducted in collaboration with British colleagues, particularly in the Home Office, encouraged us to proceed. Now, at the conclusion of our work, we hope that both British and American readers of the project's reports will share our view of the utility of this cross-cultural research.

We appreciate the cooperation extended to us by the Research and Planning Unit of the Home Office, without which this study could not have been done. In particular, Bronwen Fair, David Moxon, Patricia Morgan and Hugh Pullinger provided enthusiasm, encouragement, advice and considerable support when it

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Others associated with the Vera Institute's London Office provided tireless, skilled assistance as we attempted to understand the complex process of fine setting and administration in four diverse and geographically disparate magistrates' courts. Mary Baginsky carried out much of the qualitative interviewing and generally supervised the collection of case record data. The quality of the empirical data owes much to her sensitivity

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Finally, we offer thanks to the many people, at the four research sites, on whom the success of England's sentencing policy of relying on fines as the sentence of choice rests so heavily. In particular, the Chief Clerks and their staffs gave generously of their scarce time, their considerable knowledge, their broad expertise, and their insights into the strengths and weaknesses of the fining process. The magistrates themselves were always concerned and helpful, despite our intrusions and endless questions. The Chief Constables and members of their police forces offered us much needed assistance as we sought access to past record information. And the Governors and staffs at the prisons we visited were always cooperative and informative as we tried to understand the problems fine enforcement pose for them.

We hope our manuscript manages to convey the dedicated and competent professional service these individuals provide in what is a central, but often difficult and generally unheralded part of the criminal justice process. We have drawn upon their own observations and critiques to enrich our understanding of the problems they face day-to-day. We hope we have carried out this task accurately and with sensitivity.

It is our hope that, by putting together what we have learned about the strengths and limitations of current fine setting and enforcement practices in magistrates' courts in England and by attempting to place them in a systematic framework, we will stimulate creative policy discussion and encourage experimentation and research both in England and in the United States. Fines have been demonstrated to be of considerable use as a punishment, within the rather narrow repertoire of criminal sanctions, and we believe their use could be extended further; but fines have almost been ignored in policy discussions and research, especially in the United States, in large measure because the sentencing activities of lower courts generally have been neglected. We view this set of empirical studies as one step toward rectifying this situation.

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CHAPTER I

INTRODUCTION: STUDY OBJECTIVES AND APPROACHES

One important trend in contemporary criminal justice policy and research has been a search for ways to expand the repertoire of sentencing options available in criminal cases and to provide meaningful alternatives to incarceration as a sanction. The improvement of fining practices and the expansion of the use of the fine as a sentencing alternative seems an obvious direction for policy consideration. The fine is a penal sanction already in place and extensively used in legal systems on both sides of the Atlantic. Its overall use as an alternative to short-term custody has been growing, at least in Europe. But, until quite recently, little has been known about how the fine is used by different types of American courts for different types of offenses and offenders. As important for policy-making, there has been even less information available about the enforcement of fine sentences in the United States: are fines paid and, if so, how, by whom, and after what types of official enforcement activity?

During the last decade, research on the use of fines has been undertaken both in England (e.g. Softley, 1973, 1978; Morgan and Bowles, 1981; NACRO Working Party, 1981; Casale, 1981; Softley and Moxon, 1982) and in the United States (Hillsman et al., 1984; Gillespie, 1980, 1981, 1982). An important implication of this research is the need to focus more explicitly on the link between the way fine sentences are im-

posed and the methods by which they are collected and enforced. Previous studies have acknowledged, explicitly or implicitly, the importance of this link but most have focused on one or another discrete aspect of the fine as a sentence rather than exploring, as we do here, fining as a process in which imposition and implementation (collection and enforcement) are inextricably interwoven.

We stress this view of fining as a process for a number of reasons. Unlike many other major criminal penalties, use of a fine often involves the court itself and its agents in actions (anticipated in, but extending beyond the handing down of the sentence) to ensure punishment is achieved through payment. Many courts both here and in Western Europe rely extensively upon fine sentences; in these courts, the fine is a thread running through the fabric of the court's activities. It tends to involve often complex relationships among most units of a court's staff and other elements of the criminal justice system. In an English magistrates' court, fining requires interaction between lay or stipendiary (paid) magistrates making up the local bench, the clerk of the court, the clerical and administrative staff, the police, the bailiffs (often civilians), the probation officers, and the local prison staff.

Furthermore, fines work is often these courts' main activity. The activities entailed by the use of fine sentences embrace the full spectrum of court functions: court appearances (sentence sessions, means inquiry sessions); administrative paper work (record keeping, money transactions, accounting, pre-

paring warrants and other instruments); contact with the public (money transactions and discretionary decisions as to payment involving offenders and victims owed compensation); and enforcement action (execution or delegation of enforcement measures). The close examination of this complete set of activities undertaken for this study leads us to the conclusion that the final outcome of a fine sentence (payment or non-payment of the fine) depends as much upon how the initial stage--the imposition of the sentence--is handled as it does upon the post-sentencing strategies employed to implement the sentence, and that successful management of the complex interaction between sentencing and enforcement decisions is crucial.

Finally, for some and perhaps many court systems that rely on fine sentences as a means of punishment, the outcome of the fining process--payment of the sums imposed by the courts--is closely connected to the financial maintenance of the court system, often even directly providing revenues to fund the courts.

Thus, in understanding how fines are used as criminal sanctions, we believe it is important to view the imposition of the sentence as inextricably linked to its implementation. The viability of the fine as a criminal sanction--the ability of the court to ensure punishment through payment of a financial penalty properly imposed--depends upon the integrity and internal consistency of the overall fining process.

In England, the fine is a central part of the criminal justice system, having long ago established its position as the mainstay of the sentencing process. Thus, recent evidence of

uneven patterns of success in fine collection in courts across England has attracted policy attention and has led British researchers to explore better techniques for setting fine amounts and for enforcing fine payments, rather than to call into question the policy of using the fine sentences extensively.¹ In the United States, however, despite the widespread use of the fine, the existence (or at least the perception) of collection problems and enforcement failures discourages policymakers from closer examination of the potential for improvement and expansion of the fine's use as a punishment (Hillsman et al., 1984).

In both systems, however, evidence of the frequent failure to implement the fine successfully or of the considerable difficulty and expense of being successful, would certainly affect the ways fines are used in sentencing practice. If fines imposed by a court are commonly disregarded by fined offenders, then the fine has little or no efficacy as a sanction. If, on the other hand, fines are collected in a high proportion of cases then the fine may have credibility as a criminal penalty. It is also likely that improved efficient enforcement would

¹In Western Europe there is clear evidence of the commitment to fining as the major sentencing form. In the Federal Republic of Germany, there has been a recent trend similar to that seen in England over a somewhat longer period in favor of the fine rather than short-term imprisonment. Efforts to improve fining have led to introduction of a day-fine system (discussed below) loosely based on the Swedish model. The day-fine concept, though not yet adopted in England, has been seriously considered in the past and is again under consideration as a means of refining a process upon which the criminal justice system heavily relies. (See Casale "Fines In Europe," New York: Vera Institute of Justice, 1981).

influence the patterns of fines use: if judges or magistrates become aware that fine sentences will be collected, they may become inclined to consider their more extensive use than if they believe offenders ignore fine payment with impunity. It is equally likely that improvements in the way judges or magistrates impose fines (i.e., sentences which are appropriate with respect to their amount and the terms set for payment) may have a positive influence on collection: enforcement staff may work with greater conviction and purpose if they perceive that defaulters are willful rather than unable to pay.

Although information about fine imposition and enforcement practices is of central importance to developing effective strategies for using the fine as a sanction and for expanding its potential as an alternative to incarceration, there has been almost no descriptive or analytic research in this area in the United States. The recently completed exploratory study of the use of fines in American courts undertaken jointly by the Vera Institute of Justice and the Institute for Court Management, and funded by the National Institute of Justice (Hillsman et al., 1984) indicates that fine imposition, collection and enforcement practices vary widely across this country. Some American criminal courts (especially those of limited jurisdiction) appear to use fines extensively and to be relatively effective in collecting them; others use them much less frequently and seem to have difficulty in enforcing them. Nevertheless, fining is clearly an important part of American sentencing practice. However, data on specific American courts and their experiences with

different strategies for imposing and collecting fines remain fragmentary.

The situation in England is appreciably different. The fine has long been regarded as an important sentencing option in English courts. Over the past half century (particularly during the past ten to twenty years), fines have increasingly displaced custodial sentences for many types of offenses. Because of this, information on many aspects of the fine collection and enforcement process are available in the records of the lower courts and there has been some empirical research undertaken to examine various aspects of the fining process in these courts.

The important nexus between imposition and enforcement is also recognized by at least some British practitioners and policymakers, as is the role of the fine as an alternative to incarceration. As former Home Secretary William Whitelaw observed,

The fine occupies a central position in the range of sentences available to the courts. As such, the effectiveness of the fines system is not merely important in itself; it has a crucial part to play in avoiding the unnecessary use of imprisonment, with all the difficulties which that creates.

Confidence in the system of fines depends in no small measure on the effectiveness of the enforcement arrangements. If the imposition of fines is not followed by their payment, and if a significant portion of offenders who are fined as an alternative to being sent to prison merely end up in prison as fine defaulters then the value of fining is to that extent diminished. (Forward to NACRO Working Party Report, 1981.)

The experience of English magistrates' courts with respect to the collection and enforcement of fines should be of con-

siderable relevance to American policymakers interested in the possibility of better (and perhaps wider) use of the fine as a sentencing alternative. The magistrates' courts, which have criminal jurisdiction roughly analogous to that of American limited jurisdiction criminal courts, handle all aspects of over 90 percent of the criminal cases in England and Wales, and fines are used in approximately 86 percent of their sentences (see Table II-1, p. 30 below). Additionally, when a fine is imposed by the Crown Court (which handles jury trials and sentencing in more serious cases), it is the magistrates' court which is responsible for collecting the fine. The accounts kept by the administrative staff of every magistrates' court are audited periodically, and techniques of collection and enforcement are a frequent subject of discussion at professional conferences of senior court administrators.

As in the United States, imprisonment--or, more accurately, the threat of imprisonment--has long been regarded in England as a primary tool for enforcing the payment of fines. But, perhaps because of a greater desire to employ fines as alternatives to incarceration, the English have also given considerable attention to other available mechanisms to ensure payment of the fine. Some of these, such as the systematic use of reminder letters or the issuance of warrants and summonses to defaulters to attend court hearings, are known in American courts (especially warrants) although they are not always used in the same ways. Other mechanisms employed by English courts, such as the attachment of earnings and the issuance of distress warrants

(seizure of property), are authorized by statute in some American states but appear to be used rarely in practice.

Because the English legal system has so much in common with the American system, and because policy and practice with respect to fine use and enforcement have developed to a considerably greater extent in England than in the United States, it should be possible for Americans to gain useful insights in this area through examination of the English system. This study is meant to provide a step in that direction.

A. Objectives of the Study

The current research was designed to achieve three principal objectives. First, it has sought to describe how specific fine imposition and enforcement procedures actually work in several English courts, and to identify the problems that exist with respect to particular procedures. Second, it has attempted to assess the implications of these practices and problems for issues of interest to current American research and policy development, in particular for concerns about the efficacy of the fine as a sanction for non-trivial offenses and for offenders who are both poor and have prior criminal records. Third, drawing on this analysis, it has developed suggestions regarding imposition and enforcement practices with which, in the light of English experience, American lower courts might experiment.

For policymakers interested in the effective use of the fine as a sentencing alternative (including as a way to reduce reliance on short-term custodial sentences), the heart of the

problem is the poor defendant accused of a non-trivial offense. In many American lower courts, the use of a fine in such cases is often thought to be inappropriate, because of what is perceived as a high likelihood that the fine either cannot or will not be paid by the offender. Given the lack of other enforceable options for punishment, the result is frequently the imposition of a jail sentence, often for a period of several months. The English appear to take a somewhat different view of the matter, commonly using a fine even when American courts might sentence the offender to jail. It is this apparent difference--and the practical experiences that underlie it--which makes an examination of fining practice in English magistrates' courts a potentially worthwhile undertaking.

From an American perspective, two aspects of the English experience seem especially relevant. The first is the extent to which the fine is used in cases where, in many American courts, there is a greater likelihood that the offender would be sentenced to a short jail term. What happens in English lower courts when a poor defendant with a prior record is convicted of a non-trivial offense? How often do such courts impose a fine sentence in these cases? In what amounts? To what extent (and how) are offenders' economic circumstances taken into account in setting the amount of the fine? What other factors (in particular the offender's prior criminal record and his past record of paying) appear to influence the choice of a fine sentence as opposed to other sentencing options? Are potential payment problems taken into account at the time the fine sentence is announced in court?

The second aspect of interest to Americans relates to specific methods of enforcement. With what frequency are the different methods available actually used by particular courts? How do they operate in practice? What are the consequences of different enforcement strategies for the court, in terms of both the difficulty of their use and the sums collected? What are the consequences of different enforcement strategies for the fined offender, in terms of what he actually pays, how long he has to pay, and possible hardship on him and his family?

B. Research Approach²

The approach followed in this study has been to combine the collection of qualitative data from interviews and observations with the collection of quantitative data from actual case records. Because the research in this area of sentencing practice is still largely exploratory, the techniques employed for the analysis of these data are basically descriptive. The principal goal has been to describe the practices used in imposing fine sentences on selected types of non-trivial cases in the magistrates' courts and to follow through with these cases and describe how the fines were collected and enforced. In doing so, we have tried to identify practices and problems that are likely to be of particular interest to American policy-makers and practitioners.

²For a more detailed discussion of the various parts of the research methodology, see Appendix A.

1. Site Selection

The study examines the workings of four English magistrates' courts in some detail, setting this examination in the context of the magistrates' court system as a whole. The decision to focus on several individual courts derives from the need to go beyond aggregate statistics in order to explore in depth how the fine systems of various courts work and to obtain a sense of how different structural factors, local cultures, and operating procedures interact.

The substantial time and research needed to examine the operations at each court dictated a small number of sites. Obviously, no group of four courts constitutes a representative sample of the more than 600 magistrates' courts in England and Wales.³ In selecting four sites for intensive study, we chose courts in distinctly different geographic areas and also focused on several other factors of particular importance to the fining process: the transience of the population; the socio-economic status of the offender population; the nature of the court's criminal caseload; and the type of fine enforcement strategy generally employed by the court.

³The administration of justice in the United Kingdom is not subsumed under one system. Scotland and Northern Ireland have separate court systems, although politically integrated with the rest of Britain. Despite some measure of government decentralization in recent years, Wales is separate from England neither politically nor as regards the administration of justice. Reference to the system in England and Wales concerns a single system of magistrates' courts and Crown Courts operating throughout these two areas.

Transience was considered an important factor because any system of collecting money is more difficult when the debtor population is on the move. Overall, the English do not seem to move as frequently as Americans do. Moreover the long welfare state tradition of public (Council) housing encourages the poor, even those who move often, to remain on Council lists in order to obtain subsidized housing.⁴ One would expect that the urban areas of England would have the highest rates of transience, as does urban America. Magistrates' courts in these areas are somewhat similar to the big-city limited jurisdiction criminal courts in the United States in terms of the types of crimes that make up their caseload and in the low socio-economic status of their defendant populations.⁵ For these reasons, we selected three magistrates' courts located in urban settings: one in Inner London and two in major urban areas in England's industrial heartland that have been hard hit by recent years of recession. For the fourth court, we selected a small provincial center; it provides an interesting contrast to the urban courts and also has much in common with many American courts located outside large cities.

⁴The outcome (though not the impact) of the Council housing list is analogous to the police register in the Federal Republic of Germany. A large proportion of the population is traceable by a relatively simple method. There exists, however, in both societies a small minority who is not on official lists and whose whereabouts cannot be formally traced.

⁵However, there is a distinct difference in terms of the nature of crimes of violence. Weapon involvement, and in particular the use/presence of guns, is rare in English cases.

We also wanted to study courts that relied upon different fine enforcement strategies, in order to get a picture of the way in which particular techniques work in practice. In this connection, we were especially interested in the use of property seizure (or "distress") as a tool for fine enforcement.⁶ During the past several years, the use of distress has increased dramatically in English courts, and it is a technique which may be of particular interest to American policymakers and court administrators. Two of the four courts selected for examination make considerable use of distress while the other two did not use it at all during the period covered by our research. Another area of interest was the use of different types of mechanized recordkeeping systems in fine enforcement. One of the four courts in the study had a semi-automated system for monitoring fine payment status and for producing fines administration/collection documents; the others operated entirely with manual systems. Since the time of our research, two of the four courts have started the process of converting to computerized systems.

The relevant characteristics and operating procedure of each of these four courts are discussed in some detail in subsequent chapters, but it may be helpful to provide a brief broad sketch of each court at the outset:⁷

⁶When a fined offender is in default, the court may issue a warrant authorizing the forcible seizure and sale of the offender's personal property in order to pay the amount in default. Such warrants, which are usually executed by bailiffs who are private businessmen under contract to the court, are known as "distress warrants" and the overall process is referred to as "distress."

⁷For a matrix of the main characteristics of each court, see Appendix A, Figure A-1.

CAPITAL COURT. Capital court is one of the sixteen magistrates' courts located in Inner London. The neighborhood it serves encompasses mostly low-income housing and equally rundown commercial premises. The local population is primarily working class and engaged in manual labor when employed. Although there are no official unemployment figures for this area, the neighborhood is generally characterized as one suffering from economic depression and there are clear signs on the streets that support the view that many people are out of work. Inside the busy courthouse, the administrative operations of the court are headed by a Chief Clerk who is known for his concern about efficiency. The court has adopted a semi-automated system of fine collection. About a year before this study began, the court started using distress as a tool for collecting fines from offenders who failed to pay on time in certain types of cases.

MIDLAND COURT. This court is located in the industrial heartland of England, in a city hard hit by the decline of British heavy industry. The court is housed in an ancient building in the center of the city. The growth in the court's business has meant that its quarters are very cramped, and every morning the dark corridors outside the courtrooms are overflowing with people waiting for court to begin. The court's Fine Office operated entirely on a manual basis during the period of the study, although planning was underway to install a computer-based collection/enforcement system. It did not use distress at all during this period.

WEST COURT. Like Midland Court, West Court is located in a city that has been hit hard by years of recession. The unemployment figures are some of the highest in the country. Everywhere are the signs of businesses closed down, and of factories now silent. The courtrooms and most of the court's administration offices are located in a large Victorian building. The court's Fine Office is located across the street from the courthouse along with other units of the court's administrative staff. They are housed in a modern block of offices sandwiched among various local authority services; the large open plan office contrasts sharply with the atmosphere of the courthouse. West Court now has its own computer, and its fine collection and enforcement system is automated, although at the time of our research it was still in the process of transferring fines administration records to the computer from the old manual system. It makes no use of distress as a tool for enforcement.

EAST COURT. Offering a striking contrast to these three urban courts, East Court serves an ancient provincial town where the unemployment rate is well below the national average and the middle class component to the population is noticeable. The town center is spruce and attractive, and there is evidence of well-being in the busy smart commercial streets and the modern shopping precinct. There are two courtrooms, both located on the main floor of the imposing Edwardian town hall which occupies a central position on the main high street of the town. The court's administrative offices are across a narrow side street, in a nondescript old building. The court's Fine Office

occupies a portion of the cramped space here, operating with a small staff on a totally manual basis. Like Capital Court, East Court uses distress as a major tool of fine enforcement.

2. Data Collection Methods

By comparison with the United States, much was known about fine practices in England prior to this study. Our data collection efforts, therefore, focused specifically on those aspects of fining of interest to an American audience, but about which there was little or no published information.

One early key decision was to focus the collection of quantitative data on particular categories of cases. We knew from previous English research both that fines are used for a very wide range of offenses, and that the nature of the offense as well as the prior record of the offender affect default rates. Persons fined for road traffic offenses, for example, seem to present a low risk of non-payment while defendants accused of property offenses (e.g., theft) are appreciably more likely to fail to pay their fines (Softley, 1977: 17-18). Offenders with extensive prior records seem to pose a higher risk of non-payment: one study reported that 46 percent of fined offenders who had three or more prior convictions were in default after 15 months (Ibid., 21).

For reasons of American policy interest noted above, we were especially interested in looking at cases where for some reason--especially the non-trivial nature of the offense or the existence of a long prior record--the defendant appeared to be a

likely candidate for a custodial sentence, and where there appeared to be a real risk of non-payment if a fine sentence was imposed. If expanded use of the fine is to be seriously considered in American courts, particularly as a sentencing alternative, it should be helpful to know both how it is used in these cases in England and how it is enforced.

Given these parameters, we focused our case record data collection on two categories of offenses which are among the more serious handled by the magistrates courts:

- a) those involving certain offenses against property (i.e., shoplifting, taking and driving away a motor vehicle, other types of theft, handling stolen property, criminal damage); and
- b) those involving certain offenses against the person (i.e., assaultive behavior without a weapon or serious injury to the victim).

Furthermore, we limited the samples to cases involving defendants who had applied for legal aid (i.e., requested the court to authorize the expenditure of public funds to reimburse a solicitor for representing the defendant). The rationale for this is three-fold. First, as such an application for legal aid suggests, the defendants are at the lower end of the income scale. Second, because legal aid is not granted automatically in magistrates' courts, even upon a showing that the defendant has little or no income or property, defendants who apply for legal aid tend to be those at some risk of being imprisoned if convicted, either because they have a prior record or because the offense charged is non-trivial. Third, when a defendant applies for legal aid, the court record includes detailed self-reported information on the defendant's financial circumstances.

Thus, the cases selected for this study and for which court and police records have been examined are those involving offenders for whom imprisonment is likely but who would also seem to present a risk of non-payment if sentenced to a fine. To study such offenders in each of the four courts, we drew a general sample, consisting of 1263 cases, approximately 300 at each court, involving offenders sentenced following conviction for property or assaultive offenses. In addition, we analyzed in greater detail a fined offender sample, consisting of 444 cases--approximately 100 cases from the general sample in each court in which there was a fine imposed at sentence

For each case in the general samples, we obtained data on the specific charges against the defendant at the time of arrest and at conviction; the offender's age, sex, economic situation, and prior criminal record; and the sentence imposed by the court. From this information we can build a general picture of sentencing patterns in the four courts and, despite the small sample sizes, we can address a number of specific questions about use of the fine as a sentence for offenders who appear at risk of incarceration or non-payment if fined.

The fined offender sample consists of 444 of the 524 offenders in the general sample who were sentenced to a fine (85%). The data on each fine case was supplemented by information on the amount and terms of the fine sentence (provision for payment by installment, etc.) and on the details of the payment/enforcement process. At East Court, we were able to obtain data on the terms of the fine and on the collection and

enforcement process for all 115 general sample cases in which the offender was sentenced to a fine. In the other three courts, however, incomplete records made it impossible to obtain this information for every fined offender in the general sample. Thus, although the characteristics of the 444 cases in our fined offender sample are very close to those of the 524 cases in the general sample that resulted in fines, we have analyzed the two samples separately. We have information on case history, case characteristics, and offender characteristics for a sample of over a hundred fined offenders at each of the four courts, and can examine the outcome of the collection process in these cases in the light of the different enforcement strategies followed at each of the courts studied.

Our collection and analysis of data from official case records (mainly those kept by the police and the magistrates' courts) have been supplemented by structured interviews with practitioners in these courts and by observation of court processes. Much of the interview data center on the working of two types of highly coercive enforcement mechanisms--committal to prison and distress warrants--in specific cases in which these mechanisms were used in each court. At each site detailed information was sought on the enforcement process in ten cases in which the court ordered an offender in default to be committed to prison. In addition, in the two sites where distress was in use, parallel interviews were conducted with participants in ten cases where distress warrants were issued. More general interviews dealing with all the various aspects of fine collec-

tion were also conducted with magistrates, administrative staff in the courts, police officers, private bailiffs involved in the use of distress, and prison staff involved in the reception of offenders jailed for default.

Because our collection of case data from court records took place at court offices, we had ample opportunity to observe in-court proceedings in the four courts, to watch the interaction between Fine Office staff and fined offenders, and to see how the different record-keeping procedures worked on a routine basis. Although most of our observations took place at the courts, we also observed the work of others involved in the enforcement process such as bailiffs, police officers, and prison staff.

Because our research is based upon cases drawn from only four magistrates' courts, they cannot reflect the wide variation in phenomena found across the more than 600 magistrates' courts in the English system. Moreover, the small size of our fined offender samples makes difficult a sophisticated statistical analysis from which one might make generalizations that are less cautious than those offered in this document. However, the data on these cases are rich in descriptive content and provide considerable detail, heretofore unavailable to either British or American audiences, about fine collection and enforcement practices at four different courts, permitting us to identify operational problems and to develop working hypotheses about this process.

C. Outline of the Report

Chapter II of this report begins with a consideration of the fine as a sentencing option in the English magistrates' courts. As background for American readers, we discuss first English law concerning the use of the fine as a criminal sanction. Then, against the background of an overview of the magistrates' courts system, we consider the fine's central role in English sentencing practice, as reflected both through official aggregate statistics and through the greater detail of our quantitative and qualitative data. Six profiles of typical non-trivial cases that were fined, are provided.

Chapter III focuses upon the nature and content of the fine sentence. This discussion draws upon the law, official guidelines and the considerable literature informing the debates in England about setting the amount and terms of the fine sentence, particularly in relation to the offender's means. It then describes what we have learned empirically about this initial stage in the fining process from observation, interviews and case record data about concrete decisions as to the amount and conditions of the fine for our samples of more serious offenders sentenced in the magistrates' courts.

Chapter IV turns to an exploration of the variation in patterns of voluntary payment (and default) at the four courts. It attempts to identify the types of fined offenders among the more serious and riskier offenders we sampled who are ready payers and to examine the circumstances surrounding voluntary payment. Chapter V examines alternative strategies for collecting and enforcing fines when payment is not forthcoming from

these offenders and tries to identify relatively successful combinations of techniques. The final sections address questions about who ultimately fails to pay and the breakdown of the fining process.

Chapter VI focuses on two coercive enforcement techniques that are of particular interest from the comparative perspective and about which little of an empirical nature is known: distress and prison committal.

Finally, Chapter VII attempts to draw together the central questions raised and problems exposed by the analysis in order to present a series of some conclusions, practical policy suggestions, and directions for further thought and study.

CHAPTER II

USING THE FINE AS A CRIMINAL SANCTION:

SENTENCING PRACTICES IN THE MAGISTRATES' COURTS

Introduction

In this chapter we briefly review the salient features of the magistrates' court system in order to place in context our discussion of how the decision to fine or not to fine is taken in the four courts studied. We then discuss how a combination of legal traditions have given rise to the dominant position of the fine among criminal sanctions in England. After presenting a profile of our samples of "high risk" offenders sentenced at the four magistrates' courts, we shall (a) analyze the relative frequency of the various sentencing options, reconfirming the dominant use of the fine even with these "high risk" samples; (b) identify characteristics of offenders most frequently fined; and (c) discuss the use of the fine for those offenders who are arguably at risk of default: the unemployed with prior criminal records.

A. The Magistrates' Courts - An Overview

Our research is confined to the magistrates' courts because it is here that the vast majority of criminal offenses are disposed of in the English system and that the predominance of the fine is most apparent. These courts deal with about 95 percent of court business arising from criminal offenses and with virtu-

ally all motoring/traffic cases.¹ The magistrates' courts are broadly analogous to the courts of limited jurisdiction in the United States in that they mainly handle a great variety of criminal matters including many non-trivial offenses. It is in the United States' counterparts to these courts that fine use as a criminal sanction is also most extensive (Hillsman et al., 1984: 28ff).

A magistrates' court is generally composed of a bench of two or more lay Justices of the Peace, non-lawyers not paid for this work. Paid (or stipendiary) magistrates, professional judges with past experience in the practice of law, are found in the system but are rare and are located only in the largest cities. The lay justices who comprise the vast majority of the magistrates in this court system are appointed on the recommendation of local committees by the Lord Chancellor.

In the English system, criminal offenses are divided into three categories: summary, "either-way," and indictable. Summary offenses may be tried only in the magistrates' courts and, therefore, not by jury; an offender charged with a summary offense may not elect trial by jury which is only available in the Crown Court. Either-way offenses, as their name suggests,

¹ The magistrates' courts also have jurisdiction in certain civil matters (primarily gambling and alcohol sale licensing), in family law (excluding divorce cases) and in regulatory offenses (particularly non-payment of local authority rates and other offenses against government revenue regulations, health and safety regulations and immigration law). They also deal with juvenile cases involving status or criminal offenses. See B. Mahoney et al. "Research in Britain" in Justice System Journal, Vol. 6/1 : Spring, 1981.

may be tried either in the magistrates' courts or in the Crown Court. The offender charged with an either-way offense may exercise a choice of mode of trial: by a bench of lay justices or a single stipendiary magistrate in the magistrates' court, or by jury in the Crown Court. The main advantage of trial by magistrates' court lies in the limited powers of punishment available to the magistrate: a maximum of six months imprisonment imposable for a single offense, and twelve months for multiple offenses. However, an offender convicted summarily (that is, in a magistrates' court) of an either-way offense may be referred to the Crown Court for sentence, if the magistrates feel that their sentencing powers are too limited in a particular case. Despite this possibility, referral for sentencing occurs infrequently. Purely indictable offenses (comparable to more serious felonies in the United States) are not triable in the magistrates' courts and must be referred to the Crown Court.²

A central role in the magistrates' court is played by the clerk to the justices.³ The justices are usually lay magistrates with only training course experience in the law and the

² However, they originate in the magistrates' courts which exercise original jurisdiction: a committal proceeding, either written or oral, transfers cases from the magistrates' courts to the Crown Court.

³ See E.C. Friesen and L.R. Scott English Criminal Justice (Birmingham: Institute of Judicial Administration, 1977), p. 35.

workings of the criminal justice system, but the clerks are usually fully qualified solicitors. The clerk has overall responsibility for the administrative work of the court: issuance of licenses, collection of maintenance and fines and all the ancillary paperwork involved in the day-to-day running of the court.⁴ Furthermore, the clerk has the power to grant legal aid.⁵

In addition, the clerk and his deputies perform the function of "clerk to the court." This involves participation in courtroom sessions as a directing force in the proceedings, that is, performing many of the oral tasks in court, such as putting to the defendant questions regarding his identity and address, plea and choice of venue.

The clerk to the justices is thus a figure of considerable authority. Not only is his responsibility far-reaching; in many magistrates' courts he or one of his deputies is the sole le-

⁴ In large courts these individual administrative tasks are so considerable that they are assigned to various deputy clerks. The magistrates are only referred to for substantive decisions, such as authorization of warrants.

⁵ The clerk may not refuse legal aid, however, without referring the matter to the magistrates. There is no absolute right to legal aid, but a defendant should be legally represented if the magistrate indicates that he is considering a sentence of imprisonment after conviction in the magistrates' courts. The case would normally be adjourned after conviction at this juncture in order that the defendant might obtain legal representation. The rates of granting legal aid vary from court to court depending largely upon the individual clerk's policy. In general, it may be said that legal aid is forthcoming provided that the defendant meets the means test on the legal aid application in cases involving complex legal issues (of which there are very few in the magistrates' courts) or involving serious offenses and offenders with serious past records, so that the likelihood of imprisonment is greater than average.

gally qualified person available to advise on points of law. Furthermore, the strong tradition of local autonomy for the magistrates' courts means that the authority of the individual clerk to run his court as he thinks fit is extensive within the parameters of the law. As we shall discuss later, this authority has important implications for the imposition and enforcement of fines.

B. The Fine in Relation to Other Sanctions: English Law and Practice

The fine is the pre-eminent sanction for criminal offenses in the English system.⁶ Its central role is attested to in the rich literature on the criminal justice system in England.⁷ That it occupies this role is made possible by the fact that under English criminal law, magistrates and judges have considerable sentencing discretion. Only when the sentence is fixed by law, as in murder, is there a minimum sentence; the vast majority of offenses carry no sentence minima, and the

⁶ In this respect there are strong parallels with other European systems, especially those in Sweden and the Federal Republic of Germany. See Casale "Fines in Europe," New York: Vera Institute of Justice, 1981.

⁷ See P. Softley Fines in Magistrates' Courts, H.O.R.S. No. 46, (London: H.M.S.O., 1978), p. 2; F.H. McKlinton Crimes of Violence (London: McMillan & Co. Ltd. 1963); R. Hood Sentencing in Magistrates' Courts: A Study of Variations in Policy (London: Steven & Son, 1962), p. 99; R. Tarling Sentencing Practice in Magistrates' Courts H.O.R.S. No. 56 (London: H.M.S.O., 1979); R. Morgan and R. Bowles "Fines: The Case for Review" in Crim. L.R., 1981, p. 203; NACRO "Fine Default," Report of the NACRO Working Party (London: NACRO, 1981), p. 1.

maxima permitted by the law are rarely imposed.⁸ Thus, it is permissible for sentencers to impose fines in almost all cases. The fact that they do so in a high proportion of cases reflects of the prevailing view of the fine as a useful and appropriate punishment in most types of cases.

This view of the fine has evolved over the past 150 years. In this century, in particular, there has been a trend in England, as elsewhere in Europe, away from short-term imprisonment in favor of fining as a means of punishment. This shift appears to have intensified in recent times both as a result of a change in penal philosophy and as a response to mechanical problems in the criminal justice system.⁹ Thus, over the period 1938-1960 in England, the increase in the use of the fine for violent offenses was far greater than any other penalty, especially after conviction in prosecutions of indictable offenses. This policy decision in the English system has been explained in terms of four factors: (a) the proportional increase in young offenders convicted of crimes of violence and the prevailing policy of using alternatives to imprisonment for

⁸ R. Cross and P.A. Jones An Introduction to Criminal Law 7th Edition (London: Butterworths, 1972), p.1.

⁹ It is important to remember, however, that the English system may share historical trends visible in Europe at large. Thus we find that in both England and the Federal Republic of Germany extended use of the fine seems to have occurred as a result of disenchantment with short-term imprisonment. Grebing has described clearly the gradual shift in the balance of use as between imprisonment and the fine in the Federal Republic of Germany. See Jescheck and Grebing, eds., Die Geldstrafe in deutschen und ausländischem Recht (Baden-Baden: Nomos Verlagsgesellschaft, 1978), pp. 32f.

offenders under 21 years of age; (b) a general disenchantment with short-term imprisonment; (c) prison overcrowding; and (d) the increase in non-stranger crimes of violence (McKlintock, 1963).

It might be said that many, if not all, of these factors that gave rise to the shift towards increased use of fines as punishment in the English system, especially in serious cases, are present today in the United States. It is therefore of particular relevance to analyze systematically the current English experience in the use and enforcement of fines.

This predominance of the fine as the criminal sanction of preference is reflected in the official sentencing statistics compiled on a national aggregate basis for England and Wales. As Table II-1 indicates, the fine is the major sentencing option for criminal cases, accounting for 86 percent of all offenders sentenced in 1980. Even among the more serious offenses, the fine is the most frequent penalty imposed (for 48% of offenders convicted of indictable offenses).

The dominant position of the fine among criminal sanctions in the English system is the more dramatic because, in contrast to practice in other European countries, the fine in England is typically the sole punishment for the offense.¹⁰ Indeed, there

¹⁰ In England, the fine is of course used extensively as one of a combination of penalties, such as disqualification and license endorsement, in multiple charge traffic cases.

In the Federal Republic of Germany, however, the fine is also sometimes used in combination with imprisonment for criminal cases, and in Sweden over the last fifteen years there has been a marked increase in the use of combined penalties involving the fine: 80% of persons sentenced by means of combined penalties in 1979 were fined. (For a more detailed discussion of this phenomenon, see Casale "Fines in Europe" *op. cit.*, p. 8ff.)

Table II-1

ENGLAND AND WALES: PERSONS FINED BY MAJOR OFFENSE, 1980

<u>OFFENSE</u>	<u>FINED</u>	<u>ALL PERSONS SENTENCED</u>
Violence against the person	25,000 (50%)	52,300 (100%)
Sexual Offense	3,600 (45%)	8,000 (100%)
Burglary	16,100 (24%)	67,100 (100%)
Robbery	200 (6%)	3,500 (100%)
Theft/Handling	120,800 (52%)	234,500 (100%)
Fraud/Forgery	11,600 (47%)	24,900 (100%)
Criminal Damage	4,700 (42%)	11,300 (100%)
Other Indictable Offense (excluding Motoring Offenses)	19,400 (69%)	28,000 (100%)

Subtotal indictable (excluding Motoring)	202,200 (47%)	429,700 (100%)

Indictable Motoring Offenses	18,300 (70%)	26,000 (100%)

SUBTOTAL ALL INDICTABLE OFFENSES	220,500 (48%)	455,700 (100%)

Summary Offenses (excluding Motoring Offenses)	412,100 (89%)	462,500 (100%)
Summary Motoring Offenses	1,278,300 (99%)	1,294,300 (100%)

SUBTOTAL SUMMARY OFFENSE	1,690,400 (100%)	1,756,800 (100%)

GRAND TOTAL	1,910,900 (86%)	2,212,500 (100%)

Source: Criminal Statistics England and Wales 1980 (London: H.M.S.O., 1981)

are statutory restrictions placed upon the English court's ability to combine a fine and a probation order (except on separate charges and counts);¹¹ a fine and a community service order (although the fine may subsequently be imposed on an offender who has breached a community service order);¹² and a fine and immediate imprisonment (these should normally not be imposed in combination, especially if the prison sentence is substantial).¹³ Thus the figures for fines use in the English system largely reflect the incidence of the fine as the sole penalty for a particular offense.¹⁴

Obviously, nationally aggregated figures mask differences among individual courts across the country. In fact, in the English system the greatest variance in courts' sentencing practice occurs in their use of the fine. Research in the early 1960's showed that the proportion of convicted offenders sentenced by means of a fine varied among magistrates' courts studied from a maximum of 81 percent to a minimum of 25 per-

¹¹ R. v. Bainbridge (1979) 1 Cr. App. R. 36.

¹² R. v. Carnwell (1978) 68 Cr. App. R. 58.

¹³ R. v. Forsyth (1980) Crim L. R. 313; R. v. Jacobs (1980) Crim. L. R. 800.

¹⁴ It should be noted here that the fine sentence in England often contains more than one financial component: the fine itself, court fees and prosecution costs, and sometimes victim compensation (restitution). This phenomenon, and its implications for the setting of the fine amount and for its collection, is discussed in Chapter III, p. 60ff.

cent.¹⁵ Not surprisingly, there appears to be a high negative correlation between the use of fines and the imposition of custodial sentences; that is, a court using fines frequently tends to imprison sparingly, and vice versa.¹⁶

Although the aggregated official data obscure such differences among courts, the national figures are useful to show the clear pre-eminence of the fine and the variation in fine use by type of offense. We see from Table II-1 that robbery is rarely dealt with by means of a fine (6% of offenders) and burglary in less than a quarter of cases (24% of offenders).¹⁷ Violence against the person, however, is frequently handled by means of a fine (50%) as are theft or handling (stolen property) offenses (52%) and criminal damage (42%).¹⁸

¹⁵ Roger Hood, op. cit. More recently research has revealed a smaller range of 76% to 46% of offenders fined across courts. It would also appear that over time individual courts show little internal variation in sentencing practice: each tends to follow an internally consistent policy despite inconsistency of sentencing across courts. See Roger Tarling, op. cit.

¹⁶ Hood, op. cit., p. 99. Data included in the report of the recent NACRO Working Party supported the greater use of the fine as an alternative to a custodial sentence; see NACRO Report of the Working Party, op. cit., pp. 2-3.

¹⁷ But again the nationally aggregated figures tend to obscure variation among the courts. Thus, Tarling noted that the use of fines varied across courts for individual offense; for example, the range for burglary was 19% to 62% at the thirty courts studied, see Tarling, op. cit.

¹⁸ The 1978 Home Office Study confirms this general pattern, see Softley Fines in Magistrates' Courts, op. cit., pp. 2-3.

The incidence of fines for these non-trivial offenses is high, particularly from the comparative perspective. The figures available for New York City compiled in the earlier Vera Fines in Sentencing study, show that neither on a city-wide, nor on an individual county basis, does the use of the fine for assault and theft-related offenses approach the high level of fine imposition for these offenses in England (see Table II-2).¹⁹

The high incidence of fines as punishment for the major property and assaultive offense in the English system recommends them for closer examination, especially because of the indications that in some areas of the United States fining is less extensive for these offense categories. Thus there may be room for expanding the use of fines and for using them more widely as an alternative to short custodial sentences.

The present study's general samples allow us to examine how offenders convicted of these non-trivial offenses are sentenced in cases which in some American lower courts, as well as in English courts, carry a risk of imprisonment. Previous research in England leads us to expect that the choice between a fine or a custodial sentence in these types of cases in the magistrates'

¹⁹ There is, however, considerable variation in sentencing patterns across the five counties in New York City. Thus, although citywide only 15% of theft-related convictions and 19% of assault convictions are dealt with by fines alone (and a further 1% and 8% respectively by a fine in combination with either a conditional discharge or a probation order), New York County (Manhattan) imposes a fine for 22% of theft-related convictions and 33% of assault convictions, and Queens County imposes combination sentences including a fine for 40% of assault convictions.

TABLE II-2

INCIDENCE OF FINE SENTENCES: NEW YORK CITY SAMPLE SENTENCES

Offense	Fine and Conditional Discharge/Probation											
	Fine Only					Fine and Conditional Discharge/Probation						
	New York	Bronx	Kings	Queens	Richmond	Citywide	New York	Bronx	Kings	Queens	Richmond	Citywide
Theft-related Offenses	22%	11%	6%	12%	12%	15%	0	0	1%	2%	0	1%
Assault	33%	8%	8%	20%	0	19%	0	17%	0%	40%	0	8%

Source: Hillsman et al. (1984) Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction. Washington, D.C.: National Institute of Justice, pp. 306-310.

courts is likely to be influenced by the extent of the offender's criminal record.²⁰ Among offenders with longer records, unemployment and unstable community ties, the probability of a custodial sentence in preference to a fine increases.²¹

Our general offender samples were designed, therefore, to focus upon offenders convicted of non-trivial offenses, with limited means and relatively poor employment histories, and with past criminal records. In this way we are able to address the question of how extensively fines are used for these offenders in the English system, before turning to the closely related topic of their enforcement.

C. The Sentencing Decision

On general principles of law, the court is to decide the type of sentence with reference to the nature and circumstances of the instant offense; it would seem, however, that in practice magistrates are influenced by various other considerations. In a general sense, magistrates and clerks seem to be aware of the important revenue-generating role of the fine in supporting the administrative costs of the courts. Whether this awareness has a bearing on the decision to fine in individual cases is not clear, but an operational notion seems to exist that, with

²⁰ Softley notes that "relevant features of an offender's record included: whether a term of imprisonment had previously been served.... and the number of previous convictions". Paul Softley "Sentencing Practice in Magistrates' Courts" Cr. L. R. (March 1980), 163.

²¹ Ibid., p. 165.

certain exceptions, the fine is the preferred sentence in all cases.

What are the exceptions to this rule of practice? Some magistrates express reluctance to fine first offenders and have a standard policy of using discharges in such circumstances. Others testify to a reluctance to fine sexual offenders. Some proceed on the principle that an offender convicted of a non-trivial offense and with three or more past convictions, requires a more severe penalty than a fine.²²

Moreover, there are indications that some magistrates will not fine offenders who are obviously "down and out," particularly when they are of dubious address or no fixed abode. Or, we have observed that such offenders, if fined, may be ordered to pay the fine forthwith with a fixed alternative sentence of imprisonment set at sentence. Since the court has been made aware from the police that the offender has no money on him, a fine with a fixed custodial alternative is tantamount to a sentence of immediate imprisonment. The decision as to the nature

²² But when asked for an example, one magistrate said a probation order would be more appropriate, indicating that the intensive supervision intended by such an order (and actually provided by English probation officers) would constitute a "stronger" sentence.

It is important to note here an important distinction between American and English sentencing practice as it relates to Probation Orders. Probation Orders are less frequent in England than in America apparently because they are used only when the court believes the specific types of assistance that can be made available to the offender by the Probation Service would measurably improve his or her situation. Probation is not used to keep an offender legally tied to the court during a period of supervision, and it is not used to ensure the collection of fine or restitution payments.

of this sentence seems quite clearly linked to the offenders' circumstances. In many cases, the alternative is fixed at one day and the defendant serves this time at the courthouse either during the night between arrest and court appearance or during the day of the court appearance. Thus some punishment occurs but the sentence amounts to little more than a discharge. It is, however, technically a fine with a default followed by imprisonment for non-payment.²³

It has been argued that under English law the decision as to whether or not to fine is separate from the decision as to the amount of the fine. The High Court requires a sentencer "to consider first what type of sentence is appropriate. If [he] decides that the appropriate type of sentence is a fine, it is then necessary to consider what would be the appropriate amount of fine, having regard to the gravity (or otherwise) of the offense. Finally, the court should consider whether or not to modify this amount, having regard to the offender's means."²⁴

This is an important point. The separation of the decision stages should ensure that an offender is not imprisoned rather than fined because he appears to have no means to pay a fine. Conversely, an offender should not be fined rather than im-

²³ Similarly in American jurisdictions, such as in New York City, a sentence of "time served" (i.e., in pretrial detention) is sometimes used in lieu of a fine or a direct discharge.

²⁴ See Cecil T. Latham "The Imposition and Enforcement of Fines" in The Magistrate, Vol. 36, No. 6 (June 1980) pp. 85-86. Note the parallel here with the more sophisticated day fine models of Sweden and the Federal Republic of Germany, see Casale "Fines in Europe" op. cit., pp. 21ff.

prisoned simply because the court could exact a very heavy fine from him. From our observations, however, this separation often appears in practice to be theoretical at best, a departure from the ideal which we shall show has significant consequences for fine collection and enforcement.

As in the United States, sentenced offenders have been convicted on a guilty plea.²⁵ The magistrates, therefore, normally will have heard only a brief statement of the facts of the incident. From the police they will know of the offender's criminal history and a few details of his circumstances, which may include his employment and residence status. The police will know how much cash an offender had on him at arrest and this information is often transmitted to the bench. Unless the court has adjourned the case in contemplation of a possible custodial sentence or a probation or community service order, it is rare for a social enquiry report (presentence investigation) to be prepared.

Thus, the magistrates have only an outline of the offense and a rough picture of the offender. Often the members of the bench seem to size up the offender on the basis of his appearance and any remarks he or his legal representative may make. Frequently the offender says nothing at all. Unrepresented offenders are generally asked if they have anything to say. The

²⁵ Our data show a range of between 65% and 87% of offenders convicted on a guilty plea for these non-trivial offenses.

standard reply is either "I'm sorry" or an unintelligible mumble.

In the non-trivial cases in our sample, many of which have involved legal aid grants, the defense solicitor supplies the court with details of the offender's work, living arrangements and "character," in a short mitigating address. In the case of well-off women shoplifters, for example, the solicitor may make a point of emphasizing the woman's wealth in the hope of encouraging imposition of a fine.

Thus our observations suggest that the decision as to whether or not to impose a fine is frequently influenced by practical economic considerations, although theoretically these factors should only come into play when the court, having decided to fine, is considering the appropriate amount and terms of the fine. We shall return to the specifics of the fine sentence and the importance of this collapsing of the stages of the sentencing process in the next chapter. Suffice it to point out here, that the choice of fine amount and terms, in practice, is not as readily separable from the choice of sentence as a literal reading of the law might imply.

D. Sentencing Patterns

1. Offenders to be Sentenced: A Profile of the High-Risk Samples

In order to appreciate fully the use of the fine in our general sentenced offender samples, it is important to reiterate that our samples focus upon non-trivial offenses involving many offenders with criminal records and low incomes. Table II-3

presents a comparative profile of some salient characteristics of the offenders at the four courts. (For further details, see the tables for the General Samples contained in Appendix D.)

Record. As our sampling strategy anticipated, many in the offender population selected for study at the four research sites had prior involvement with the courts: at all the courts more than half the offenders in our general sample had criminal records. Moreover, some had quite extensive previous convictions: at West Court at least 27 percent of the sample had four or more previous convictions, as compared with 21 percent at Capital Court, 16 percent at Midland Court and 12 percent at East Court. Many offenders with records had a conviction less than one year before the sample conviction, often for an offense identical or similar to the sample offense, indicating a recurring behavior pattern. Furthermore, at least ten percent of sentenced offenders at each of the sites had served prison sentences for prior convictions.²⁶

Economic circumstances. The harsh reality of Britain's recession is reflected in the economic circumstances of these offenders as indicated primarily by data from their legal aid application (see Appendix C, pp. 296-9). For the three urban courts the majority were unemployed; even at the provincial

²⁶ In England and Wales, there is no distinction between jails and prisons; all individuals in custody (pretrial or post-sentence, short-term and long-term) are in facilities run by the Prison Service which is part of the Home Office. References throughout this text to "prison" sentences, therefore, encompass shorter terms (more typically referred to as "jail" sentences in America) as well as longer terms of confinement.

TABLE II-3

PROFILE OF OFFENDERS IN THE GENERAL SAMPLES

	Capital	Midland	West	East	All
% of first offenders	48	37	26	35	37
% with 4 or more prior convictions	21	16	27	12	19
% having served prison terms	14	12	17	10	13
% in steady employment	21	20	17	27	21
% unemployed	54	59	67	45	56
% reporting no funds	20	4	5	11	11
% with \$1-20 per week	20	27	30	21	24
% with non-permanent address	6	7	4	8	6
% of offenders 17-20 years old	40	41	28	38	37

court (East) close to half were out of work. Only one in four at East Court had been employed throughout the year prior to the sample conviction; at Capital and Midland this figure dipped to only one in five and at West Court one in six.

Substantial proportions of the offenders sample at each court belong to the unskilled or laboring work force.²⁷ Most who did have a job had weekly wages in the range of £30 to £75, with rather more earning towards the lower end of this range.²⁸ Offenders on public assistance generally received weekly benefits in the £16 to £30 range.²⁹

Ignoring the source of money coming into the household and concentrating simply on the total funds available each week, we find that at least half the sample offenders at each court reported less than £35 coming into their households. Some of the sample offenders at each court reported no money coming into

²⁷ At Capital Court over a quarter, over a third as West Court, nearly half at East Court and two-thirds at Midland Court. The differences noted here may, however, be less the result of actual differences in the population than of differences in the perceptions or labelling definitions of the court staff who classify the offenders. Unfortunately, the information on work skills was inconsistently available, so that at West Court we can only describe the skills of that half of the sample for which the data were recorded.

²⁸ The £: \$ exchange rate at the time of the sample cases was about £1: \$2.20. For easy reference, we have included a chart for conversion from quoted £ values to dollars in Appendix A, p. 277. Since 1980-81 the exchange rate has dropped to £1: \$1.30.

²⁹ Public assistance includes either national insurance benefits for the unemployed or supplementary benefits, weekly allowances, for persons not in full-time work and whose resources fall short of their requirements.

the household at all.³⁰ This may be explained in part by delays in applying for public assistance benefits, as well as by the existence of undisclosed or illicitly obtained income. Few offenders stated that they had more than £75 coming into the household;³¹ whereas at least one in five reported £20 or less per week. If these self-reports are accurate, and we have no reason to assume they are not, many of the sample offenders were living at or below poverty level.

Thus we find that our sampling strategy has produced the desired concentration on potentially high risk offenders -- those with criminal records and low economic status.

In the light of that sampling strategy, the youthfulness of sample offenders is worth noting. In the Capital, Midland and East Court samples, approximately forty percent of the offenders were under the age of 21, and at West Court slightly over a quarter; roughly 70 percent in each court sample were under the age of 30.³² At all the courts roughly eighty percent were men.

³⁰ Varying considerably from court to court: at Capital Court 1 in 5; at East Court 1 in 10; at West Court 1 in 20; and at Midland Court 1 in 25.

³¹ At East and West Courts 8%, as compared with 9% at Capital Court and 5% at Midland Court.

³² The age distribution of the Capital and Midland Court offenders were strikingly similar. The East Court sample, on the other hand, shows some divergence from this pattern in terms of the relatively higher proportion of offenders in the 30 to 44 age group; at West Court the divergence appears in the higher proportion of 21-39 year olds. For further details of the breakdown by age and other offender characteristics see Appendix D, Tables II, 1-11.

Across the four courts we are able to identify three important groups of offenders within the general samples:

Young male offenders: There is a large group of young (under 21) males (30% of the entire general sample across the courts). Often these young males are unemployed and on public assistance (41%), and involved in t.d.a. (taking and driving away a motor vehicle) or other theft offenses (62%). Although this group of young males also shows the highest rate of continuous employment across the four courts (28%), this composite rate masks the variation among the courts. In particular it hides the fact that at the three urban courts only twenty to twenty-five percent of the young male offenders had a job over the past year, whereas at East Court the rate of constant employment was forty percent for the young men. Although this is still a low figure in an absolute sense and bears witness to the effect of the recession, it also shows that in the provincial East Court area there is substantially more chance of work for younger members of the labor force.

Older unemployed males: The general lack of employment among offenders in the sample is not confined to the young males. Half the 21-29 year old males were also unemployed and on public assistance, as were 57 percent of those between the ages of 30 and 44. The offense patterns, however, change across the courts among older male offenders: there is notably a shift away from the young man's offense--t.d.a.--towards other theft and assaultive offenses. Assaultive offenses seem to figure particularly among male offenders who are in continuous employ-

ment, irrespective of age. Shoplifting is more prevalent among the older men. Nearly half the men over 44 were sentenced for shoplifting: the offense was especially dominant among the older unemployed men on public assistance.

Female offenders: Shoplifting is the main offense among females: half the women offenders in all age groups up to age 44 were sentenced for shoplifting and the figure rises to 80 percent for women over 44. Among older female offenders, there is a shift from unemployment with public assistance (the economic situation for half the females under 21), to the occupation of housewife.

Few female offenders of any age have extensive criminal records (even for shoplifting), whereas across the four courts almost one in four male offenders had four or more previous convictions. Women who have served time in prison for past convictions are also rare.

2. Penalties Imposed

That the fine continues to be the predominant sentence for this offender population is particularly striking because the samples include the more serious cases dealt with in the magistrates' courts and many of the offenders have past records and are living close to or below the poverty level. Fines were imposed in 34 percent to 47 percent of the cases sentenced and outrank the number of immediate imprisonment sentences imposed at all four courts sampled (Table II-4). Indeed, prison ranks fourth or lower among the sentencing options selected at these four English courts, accounting for 13 percent of offenders

TABLE II-4
PROPORTION OF OFFENDERS SENTENCED TO VARIOUS SANCTIONS

Type of Sentence	Capital Court (%) (N)	Midland Court (%) (N)	West Court (%) (N)	East Court (%) (N)	All Courts (%) (N)
Fine	34% 127	47% 138	47% 144	39% 115	41% 524
Prison	13 47	3 10	3 10	7 20	7 87
Suspended Imprisonment Sentence	14 50	8 24	8 23	9 28	10 125
Probation	11 41	11 31	16 50	14 42	13 164
Community Service Order	9 32	9 27	7 21	9 26	8 106
Conditional Discharge	14 53	19 54	11 33	18 53	15 193
Other	5 19	3 8	8 23	4 14	5 64
TOTAL	100% 369	100% 292	100% 304	100% 298	100% 1263

sentenced at Capital Court, but only seven percent at East Court and three percent at Midland and West Courts.³³

This extensive use of fines by these English magistrates' courts holds true for offenses against the person as well as for the major offenses against property, as seen in Table II-5. Between 39 percent and 48 percent of sample offenders convicted of assaultive offenses were sentenced to a fine at the four courts studied. From a comparative perspective, this tendency to choose a fine rather than any other sentence option, even for offenders convicted of violence against the person, is of particular interest.

Given this decided preference for the fine, are there recognizable groups of offenders whom the courts fine more frequently than others? Table II-6 provides a profile of the fined offenders in the general samples.³⁴

The number of male offenders is sufficiently large for us to discern sentencing patterns for subgroups. The courts show a marked tendency to fine male first offenders: over half received fines across the four courts. The proportion fined among retired or student male first offenders is particularly high (71%); it is also high for those continuously or sporadically employed over the past year (60% and 63%, respectively).

³³ For a more detailed breakdown of sentencing patterns by offense types see Appendix D, Tables II, 12-15.

³⁴ For more detailed breakdowns of the fined offender samples with respect to these and other offender characteristics, see Appendix D, Tables II, 16-20.

TABLE II-5

PROPORTION OF OFFENDERS FINED FOR DIFFERENT TYPES
OF OFFENSES AT FOUR MAGISTRATES' COURTS

Type of Offense	Capital Court (%) (N)	Midland Court (%) (N)	West Court (%) (N)	East Court (%) (N)	All Courts (%) (N)
Violence against the Person	43% 35	48% 28	39% 24	47% 28	44% 115
Shoplifting	37 26	39 35	35 26	36 24	37 111
Taking & Driving Away (t.d.a.)	29 21	54 25	31 10	56 15	40 71
Other Theft	30 34	44 30	57 46	30 31	38 141
Handling	35 6	60 6	75 12	50 9	54 33
Criminal Damage	42 5	70 14	65 26	35 8	56 53
All Offenses	34% 127	47% 138	47% 144	39% 115	41% 524

TABLE II-6
CHARACTERISTICS OF FINED OFFENDERS

	Capital	Midland	West	East	All Courts
% of offenders 17-20 years old	40	44	26	39	37
% of first offenders	59	44	36	51	48
% with outstanding fines	6	11	20	14	13
% previously fined	25	33	50	30	35
% having served prison term	9	9	12	6	9
% in steady employment	27	30	21	39	29
% unemployed	44	50	58	34	47
% reporting no funds	25	2	4	7	9
% with \$1-20 per week	13	22	27	17	20
% with no permanent address	4	4	1	6	3

On the face of it, it would seem that these types of offenders are considered relatively good "risks" for fine imposition, either in terms of fine default or of recidivism. However, magistrates do not generally describe their sentencing decisions in these terms. While they indicate a preference for fining first offenders, rather than offenders with long records, this appears to be derived less from a calculation of risk than from the application of a sequence of escalating penalties. The offender with a long record is viewed as beyond the fine stage in this sequence. This approach may reflect a somewhat routine notion of sentencing tariffs or a deeper conviction of the need to punish more harshly those who continue to transgress.

Insofar as the courts do calculate the risks of fining offenders in light of their past records, the calculation is not sophisticated. For fining purposes, the distinction seems to be drawn on the basis of criminal convictions. However, a more subtle distinction could be made between offenders with good fine payment histories and offenders with histories of default, if court record-keeping systems were sufficiently refined and provided sentencing justices with this information in addition to the official data on prior arrests and convictions already available.³⁵ That the courts do not now have such prior fine payment information at sentencing is clear from discussions with magistrates and Fines Officers and from our own data: over 30

³⁵ The Criminal Records Office (CRO) is responsible for collecting and supplying data on individuals' former convictions to local police and to the courts.

percent of the offenders in our samples who had fines outstanding were fined again.

Offenders with prior convictions are fined less often across the courts studied than are first offenders. The proportion fined decreases from half to 43 percent for males with one to three convictions, and for those with longer criminal records it drops more dramatically to 29 percent. Nonetheless, from a comparative perspective this level of fining is still quite high for males with at least four prior convictions.

In particular we find that the male offenders who combine poor criminal and poor employment records are fined least often: the courts fined a quarter of the unemployed males on public assistance who had serious criminal records, compared to 53 percent of the unemployed male first offenders with less serious records. We gain confirmation for the influence of both economic status and criminal record on fining, when we classify the male offenders by income level. The only group of male first offenders not fined at roughly a 50 percent level are those reporting no income whatsoever. These men tended to receive suspended sentences (or community service or probation orders); one in three was fined. This fine level holds for the male offenders reporting no funds regardless of their criminal record; even one-third of the men with four or more convictions were fined. What changes is the courts' use of other sentencing options for the remaining two-thirds. As the men's criminal records deteriorate, the courts place a heavier emphasis on prison for offenders with no reported income.

Still prison sentences are not common for these relatively serious offender samples. Fewer than one out of ten offenders across the four courts were imprisoned; the proportion ranged from three percent at Midland and West Courts to 13 percent at Capital Court. The highest proportion (27%) was found among the male offenders with four or more previous convictions and low incomes (under £20). We note one special but small group with an extraordinary high level of imprisonment (55%): eleven males, sentenced for t.d.a. offenses who had been in prison before. Clearly, whether or not an offender has served a previous prison term affects the likelihood of reimprisonment: 18 percent of male offenders who had been to prison before were sentenced to another term, compared with six percent of those with no prison record.

Prison sentences were even rarer among the female offenders and first offenders. Only one female first offender was sent to prison: she was under 30 and had lost her job as a result of her involvement in a theft case; six male first offenders (all under 30 years of age) were sentenced to imprisonment (for assault or "other theft" offenses).

In general, these lower court sentencing patterns are not unexpected. What is striking from a comparative perspective, however, is (1) the degree of preference for the fine, even for non-trivial offenses and even for relatively poor offenders; and (2) the fact that prison ranks as low as it does among the sentences imposed even though our samples were designed to focus on offenders more likely to be considered for incarceration.

If we consider certain noticeable groups among the offender population we sampled across the four courts, we may gain a better understanding of how the striking reliance on the fine comes about.

(a) The largest group consists of the young male offenders (under 21 years of age). Among first offenders half are fined; the half not fined are dealt with mainly by conditional discharge, or probation. Prior criminal record changes significantly the proportion fined among the young male offenders: it drops from 50 percent for first offenders to 37 percent for those with one to three previous convictions. Of the small set of young males (31 in all) with more extensive criminal records (i.e., for those who have averaged at least one conviction per year since reaching sixteen years of age), only one in five is fined. Only for this small group, many of whom were convicted of t.d.a., is prison the dominant sentence (29%), with the suspended prison sentence, fine and probation ranking equal second (19%). For all other young male offenders, whether first offenders or not, the fine outranks others sentences by a ratio of at least two to one.

(b) Sixty percent of the male first offenders in steady employment are fined, as we have noted. The second most popular sentence for these relatively good risk offenders is the conditional discharge (17%); only one was sentenced to imprisonment.

(c) Female shoplifters represent over half the female offender group. About half the female shoplifters with no prior

record are fined, and most others are conditionally discharged; none receive either suspended or immediate prison sentences. The proportion of women shoplifters with records of one to three convictions who are fined is much lower (25%); instead the courts deal with these women by probation orders (32%), suspended sentences and conditional discharges (18%). For the women shoplifters with even more extensive records, the proportion fined is lower yet (13%). For this group the suspended prison sentence is the preferred sentence (31%), followed by probation (25%), with the fine, prison and community service orders ranking equal third (13%). Although many of these women repeat the same offense pattern, the courts appear disinclined to imprison. The use of the suspended prison sentence for the recidivist women shoplifter seems part of a gradual escalation in sentencing severity. Only three women shoplifters were sent to prison; one had previously been fined but the other two had not; none had been to prison before.

(d) The unemployed male offender on public assistance with a criminal record is perhaps the highest risk offender. We have noted already that the young offenders in this group were convicted predominantly of t.d.a. and other theft offenses, whereas the somewhat older offenders had more assault or other theft convictions. Among the oldest members of the group (those over 44 years), over half had been involved in shoplifting.

How did the four courts deal with these risky offenders? Even if the offender had one to three previous convictions, the most likely sentence was still a fine (39%), despite the offen-

der's lack of work and dependence on public assistance. Probation ranked as the second most frequently imposed sentence (18%), followed by a Community Service Order (13%) and a conditional discharge (12%). Prison ranked sixth and accounted for only five percent of the sentences imposed upon male unemployed offenders who had limited prior records. Even for those with more extensive records (4 or more previous convictions), the courts still favored the fine for one out of four; but prison ranked second for this group (20%), followed by suspended sentence and probation (both at 15%).

(e) Finally we consider one last group: male unemployed offenders who declare no household funds whatsoever. Our discussions with magistrates and clerks reveal a prevalent assumption that many (but not all) of these offenders are lying about their finances, and are engaged in illegal activities to earn money. How do courts sentence this group? The predominant penalty is again the fine. Although those with the worst prior records are fined less often, the fine is still the preferred sentence--30 percent; for these men prison and suspended sentence are important second sentencing options--each accounting for almost a quarter of the group. This comparative severity may either reflect the court's view of these men as high risk offenders, or it may reflect escalating punishment for this type of offender, or both. Nevertheless the fact remains that across the courts nearly a third of this group is fined despite long prior records and their declaration that they have no income.

We have tried in the foregoing discussion to outline the patterns of sentencing emerging from our data. Our examination of who is fined or dealt with otherwise reveals patterns that are not unexpected in the light of our discussion of the fine's paramount position among sentencing options in English penal philosophy and practice. Offenders with stable residence, and continuous work histories, with no (or minor) records, no former prison sentence, and within the higher financial brackets in the sample are more likely to be fined than are offenders living in squats, doss houses or temporary accommodation, out of work, with limited funds, previous convictions and past prison terms.

Yet an equally important finding from our data is that a significant proportion of this latter group of offenders are nonetheless fined. Indeed, because the fine is so dominant in English sentencing, the courts impose fines on these less likely candidates for fines at a level that exceeds the rate of fining vis-a-vis other sentencing choices shown in the limited data available to American courts.

Therefore, before proceeding to describe the process of fining in English magistrates' courts in subsequent chapters, we would like to present brief profiles of six fined cases from our research samples. The purpose of these profiles is to give the reader, as best we can from the recorded data on the cases, a "feel" as to the nature of non-trivial cases fined in the magistrates' courts. The six which follow are not atypical; they have been selected as interesting because (1) they are assault cases that might not have received a fine in American

courts; (2) the offenders were unemployed or casually employed; (3) the offenders had previous criminal convictions and often previous fines; and (4) they paid their fines either at once or eventually.

Case 1

An 18-year-old male on unemployment benefit of £19 per week was convicted of assault as a result of a street brawl. No permanent injury was recorded. He had one previous conviction, also for assault (sentence not recorded). The sentence on the current conviction was: £40 fine and £25 legal aid contribution, to be paid at £5 per week. The offender did not pay until a reminder letter was sent; he then paid regular installments until the sum was paid in full.

Case 2

A 53-year-old male on disability of £48 per week, with £4 per week from his father with whom he lived, was recorded as being an unemployed taxi driver. He was convicted of assault as a result of a pub fight; the victim's injuries were recorded as bruises and a lost tooth. The offender had two previous convictions, both for assault; the latter was dealt with by a fine (status of fine: paid, but no details of whether within terms set or after enforcement). He was sentenced to: £75 fine, £25 costs and £28 compensation, to be paid in 28 days. After three reminder letters he eventually paid the lump sum.

Case 3

A 25-year-old male, casually employed as a brick layer and currently earning £80 per week and receiving £4 per week from his father, who lives with him, was convicted of assault; the location of the offense was a work site, but no details of injury were recorded. He had three previous convictions (charges not recorded); one of these had been dealt with by means of a fine; which had been paid after enforcement. He was sentenced to: £80 fine, £50 costs and £50 compensation, to be paid at £10 per week. He paid outside the terms set by the court, but without court action.

Case 4

A 51-year-old male on unemployment benefit of £28 per week was convicted of assault against an acquaintance in the street. He had four previous convictions for offenses other than assault and had been fined once before. His fine was not outstanding at the time of the current fine. He was sentenced to: £40 fine to be paid in 28 days. He paid within 28 days in full.

Case 5

A 27-year-old male on unemployment benefit of £42 per week was convicted of assault in a dispute involving friends. No permanent injury recorded, but he hit someone with a shovel. He had 11 previous convictions, "several for assault" (sentences not recorded, but known to have had two previous fines, neither currently outstanding). He was sentenced to: £75 fine to be paid at £5 per week. He did make a couple of payments, then defaulted, but paid the remainder as a lump sum when the means warrant was executed.

Case 6

A 32-year-old male was receiving £45 per week National Insurance and £12 from his father towards the household funds. This unemployed offender was convicted of assault and theft. He attacked the shop owner who was trying to detain him; the victim required stitches. The offender had 13 previous convictions and had had 8 fines (none now outstanding). He was sentenced to: £95 fine, £45 costs and £75 compensation, to be paid in 42 days or else he was to attend a means inquiry on the forty-second day. He did not pay, but attended the means inquiry, when his terms were reduced to £1.50 per week. He eventually paid the full amount through these regular small installments. It would have taken him about three years from sentence at these reduced terms, but after a year he paid off the remainder in a couple of large amounts (no record as to change in means).

CHAPTER III
THE NATURE OF THE FINE SENTENCE IMPOSED

Introduction

This chapter is divided into two sections dealing with the components of the fine sentence: the amount imposed and the terms of payment. In examining the amount imposed we discuss first, law and practice in relation to (a) the various component financial penalties subsumed under the general term 'fine' and (b) the decision as to how great a sum to impose. Second, we examine data from our empirical research as to (a) variations in amounts imposed (and their component elements), and (b) factors affecting the decision as to amount, focusing primarily on the role of offense gravity and the offender's means.

The second part of the chapter is concerned with the terms of payment set by the court. After discussing law and practice relating to payment terms, we examine our empirical data to describe (a) variations in the terms of payment set and (b) the relationship between these terms and the amount imposed. The chapter concludes by adumbrating our discussion of the links between fine amounts and the terms imposed by the court at sentencing and subsequent patterns of payment. We turn to the latter subject in the next chapter.

A. The Amount of the Fine

1. Law and Practice

Under English law, the exact nature of the fine sentence--its amount and payment terms--is left to the discretion of the

sentencer. This latitude is striking because, as we have already noted, the great majority of sentencers are lay magistrates. The situation indicates the measure of public confidence in the Justices of the Peace.

There are few legal constraints upon the size of the fine. Although a maximum amount of £1,000 exists under the Criminal Law Act 1977, it is rare to find sums close to this level imposed in the magistrates' courts.¹ This is also the situation we found in most American courts (Hillsman et al., 1984). The largest sums imposed in the magistrates' courts tend to encompass not only a fine proper, but also several other financial penalties, such as compensation (restitution), prosecution costs and legal aid contributions. Indeed, the compensation order is apt to exceed the fine proper and to inflate considerably the total sum imposed.²

The existence of different components within what is referred to commonly as "the fine" complicates the administration of the fine, as well as its imposition. The components of the fine take different priority in terms of payment. Any monies received by the court are to be applied against the sums adjudged to be paid in the following sequence: first for compen-

¹ Criminal Law Act 1977, S. 28. This maximum is for either-way offenses.

² By law, since 1972 magistrates' courts have had the power to order compensation for personal loss or injury up to a maximum of £400 for each offense proved. See Criminal Justice Act 1972, Section 1, re-enacted under Powers of Criminal Courts Act 1973, Section 35. At the Crown Court there is no limit set upon the amount of compensation awardable, but the court should take into consideration the offender's ability to pay.

sation, second for prosecution costs, third for fees and finally for fines.³

Moreover, there are distinctions among the various components of the "fine" when it comes to writing off amounts left unpaid. Whereas a court may apply to the Home Office to have a fine, costs or fees written off as uncollectable, in the case of compensation the court must notify the victim. But the practices seem to vary from court to court. Some courts, such as West Court, inform the victim that the fine/compensation records have been transferred to a dormant file pending further information concerning the offenders' whereabouts.⁴ In contrast, at Capital Court the Fines Office writes to the victim for his/her agreement to have the compensation amount written off. In one case in our sample, the victim replied in an irate letter that she knew precisely where the offender was and supplied the new address so that the police might "try again." We shall return later to the complexities of administering a financial penalty composed of various sums imposed that are due to different parties.

Most important, because the fine imposed is often a composite of several elements, the court's decision-making when relating the total sum imposed to the offender's means is made more complex. In order to understand the complicating role of

³ 1972 Criminal Justice Bill, Schedule 2: Magistrates' Court Act 1980, Part III, S. 139.

⁴ See example of form letter in Appendix C.

compensation (and to a lesser extent costs and fees) in this relationship, we must first examine the ambiguities in English theory and practice surrounding the question of how the offenders' means should affect fine amounts.

As mentioned, the decision about the fine amount is theoretically separate from the decision about whether to fine (although in practice the two stages are often confused). Even in theory, however, the lack of policy agreement in England over the central questions--the proper amount of a fine and its relation to the offender's means and to the gravity of the offense--is striking. Consideration of these issues is confused further by inconsistent use of the term "fine," so that it is not clear whether the fine proper or the total financial penalty is under discussion. While there is support for a policy of uniformity in fining, with the amount set by a tariff system geared to the offense,⁵ in practice, courts have no clearly articulated tariff systems for fines related to particular offenses, except in traffic cases.⁶ The Court of Appeals has advocated a basic tariff system for fines with mitigation in the form of reduction for the indigent offender.⁷ Others have proposed closer regard for all offenders' means, as well as for the offense category, in deciding the amount of the fine, thus

⁵ "Justice of the Peace" 131 (1967), p. 36.

⁶ D.A. Thomas Principles of Sentencing. 2nd ed. (London: Heinemann, 1979), p. 319.

⁷ See discussion in Roger Hood Sentencing the Motoring Offender. (London: Heinemann, 1972), p. 71.

taking a policy perspective more in line with the concept of the day-fine which has attracted considerable interest in Europe and in the United States.⁸

The general legal prescription reads that "in determining the amount of a fine, a magistrates' court shall take into consideration among other things the means of the person on whom the fine is imposed so far as they appear or are known to the court."⁹ However, in practice, many clerks and magistrates do not interpret this as placing much (or any) responsibility upon them to inquire actively into the offender's means at sentence.¹⁰ Although we have observed frequent rudimentary communications at sentence about the offender's ability to pay,

⁸ See Scottish Council on Crime Report on Fines (Scottish Office, 1974); Advisory Council on the Penal System (Wootton Committee) Non-Custodial and Semi-Custodial Penalties (London: H.M.S.O., 1970). The latter advocated that the fine should be increased or decreased according to the individual's financial circumstances. Both bodies, however, rejected the possibility of adopting a day-fine system (as the ultimate extension of this position) on practical grounds.

The day-fine concept began in Sweden and was successfully adapted to the Federal Republic of Germany criminal justice system in recent years; it refers to a two-stage process of setting a fine. First, the number of units to be fined is determined on the basis of offense gravity and circumstances; then the monetary value of each unit is set on the basis of a specific offender's financial means. We discuss the day fine below, both in Chapter IV at page 105 and in Chapter VII. See also Hillsman et al., 1984, pages 15-17, 201 and especially Appendix C; and Casale, 1981.

⁹ Magistrates' Courts Act, 1980, S. 35.

¹⁰ Discussion at Justices' Clerks' Society Biennial Conference, Trinity Hall, Cambridge, October 1982.

these are usually in connection with questions about what terms of payment to impose, rather than the amount of the fine. In general, there seems considerable variability in the amount-setting process among courts, and it is our sense that the chief clerk's view of the matter tends to determine the policy adopted in his court.

This is not surprising because in the usual summary conviction on a guilty plea, the clerk does most of the talking, particularly when it is a lay bench. He puts the choice of venue and plea to the defendant and explains the implications of the alternatives. He also communicates to the bench information about the offender, other than those details furnished directly by the police. Although the clerk formally performs an advisory role in the sentencing decision, technically his advice is confined to matters of law. In practice, however, his input is far greater insofar as he is the main source of information to the bench. When it is a lay bench, which often displays a strong reliance upon this experienced professional, the clerk's influence may be substantial. A stipendiary magistrate, however, as an equally experienced lawyer, is less likely to require the legal advice of his clerk.

We have observed that stipendiaries tend to view their proper role on the bench as a more active one than do lay benches, and often want to know more about the financial circumstances of the offender before them and ask for specifics in a way that is less common among lay benches. The lay justices appear to rely more passively on the police and clerk to supply

whatever information they deem appropriate. Although it is not possible to make sweeping generalizations about such practices, we have noticed these distinctions and shall return to them in later discussions.

In the typical case of the unemployed poor offender, few magistrates will go into the exact details of the offender's economic circumstances. Although we have observed some sentencing stipendiaries asking about debts and weekly expenses and making rough calculations, the amount of the fine and of other sums imposed has usually been decided already and what is at issue is the terms of payment, usually the installment rate.

In particular, the amount of compensation (restitution) frequently appears to be set without regard for its effect upon the total sum imposed, much less for the relationship of that total to the offender's means. The factor uppermost in the court's deliberations about compensation appears to be, as might be expected, the extent of damage or injury to the victim. While clearly relevant to setting the amount of this element of a financial penalty, compensation calculation appears more often than not to divert courts from seriously considering whether the total penalty they are imposing is realistic and justifiable when measured against the offender's economic circumstances.

In theory, compensation encompasses the notion that the offender is aware he is paying restitution to the person(s) whom he has harmed. In practice, however, this idea becomes submerged in the business of paying or collecting monies. From observations in court, we conclude that magistrates and clerks

rarely make clear to the defendant the distinction between the imposition of a fine and a compensation order. There is no routine effort to explain to the offender that the amount imposed by the court includes money that will pass through the court's hands to the victim. It is our impression that the offender merely registers the fact that his punishment takes the form of a total amount owed the court.¹¹ Subsequent dealings with the Fines Office do nothing to dispel this notion: the staff commonly refer to all monies owed as "the fine." The total is what counts both to the offender and to the court staff who are collecting it.

The court will typically listen to the police summary of the facts of the case and arrive at a decision. It will announce the amounts of the fine, compensation and costs (when ordered); while this is being done, the court (or the clerk) may often be observed adding up the sums imposed. This practice underlines the observation that the fining decision does not usually have a clear focus on whether the resulting total is realistic. For instance, in one case before a bench of lay magistrates the chairman of the bench was heard to say: "Fined £30; £20 costs; £68 compensation to pay." Then in an audible aside to the clerk: "How much does it come to?"

Of course, the court (or the clerk) may ask the offender whether he wants time to pay, or how he intends to pay, or refer

¹¹ In this connection, Walker notes that from a reductionist viewpoint the distinction between fine, compensation and costs may well be immaterial. Nigel Walker Sentencing in a Rational Society (Harmsworth: Penguin Books Ltd., 1972), p. 105.

the offender directly to the Fines Office for clarification of payment options, but it rarely inquires as to whether the offender can pay the amount it has imposed. The offender, if wise in the ways of the court or dismayed on hearing the total amount due, may ask the court for time to pay without prompting. Often the offender may be confused as to how to proceed and may not reach the Fines Office on the sentencing day, although by not doing so he is at a disadvantage in terms of not understanding how the system works.

2. Sums Imposed

The case record data provide further evidence about how sums are initially imposed in the fining process. While we first present data on the separate amounts of fines, compensation orders and costs, court practice and offenders' perceptions about their monetary obligation lead us to concentrate thereafter mainly on the total sum imposed by the court (referring to it in later chapters as "the fine" for convenience).

The information gathered on these questions in our research comes from the sub-samples of fined offenders, rather than from the general samples of sentenced offenders on which our earlier discussions have been based. Considering the amount of fine alone, we note some variation among the four courts. At West Court and Capital Court the fines imposed tended to be smaller than at Midland and East Courts: 38 percent of the fined sample at West and one quarter at Capital Court were fined £25 or less, as compared with 16 percent at East Court and only 11 percent at

Midland Court. At the latter two courts, a quarter of the fined offenders were fined over £100.¹²

The total amount of money imposed by the courts tended to exceed the amount of the fine alone by substantial sums. Costs and compensation in particular figured quite strongly in the composite amounts imposed. Our data suggest substantial variation among the courts in the assignment of costs to fined offenders. At Capital Court this occurred infrequently (15%) and at West Court not at all. At Midland and East Courts, however, the majority of fined offenders had to pay some costs (68% and 80% respectively); indeed more than a third were ordered to pay over £20 in costs.¹³

To some extent, the Midland and East Court samples also showed a higher proportion of compensation orders imposed in cases involving fines (30 percent and 36 percent, respectively, as compared with 21 percent at Capital Court and 20 percent at West Court). The variation in amounts of compensation orders imposed was not striking, however.¹⁴

These differences in sentencing practice are reflected in the total financial penalties imposed at the four courts (see

¹² The mean fine ranged from £50 at West Court through £80 at Capital to £89 at Midland and £93 at East Court. For a detailed comparison of fine amounts imposed at the four courts, see Appendix D, Table III-1.

¹³ The mean costs award against offenders at East and Midland Courts was £18 and £15 respectively. For further details see Appendix D, Table III-2.

¹⁴ The mean compensation order was £13 at Capital, Midland and West Courts; East Court's mean was higher at £20, primarily as a result of a few very large compensation orders. For details see Appendix D, Table III-3.

Table III-1 below and, in Appendix D, Tables III-4-7 for these fine amounts by charge in each court). Midland and East Courts imposed much larger sums. At West Court and Capital Courts 30 percent and 19 percent of fined offenders, respectively, were ordered to pay a total of £25 or less, whereas at Midland and East Courts only three percent and four percent of fined offenders, respectively, were ordered to pay a total amount that low. In contrast, about half the fined sample at each of the latter two courts was ordered to pay total amounts over £100, compared to 12 percent of the West Court fined sample and 29 percent of the Capital Court fined sample.

Because our samples targetted non-trivial cases, we would expect composite financial penalties in these courts to be higher than the average for fined offender populations at magistrates' courts generally.¹⁵ What is important, however, is the variation among the four courts studied, in amounts imposed when sentencing apparently similar offenders for similar non-trivial offenses.

¹⁵ The earlier Fines in Sentencing study involved research on a broader spectrum of offenders fined by two of our four magistrates' courts (Capital and East) for criminal offenses (excluding traffic and revenue offenses). The median total sums imposed were £10 and £64 respectively. Even allowing for inflation over the year between these earlier samples and the present samples, our current research shows heavier fining patterns associated with more serious cases. (See, Casale, "Fines in Sentencing," New York: Vera Institute of Justice, 1981).

If we contrast these data with the Vera-ICM study's New York City figures, we see that the city-wide median fine of \$75.00 is considerably less than the East Court median (Hillsman et al., 1984, pages 55-56). We must remember that the New York City fined offender sample is even broader than the original English samples reported by Casale, op. cit.

TABLE III-1
TOTAL AMOUNTS IMPOSED ON FINED OFFENDERS

Total Amount (£)	Number of Offenders							
	Capital Court	(Cumulative %)	Midland Court	(Cumulative %)	West Court	(Cumulative %)	East Court	(Cumulative %)
£5 or less	-	-	-	-	2	(2)	-	-
£5+ - £10	2	(2)	-	-	-	-	-	-
£10+ - £25	18	(19)	3	(3)	29	(30)	5	(4)
£25+ - £35	4	(24)	4	(6)	10	(40)	3	(7)
£35+ - £50	15	(38)	24	(26)	24	(63)	10	(16)
£50+ - £75	17	(54)	16	(39)	7	(70)	23	(36)
£75+ - £100	18	(71)	15	(52)	19	(88)	16	(50)
£100+ - £250	23	(93)	50	(93)	11	(99)	47	(91)
£250+ - £500	4	(97)	9	(100)	1	(100)	6	(96)
£500+ - £750	2	(99)	-	-	-	-	4	(100)
Over £750	1	(100)	-	-	-	-	-	-
TOTAL	104		122		103		114*	

*Information was missing for 1 offender.

Overall, Midland and East Courts dealt more severely with fined offenders than did West and Capital Courts. One possible explanation lies in structural differences among these courts. Midland and East Courts are served by lay magistrates, whereas Capital and West Courts have stipendiaries. There is a common belief that stipendiaries tend to impose lower fine amounts than lay benches. There are various theories as to why this should be so. Although differences of social class and political ideology are said to encourage this, it seems more likely that the difference in sentencing behavior is a function of stipendiaries' professional experience. We have already noted that they appear to take a more active approach in considering the offender's means when setting fine payment terms, asking for details rather than relying on information the police or clerks volunteer. This difference in initiative in the decision-making process may influence the decision as to how heavily to fine. The stipendiary may also have more awareness than lay magistrates of the practical problems the court encounters in collecting fines and a keener sense of what it means to be on welfare. In other words, the stipendiary may pay more attention to means when setting the fine amount.

Finally, the stipendiaries at Capital and West Courts are less likely to burden offenders in our samples with court costs whereas the lay magistrates at Midland and East Courts routinely order such contributions from offenders. This may suggest a more punitive or conservative attitude on the part of lay justices: the offender, not the tax-payer, should foot the bill for the criminal justice process.

Despite variations among courts, these data from our samples indicate the direct relationship between the amount imposed and the seriousness of offense that has been found in previous research.¹⁶ Offenses of violence against the person and offenses involving property of substantial value (as in t.d.a. offenses) evoke generally higher fines. The less serious offenses, such as shoplifting, tend to draw lower fines. One type of offender about whom all four courts show a striking degree of agreement is the shoplifting housewife: none had a fine set over £90, and across all courts the majority was ordered to pay £60 or less. This pattern is repeated, though less markedly, for male shoplifters. This difference suggests that the consistently lower fines for female shoplifters may be part of a phenomenon that appears to hold across the courts of relatively lower fine amounts for female offenders generally.¹⁷ (For example, only one housewife in the samples received a fine of over £120, for assault.)

Means. As we have indicated, the law is open to interpretation and court practice is flexible (perhaps, unfortunately) as to the nature of the sentencing court's obligation to inquire into the offender's circumstances when setting a fine. Nevertheless, fine amounts do reflect some appraisal of means. While one knowledgeable official characterized magistrates' courts

¹⁶ See Softley, Fines In Magistrates' Courts, op. cit., pp. 10ff; for details of the breakdown of fine by charge see Appendix D, Tables III-4-7.

¹⁷ See Appendix D, Table III-8 for further details.

generally as operating rough and ready, simplified day-fine systems, our observations, interviews and data indicate this is not uniformly so. Our case record data show quite striking differences among the courts studied in the relationship between the total sums imposed and offenders' self-reported means (see below Tables III, 2-5). Data from the Capital and West Courts indicate a fairly consistent pattern of relationship between fines and funds. The cases there cluster around two poles: "low" fines matched with "low" incomes and "high" fines matched with "high" incomes. (The term "high" and "low" being relative; Capital Court shows much greater use of fines over £120, as compared with West Court, where the high fines are more often in the £91-120 range with only 7% of offenders fined over £120.)

But at the East and Midland Courts, the pattern is less clear, and there is a disproportionate use of higher fines for lower income offenders. (There is also simply a greater tendency to use relatively high fines: 43 percent of fined offenders at Midland Court were fined over £120 and 45 percent at East Court.) This could either be a result of disregard (or ignorance) by the lay magistrates in those courts, of the offender's means when setting the fine and compensation orders, or it could arise from a discrepancy between self-reported means on legal aid forms (the source of our data) and means declared in court. However, our interviews provide no evidence that Midland and East Court offenders, when reporting similar means on their legal aid applications and in court, are less consistent than those at Capital and West Courts.

TABLE III-2

CAPITAL COURT: OFFENDERS' MEANS AND SUMS IMPOSED

Total Weekly House- hold Funds (£)	TOTAL SUM IMPOSED (£)						Total
	0-30	31-60	61-90	91-120	Over 120		
0	6 (24%)	6 (20%)	6 (24%)	4 (16%)	4 (16%)	25 (25%)	
£1-20	3 (23%)	5 (38%)	1 (8%)	2 (15%)	2 (15%)	13 (13%)	
£21-40	9 (35%)	6 (23%)	1 (4%)	4 (15%)	6 (23%)	26 (26%)	
£41-60	1 (8%)	4 (31%)	1 (8%)	4 (31%)	3 (23%)	13 (13%)	
£61-80	4 (27%)	4 (27%)	1 (7%)	3 (20%)	3 (20%)	15 (15%)	
Over £80	0 (-)	0 (-)	1 (12%)	4 (50%)	3 (38%)	8 (8%)	
TOTAL	23 (23%)	24 (24%)	11 (11%)	21 (21%)	21 (21%)	100 (100%)	

TABLE III-3
WEST COURT: OFFENDERS' MEANS AND SUMS IMPOSED

Total Weekly Household Funds (£)	TOTAL SUM IMPOSED (£)						Total
	0-30	31-60	61-90	91-120	Over 120		
0	3 (75%)	0 (-)	1 (25%)	0 (-)	0 (-)	4 (4%)	
£1-20	8 (30%)	7 (26%)	6 (22%)	5 (19%)	1 (4%)	27 (27%)	
£21-40	12 (48%)	7 (28%)	0 (-)	2 (8%)	4 (16%)	25 (25%)	
£41-60	10 (36%)	8 (29%)	3 (11%)	7 (25%)	0 (-)	28 (28%)	
£61-80	4 (36%)	2 (18%)	1 (9%)	2 (18%)	2 (18%)	11 (11%)	
Over £80	2 (33%)	3 (50%)	1 (17%)	0 (-)	0 (-)	6 (6%)	
TOTAL	39 (39%)	27 (27%)	12 (12%)	16 (16%)	7 (7%)	101 (100%)	

TABLE III-4

EAST COURT: OFFENDERS' MEANS AND SUMS IMPOSED

Total Weekly House- hold Funds (£)	TOTAL SUM IMPOSED (£)						Total
	0-30	31-60	61-90	91-120	Over 120		
0	1 (13%)	1 (13%)	2 (25%)	1 (13%)	3 (38%)	8 (7%)	
£1-20	3 (16%)	5 (26%)	6 (32%)	0 (-)	5 (26%)	19 (17%)	
£21-40	0 (-)	8 (25%)	7 (22%)	5 (16%)	12 (38%)	32 (29%)	
£41-60	1 (4%)	6 (23%)	4 (15%)	4 (15%)	11 (42%)	26 (24%)	
£61-80	1 (7%)	0 (-)	0 (-)	3 (20%)	11 (73%)	15 (14%)	
Over £80	0 (-)	1 (10%)	2 (20%)	0 (-)	7 (70%)	10 (9%)	
TOTAL	6 (5%)	21 (19%)	21 (19%)	13 (12%)	49 (45%)	110 (100%)	

TABLE III-5
MIDLAND COURT: OFFENDERS' MEANS AND SUMS IMPOSED

Total Weekly House- hold Funds (£)	TOTAL SUM IMPOSED (£)						Total
	0-30	31-60	61-90	91-120	Over 120		
0	2 (67%)	0 (-)	1 (33%)	0 (-)	0 (-)	3 (2%)	
£1-20	0 (-)	5 (19%)	2 (7%)	7 (26%)	13 (48%)	27 (22%)	
£21-40	3 (8%)	16 (40%)	7 (18%)	2 (5%)	12 (30%)	40 (33%)	
£41-60	3 (9%)	6 (19%)	4 (13%)	3 (9%)	16 (50%)	32 (26%)	
£61-80	0 (-)	1 (9%)	1 (9%)	0 (-)	9 (82%)	11 (9%)	
Over £80	0 (-)	1 (11%)	1 (11%)	4 (44%)	3 (33%)	9 (7%)	
TOTAL	8 (7%)	29 (24%)	16 (13%)	16 (13%)	53 (43%)	122 (100%)	

Interplay of Offense and Means. What are the financial implications for offenders of these different fine-setting patterns? The effect upon certain types of offenders will be far smaller than on others. The male offenders who are steadily employed tend to draw relatively high fines at all four courts. In particular, the steadily employed offenders convicted of fairly serious assault and t.d.a. offenses drew the largest fines at the Midland and East Courts, as they did, though less frequently at Capital and West Courts. However, because West Court set markedly lower fine amounts generally, this meant that, although the same link between higher fine amounts, means, and offense severity is in evidence, the scale of fines is transposed to a lower key across the board. For example only ten percent of the steadily employed were fined over £120 at West Court compared to over half of those at Midland and East Courts. Nevertheless, the data suggest the expected link between offense gravity and work history in influencing higher fine amounts.

However, this interplay between offense, means, and fine is not clear at the other end of the spectrum: low income offenders did not consistently draw the lowest (or even lower)

fines.¹⁸ And they fare differently at the four courts in the way their means and offenses relate to the amount of their fines. This is despite the fact that, as the majority of these offenders are unemployed and on public assistance, they have readily verifiable incomes. Across the four courts, about half of these offenders were ordered to pay relatively low fines (£60 or less). But offense had a primary role: the offenders convicted of shoplifting or other theft offenses tended to receive the lower fines; the more serious assault and t.d.a. offenders tended to draw the larger fines, despite similarly limited means.

Therefore, although they show that very low income mitigates fine amounts at some (but not all) courts, what those data chiefly reveal is the overriding importance of offense growth in determining the amount of fine imposed. Offenders with £20 or less coming into the household each week were ordered to pay over £120--by Midland Court in 48 percent of fined cases, by East Court in 26 percent, by Capital Court in 15 percent by West Court in only four percent of fined cases. T.d.a. and criminal

¹⁸ The patterns here are distorted by the fact that a proportion of the unemployed group with prior criminal records had declared they had no funds at all coming into the household. In some cases at least, this triggered a harsh response from the courts; interview data suggest this is because magistrates suspect these offenders are lying about their means. However, because the group of offenders with no declared funds is small in our samples, it is difficult to identify clear patterns of fine setting at the individual courts. Yet there are indications that, apart from West Court, which again imposed the lowest level of fines on half this group, the courts were equally as inclined to impose very high fines as very low. In particular, when this offender group had assault or t.d.a. convictions, the courts either ignored or disbelieved their declared poverty.

damage offenses primarily accounted for these very high fines.¹⁹

Capital and West Courts again appear to follow a policy at some variance with the fine setting patterns at Midland and East Courts. It may be that the former two courts are tempering the influence of offense on fine amount by considering more seriously the relative poverty among their inner city offender populations. Moreover it would seem that at these two courts the stipendiary magistrates are particularly aware of the declared poverty of the particular group before them.

Is this true of the lay magistrates at Midland and East Courts? If they are aware that these offenders have at most £20 per week to live on (and perhaps to support their families), the imposition of £120 or more is equivalent to ordering intentionally that these offenders should pay six weeks of their livelihood. Even at very low installment rates, it is questionable whether this is affordable or feasible within 12 months, the generally agreed maximum period of time for fine payment.

We have arrived at the question of payment terms and their relationship to fine amount. We shall come back to this point later in the following section, when we review our own case research data.

¹⁹ Compensation appears to play an important role in raising the total amounts imposed on low income offenders. At Midland Court, for example, of these offenders without jobs and on public assistance who were convicted of criminal damage, eight percent were order to pay over £120.

B. The Terms of Payment

1. Law and Practice

It is our sense that magistrates generally do not approach fine imposition by considering the extent of the "burden" upon the offender (i.e., the sacrifice entailed by paying X amount under Y installment or fixed term conditions) before arriving at the decision as to the total amount.²⁰ The mainstream of current English practice is quite unlike any of the day-fine models, in which the total amount of the fine (rather than merely the terms of payment) is calculated on the basis of the economic burden on the offender, as well as the gravity of the offense.

This is not to suggest that the fine amount and the terms of payment are not intimately related. From the perspective of the offender, they are closely linked because together they determine the duration of the punishment. Sentencers, on the other hand, perceive the amount and terms as separate aspects of the fine sentence. Court observations and interviews with sentencers lead us to observe that in imposing a fine at X level to be paid at £Y per week, the court typically has no clear perception that it is sentencing the offender to pay the fine over the course of two or three years. Despite clear guidelines that fine payment normally should be completed within twelve months of imposition, actual amounts and terms of payment set by these four courts often entailed far longer periods for total

²⁰ See R. Morgan and R. Bowles "Fines: Where does Sentencing End and Enforcement Begin?" Crim. L.R. 78 (1983).

repayment--in one case, as much as four years. (It is our sense from interviews that the practice at these four courts is not atypical.)

By law, the decision to set a fixed term or installment rate for fine payment rests with the court. (The choice has important implications for subsequent fines administration. As we shall show later, the fixed term is easier to monitor and thus more readily collected.) At the four courts studied the payment terms were initially arrived at in court, generally only after the full amount to be imposed was determined. The practices involved in setting the terms varied among the courts. At Capital Court, where most fines were imposed on fixed terms, the clerk typically asked whether the offender wanted time to pay and if so how soon he could pay the total sum. The offender's answer might be reflected in the magistrate's order for the term of payment, but generally only if the offender had suggested a period within the two-month range favored at this court.

At the other three courts, and at Capital Court when installment payment was at issue, the clerk would ask what the offender was offering to pay each week. We observed that some offenders offered to pay only very small amounts (£1 per week), whereas others offered to pay installments that appeared out of line with their means. Some offenders, perhaps those who knew the system, pleaded poverty in the hope of "getting away" with minimal weekly payments. Others, perhaps less experienced, were anxious to appear able to afford the fine and overstated their capacity to pay each week. There might be some response and

further inquiry from the court after the offender's offer of a weekly rate. However, the process was uniformly cursory, depending more on the offender's statement of what he could pay than on a formal calculation by the court based on details solicited from the offender or court papers about his actual circumstances. The offender was then directed by the clerk to "see the office" or alternatively to consult the usher (for directions to the Fines Office) in order to learn how to go about making the payments.

There is evidence that some English magistrates' courts leave the matter of terms entirely to their administrative staff.²¹ The legal basis of this practice is open to question, but it seems clear that the chief clerk has the authority at least to allow additional time to pay.²² Recently doubts have arisen, however, about the chief clerk's ability to delegate this authority to his administrative staff.²³ However, most Fines Offices could not function without some delegation of the clerk's authority to modify (adjust) the initial fine terms.²⁴

Subsequently, at our four courts, some offenders asked the Fines Office if they could extend the fixed term deadline or lower the installment rate originally set in court. The ad-

²¹ Ibid.

²² Justices' Clerks' Rules 1970.

²³ See R.V. Gateshead Justices, ex parte Tesco Stores Ltd. (1981) 1 All E.R. 1027.

²⁴ There is authority for altering the installment rate in Criminal Justice Act 1982. S. 51 (i).

ministrative staff of each case exercised discretion in granting or refusing such applications, but could not change the overall amount of the fine set by the court. At some courts, such as Capital, where the management orientation is strong, the levels of discretion are clearly demarcated: decisions involving up to a given value may be decided by the clerical staff; decisions involving larger sums must be referred to a superior administrator. Yet few matters of this sort reach the chief clerk himself.

The adjustment of terms occurs at various stages in the payment/collection process. We shall return to this later when the discussion focuses on that process. It is important, however, to note that the lines distinguishing fine imposition from fine administration become blurred when the details of payment terms are being worked out. At the four courts we studied, this process begins in court and ends in the Fines Office, whereas at other courts the entire matter of payment terms may be handled outside the court by various administrative levels in the Fines Office.

2. Setting the Terms

Our samples reveal a striking difference between the courts' practices of setting terms for fine payment. East, Midland and West Courts used installment terms in 77, 81, and 85 percent of fined cases, respectively. By contrast, the vast majority of fined offenders (81%) at Capital Court were ordered to pay within a fixed term: eleven percent of the fixed term

fined offenders were ordered to pay forthwith and not a single offender was allowed more than two months to pay. The most common fixed term period was between three and four weeks (43% of the Capital Court fixed term fined offenders).²⁵

The three courts using installments adopted quite different approaches in doing so. Midland Court tended to impose low weekly rates (£1 or less per week in over a third of the sample, the median weekly rate being £1.50). By contrast, East Court set high installment rates: only three offenders were ordered to pay as little as £1 per week; a third of East Court's installment orders were for more than £3 per week. West Court's use of installments lay somewhere in between: 15 percent were ordered to pay £1 or less per week and half had weekly dues of £2 or less; however, a third were ordered to pay over £3 per week. Therefore, from the standpoint of leniency of the overall fine sentence imposed, West Court appears least severe by combining a tendency to impose the lowest overall fine amounts with the most frequent use of the more accommodating terms of payment (installments).²⁶

²⁵ By contrast, at Midland, East and West Courts the vast majority were ordered to pay by installments. Out of the small minority with fixed term fines, only one offender at Midland Court, two at West Court and three at East Court were ordered to pay forthwith and the most frequent term allowed was between 6 weeks and 2 months at Midland Court, as compared with between 2 and 3 weeks at East Court and West Court. Thus the courts relying heavily on installment payment tended to adopt different approaches for the few offenders fined on fixed term payment. For a further comparison of the four courts' approaches to the fixed term; see Appendix D, Table III-9.

²⁶ For details of the installment orders for these three courts, see Appendix D, Table III-10.

C. Terms and Amount

What patterns are found overall in the relationship between fine amount and terms? The profiles of fine amounts and terms imposed at these four courts reveal severer fines (higher amounts) at Midland and East Court, but severer terms (fixed) at Capital Court. West Court appears most lenient on both, combining the lowest overall fine amounts with the most frequent use of the more accomodating installment terms. Although these patterns might appear superficially contradictory, they reflect a consistency in fining policy. The imposition of relatively low fines may suggest to the court that stringent payment conditions are appropriate, as seen at Capital Court. It may be seen as appropriate to set more accomodating terms when larger fines are levied, as at East and Midland Courts. Finally, the overall leniency at West Court may reflect the relative poverty of its offender population, compared to the other sample populations (though it should not be forgotten that all of them are generally characterized by low income and high unemployment).

At Capital Court the incidence of fixed terms decreased as the fine amount increased, the larger fines being imposed on installments.²⁷ However, relatively low or moderate fine amounts were the norm, and the court ordered these paid by short fixed terms. The exceptional cases, in which installments were ordered, were typically those involving female assault offenders (aged 30-44) who were fined heavily but were of moderate means,

²⁷ See Appendix D, Table III-11.

and those involving young male offenders fined relatively large sums. (However, Capital Court ordered installment payment only if the offenders had permanent addresses.) Thus, there seems to be a consistent and realistic policy behind this court's use of different payment terms in conjunction with different sums imposed.

The other three courts used fixed terms infrequently; when they did, it was generally because the offender had a temporary or no fixed address and low income, and often had been ordered to pay relatively small fines. Thus, again, the smallest fines tended to be ordered on fixed term, and the larger fines on installment.²⁸ The prevalence in these three courts of more lenient installment conditions reflects realistic thinking on the part of courts about heavily fined offender groups characterized by limited means to pay. These data support our earlier observation that it is over the question of terms, rather than total fine amount, that courts take means into consideration.²⁹

²⁸ The data do show some exceptions to this pattern between amount due and terms. At East Court a small group of very large fines involved fixed terms orders; we hypothesize that these are an offender population punished by punitively high sums because the court suspects substantial gain from the proceeds of crime. The assumption on the part of the court was that these offenders could afford to pay even such heavy fines within a short period.

²⁹ The rates of weekly installments imposed by East and West Courts, two of the three courts relying predominantly on installment payments, showed broad correspondence with income level: the lower rates tended to go to the lower income offenders. At Midland Court there is no apparent correspondence between rates and income levels. See Appendix D, Tables III-12-14 for further details.

Whether the initial decision to impose heavier fines reflects realistic sentencing is another matter and depends, in part, on the outcome of the payment/enforcement process (to which we turn shortly). In this connection the sentencing policy at Capital Court is interesting because it arguably reflects a practical attitude to the whole fining process. Sentencers seem realistic about imposing heavier amounts--they may be paid on installment; but the majority of the fines are relatively small and are to be paid on fixed terms. This overall policy may spring from a desire both to take offenders' poverty into account and keep down the court's administrative costs and to put pressure on most offenders to pay soon after sentence (reflecting the desirability of swift punishment).

It is harder to discern a consistent policy behind Midland Court's fining practices. The heavier fining, especially when offenders declare very limited means, does not bode well for the successful outcome of the sentence--payment. The low weekly installment rates at Midland Court indicate that the magistrates are aware of offenders' means. But, at the same time, the combination of high fines and low payment rates means long payment periods. Are the magistrates making this connection when they fine? Either they do not view the fining process in its totality or, if they do so, other considerations take priority.

Research has pointed to the link between the nature of the fine sentence (the amount and terms) and the outcome of the payment/collection process.³⁰ Our own data, presented below,,

³⁰ Cf. Softley A Survey of Fine Enforcement H.O.R.U. Study 16 (London: H.M.S.O. 1973) p. 38.

confirm this: The larger fines cause more payment problems than the smaller fines; except for some very small fines (often nominal fines imposed on offenders with very limited means and weak community ties, with an order to pay forthwith that results in time served), low fines tend to be paid without the court (Fines Office) taking any action or after only limited action (e.g., reminders letters).³¹ The higher fines tend to be paid in full only after more coercive measures are taken, or they are cancelled by prison time served in lieu of payment, paid in part with the remainder written off as uncollectable, or remain outstanding for long periods.

The association between the terms set for payment and voluntary payment is even more striking. Capital Court's sample of fined offenders demonstrates the less problematic nature of the smaller fine with fixed term arrangements: 45 percent of fixed term payers paid without any court action as compared with 19 percent of installment payers. Data from the other three courts bear out the supposition that fixed term smaller fines cause less work to elicit payment than do installment fines.³²

Whereas this confirmation of past research findings has important policy implications it does not explain the full variety of payment outcomes evidenced in the data. In the following chapter we shall try to go beyond the crude link between

³¹ See Appendix D, Tables III-15-18.

³² See Appendix D, Tables III-19-22. This same relationship was evident in our previous research on fining practices in the United States (Hillsman et al., 1984: 101ff).

the nature of the fine sentence (amount and terms) and the outcome of the payment/collection process, when we consider who pays voluntarily and who does not.

CHAPTER IV

PATTERNS OF PAYMENT:

PAYMENT BEFORE ENFORCEMENT

Introduction

In this chapter we deal with issues of the payment and non-payment of fines. We begin by defining our terms (because a variety of usages may be found in the literature), and by briefly reviewing what is already known about (a) the extent of payment, interim default and non-payment in English magistrates' courts, and (b) the factors associated with these phenomena.

We explore primarily who pays "voluntarily" rather than who pays as a result of enforcement activity on the part of the court, a subject primarily reserved for Chapter V. We shall focus on characteristics of sentences and offenders that offer insight into the question of who pays voluntarily, thus also addressing who among the original pool of fined offenders remains to be subject to increasingly coercive enforcement techniques. In doing so, we discuss briefly the European literature on the Swedish and German day-fine systems that suggests the relationship between amount imposed and offender's means as a key to explaining the success of fine collections. In examining data from our present study to address some of these questions, we draw upon the unique information we have collected on the means of individual fined offenders. Using these data we attempt to explain the extent of voluntary payment (as contrasted to elicited payment and to non-payment) at different courts.

First, we seek to identify typical combinations of sentence and offender characteristics that appear associated with voluntary payment. Then, in the light of this analysis, we examine the position of certain offender groups traditionally considered bad fine risks either from the English or from the American viewpoint.

A. Defining the Stages of the Fine Payment and Enforcement Process

Fine payment is a complex subject. There are a variety of ways in which sums may be forthcoming in payment of court-imposed financial penalties. Systematic information about the payment process and why certain cases result in only partial or no payment is sparse. However, to review the existing information, we must establish our terms of reference. Not only are there considerable gaps in the existing literature on fine payment, there is also ambiguity in the use of terms to describe the process.

In dealing with the payment of fines and other sums imposed upon fined offenders we shall confine ourselves primarily to considering payment in full. There are of course instances in which a fined offender, particularly when granted installment conditions, will pay part of the sum owed and then fail to pay the remaining debt. Although we have information concerning partially outstanding or partially written off sums, we shall focus on the question of whether the fined offender complied in full with the sentence. This focus stems from our interest in

the appropriateness of the original amount and terms of the sentence, and with whether the court was obliged to take action to elicit payment. We are not primarily concerned with the financial implications for the court of partial or full payment.

Therefore, when we speak of 'non-payment,' we refer to failure to pay the entire amount owed. For practical purposes, our research cut-off date was 15 months post sentence, but this time frame also reflects the prevailing policy in magistrates' courts that full payment should be accomplished in one year following sentencing.

We use the terms 'non-payment' or 'failure to pay' because the more usual term 'default' is open to various interpretations. It may signify ultimate failure to pay the full amount. (Thus when a fined offender is committed to prison for non-payment of a fine, it is typically referred to as imprisonment for fine default.) However, default is also used to signify an initial failure to comply with the original payment conditions that may, or may not, be followed by full payment of the fine. (Thus when a court is said to have a default rate of 50 percent, this often means that half of those it fines violated the original payment conditions while half paid in full accordance to those terms.) The problem with using 'default' to cover both phenomena lies in the fact that a fined offender may technically default on his payment conditions (e.g., miss an installment, pay less than the full weekly installment rate or pay the full amount or part thereof after expiration of the fixed term

period) but may eventually pay in full. We confine our usage to this second meaning as signified by the term "interim" default.

We shall refer, therefore, to the various payment permutations as follows:

- 1) voluntary payment: full payment either (a) in accordance with the conditions of payment (i.e., without interim default); or (b) after a technical interim default but before the court initiates any action to elicit payment;
- 2) interim default: failure to pay fully in accordance with the conditions of payment;
- 3) elicited payment: full payment after interim default and initiation of court action to elicit payment;
- 4) ultimate payment: voluntary and elicited payment (i.e., any payment in full with or without court action);
- 5) non-payment: ultimate failure to pay fully (by the 15-month research cut-off date), whether or not the court chooses to enforce the fine sentence by imposing a prison term in lieu of payment.

We note that voluntary payment is only non-problematic in that the court does not take action. It may involve interim default, although this is likely to be of short duration because it is resolved before the court has time to identify the interim default and to initiate action.

Elicited payment consists of full payment which occurs subsequent to court action, but it must be noted that any inference about a causal relationship between a court action and subsequent full payment must remain tenuous in this research. Nevertheless, we will make the assumption that a court action has at least some impact on the fined offender's decision to pay in full.

B. Prior Research on Payment and Default

1. Extent of the Non-Payment Problem

Past research has tended to focus on a somewhat different set of questions than those we address in this chapter. Studies have been concerned with court efforts to enforce fine payment in the event of interim default and patterns of ultimate payment or non-payment.

From studies of fining conducted in England over the last fifteen years, a picture emerges of a sizeable non-payment problem in the magistrates' courts. Research indicates considerable variation across courts but suggests about a quarter of the offender population fined for serious offenses ultimately fails to pay the full fine imposed. This may be favorably contrasted, however, to the somewhat higher rate of one-third found in the New York City lower court system for all fines imposed (Hillsman et al., 1984: 83).

For instance, almost a quarter of the fined offenders studied in one British sample were "in default" after 18 months, nine percent of whom had not paid any part of the fine.¹ Over a quarter of the monies due to the court were outstanding after 18 months. This Home Office study, published in 1978, and based upon nationally aggregated data for 1974, revealed a fine payment rate of 77 percent among offenders fined for indictable offenses.

¹ Paul Softley, Fines in Magistrates' Courts, H.O.R.U.S. No. 46 (London: H.M.S.O., 1978).

We also learn of variations in payment patterns from past research. If a broader range of cases is included, the ultimate payment rates tend to be higher than for indictable offense cases. Moreover, payment rates vary somewhat across courts. A 1983 Home Office study of 34 courts revealed payment rates ranging from 78 percent to 95 percent; but the samples included offenders fined for traffic offenses, a group with traditionally high payment rates, the inclusion of which would explain the higher payment rates as compared with the indictable offense sample in the 1978 study.²

Thus from past studies we have a rough indication of the extent of the ultimate outcome of the fining process across courts and offenses. Yet this does not speak to why some fined offenders pay readily and others do not. To understand the full extent of the problem, we must consider the degree to which payment occurs voluntarily and conversely, the extent to which the court is obliged to take action to elicit payment.

Past research affords some data on these phenomena, the emphasis being primarily on problematic payers. One study found that official court action was needed to enforce payment against 48 percent of the fined offenders in the sample.³ Other studies provide similar evidence of the considerable administrative task involved in eliciting payment. For example, in 1972

² Paul Softley and David Moxon, Fine Enforcement: An Evaluation of the Practices of Individual Courts. H.O.R.U. Paper 12 (London: . H.M.S.O., 1983).

³ Softley, Fines In Magistrates' Courts, op. cit., p. 21.

about 100,000 fines were imposed in Manchester courts; 18,000 were paid without action having to be taken. Eventually, warrants were issued against 4,200 defaulting offenders and, of these, 884 offenders (nearly one fifth of those with warrants) were committed to prison for fine default.⁴

Obviously the amount of enforcement work occasioned by fine default varies from court to court, with the variation in interim default associated with factors such as the nature of the offender population, offense characteristics, fine amounts, etc. It is reasonable to conclude from our own and others' research that enforcement, regardless of its magnitude, is often a significant part of English courts' administrative tasks.

2. Factors Associated with Payment, Interim Default, and Non-payment

As well as considering the extent of the problem raised by interim default, existing studies have addressed the question of the link between sentence, offender or system variables and interim default, payment and non-payment. Again the emphasis has been largely upon why offenders do not pay initially or ultimately.

Sentence variables. Past research has raised a point that has major implications for sentencing policy: there is evidence that ultimate non-payment correlates highly with the amount of the fine. One study showed that half the offenders due to pay

⁴ Cecil T. Latham "Enforcement of Fines" in Crim. L. Rev. No. 552 (October 1973), pp. 552-559.

over £100 were in default after 18 months, and noted that failure to pay was associated with amounts imposed in excess of £50.⁵ Similarly, the 1983 Home Office study found a clear relationship between the average sum imposed by a court and the proportion of offenders paying within 12 months. As we indicated at the end of the preceding chapter, our own data support this.

Once one begins to consider the sentence in detail, however, the complexity of the links between the sentence and its payment becomes apparent. Past research indicates that the likelihood of interim default and ultimate failure to pay increase with the severity of the sentence (i.e., the fine amount); but there is also evidence that interim default is less likely when the conditions of payment are strict.

One major study in England found a statistically significant difference in the rate of interim default associated with installment versus fixed term payment. Of a sample of offenders sentenced to pay the fine by a certain term, 31 percent had paid nothing one week after the final term date, whereas of those paying by installments 17 percent had made no payments at all one week after the final installment due date.⁶ However, it is to be expected that an offender paying on installments due to run over a six-month period will have paid something by one week

⁵ Softley, Fines in Magistrates' Courts, op. cit., pp. 17-18.

⁶ Paul Softley, A Survey of Fine Enforcement, H.O.R.S., No. 16 (London: H.M.S.O., 1973), p. 19.

after the final due date, even if only one installment, whereas a fixed term payer with only two weeks to pay may have paid nothing by one week after the due date. The implications of these findings for offenders' eventual payment or default remain unclear. However, English data from our earlier Fines in Sentencing study suggest a higher incidence of full payment among fixed term payers.⁷ As we noted in Chapter III, in our present data eventual payment is associated with fixed terms rather than installments. An earlier Home Office study, based on data aggregated across the country found that, after nine months had elapsed following sentence, 90 percent of fined offenders had completed payment in 1967 and 89 percent in 1968. These high payment rates were apparently related to the fact that 70 percent of fined offenders were given only seven days to pay.⁸

Thus we see that "severity of sentencing," if it takes the form of strict payment terms, does not necessarily lead to lower payment rates. The harshness of the short fixed term as a condition of payment would appear to bear a positive relationship to payment, whereas the relationship between harsh fining, in terms of amount imposed, and payment is negative. However, in comparing payment rates by payment terms one cannot disregard that fixed terms and installments are often used in conjunction with different amounts imposed. Fixed terms are used primarily

⁷ Casale, "Fines in Europe." New York: Vera Institute of Justice, 1981, Part III, pp. 58f.

⁸ Softley, A Survey of Fines Enforcement, op. cit.

for relatively small fines, and the higher payment rates associated with fixed terms may partially reflect the link between payment and smaller fines.

Offender characteristics. But beyond this relationship between amount imposed, terms and payment, there are the links between the payment outcome and offenders' circumstances. Past research has attempted to relate certain offender characteristics to likelihood of payment.

Various studies indicate that the extent of the offender's prior record appears highly related to non-payment of fines. For instance, in one study 46 percent of offenders with three or more previous convictions were in default after 18 months.⁹ Parallel findings from an analysis of 1961 data show a non-payment rate of 21 percent for offenders with no or only one prior conviction, as opposed to 54 percent for those with two or more previous convictions.¹⁰ If we try to explain this relationship we find ourselves thinking not only in terms of unresponsive or irresponsible behavior patterns possibly associated with offenders with long records, but also in terms of the likelihood that offenders with serious records will tend to have bad employment records, low income and poor social ties. In other words, the research to date leads us to consider the link between criminal record and fine default as potentially explained at least in part by an association between economic means and amount owed.

⁹ Softley, Fines in Magistrates' Courts, op. cit., p. 19.

¹⁰ R.F. Sparks, "The Enforcement of Fines" in British Journal of Criminology, Vo. 13 (1973), p. 104.

Unfortunately, past research provides limited information about that association because it has not obtained detailed information on offenders' means. The evidence that is presented suggests that if offenders are classified by broad distinctions such as family income level, employment status at the time of sentencing and residence in a low or high crime rate area, the probability of default increases greatly as the offender's position in such rankings declines.¹¹ More recent Home Office research on 34 courts, while it did not include specific economic or employment information on individual fined offenders, it did consider the relationship between offenders' payment rate and community economic variables: the level of unemployment, the rateable value of property and the gross weekly income in the area served by the courts. The study found no statistically significant correlations.¹²

System variables. Past research has also addressed the question of how ultimate payment is linked to court action to elicit payment from those fined offenders who do not pay voluntarily. Our discussion of the relationship between system variables and eventual payment or non-payment belongs primarily in the next chapter. In this chapter we focus on a numerically more important group: the majority of fined offenders upon whom the fine enforcement system has no direct effect because they have already paid before that system is called into action. The

¹¹ Martin Davies, Financial Penalties and Probation, H.O.R.S. No. 5 (London: H.M.S.O., 1970), p. 21.

¹² Softley and Moxon, op.cit.

only enforcement effect attributable to the system for this larger group is a general and indirect (but potentially important) one. That a fined offender may know what will happen if he fails to pay may encourage his voluntary payment or contribute to his decision to allow interim default to occur. Past research has noted the variety and relative frequency of measures adopted by courts to elicit payment and the rates of ultimate payment and non-payment following different measures. We shall return to this subject in greater detail when we focus upon the enforcement strategies adopted by our courts in Chapter V.

C. Gaps in Knowledge About Fine Payers

1. European Experiences

Although the past fifteen years have seen increasing research interest in England on the use of fines and the problems of enforcing payment, there are still considerable gaps in our knowledge about what determines the success or failure of the fining process (compliance or non-compliance with the fine sentence).

As the recent NACRO Working Party has reported, there is a "distinct lack of information about many of the most important questions involved" in the process of fine default and enforcement. In particular, "little is known about the characteristics and circumstances of fine defaulters and the reasons for their default."¹³ We shall try to take a first step in addressing

¹³ NACRO, Fine Default: Report of a NACRO Working Party (London: NACRO, 1981), p.8.

these issues. We proceed from the idea that in order to understand why some offenders default, it is important to examine why some offenders pay readily. That examination leads us to one of the questions evoked by past research: the relationships between the payment outcome, the nature of the fine sentence and the offender's means.

It is a question central to the whole fining process. After all, if one is dealing with a financial penalty, it makes sense to examine the finances of the offender on whom that type of penalty is imposed. The issue is not merely a technical one: it goes to the fundamental equity of a system of financial penalties imposed on persons of different financial means. Although research in the English system has not tackled this intriguing set of relationships, in certain European countries the issue has given rise to the development and study of a refined system of fining: the day-fine system.

The recent interest in Europe in the day-fine concept, as reflected in its introduction into the Federal Republic of Germany, testifies to a growing awareness that fining is not a simple sentencing task.¹⁴ Like some other sentence options, the fine permits flexibility: severity of punishment may be geared to gravity of the offense by increasing the fine amount or the harshness of payment terms, as the length of a prison sentence may reflect the seriousness of the crime. But to a greater extent than with other sentence options there is also a

¹⁴ For a further discussion of the day-fine concept see Casale, "Fines in Europe," op. cit., Part I, pp. 27ff.

conspicuous "flexibility" about its impact: the sacrifice entailed for different individuals by the identical fine may vary considerably. A system of equitable fining must achieve a balance by weighting both for offense gravity and for the sacrifice entailed. The day-fine system attempts to do just this.

The impetus for the day-fine system may have come chiefly from concerns for equity, but the system has implications of a practical as well as a jurisprudential nature. Research conducted in the Federal Republic of Germany¹⁵ into the effects of the introduction of the day-fine system provides evidence of a general satisfaction on the part of practitioners with the way the system works.¹⁶ There are also indications (probably not unrelated to practitioners' attitudes) that a fining process which starts with a fine sentence closely tuned to the individual offender's means, as well as to the gravity of the offense, ends with a high level of payment, both in terms of a high proportion of offenders paying voluntarily (65%) and a low proportion not paying at all (6%).¹⁷

Similarly in Sweden, where the day-fine system has been operating for many years, the high payment rates appear to reflect, at least in part, the imposition of carefully weighted fine amounts. The refinement of the sentencing process, there-

¹⁵ Cf. Hans-Jorg Albrecht, Strafmessung and Vollstreckung bei Geldstrafen. (Berlin: Duncker & Humboldt, 1980). For a discussion in English see Casale, op. cit., Part II.

¹⁶ Casale op. cit., Part I, p. 34.

¹⁷ Ibid, Part II, p. 7.

fore, appears to have a positive effect on enforcement practices.¹⁸ If, as in Sweden and the Federal Republic of Germany, there is a measure of general confidence in the equity of the original fining decision, the authorities tend to view persistent defaulters as willful rather than inept and to pursue them with conviction. It may be that part of the lack of vigor seen in the enforcement efforts of certain English courts derives from an uneasy sense that some offenders cannot rather than will not pay their fines. In addressing questions of the relationships between the fine sentence, offender's means and payment outcome, therefore, we are examining the policy-relevant issue of whether the fining process is equitable and realistic.

2. Present Study

The success of the whole fining process and, within it, of the fine enforcement process thus depends upon the original sentencing decision. It is for that reason that this chapter is concerned with the relationship of offender characteristics and voluntary payment outcomes. In order to do so, we collected self-reported financial and work information on the individuals in our fined offender sample. Using this unique information base we shall discuss the extent of voluntary payment in terms of the offender's economic circumstances in relationship to the total sum imposed by the court.

¹⁸ Ibid., Part I, p. 43.

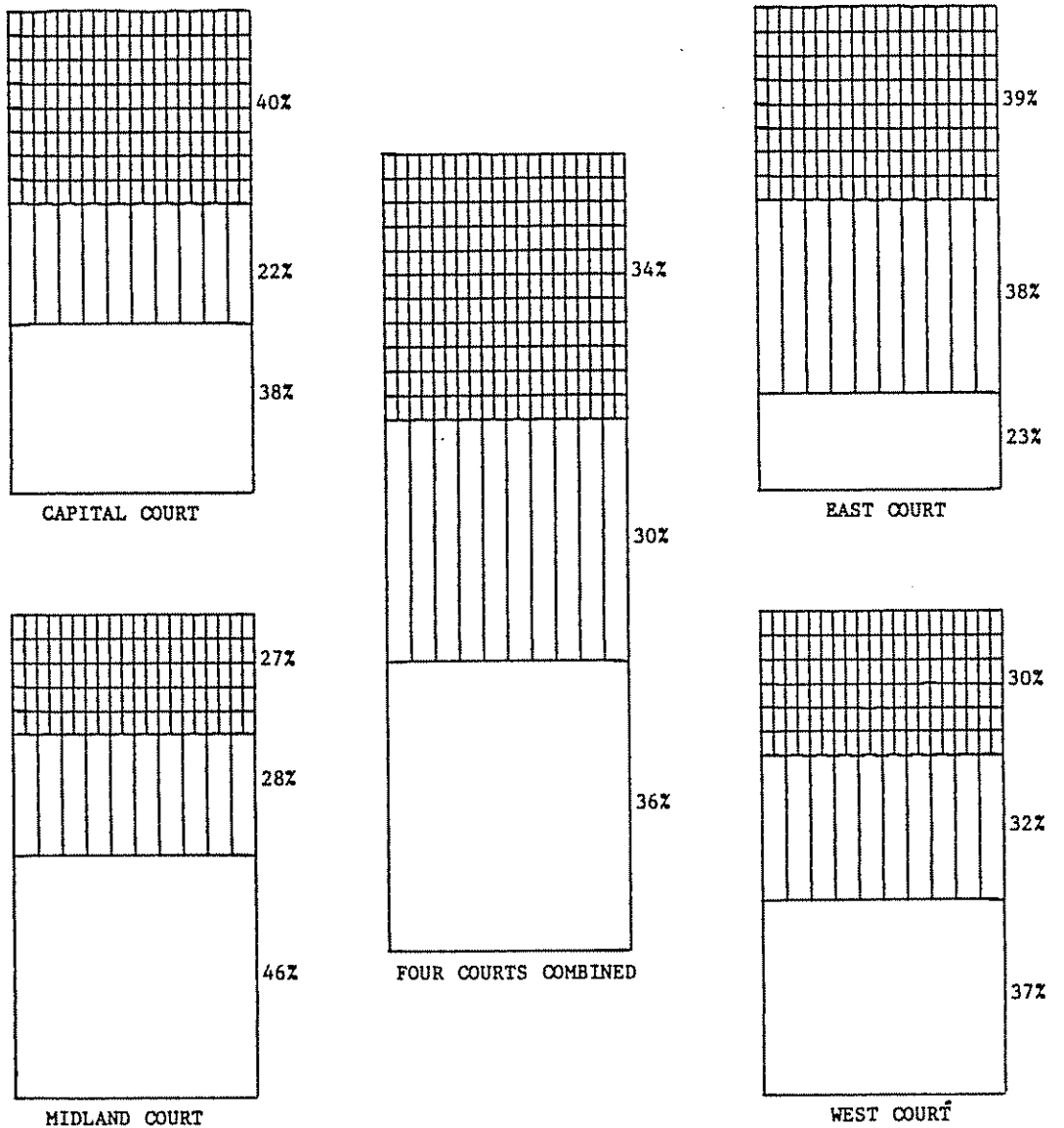
D. The Extent of Voluntary Payment and the Resulting Problems of Enforcement Confronting the Courts




Combining the four magistrates' courts studied we find that roughly one in three fined offenders paid in full "voluntarily," that is, without court action (see Figure IV-1). Although some of these at each court were technically in default (they did not comply exactly with the terms of payment set down by the sentencing courts), the majority of the voluntary payers were able to meet all the conditions of the sentence: they paid the full amount imposed according to the payment terms. The aggregated data, however, mask different patterns at the four courts.

When we look at our four courts individually, we find that the proportion of voluntary payers varies considerably. At Capital and East courts approximately 40 percent pay without the courts having to take any action to encourage payment; West and Midland courts fare somewhat worse with 30 percent and 27 percent, respectively.

It is difficult to attribute the response to the collection/enforcement strategies of the courts. For these voluntary payers those strategies were never called into play. It may be that these offenders are responding to the threat of enforcement--that they knew precisely what would lie in store for them if they defaulted--but it is hard to regard this as their prime motivating force. Although general knowledge of each court's enforcement strategy may have some influence on voluntary payment, we begin by looking elsewhere for an explanation of the variation among the courts. It seems more likely that the

FIGURE IV-1
FINE PROCESS OUTCOMES: VOLUNTARY PAYMENT, ELICITED PAYMENT, AND NON-PAYMENT



KEY:  Paid Voluntarily  Payment elicited after court action  Not paid in money (time served; fine outstanding)

voluntary payment pattern is associated with offender characteristics and with the nature of the fine sentence.

Broadly speaking Capital, West and Midland Courts have similar fined offender populations: there is large scale unemployment and the funds available to the offender's family each week are limited. However, East Court's fined offenders are somewhat better off and their unemployment rate is lower. Thus the voluntary payment variation is not simply explained by relative prosperity.

Behind the similarity in Capital and East Courts' better voluntary payment rates lie very different sentencing patterns. On average the amounts imposed at Capital were lower than at the other courts though closer to the sums set at West Court; at Capital, however, the conditions of payment were more severe than at the other three courts, with heavier reliance on short fixed terms rather than installment terms. Yet despite these differences, Capital and East Courts had similar higher rates of voluntary payment.

Voluntary payment rates appear linked to both sentencing policy and offender characteristics. We focus particularly on the notion that the degree of match between the sentence and offender's economic circumstances affects the rate of voluntary payment.

As we have said, there is not a simple relationship between voluntary payment and offender characteristics. Across the four courts, however, certain types of offenders stand out as particularly good fine risks (i.e., they pay voluntarily): female

offenders generally and male first offenders. We shall try to examine payment patterns to see whether it is indeed the offender characteristics that explain voluntary payment or whether these are in turn linked to sentence characteristics.

1. Female Offenders

Female offenders are an interesting group despite their relatively small representation within the more serious fined offender sample (approximately 10%). Across all the courts women pay their fines: 72 percent ultimately paid, and more important for our immediate concern, 41 percent paid voluntarily.

Among the women, who are the voluntary payers? They are predominantly women first offenders with household incomes of over £60 per week.

Case A involved a middle-aged woman convicted at West Court of shoplifting and sentenced by a £30 fine payable in 25 days. She had lost her job because of her conviction but her spouse was earning £110 per week. The household weekly expenses were reported as totalling £57. The woman had no previous convictions. She paid within the fixed term of 25 days.

Income and prior record are both important for offenders' payment outcomes but, among women, record is less important than among the men.¹⁹ Women offenders tend not to have as serious

¹⁹ It is generally speaking harder to find well-paying employment if you have a record, and the worse the record the harder this becomes. The link between prior record and non-payment, attested in past research, may be partly a reflection of the link between means and record.

records as the men. However, the women with some prior record (1-3 convictions) tended to pay voluntarily, provided that they had funds over £60 coming into the household each week. Here the importance of other family members' earning power can be seen as a dimension of the interplay between prior record, means and payment.

Case B involved a fifty-two year old woman convicted of shoplifting at Midland Court. She had one previous conviction for which she had been fined. On the present offense she was fined £50 to be paid in 14 days. She herself was in steady employment earning £32 per week as a clerk and her spouse was also fully employed, earning £29 per week. The household's reported weekly outgoings totalled £19. The woman paid the fine at the end of the 14 days.

What stands out most about the women offenders, especially those who paid voluntarily, is that they had relatively small fines to pay especially in comparison to their household incomes. We observed earlier that the courts tend to fine women less heavily than men, regardless of the self-reported financial circumstances of the woman or her household.²⁰ We suspect that this may be due in part to the magistrates' traditional view of the woman as not self-supporting and their reluctance to place a

²⁰ The women offenders were fined slightly less frequently than the men and, if fined, they were ordered to pay lower total amounts. For example, across our four courts 11% of the women fined were ordered to pay over £120, compared to 32% of the male offenders.

financial penalty indirectly on the husband. It may also be linked to the dominance of shoplifting among women's offenses and the notion that this offense is connected with either family deprivation or emotional problems. Moreover shoplifting seems to rank farther down on the scale of grave offenses than other offenses sampled in our research.

At Capital and West Courts in particular the women voluntary payers were fined smaller amounts (under £31), regardless of the level of household funds.²¹

Case C involved a 27-year-old housewife convicted of shoplifting at Capital Court. She had no previous convictions. Her spouse earned £65 per week and her father, who lived with the household, gave her £8 per week for his keep. She was ordered to pay a fine of £20 in 28 days. She paid within the stated fixed term.

But even the women at East and Midland Courts, who were generally fined rather more heavily than at Capital and West Court, paid voluntarily if their family income was relatively high. Although at East Court the women voluntary payers were all paying fines over £60, they were also relatively better off than the women voluntary payers at the other courts.

Case D involved a forty year old woman convicted of shoplifting at East Court. It was her first conviction. She was employed as a female inspector

²¹ At Capital Court 7 of the 10 women voluntary payers were fined under £31; at West Court 4 out of 7 were fined under £31 and the remaining 3 were fined under £61; the latter three women all had over £60 per week coming into their households.

and earned £67 per week. Her spouse earned £75 per week; the family owned property in the U.K. She was fined £60, ordered to pay £15 costs and £100 legal aid contribution. The court allowed her 28 days in which to pay the total of £175. She in fact paid one month too late but the Fines Office had not initiated action by that time.

At Midland Court where women were fined more severely, those who paid voluntarily belonged to the upper income brackets. However, unlike the other courts, fewer women overall at Midland Court paid voluntarily (although most women offenders ultimately paid). This reflects the larger fine amounts in relationship to household income characteristic of this court. This pattern is illustrated by two cases of women who had still not paid their fines in full after at least a year. They were fined over £90 although they reported less than £40 in weekly income.

Case E involved a 19-year-old girl convicted of assault. She had no previous convictions and was fined £50 plus £42.75 costs. She was ordered to pay at an installment rate of £2 per week. She was unemployed and received benefits of £17 per week out of which she spent £12 per week on room and board. She failed to make any payments and a means warrant from the Fines Office was still outstanding against her fifteen months after sentence.

Case F involved a twenty-one year old housewife convicted of assault. It was her second conviction and her first fine. She was fined £125 plus £42.75

costs to be paid at £2 per week. She reported that she was divorced from her husband and receiving £17 in benefits each week. She lived with her father who gave her £7 per week for housekeeping. The woman defaulted on her installment payments and the Midland Court Fines Office issued a means warrant on which she was brought before the default court. There she was ordered to pay at the increased rate of £3 per week. She paid a few installments sporadically, before relapsing into renewed default. After the 16 months following sentence she had ultimately not paid (there was over £100 still outstanding).

As we said in the preface to this discussion of the women voluntary payers, the female group is a small one given the predominance of men in the general offender population and also in the fined offender population. Nevertheless the data have interest because they suggest that

a) generally, high voluntary payment rates among women are linked to relatively low fines in relation to family income, and

b) the exceptions to this general rule of voluntary, and ultimate, payment among women may be partly attributable to the incidence of disproportionately heavy fines imposed on relatively poor women.

Let us consider whether similar factors relate to the behavior of the other conspicuous group of voluntary payers: male first offenders.

2. Male First Offenders

The voluntary payment rate for men across the four courts is one in three. Most of the male voluntary payers were first

offenders (69%), and these men make up nearly half the total male first offender population in the sample. However, the proportion of male voluntary payers drops from nearly one in two for first offenders to one in four for men with minor records (1-3 convictions) and to one in ten for men with more serious records. Notably the voluntary payers who had long prior records were also the few among that group who were employed:

Case G involved a 43-year-old man convicted of shoplifting at Capital Court. He had 5 previous convictions. Although he had not had steady employment throughout the previous year, he reported current weekly earnings of £75 per week and outgoings of £30 per week. He was fined £20 payable in 7 days and he paid at the end of the week.

If we examine further the first offender voluntary payers we see that they were quite often men in steady employment. Of the 71 first offender males who paid voluntarily, 31 were employed throughout the previous year. A numerically small group of student and retired men are also found among the first offender voluntary payers.²²

We suggest from these data that the male first offenders' tendency to pay voluntarily reflects both a less cynical (or less experienced) attitude towards playing the system (i.e.,

²² The first offender students and pensioners show a voluntary payment rate of 89%. The students and pensioners with records show a lower voluntary payment rate (67%) than their counterparts with no criminal records but they still are the predominant type among the male voluntary payers with records, relative to their incidence in the sample. (They total 27 offenders at the four courts.)

waiting for as long as possible before paying or evading payment entirely) and the fact of their steady, if limited, income.

In fact the steadily employed and the small group of students and retired men predominate not only among the first offenders but among the male voluntary payers generally. Forty-one percent of all male voluntary payers were in steady employment (although only 30% of the male fined offender population were steadily employed). In contrast, unemployed men on benefits were less frequent among voluntary payers (28% of that group) although they accounted for 41 percent of the male fined offender samples. Although the unemployed on benefits may have very limited means, theirs is a steady income. Whether they paid voluntarily seems also to be related to the amount of the fine. Most of the unemployed men on benefits who paid voluntarily (84%) had smaller sums of under £61 to pay. Overall, therefore, the same pattern of explanation emerges from our discussion of men who pay voluntarily as from our discussion of women: the size of the fine in relationship to the means available from employment, or family, or both (with the relationship between employment and prior record influencing the means).

3. Voluntary Payers at the Four Courts

We know that Capital and East Courts show the highest overall voluntary payment rates. As with the women, at East Court the male voluntary payers tended to pay higher fines (half were over £120), were mainly in steady employment and in the moderate to high income brackets.

Case H involved a 19-year-old male convicted of taking and driving away a vehicle. It was his first offense. He had a steady job as a mechanic and lived with his parents. He earned £54 per week and declared weekly expenses totaling £18 per week. He was fined £125 with £10 costs, £17.50 compensation, and £30 legal aid contribution. These various sums totalled £182.50 payable at £5 per week. He paid in accordance with these terms (except for minor aberrations in the installment dates).

At Capital Court the male voluntary payers were either (a) unemployed men on benefits paying lower fines under £30, or (b) men in steady work and in the highest income brackets (almost all over £60 per week) paying higher fines over £90. This pattern resembles West Court, except that there were few voluntary male payers at West Court paying higher fines.

Case I involved a fifty-five year old man convicted of shoplifting. He was out of work and received £34 per week in unemployment benefits. He was a first offender and West Court fined him £20 to be paid in 21 days. He paid in full at the end of the three weeks.

By contrast, there were fewer voluntary payers at Midland Court of any type, but especially with fines under £30, and the small number of male voluntary payers was made up chiefly of a group which, like the male voluntary payers at East Court, had relatively high incomes, steady jobs and high fines.

Although the typical voluntary payers at each court differ somewhat, the details of their cases tend to fit the same

pattern: voluntary payment tends to occur when the means of the fined offender and the financial penalty imposed are in line with each other. The pattern of voluntary payment at the combined courts (Table IV-1) confirms that there are few voluntary payers with large fines and low incomes.

The voluntary payers show a marked tendency to cluster around lower fines. There is a less striking clustering of voluntary payers around higher fines with higher incomes. The broad patterns support our tentative conclusion that a fining decision that tries to match amount imposed and means of the offender carries a greater probability of fining success (i.e., ready and full payment).

However, although at Capital, West and Midland Court the voluntary payers rarely combined low incomes and high fines, at East Court a number of voluntary payers fitted this unusual profile (Table IV-2). How is it that this phenomenon is unique to East Court? Why does it not occur at Midland Court where higher fines are also imposed on offenders with lower incomes?

We can suggest speculative but plausible explanations. First, the mismatch between fine and means is simply more glaring at Midland Court among offenders with £20 per week and less and fines over £120: almost half the offenders (48%) in the very low income group had fines of this magnitude at Midland Court.

Second, offenders at Midland Court live in a city more clearly hit by the recession: the local unemployment rate is higher than at East Court. Unlike imprisonment or probation,

Table IV-1

VOLUNTARY PAYERS

Fine Amounts Imposed by Weekly Household Funds (All Courts)

Total Weekly Household Funds (£) s	TOTAL SUM IMPOSED (£)							Total Voluntary Payers
	0-30	31-60	61-90	91-120	Over 120			
0	7 (41%)	1 (6%)	4 (24%)	3 (18%)	2 (12%)			17 (13%)
£1-20	7 (39%)	5 (28%)	2 (11%)	1 (6%)	3 (17%)			18 (13%)
£21-40	9 (24%)	12 (32%)	4 (11%)	3 (8%)	10 (26%)			38 (28%)
£41-60	6 (18%)	6 (18%)	5 (15%)	6 (18%)	10 (30%)			33 (24%)
£61-80	5 (31%)	3 (19%)	0	2 (13%)	6 (38%)			16 (12%)
Over £80	1 (7%)	1 (7%)	2 (14%)	6 (43%)	4 (29%)			14 (10%)
TOTAL VOLUNTARY PAYERS	35 (26%)	28 (21%)	17 (13%)	21 (15%)	35 (26%)			136 100%

Table IV-2
VOLUNTARY PAYERS
Fine Amounts Imposed by Total Weekly Household Funds and by Court

Total Weekly Household Funds (£)	Court	TOTAL SUM IMPOSED (£)							Total
		0-30	31-60	61-90	91-120	Over 120			
0	C	5)	1)	2)	3)	-)	-)	11	
	E	-)	1)	-)	-)	2)	2)	2	
	M	-)	-)	1)	-)	-)	-)	1	
	W	2)	-)	1)	-)	-)	-)	3	
£1-20	C	4)	2)	-)	-)	-)	-)	6	
	E	-)	1)	1)	1)	2)	2)	4	
	M	-)	2)	-)	1)	1)	1)	4	
	W	3)	-)	1)	-)	-)	-)	4	
£21-40	C	4)	3)	-)	-)	2)	2)	9	
	E	-)	2)	3)	1)	6)	6)	12	
	M	1)	4)	1)	-)	1)	1)	7	
	W	4)	3)	-)	2)	1)	1)	10	
£41-60	C	1)	-)	-)	2)	1)	1)	4	
	E	-)	2)	3)	1)	5)	5)	11	
	M	-)	2)	2)	1)	4)	4)	9	
	W	5)	2)	-)	2)	-)	-)	9	
£61-80	C	4)	1)	0)	-)	-)	-)	5	
	E	1)	-)	2)	2)	3)	3)	6	
	M	-)	1)	-)	-)	2)	2)	3	
	W	-)	1)	-)	-)	1)	1)	2	
Over £80	C	-)	-)	1)	3)	3)	3)	7	
	E	-)	1)	1)	-)	1)	1)	2	
	M	-)	-)	-)	3)	-)	-)	3	
	W	1)	1)	-)	-)	-)	-)	2	
TOTAL	C	18)	7)	3)	8)	6)	6)	42	
	E	1)	5)	8)	4)	19)	19)	37	
	M	1)	9)	4)	5)	8)	8)	27	
	W	15)	7)	2)	4)	2)	2)	30	

the fine is an impersonal penalty; someone cannot serve time in prison or undergo probation supervision in your stead, but someone else may contribute to your fine payments. Poorer East Court offenders differ from their counterparts at Midland Court by having a network of somewhat better off individuals upon whom to draw for financial support.

Finally, the fine enforcement process (to which we now turn) is more varied and more personally run in East Court than at any of the other courts studied. The enforcement process in this small community may provide a more effective deterrent to interim default for those whose more limited means make payment of larger fines difficult.

These explanations tend to elaborate our general finding that voluntary payment is a more likely when there is congruence between fine amount and the financial resources available to the offender. We turn now to those offenders who did not pay voluntarily but who did respond to the collection/enforcement process, as we trace the fining process through its next stages. The enforcement stage may be varied and protracted but in most courts it serves to deal successfully (i.e., elicits full payment) with a minority of the fined offender population (30% in all four courts combined). As we have pointed out already, most fined offenders (one-third) either pay without the enforcement system (voluntary payers), or ever pay all that is due (just over one-third) despite the enforcement system (ultimate non-payers), although some of these non-payers are eventually imprisoned in lieu of payment. If offenders pay voluntarily

primarily because their fines are congruent with their means, then we would expect to find among the ultimate non-payers evidence that fines and means were mismatched. This is indeed the case as we shall see in Chapter V.

It might be argued that an effective collection/enforcement system would identify serious mismatches and include mechanisms to rectify this situation, thus avoiding the failures of the fining process that are evident from partial payments, write-offs, and imprisonments for default. While there is theoretically scope for this function within the English fining system, in practice, the original amount imposed stands and only the terms of payment are modified. Thus we shall see that the enforcement strategies employed by these magistrates' courts serve mainly to apply pressure to pay, with various degrees of effectiveness. We would not expect, therefore, to find serious incongruity between fine amounts and means among these offenders who respond favorably to the enforcement pressure. Rather we would expect that elicited payment most commonly occurs when the amount imposed is hard but not impossible to pay. In this context, therefore, ultimate non-payment is an indicator of (a) the extent to which a court's enforcement efforts are well applied to those offenders capable (though perhaps unwilling) to respond to it and (b) the extent to which no amount of pressure can alter the fundamental reality of a major mismatch between the fine amount set and the financial circumstances of the offender.

The next chapter addresses the first of these points by examining the enforcement processes in these four magistrates' courts in detail.

CHAPTER V

FINE ENFORCEMENT: TECHNIQUES AND STRATEGIES TO IMPLEMENT THE FINE SENTENCE

Introduction

In this chapter we examine what happens when fined offenders fail to pay their fines voluntarily. Let us first, however, review the definitions we are using of key terms, before discussing the law and practice involving the techniques of fine enforcement available in the English system.

After presenting a broad outline of these options and the various ways they are used at different courts, we examine some of the advantages and disadvantages of the individual techniques, dividing them into two main categories: (a) enforcement techniques normally adopted at sentencing and, therefore, providing a link between the sentencing and implementation stages of the fine process; and (b) techniques normally adopted in response to interim default and, therefore, providing no direct link between the two stages.

After this discussion of specific enforcement techniques, we turn to an examination of different enforcement approaches in the four courts, including various ways Fines Offices are organized, as well as the differing combinations and sequences of techniques they adopt as strategies to elicit payment.

Finally we compare the relative merits of the four courts' overall enforcement strategies in terms of the rate of elicited payment and the extent of ultimate non-payment--the failure of the fine process.

A. Definitions

In this chapter we are primarily concerned with the enforcement stage of the fine process, that part of the overall fining process directed at eliciting payment from those who have not paid voluntarily. As previously, we define the success of this process as full payment of the sum imposed.

As seen in Chapter IV, Figure IV-1, about two-thirds of all fined offenders at each court fail to pay in full without court action and thus are in interim default on fine payment. Among the fined offenders in interim default, we distinguish two groups:

i) those who are in interim default but eventually pay, that is, those who appear to respond to enforcement action although the causal link between court action and payment is not always clear, particularly when long gaps occur after enforcement action and before payment; and

ii) those who persist in not paying after 15 or more months have elapsed since the fine sentence, that is, those who are the failures of the fine process.

Court enforcement action to elicit payment tends to be highly variable across courts and to lack overall coherence. Although a court's "enforcement strategy" may be intimately bound up with its fine sentencing practices, more typically it operates reactively: enforcement starts only after interim default has been detected.

The enforcement approach of a court may entail a complex fusion of actions and actors, and it potentially encompasses the entire duration of the fine process involving many in-house and

external agents of the court. In practice, the histories of most fines reveal a process that is characterized more by a succession of hiccups than by a smooth continuous flow from imposition through implementation: the disjunctions in the process are more striking than the continuities.

We noted earlier that the lack of continuity in the fining process is already in evidence at sentencing. Thereafter, as payment begins, if the system breaks down, it does so less because of specific mechanical failures than because of a lack of awareness of the entire fine process. Fine implementation requires organization and, in this area of court activity, the organizational links may be tenuous.

After sentencing, although the magistrates are theoretically still in control, the fine becomes the responsibility of the court's Fines Office. The magistrates have delegated their authority to the clerk and he in turn has delegated it to deputies and to the Fines Office staff. Too often in actual practice, however, there is no one individual who is held accountable for the outcome of the fine process. In addition, the Fines Office receives the responsibility for the successful outcome of the fining process. Furthermore, while the Fines Office gets general responsibility for the fine outcome, it exercises no control over the definitive stage, namely the original sentence, neither can it reduce the amount of the sentence subsequent to sentencing. (Not only does the Fines Office at a magistrates' court carry the burden of implementing its own court's fine sentences, it is charged also with implementing crown court fines.)

Implementation requires managerial skills. In particular, a pre-requisite for managing the payment and enforcement process is an ability to identify problem payers. Apart from those enforcement techniques preset at sentence, the Fines Office is concerned mainly with deciding when to take official action and what action to take. To make this decision it must be able to detect default. Thereafter it must be able to monitor offender action and official response. Given the extensive use of fines in the English system this poses substantial organizational and managerial tasks.

Thus when we use the term 'enforcement approach,' we mean not only the specific enforcement strategy or strategies used by a court to elicit payment but the whole system of administrative and operational policies that is called into play to implement the fine sentence. In the following section we review the separate enforcement options available in the English system before turning to the more complex question of how these fit together into the network of a court's overall enforcement strategy.

B. Specific Enforcement Techniques Available to Magistrates' Courts

The statutory means available to the English courts to enforce fine payment are many and varied. Chart V-1 sets out the main techniques available and indicates the more common variations in practice.

CHART V-1

Enforcement Techniques Available to Magistrates' Courts

Technique	Description	Methods
Alternative prison term fixed at sentence	Sentencing magistrates' order an alternative in event of default to avoid necessity for means inquiry	Often used if no fixed abode and with fine payable forthwith
Adjustment of terms	Discretionary modification of payment terms (a) by increase or decrease of installment rates, or (b) by alteration of fixed time to pay, or (c) de facto by exercise of discretion in invoking enforcement system	Exercised (a) formally by default court, or (b) informally by Fines Office, by authority deputed from clerk
Reminder (Warning Letter)	Written Notice of Interim Default (letter format or duplicate of fine notice)	Delivered by post (occasionally by registered delivery)
Means Summons	Summons to appear at court for means inquiry at specified date	Delivered by ordinary post or registered delivery
Means Warrant with bail	Warrant for court attendance at means inquiry; offender bailed to appear on specified date	Delivered by police or warrant officers (a) in person or (b) by notice to come to police stat./warr. office for bail pending attendance

continued.../

Chart V-1 cont.

Technique	Description	Methods
Means Warrant without bail	Arrest warrant for attendance at specified means inquiry; offender detained pending appearance	Executed by police/warrant officers; offender taken into custody for appearance (forthwith) at means inquiry
Means Inquiry (default court)	Court session to inquire into offender's means and reasons for interim default; date set (a) at time of sentence, or, more typically, (b) after interim default.	Used to (a) adjust terms and to (b) issue and temporarily suspend committal warrants (see below)
Distress Warrant	Warrant issued to bailiffs authorizing seizure of property in lieu of payment	Usually civilian bailiffs charging % fee on successful warrants including tax (V.A.T.) and/or claiming flat reimbursement fee on failed warrants
Attachment of earnings or garnishment of wages (AOE)	Order at original sentence, or at means inquiry for direct deduction of fine from wages	Order to employer to deduct and send to Fines Office weekly installment from offender's wages
Money payment supervision order (MPSO)	Order made at sentence or means inquiry for supervision of fine payment.	Usually carried out by probation officer empowered to adjust terms but not to remit fine.

continued.../

Chart V-1 cont.

Technique	Description	Methods
Committal Warrant	Warrant ordered at sentence or means inquiry for committal to prison to serve time in lieu of payment	May be suspended pending last chance of payment or effective immediately
Lodged Warrants	Technically a committal warrant ordered at sentence, at means inquiry, or by written administrative process for offender already in prison on other matter	Offender's consent obtained by Fines Office to cancel fine by time served in prison on other matter obtained by Fines
Remission	Partial or total cancellation by default court of sum imposed	Power theoretically available to default court; rarely used even for partial remission

Using this outline of statutory techniques available to magistrates' courts as a basis for discussion, we shall consider variations in the operation of particular techniques. We then turn to a discussion of how they are used within the enforcement strategies of different courts. We have included among these enforcement techniques certain elements of the fine sentence: for example, prison alternatives to a fine fixed at sentence; means inquiry dates set at sentence; money payment supervision orders (MPSOs) and attachment of earnings (AOEs) ordered at sentence. In choosing at least a partial structure for future fine payment, the court appears at sentencing to be looking ahead to future stages of the fine process: the implementation of a payment scheme.

As we have already noted, to the extent that the amount imposed and payment terms have important implications for the payment outcome, all the details of the fine sentence might be considered part of the court's implementation strategy. Although this makes sense from both a practical and a theoretical standpoint, in practice, there is a lack of continuity between the sentencing and enforcing stages in the fine process. Courts do not commonly articulate awareness of payment implications when deciding how heavily to fine an offender. Such considerations may play a superficial role in the decision as to payment terms (and even here we find installment rates set with no clear notion of what these entail in terms of duration of payment). Similarly, sentencing magistrates do not pay much attention to the enforcement strategy at their courts nor is there any marked

feedback between the Fines Office and the magistrates to let them know what enforcement problems are routinely encountered in the sentence they impose.

Therefore, although for purposes of this discussion we will consider enforcement techniques that are initiated at sentence as well as those employed later in the fine process, their inclusion is not an indication of a coherent and continuous plan of campaign coordinated between sentencing magistrate and Fines Office to promote fine payment. That characterization is very wide of the mark for the courts studied.

C. Variations in the Operation of Individual Techniques

1. Techniques Linking the Fine Sentence to its Implementation

There appear to be certain exceptions to the general rule of disjunction between sentencing and implementing in the fine process. One occurs in the limited use of the fine sentence with a fixed alternative prison term. However, the continuity between sentence and implementation is largely dictated by the timing of events, since the technique is usually used with fines payable forthwith. Thus, the continuity is somewhat misleading. When examined more closely, this technique is often merely an administrative convenience used to rid the court of further proceedings on a potentially bad fine risk while avoiding direct imposition of a sentence of imprisonment.

Usually this takes the form of a sentence such as "£5 or 1 day" and tends to occur in connection with small fines imposed

on offenders with few community ties (e.g., no fixed abode).¹ If the offender chooses to serve time in lieu of payment,² he might be held in detention at the courthouse during the day of sentence in order to serve a one day alternative fixed term.³ (Longer terms would normally involve committal to prison.) Sometimes the offender sentenced to a one day alternative prison term has already served his time when he appears in court, because he has been arrested late on the evening before or during the night and has spent the night (or possibly an entire weekend) in the police cells. In this event the fine is a

¹ The circumstances under which the court might fix an alternative of imprisonment were set out in the Criminal Justice Act 1967, and restated in Magistrates' Courts Act 1980 82 (1). The Criminal Justice Act of 1967 made this permissible only if: (a) the offense itself was one punishable by imprisonment and the offender appeared able to pay immediately or (b) the offender was unlikely to remain in the U.K. long enough for payment to be enforced, or (c) the offender was already serving a term of imprisonment or detention in a detention center. Under this Act, as under previous legislation, unless the court had fixed an alternative term of imprisonment at sentence, it might not issue a committal warrant subsequent to sentence without first calling the offender to a means inquiry. The court might then fix the term if (a) the offense were punishable by imprisonment, or (b) all other means of enforcement had failed.

² The element of choice is not always clear in these cases. In the case of offenders fined with a fixed alternative because of no stable abode, it may well be clear to the police, if not to the court, that the offender does not have the means to pay on him and in the absence of close and substantial community ties will not be able to find the necessary funds. In this event the phenomenon may run counter to the legal requirement that a person should not be imprisoned for non-payment of a fine simply because he cannot afford to pay. See Mag. Ct. Act 1952, Section 69 (2).

³ Under Section 110 of the Magistrates' Court Act 1952 the offender may not be kept later than 8 p.m. Often the offender is given a mid-day meal by the court police staff and then told to leave.

technicality; the court is imposing a fixed alternative for which the offender will almost certainly opt, since it means that he can leave immediately without any monetary cost.⁴ The costs to the system are not large; existing detention facilities take up the slack.⁵ There is little paperwork; these in-court detention cases are normally only entered in the register but are not entered in the fines ledgers, because no fines administration is involved. This represents a saving of Fines Office time and resources.

The use of this convenient device seems most prevalent in cases involving the "socially inadequate offender" convicted of a minor offense, such as public drunkenness or vagrancy.⁶ Therefore it is rare among the more serious fined offender populations in our research samples. It is also not popular among courts generally (among the four courts studied, it was used only by Capital Court to any extent). Its limited use reflects a certain ambivalence on the part of the court about its status as a fine sentence.

⁴ Many courts report that this often happens after the weekend, when offenders have been arrested and kept in the cells pending the re-opening of court on Monday morning.

⁵ The police cells at the courthouse or Bridewell (police detention centers) are available and if resources of space and staff have to stretch to accommodate a small proportion of default detainees, the effect is not conspicuous. The additional catering costs (possibly a midday meal or a warm drink) are not enormous.

⁶ For a detailed discussion of this phenomenon, see Casale, op. cit., Part III pp. 27ff.

Apart from this exceptional device there are few statutory tools at the court's disposal that may readily link the sentencing and implementing stages of the fine process. However, the tools that do offer this possibility are also those generally used the least.

The attachment of earnings order (AOE) has potential as a tool for sentencing courts to ensure the success of the fine through guaranteed regular payment by deduction.⁷ In practice, however, it is eschewed on the grounds that it places the burden on the employer and that there is a risk of precipitating loss of employment.⁸ This argues for restricting its use to offenders working for large institutional employers. We have found only one type of case for which the AOE appears ideally suited: if the offender is a soldier, the army deducts the fine installments regularly, there is little risk that the offender will disappear and almost none that he will be dismissed.

The greatest disadvantage of the AOE, however, is the prerequisite that the offender be steadily employed. In the samples taken for this study, steady employment is not the usual condition for fined offenders.

The other tool that links the imposition of fine sentences and their implementation is the money payment supervision order

⁷ The AOE introduced for criminal cases under Section 46 of the Criminal Justice Act of 1967. The order was already available in maintenance cases by virtue of the Maintenance Orders Act 1958.

⁸ In the Federal Republic of Germany the attachment of earnings order also enjoys little use for precisely these same reasons. See Casale, Fines in Europe, op. cit., Part II.

(MPSO).⁹ However, sentencing courts rarely use it, reportedly because it is disliked by the Probation Service which is charged with its administration. Probation Officers are said to be concerned that fine enforcement duties will strain their relationships with the offenders. It also represents a significant amount of additional work.

Undoubtedly these are disadvantages. However, the strain on the probation officer-client relationship adheres merely to the use of the probation officer as the supervising agent. The courts would employ some other agent to perform the supervisory role (e.g., a court enforcement officer in its Fines Office). The remaining question would be whether the expense of this individualized handling would be worthwhile, even if restricted to a small number of defendants: would its use be likely to avoid imprisonment? While there is limited direct evidence available, there are indications in both American and English research that personalized treatment has positive effects on ultimate payment in some fine cases (Hillsman et al., 1984: 93ff). We have noted the relatively high eventual payment rate at East Court and feel this is linked at least in part to the intimate atmosphere at its Fines Office, where a relatively small caseload permits a single experienced member of staff to deal with most cases in a highly personalized way. We shall return to this point when we consider variations in enforcement strategies among the courts studied.

⁹ Magistrates' Courts Act 1980, Part III, 88.

perience and logic indicate that threat of coercion elicits payment, yet the reminder is generally couched in only mild tones of warning.

The means warrant, ostensibly a method of bringing defaulting offenders to court for a means inquiry, often works to elicit payment prior to or on the means inquiry date.¹² Again the instrument works by threat but, as in the case of the reminder, the means warrant could make stronger use of the element of threat included in the notification to appear. If the Fines Office, on behalf of the court, is intent on obtaining payment, it might emphasize more forcefully the consequences of non-compliance.

Most courts, and indeed all four of the courts studied, use means inquiries. However, the extent of their reliance on this costly measure varies considerably. Some courts (including Midland Court) favor setting an advance means inquiry date at fine imposition in case the offender does not meet the payment terms originally set.¹³ Although this suggests greater continuity between sentencing and implementing stages of the fine process, in practice it tends merely to postpone actual initiation of enforcement activity until after the means inquiry date, because there is no particular incentive for the fined offender to pay before that date. The sentencing court has, in effect, merely separated the decision as to fine amount and terms of

¹² For examples see Appendix C. In the case of the means warrant with bail, the provisions for a warrant with bail are set out on the back of the warrant form.

¹³ See Criminal Law Act 1977, Section 44A.

payment. During the intervening period, the offender is supposed to pay the fine. If he fails to pay, the default court at the preset means inquiry date will usually order payment by installment terms and set a new date for means inquiry in the event of further non-payment. Individual cases may thus involve a number of means inquiries. There is a degree of supervision, therefore, but it is a costly method that essentially uses the court rather than the Fines Office as the supervising agent. This is clearly not the most cost effective use of the means inquiry.

The means inquiry (or default court) is designed to examine the offender's circumstances and to determine whether (a) to adjust the terms of payment, (b) to take more coercive action (i.e., issuing, and perhaps temporarily suspending, a committal warrant) or (c) to remit the fine amount in part or in full.

The default court has the power to remit all or part of the fine, but it is not entirely clear whether remission must be linked to a change in the offender's circumstances.¹⁴ It is clear when such a change does occur the court is fully empowered to remit (cancel) the fine. However, as we shall see from our sample data, the remission option so rarely used at these four courts (and is reportedly rare throughout the system). Magistrates appear loath to alter an original sentencing decision by their colleagues. This may be a sound policy, if reasonably

¹⁴ Magistrates' Court Act 1980, Part III, 85:

The Court "may remit the whole or any part of the fine if the court thinks it just to do so having regard to any change in his (the offender's) circumstances since the conviction."

applied. However, if the original fine is grossly mismatched with the offender's means (as we have shown is not uncommon), there is clearly a place for reconsideration and remission of at least part of the fine. That this only rarely occurs suggests an inflexibility in the sentencing and re-sentencing part of the fining process that is oddly at variance with the prevailing flexibility of Fine Office implementation operations.

Apart from these main elements of the enforcement process (the reminder, the means warrant (or mean summons), and the means inquiry), there are two far more coercive techniques available to elicit payment: distress (seizure of property) and prison committal. Distress seems little used, if its use is measured on a nation-wide basis, but it is intensively employed by a few courts and it is gaining in popularity; indeed there has been a marked increase recently in the number of courts resorting to this measure which is more traditionally associated with civil debt collection.

We shall discuss the details of this technique in the next chapter, which is devoted to a special examination of distress and committal. Suffice it to say that the importance of distress lies not so much in its established, widespread use as in its growing reputation as a forceful additional weapon in the armory of enforcement. It recommends itself to busy Fines Offices because, like the means warrant, the distress warrant places the case, at least for a while, in the hands of an external agent (in this instance usually a civilian bailiff).

As we shall see in the next chapter, distress also tends to work by threat rather than by actual deprivation of property. Although the distress warrant, like the means warrant, is not as forceful a document as it might be, the power of distress lies in the arrival at the offender's doorstep of a determined individual interested in obtaining payment.

Committal also appears to work by threat and, again, the arrival of an individual at the offender's home, in this instance a police officer, appears to have a forceful impact eliciting payment. The committal warrant, like the means warrant, shifts the workload on to the police. However, if actual committal to prison occurs, the case is removed from the Fines Office books permanently and it is the Prison Service which must cope with the burden. Although this may not make economic sense in the context of the overall criminal justice system, it simplifies matters enormously for a Fines Office faced with a problem payer.

The committal warrant may be made effective immediately¹⁵ or may be suspended by the default court, giving the offender a last chance to pay.¹⁶ If the offender fails to comply with the payment terms, the suspended committal warrant is supposed to come into force forthwith. In practice, however, considerable

¹⁵ Lodged committal warrants may be issued to take immediate effect for offenders already in prison on another matter; technically a committal warrant is issued on the fine and "lodged" against the prisoner. By this paper process uncollectable fines may be disposed of from the Fines Office books.

¹⁶ Magistrates' Court Act 1980, Part III, 77.

time may elapse after renewed default before the committal warrant is given to the police for execution: the delay may be the result of administrative discretion on the part of the Fines Office or ignorance due to the slow process of identifying default.

As we turn to discuss variations in enforcement strategies, we shall see that the exercise of discretion is an important element in the enforcement process. Whether it is an intentional part of the enforcement strategy depends upon whether the clerk and the Fines Office has adopted a conscious policy concerning discretion and flexibility, or whether the flexibility is haphazard and derives from a lack of coherent strategy or organization.

D. Variations in Overall Enforcement Approach

Among different magistrates' courts the combination of measures regularly adopted as part of a routine strategy varies markedly and the differences have important implications for payment/default results. The sequence of measures alone does not constitute the enforcement approach. The organization of the Fines Office--its staffing arrangements and physical facilities, the prevailing policy regarding exercise of discretion, record-keeping systems and monitoring procedures, methods of dealing with the public and the very atmosphere in the Fines Office--is a complex fusion of elements that affect the payment process.

1. Prior Research Findings

Past research has examined specific techniques of enforcement, rather than enforcement strategies as a whole. The early quantitative research was based largely on nationally aggregated data. These data highlighted the incidence across the country of certain techniques and the broad payment patterns associated with their use.¹⁷ They also contained much useful information as to offender and case characteristics associated with interim default or ultimate non-payment. They identified (a) cases involving certain offense categories as productive of more payment problems than others; (b) offender characteristics, such as prior record, as related to defaulting; and (c) sentence characteristics, such as large fines or installment terms, as associated with lower rates of payment than small fines or fixed terms.

However, it was not until the 1980s that some of the intricacies of the fine implementation process came to be addressed in the reports of the NACRO Working Party on Fine Default¹⁸ and the Home Office Working Group on Magistrates' Courts.¹⁹ The former report pointed out the gaps in our understanding of the phenomenon of interim default and ultimate non-payment and made many practical suggestions about enforcement techniques and

¹⁷ For a detailed discussion of this early literature on fine enforcement in the comparative context of the European research see Casale op. cit., Part 1.

¹⁸ NACRO Working Party on Fine Default, op. cit.

¹⁹ Report of the Working Group on Magistrates' Courts, Home Office, 1981.

Fines Office organization. Its most important contribution, however, lies in its recognition of (a) the limits of current information, (b) the degree of variation in enforcement practice among individual courts, (c) the need to consider enforcement approaches in their entirety, and (d) the link between effective enforcement and a fine amount reflecting gravity of offense and offender's means.

Like the NACRO Working Party, the Home Office Working Group looked at practices in individual courts and produced some suggestions about enforcement techniques that appeared effective. Both reports emphasized speed of court action to enforce payment and placed emphasis on the organizational system at the Fines Office and the practical techniques of recording-keeping and monitoring as a necessary first stage in an effective enforcement strategy.

The more recent Home Office Research Study by Softley and Moxon follows in this new vein, by focusing on the enforcement strategies of individual courts.²⁰ The research found that speed of action after detection of interim default and in following up successive enforcement techniques was the most salient factor affecting enforcement performance. Although this quantitative analysis showed no link between staffing levels or degree of automation and performance, the authors concluded that "the

²⁰ Paul Softley and David Moxon. Fine Enforcement: An Evaluation of the Practices of Individual Courts. Research and Planning Unit, Paper 12. London: Home Office, 1982.

quality and organization of staff were possibly more important than numbers."²¹

Our present study combines quantitative and qualitative data on our four courts' enforcement approaches that include details about the sequence of techniques used, the recording and monitoring of fine payments, systems of default detection, and the exercise of discretion by the court, the Fines Office staff and other agents in the enforcement process. Before we compare the specific enforcement strategies adopted at the four courts, however, we shall review the major differences in context and organizational character at the four Fines Offices that have a bearing on their enforcement activities.

2. The Context and Organizational Character of the Fines Office

We selected the four sample courts to reflect important differences in the character of the courts as well as the areas they serve. Thus we have a contrast of modern and ancient, of city center and provincial town, of urban mass unemployment and small town moderate prosperity.

East Court's Fine Office is a small-town operation with all the characteristics of that setting: individuals or families are known to each other and the intimacy extends to the atmosphere in the Fines Office. The staff on their lunch breaks are greeted by passersby in the street, not all of whom are social acquaintances.

²¹ Id., p. 10.

The three urban courts, on the other hand, share that blanket of anonymity that inevitably attaches itself to large bureaucratic operations that deal with a high turn-over of people (both staff and clients).²² There is also evidence of the transience that is becoming more a part of inner-city English life. Despite these similarities, the three urban courts set about dealing with their similar offender populations in different ways. At the time of our research, the contrast was more marked than it is today: Capital Court had a strong commitment to modern management techniques which was less in evidence in Midland and West Courts with their more traditional manual systems and timeworn administrative structures and policies (resembling somewhat more the operation of East Court's Fines Office in style but not in scale).

The elements of Capital's organization that set it apart from the other courts are primarily in its administrative system. Its line of administrative command has been thought out carefully: about a dozen clerical personnel report to an administrative officer supervising day-to-day operations. This officer reports in turn to a deputy clerk who is ultimately responsible to the chief clerk of the court. Levels of authority are clearly demarcated: for example, matters of minor adjustment (involving sums under £30) are handled by the adminis-

²² For example, 1981 West Court disposed of more than 63,000 criminal cases and recovered over a million and a half pounds (\$2.6 million) from sums imposed on offenders; Capital Court dealt with over 22,000 cases and recovered nearly half a million pounds (\$1.2 million).

trative officer without referral to the deputy clerk. More complicated matters can usually be resolved quickly because there are always clerks in the Fines Office area (the court has a high volume of cases and a large roster of court clerks) to whom the Fines Office may refer for decisions. This tends to reduce the element of discretion at the lowest level of interaction between staff and public and to increase the impersonal quality of the operation.

The physical plant is a reflection of the prevailing organizational ethos. The Fines Office is in a modern building and is centered in a large, open-plan room with an open counter giving access to the public. Offenders arriving to pay their fines wait at the counter for the clerical assistant on cashier duty to receive the payment. The presence of a uniformed court officer in the reception hall leading to the Fines Office and to the elevators to the courtrooms and the very modern undivided floor space of the Fines Office itself adds to the sense of impersonality. This is tempered only slightly by the familiar manner of the staff dealing with the public; but the size of the clerical team and the rotation of duties militates against the development of a very personalized approach to relations with the fined offender.

There is a curious juxtaposition between Capital Court and the community it serves. The area surrounding the modern streamlined court is drab and decaying: it is a working class area many of whose workers no longer work. The shops are dilapidated and uncared for, the people on the street often down at

the heel. Capital Court stands as an oasis of plate glass and polish. Inside the building an aura of efficiency pervades which extends to the technical details of operations.

At Capital Court record keeping and monitoring of fines are semi-automated, but the smoothness of operations is largely due to the preponderance of fixed term fines imposed by the sentencing bench. With or without automatic equipment, these can be easily diaried for the date when the fixed period elapses, and a daily review of the diary reveals those fines not paid by the due date. A machine producing duplicate copies of the fine notice for reminders enables the clerical staff to follow through quickly with notification after defaulters have been flagged by the diary system. Notification therefore proceeds smoothly and consistently, and there is no marked variation in time lag between default identification and court action: default is flagged immediately; there is an automatic two week grace period; action commences at the end of that period with automatic production of the necessary document. Automation in this context drastically reduces the potential for exercise of individual discretion, and variations in administration due purely to chance which occur in less streamlined systems are minimized at Capital Court by the technical mechanisms of fines administration.

Although the other urban courts--Midland Court and West Court--were both in the process of adopting computer systems, at the time of our research they were operating Fines Offices with totally manual systems. Midland Court in particular presented a

striking contrast to Capital Court. Housed in ancient cramped quarters, the staff of the Midland Fines Office worked in two crowded rooms piled high with papers and bundles of cards; the counter surfaces were covered with card for active fines with no action yet taken, active ones with warrants pending, and fines in the process of transfer. The half dozen staff in the Fines Office seem submerged in papers. Past records are bundled up and tied with string to be shelved in a back room (not unlike what may be seen in many American courts).

West Court's facilities are rather more up-to-date, though without the ultra-modern gloss of Capital Court. Nevertheless, both Midland Court and West Court have a high volume of installment fine cases; manual monitoring to identify interim default in such a caseload requires clerks to go through every open record periodically, case by case. Every time this is done it takes up to six weeks, depending on staff availability, to pass through the entire caseload. West Court's ledger system seemed more up-to-date than Midland's array of card trays but both ultimately rely on staff slowly leafing through individual records, reviewing each case's status to detect defaults--a time-consuming and labor-intensive business. Manual systems simply are inadequate to deal with a large turnover of installment fines.

Midland Court's space problems serve to accentuate the pervading sense of overwhelming work and backlog, attested to by the frank admission that monitoring was so far behind that the Fines Office had dispensed with the reminder notice and pro-

ceeded to issuing means warrants as soon as default was detected. This removes the case, at least temporarily, from the Fines Office and into the hands of the police. Although at West Court the backlog was less conspicuous, the Fines Office had arrived at the same strategy of omitting reminders in order to avoid or at least postpone part of the administrative burden.

At West Court, the somewhat impersonal atmosphere is tempered by a degree of familiarity between the staff and people coming into the Office. And there is room for individuals to make administrative adjustments. The system was set up originally for all decisions as to adjustments (e.g., extra time for, or omission of, a weekly payment) to be referred to a magistrate for approval. Because of the backlog and the work overload the procedures changed, so that adjustments of a minor nature may be approved by the Fines Officer or Chief Administrator. Therefore, as at the other courts, most decisions on adjustment are made without recourse to the magistrates.²³

The Fines Officer at West Court offered the following example: "It may be that someone has to pay a fine in 21 days. On the 20th day we might get a letter from him saying that he is unemployed, that it is difficult to keep to the terms, but that he wants to pay. He may offer £1 a week and in most cases I'll

²³ The introduction of the computer system will continue to allow for this exercise of administrative discretion. The computer printout will, for example, indicate automatically when warrants are due to be issued. The Chief Administrator may decide, however, to allow further time, if he feels it to be necessary or if the sum is small and does not really merit the effort.

say 'yes' to that." This Fines Officer had been in this position for a number of years and had built up considerable experience not only in relation to the process but also to repeat offenders' circumstances and family arrangements. Such experience obviously plays a considerable role in decisions regarding adjustment of terms and even execution of warrants.

The atmosphere at the more provincial East Court differs strikingly from the relative anonymity of these three urban courts. The enforcement system operates with a staff of three, with occasional back-up personnel. Except for brief relief periods, therefore, the same person normally attends the cash desk and counter and has done so for over 20 years.

East Court's system of record keeping is entirely manual. As at Midland and West Courts, the fines are predominantly payable by installment, and there is no way of organizing the manual diary system to flag default automatically or immediately. The difference between East Court and the two urban courts, however, lies in the small case volume and in the familiarity of the small East Court Fines Office staff with the names recurring in the fine card trays. Even so, it takes staff between three and four weeks to work through the card files, so there is some element of luck attached to detecting interim default: some defaulters will not be detected for a month, others will have their cards checked in one day.

At the time of our research, the enforcement officer at East Court handled all administrative decisions such as the selection of distress warrants or other procedures. The cleri-

cal assistant worked the telephone and did the office paperwork. The atmosphere of a small closely knit unit was reinforced by the physical surroundings. The old building housing the Fines Office is not part of the courthouse itself. The narrow staircase from the small side street entrance leads to the modest office room. The exchanges between cashier and entering offenders are personal and easy-going. In many cases the long experienced cashier recognizes the face or the family name.

In this atmosphere it is very likely that considerable administrative discretion would enter into the operations of the Fines Office. The staff themselves are aware of the element of chance in their monitoring system: they know that the checking routine allows some offenders a "break" of up to a month. This, too, has its effect upon staff attitudes when presented with a plausible reason why an installment will be a few days late or missed for a week, or why the offender has only brought half the amount due. There is thus a humanity to the proceedings of the East Court Fines Office that is not to be confused with laxity or over-indulgence. The cashier of twenty years is a rather stern and knowing clerk who views the succession of excuses and pleadings with a strict and experienced eye. The administrative discretion at East Court is a delicately and apparently dispassionately exercised tool in the process of ensuring fine payment. While East Court's Fines Office may be unusual in the degree of its staff continuity and the quality of people working there, it is not unreasonable to suggest that other courts note

the importance of staff continuity and personal contact, at least in the context of smaller town courts.

Our descriptions of the Fines Offices at these four courts and their administrative organization point to some similarities as well as differences. In all the Fines Offices, decision-making discretion is exercised by the clerical staff. Theirs is a difficult role: they are faced with an overwhelming and mundane daily workload of over-the-counter routine cash transactions,²⁴ postal applications for time to pay²⁵ and payment through the post,²⁶ manual fine card checks or diary reviews; at the same time, they are entrusted with the delicate handling of people. They must listen to excuses over and over and yet take a firm line when appropriate. This is not an easy task for staff with little incentive to succeed other than personal pride in their work because there is little public or professional recognition.²⁷ The staff of the Fines Offices at these four

²⁴ The Fines Office day begins with handling cash from the previous day, received too late to document and send to the bank, and money arriving through the post. Receipts are made out and entries written up in ledgers or on fine cards. To give some idea of the scale of operations, note that West Court Fines Office banks about £30,000 each week.

²⁵ With the original notice of fine, some Fine Offices supply the fined offender with an application form for time to pay.

²⁶ If an offender telephones concerning fine payment, he/she is normally directed to write or come in person to the Fines Office. Checks are accepted by the Fines Office but credit card payment even in person is not.

²⁷ For an example of formal approval of application for time to pay, see Form in Appendix C.

courts were not specialists, but mainly clerical staff with some on-the-job training. Only a few English magistrates' courts employ special enforcement officers to coordinate their enforcement strategy. When this enforcement officer takes an active role in supervising the payment process, deciding on case selection for particular measures and applying pressure in person, these courts report relatively high rates of success in eliciting full payment.²⁸ However, at the moment this organizational pattern appears the exception rather than the rule in the English system.

E. Specific Enforcement Strategies and Their Outcomes

Despite different administrative and organizational styles and structures, Capital and East Court adopted similar enforcement strategies. Midland and West Court, with relatively similar organizational patterns but different caseloads, also adopted almost identical strategies but ones that differ markedly from those of Capital and East Court.

Midland and West Courts concentrated on a few tools -- the means warrant, the means inquiry and committal. This strategy has clear disadvantages: (a) the central focus is the means

²⁸ Special enforcement officers are employed in the Swedish and German systems. However, unlike the English enforcement officer, the Swedish and German collection authorities are empowered to set the terms of payment, once the initial decision to fine and to impose a specific amount has been taken. In the absence of a special collection authority in the English system, the Fines Office of each magistrates' court performs many of the tasks assigned to specialists in the Swedish and German systems. However, many of the enforcement techniques are similar in all three systems. (See Casale, op. cit., Part 1, pp. 39ff).

inquiry (default court) one of the more costly measures available; (b) the progression to the ultimate recourse--incarceration--is direct, as preliminary techniques are quickly exhausted; and (c) considerable enforcement burden is placed upon the police, who have the major role in executing two of the three measures.

In contrast, the keynote of Capital and East Courts' strategy is variety. They used reminder letters, distress warrants and/or means warrants, means inquiries and committals. The two measures they use which the others courts do not--reminders and distress--greatly increase the permutations of combined techniques. Capital and East Courts gradually apply increasingly coercive pressure to weed out as many defaulters as possible before bringing into play the ultimate recourse: committal to prison.

The speed of the enforcement process depends upon a number of factors: (a) the variety of techniques used; (b) the Fines Office's organizational style and monitoring system; and (c) whether the dominant payment terms set at sentence are fixed terms or installments. Therefore, although Midland and West Courts used fewer enforcement tools, they proceeded fairly slowly, at least as compared with Capital Court where the process moved automatically and relentlessly from step to step without much slack time.

1. Midland and West Courts' Strategy

Because of their marked similarity of approach we shall discuss these two courts together. Diagrams V-1 and V-2 show

the details of the payment/enforcement processes for Midland and West Courts, respectively.²⁹

Both courts, as we have mentioned, favored installment fine sentences, and thus, few payments were received on the day of sentence. Midland Court faces a slightly larger group of defaulters against whom action was necessary, than West Court, because it used no sentences of immediate time served in lieu of fine payments for offenders in this sample, and because the fewer of its fined offenders who were technically in interim default paid before enforcement commenced.

As we have already noted, given the preponderance of installment terms and the delay in default detection due to the slow manual checking process, both Midland and West Courts had virtually dispensed with the use of reminder letters.³⁰ At Midland Court, Fines Office staff explained that this practice was a direct result of the backlog. It was the policy of both courts to issue means warrants as soon as interim default was detected, effectively shifting the onus of fines collection immediately to the police. Both Midland and West Courts used this measure against three-quarters of the fine defaulters against whom they took action.³¹

²⁹ For explanation of abbreviations and terms used in Diagrams V-1-4, see Chart V-1, pp. 129-131; for example, m/w refers to a means warrant and M.I. to a means inquiry.

³⁰ Midland used a reminder notice for only one offender in our sample and West Court for none.

³¹ At Midland Court means warrants were used against 58 offenders out of 77 not paying without court action; at West Court they were used against 54 offenders out of 69 not paying without court action. For details, see Appendix D, Table V-1.

DIAGRAM V-1

PAYMENT/ENFORCEMENT PROCESS AT MIDLAND COURT

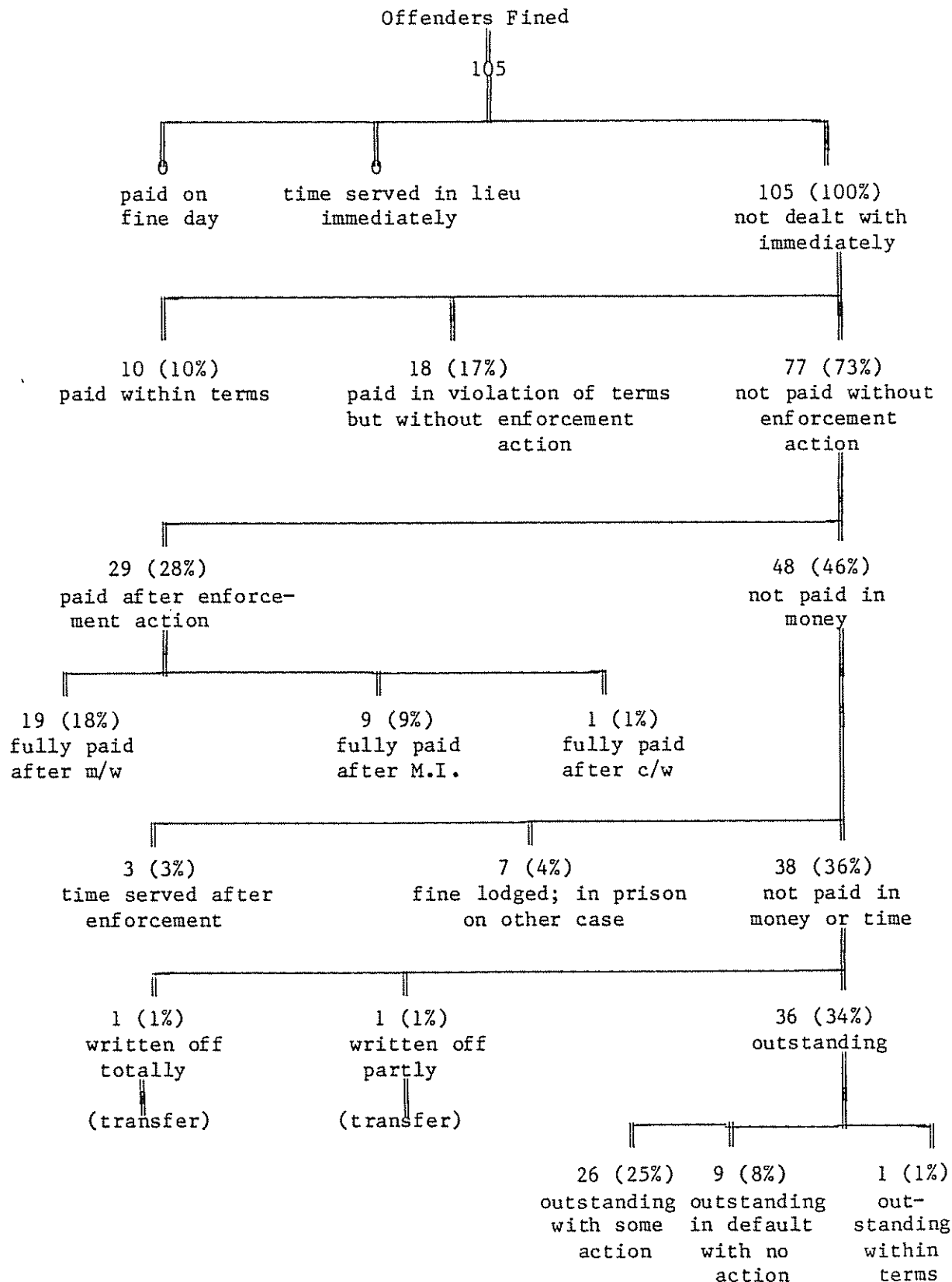
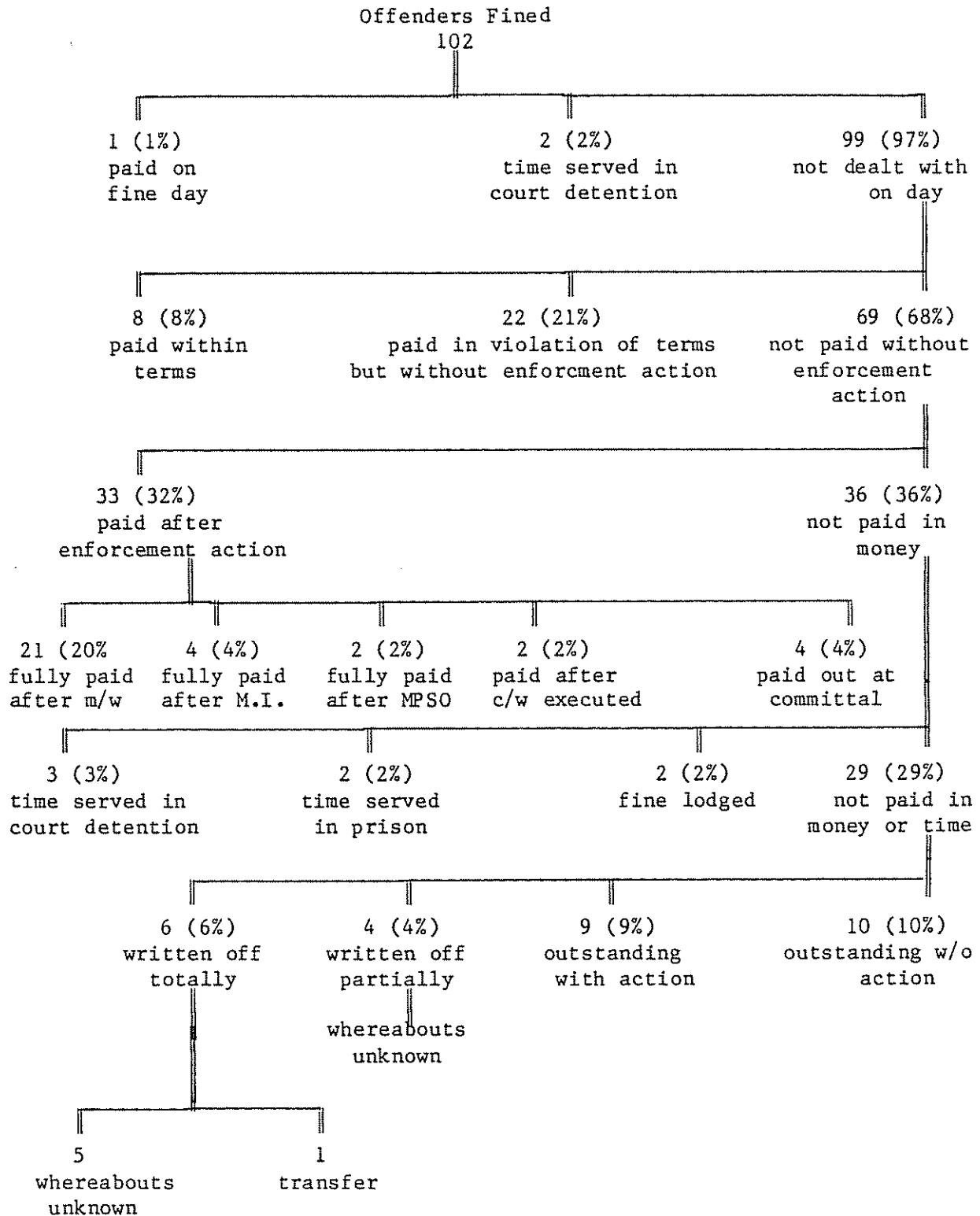


DIAGRAM V-2

PAYMENT/ENFORCEMENT PROCESS AT WEST COURT



1 missing

At Midland Court the means warrant functioned as a substitute for a reminder letter because the police typically give low priority to means warrant execution (a phenomenon reported at Capital Court and elsewhere, including in the United States). Instead, the police regularly send notification to offenders that a warrant for their attendance at court was in police possession. At Midland Court (as at Capital Court) this police practice acted as a powerful reminder because, in the absence of any prior warning letter from the court, the offender defaulting on installment payment received police notification to attend default court after a considerable time-lag due to the backlog in the default detection system.

As Diagram V-1 above shows, the means warrant at Midland Court induced one-third of interim defaulters against whom they were issued to pay their fines in full. Similarly Diagram V-2 shows that at West Court the means warrant had the effect of eliciting full payment from 39 percent of offenders with means warrants.

Thus at West Court, the use of actual means inquiries (default courts) was not as frequent as the issuance of means warrants would suggest because many paid in full before the court hearing. At Midland Court, however, it was not only via a means warrant that defaulting offenders were required to attend a means inquiry. Midland Court made extensive use of the new legal provision for a means inquiry date to be set immediately at the time of fine imposition.³² Therefore the offender was

³² See our discussion earlier in this chapter, at p. 139.

ordered at sentence to pay a fine under certain payment terms, or to appeal automatically at default court on a specified date (one or two months after the sentence date) if he fails to meet the terms of payment. For this reason Midland Court made more extensive use of means inquiry hearings. Thirty-six sample offenders--a third of the Midland Court fined sample--attended at least one default court. In fact, 16 attended more than one.³³ In theory the new provision allows for review of the payment terms after a reasonable period following sentence; in practice it seems to have encouraged many offenders to merely delay payment until the date of the means inquiry, when they applied for a reduction in installment rates, thereby automatically delaying the point at which the enforcement process actually got underway.

Thus both Midland Court's and West Court's reliance on the means warrant enhanced the likelihood of frequent and costly means inquiries, the major outcome of which was an adjustment in the terms of the original sentence. At West Court in particular the default court almost invariably modified the terms set by the original sentencing court.³⁴ However, at neither court was

³³ See Appendix D, Table V-2 for a comparison of the two Courts' use of mean inquiries.

³⁴ An additional strategy adopted by West Court in certain cases at means inquiries was the money payment supervision order (MPSO). West Court was the only court in our samples which made even minimal use of this measure. Five offenders were ordered to pay their fines by MPSO at sentence at West Court; and the default court made MPSO's against four offenders; one other MPSO was made during the collection process. The MPSO was therefore used for 10% of the West Court fined sample. However, only two offenders on MPSO paid in full, although seven others did make partial payments.

this a particularly successful technique to produce full payment: at West Court, 17 percent paid their fines in full after a means inquiry; at Midland Court, 26 percent paid in full after a means inquiry. Therefore, despite the adjustment of terms in most cases reaching this stage, default persisted for some.³⁵

The other outcome of the means inquiry strategy emphasized at Midland and West Courts was a quick escalation in both courts' enforcement efforts: issuance of a suspended committal warrant. The Midland and West default courts suspended committal warrants against over half the offenders coming before them. This coerced full payment in one of the twenty cases at Midland Court (5%) and in six out of the 14 at West Court (43%). However, even at Midland Court, only four offenders were eventually committed and at West Court two.³⁶ The ineffectiveness of the suspended committals is attributable largely to administrative inefficiency. Because of the backlog at both courts, many of those suspended committal warrants were not activated according to the order of the court (i.e., sent to the police for execution), although offenders were in violation of the terms on which these warrants were suspended.³⁷

³⁵ If we consider, however, that at Midland Court 82% of offenders attending means inquiries made at least a temporary or partial response in paying their fines, the strategy of extensive use of means inquiries had some enforcement effect.

³⁶ But by the paper procedures of lodging committal warrants for offenders incarcerated for other offenses, West Court dealt with an additional two defaulters and Midland seven.

³⁷ See our more detailed discussion in Chapter VI of the operation of the committal process.

Thus, following a common approach, centering on means inquiry hearings, Midland and West Courts found themselves, after 15 months in which to elicit payment, with write-offs or outstanding fines for 36 percent and 29 percent of the samples respectively. The extensive use of this costly enforcement technique, although eliciting response from some defaulters, did not ultimately compensate for the lack of variety in collection/enforcement options used.

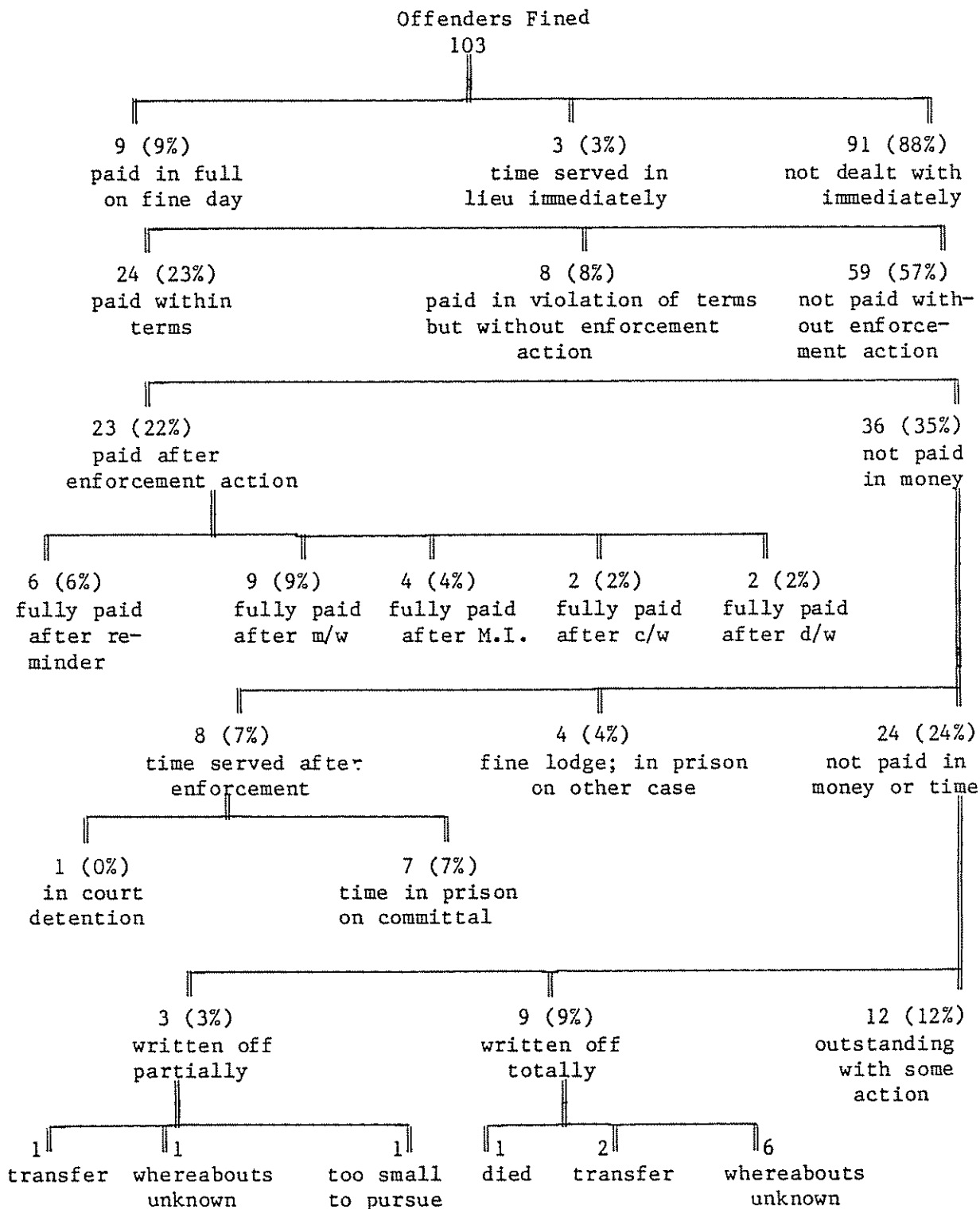
2. Capital Court's Strategy

More than at any of the other courts, the enforcement strategy at Capital Court is linked to the sentence because of its use of fixed terms. More offenders were dealt with on the sentence day at Capital Court (11%) than at the other courts (see Diagram V-3): nine offenders (9%) were ordered to pay forthwith (as compared with 3% at East Court and at West Court and 1% at Midland Court), and these orders were sometimes coupled with fixed alternatives of imprisonment at Capital Court (a rare occurrence at our other courts).

Capital Court shows not only a higher proportion of payment on the sentencing day, but also a higher proportion of offenders who paid by some date after the sentence day within the time limits set at sentencing (23%). As previously discussed, this partly reflects the preponderance of the fixed term fines in

DIAGRAM V-3

PAYMENT/ENFORCEMENT PROCESS AT CAPITAL COURT



1 missing.

Capital Court's sentencing practice.³⁸ However, Capital Court's performance record--the markedly lower proportion of offenders paying in violation of the terms but without collection/enforcement action--reflects differences in Fines Office policy and practice as well.³⁹ The combination of fixed term fines, a diary system, and a semi-automated method of producing court action documents (reminders, warrants, etc.) reduced the proportion of cases at Capital Court in which any appreciable time elapsed after interim default and before court action. The outcome of this strategy is that 42 percent of the Capital Court fined sample paid in money (or, for a very few, in time immediately served in court) without the Fine Office's initiating any collection or enforcement action. Thus, Capital Court needed to take subsequent action against fewer fined offenders in interim default (58%) than did any other court.

At Capital Court the first enforcement step after detection of interim default was a mailed reminder notice. This relatively inexpensive technique was used on 63 percent of defaulters against whom the court took action. The success rate

³⁸ Our own and others' past research on fine payment have indicated that a greater default rate is associated with the use of installment rather than fixed term conditions. Thus we might attribute the greater success at Capital Court in obtaining fine payment without default at least in part to the nature of the fine sentences themselves. See P. Softley, A Survey of Fine Enforcement, op. cit., pp. 24 and 38.

³⁹ The other courts allowed more offenders to pay in this manner; the Fines Offices may have been consciously exercising their discretion not to take any action, although the due date had passed. It is also not inconceivable that the Fines Offices did not realize default had occurred because of their slow checking process.

on this first reminder was only one in six--a not insignificant result given the low cost of this procedure.⁴⁰ If offenders failed to pay after a reminder, Capital Court used either a means warrant or a distress warrant. Distress was used against nine offenders (9% of the fined sample), seven of which produced no payment at all, although the remaining two offenders paid their fines in full without having goods seized. This low success rate must be viewed in context; Capital Court had just begun experimenting with this technique. Since then, Capital Court has used distress more extensively and its records indicate that over a third of the distress warrants produce full payment of the fine.

Capital Court issued means warrants against two-thirds (64%) of all defaulters failing to pay after a reminder or distress warrant. The means summons had fallen into total disuse at Capital Court because it was felt by some members of the Fines Office staff that a fined offender who didn't respond to a mailed reminder letter would be unlikely to react to a summons to court arriving via the same means. But if the theory was that a police officer's arrival on the doorstep with a means warrant would prove more compelling than a mailed summons to appear, the actual practice at Capital Court makes the distinction less clear. At Capital Court, as at Midland Court and elsewhere in the English system (as well as in America), the

⁴⁰ Sixteen percent of defaulters reminded paid their fines in full. However, because the time lapse between notification and payment was sometimes prolonged, an inference that the reminder letter "succeeded" may be only partially correct.

police place a low priority on means warrant execution and, instead, notify the offender in writing that they hold a warrant for his/her appearance at court on a specified date. This mode of delivery translated the means warrants into little more than a means summons.

Less than half the offenders against whom means warrants were issued actually appeared at a means inquiry. A quarter of them paid their fines instead, and another quarter paid after attending the means inquiries themselves. Thus Capital Court means inquiries showed the same rate of achieving full payment as they did at Midland Court (25% and 26% respectively), which was a better success rate than West Court's means inquiries had (17%); but Capital Court used this expensive enforcement tool less often than either of the other two courts.

As at Midland and West Courts, the main outcome of the means inquiries at Capital Court was adjustment of the original terms of payment: the sentence conditions were adjusted by the default court for four out of five offenders; for another one in four the default court issued, and then temporarily suspended, a committal warrant. Half of these warrants were activated as soon as the offenders failed to pay according to the conditions; the other half were activated after a time lag following violation of the conditions. Capital Court's use of committal warrants resulted in seven percent of the fined sample serving time in prison for default. (A further four percent agreed to have their fines "lodged," that is, a committed warrant was issued that canceled the fine by the time they were already serving in prison on another matter.)

Capital Court's more stringent approach to implementation committals meant that they ultimately had fewer fines to write-off than did Midland or West Courts. However, such a policy has important implications for the fines system and for the criminal justice system as a whole because it relies upon the use of the most coercive form of fine enforcement available and because it draws upon a scarce and costly resource--prison space.

3. East Court's Strategy

East Court provides an example of how a small-town court can successfully enforce fines without much reliance on "time served" in lieu of payment. Because East Court's strategy is so similar to Capital's, despite its vastly dissimilar environment and quite different administrative organization and mechanisms, we shall outline the main points only.

East Court starts out with the advantage of a high proportion of voluntary payers. Unlike the situation at Capital Court, this cannot be attributed to an emphasis on fixed term payments. (East Court, like Midland and West, stresses installments.) We attribute the readiness to pay to the different offender population and setting at East Court. The personnel of the Fines Office know the individual fined offender (or his brother, sister, cousin, aunt); the long serving senior staff member actually knows generations of fined offenders. The ensuing social pressure to pay is hard to quantify, but not difficult to recognize.

Diagram V-4 shows that at East Court many of the voluntary payers paid in accordance with the terms of fine imposition; but a substantial number paid when technically in interim default but before the court took any action. This is partly attributable to the slow-moving process of manual card checking at East Court, but it may also result from the intentional exercise of administrative discretion at this early stage.

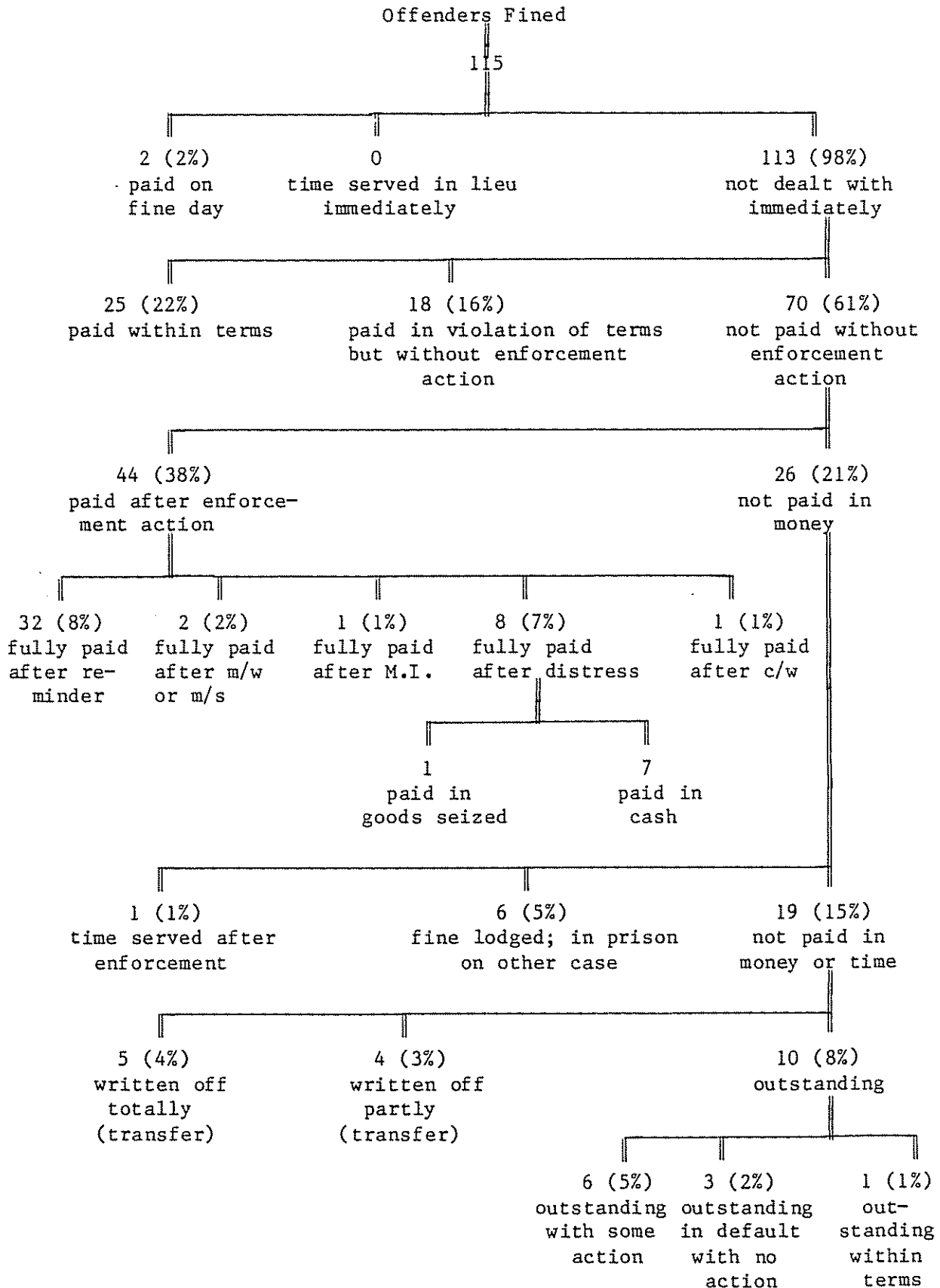
East Court was confronted with the need to take some enforcement action against 60 percent of the fined offenders in the sample. As at Capital Court, East Court's first action was almost always a reminder; over half the reminded defaulters paid in full. After this step, East Court adopted a variety of measures. In a limited number of cases, a means summons was issued; in still fewer cases, a means warrant was issued; more frequently, a distress warrant was issued. The distress warrant was highly successful as used at East Court: of the eleven offenders against whom such warrants were issued, eight paid in full, seven in cash and one in goods seized. As our next chapter will show further, the efficacy of the distress warrant generally lies in the threat of seizure rather than in actual distraining of property.

Therefore, in contrast to the other courts, East Court made very limited use of the means inquiry: in the sample five offenders appeared at the default court.⁴¹ While the intended

⁴¹ One of them appeared twice. It is possible that this relatively infrequent use of means inquiries is related to an observed high incidence of administrative discretion in adjusting fines without referral to court at East Court.

DIAGRAM V-4

PAYMENT/ENFORCEMENT PROCESS AT EAST COURT



effect of the means summons or means warrant at most other courts (frightening the offender, under threat of a court inquiry, into paying the fine rather than coming to court) occurs at East Court, it happens less frequently than at Capital Court: only two offenders paid their fines after a means summons or warrant. Rather, the means inquiry at East Court served the purpose of bringing matters to a head by threatening committal (via a suspended committal warrant issued at the time of the means inquiry) if the offender failed to respond with full payment to the court's compromise by its adjustment of the terms of payment.

This reliance on the threat of committal as the ultimate recourse resulted in a low rate of incarceration, however. East Court used a wider range of techniques before threatening this final step and it permitted longer gaps between steps in its generally slower enforcement approach. Nevertheless, the larger lower middle class component in East Court's offender population was very likely more able to pay fines easily than the populations of the other courts--a factor that must have played a part in keeping actual committals to prison low. Capital Court used the same range of techniques in the same sequence as East Court, and implemented the sequence more rapidly, but Capital Court found itself ultimately relying more heavily on imprisonment in lieu of payment.

Our observations indicate that administrative adjustment of the terms of payment originally set forth by the sentencing court is also an important component of the strategy adopted at

East Court, a strategy that combines persuasive and coercive techniques to gain payment in a substantial proportion of cases. The fine tuning of this discretionary practice is no doubt due to the unusual combination of a highly experienced Fines Officer and an intimate setting.

F. Patterns of Elicited Payment

We have discussed the different approaches taken by these four courts to enforce their fines. If we look again at Figure IV-1 (page 109) we see that the outcome of the enforcement process was as follows: the rate of elicited payment was 22 percent at Capital Court, 28 percent at Midland Court, 33 percent at West Court, and 37 percent at East Court. However, these rates are based on the proportion of the total fined offender. If we look at the rate of elicited payment as a proportion of those offenders against whom action was necessary, the rates at which enforcement action was successful in eliciting payment were: 37 percent at Capital Court, 38 percent at Midland Court, 46 percent at West Court and 63 percent at East Court. (Capital Court's proportion would increase if we include the offenders dealt with by in-court detention, but this is not strictly speaking a form of elicited payment.)

What explains the differences between the courts? The extent of voluntary payment obviously has a direct impact on elicited payment. Midland and West Courts were faced with a higher proportion of interim defaulters (73% and 70% respectively, as compared with 60% at Capital and at East Courts).

Therefore they were obliged to take action against more offenders. If we ask who are the offenders from whom payment is elicited by these actions we gain an additional perspective into the phenomenon.

We can identify certain types of offenders who appear to pay after enforcement action. They are similar in many ways to the voluntary payers. Women and steadily employed males, if they do not pay voluntarily, generally pay eventually. So do the students and the retired. The smallest of these groups is the pensioners, who also have more extensive criminal records than the women or students.

One case in point at West Court involved a sixty year old male pensioner convicted on a not guilty plea of theft. He received a pension of £14 per week with supplementary benefits of £21; his weekly basic outgoings (rent and heating) were declared as £12. He had four previous convictions and had been fined twice before. The current fine was for £25 to be paid at the rate of £1 per week. When he defaulted after several regular payments, West Court's Fines Office, according to standard policy, issued a means warrant, which was returned by the police - the man was not at the address. A second means warrant was executed at a new address, but the man paid the full amount outstanding to the court before the means inquiry.

However, the old age pensioner defaulting on a fine is not difficult to trace, if the court has the will to do so. Unless disabled, the pensioner will go in person to collect his weekly money, and the police may even resort to waiting for the Social Security Office to open on the day pensions are regularly paid out.

The students are a larger group, and East Court had a large number of them among its fined offenders. They too are easy to trace because they are attached to educational institutions and often receive local government grants. They may also be susceptible to threat, because they might not be allowed to continue their studies if committed to prison for non-payment.

The women (especially housewives) and the steadily employed male offenders also fit this pattern: they are generally traceable and vulnerable to threat: they cannot easily disappear and they have something to lose if they defy the court (providing that the enforcement system does not break down, that is, that the court does not lose the fine records, give up pursuit, accidentally fail to invoke further stages in the enforcement process, etc.).

What else in common have the offenders who respond to enforcement efforts? Table V-1 shows the distribution of amount imposed and offender's means among those who paid after enforcement action. Among poorer offenders, the proportion of elicited payment increases as the amounts imposed decrease. In contrast, among moderately or well funded offenders, similar proportions of elicited payment occur regardless of the amount imposed. There is, however, a particular concentration of elicited payment among the offenders fined over £120 with weekly funds over £80; East Court appears to account for a large proportion of this group.

TABLE V-1
NUMBER PAYING AFTER COURT ACTION, BY COURT

Total Weekly Household Funds	Court	TOTAL SUM IMPOSED (£)							Total
		£0-30	£31-60	£61-90	£91-120	Over £120			
0	C	-	1	1	2	-	-	4	
	E	-	-	1	3	-	-	4	
	M	-	10%	-	-	10%	-	10	
	W	1	-	-	-	1	-	2	
£1-20	C	-	1	1	-	1	1	3	
	E	2	3	3	-	3	5	11	
	M	-	1	15%	2	1	19%	4	
	W	3	4	-	1	-	-	8	
£21-40	C	-	3	1	2	1	1	7	
	E	-	2	1	2	3	4	8	
	M	1	5	4	-	-	13%	10	
	W	5	2	-	-	-	-	7	
£41-60	C	-	1	1	-	-	-	2	
	E	1	3	1	1	4	7	10	
	M	1	1	3	2	3	22%	10	
	W	4	4	1	1	-	-	10	
£61-80	C	1	2	-	1	1	1	5	
	E	-	-	-	1	4	6	5	
	M	-	13%	-	7%	1	40%	1	
	W	1	-	1	2	-	-	4	
Over £80	C	-	-	-	1	1	1	2	
	E	-	1	-	-	5	8	6	
	M	-	-	-	1	2	62%	3	
	W	-	2	-	-	-	-	2	
TOTAL	C	1	8	4	6	4	4	23	
	E	3	9	6	7	19	31	44	
	M	2	7	7	5	7	24%	28	
	W	14	12	2	4	1	1	33	

C= Capital E= East M= Midland W= West

Thus, the general pattern of elicited payment reflects once again the notion that payment tends to occur when amounts imposed by the court are consistent with offenders' means.⁴²

G. The Failure of the Fine Process: Non-Payers and What Happens to Them

1. Patterns of Non-Payment

The data from these samples of relatively more serious fined offenders identify about one-third who do not pay their fines in full within a period of 15 months after sentence. Referring back again to Figure IV-1 (p. 109), we see the variation across the four courts: 46 percent in Midland, 38 percent in Capital, 37 percent in West, and 23 percent in East Court. This general phenomenon of non-payment is composed of various elements that have different costs to the system. Leaving aside the financial question--partial payments and the amounts owed the courts, some fine failures have entailed far greater enforcement expense than others. Some have involved the courts and their agents in successive, costly enforcement attempts; others have ended in failure without much activity on anyone's part. (Again, see Diagrams V-1 through V-4.) We shall return to this issue of wasted resources when we examine the committal

⁴² However, there are certain anomalies. In particular we see that 60 percent of those fined offenders reporting no funds at all but paying after court action were paying amounts over £90. We shall consider this curious group further as we turn to discuss the reverse side of the elicited payment coin -- the ultimate failure of the fining system: those who never pay in full.

process in the next chapter. More important, however, are the non-monetary costs to the justice system in terms of loss of credibility for the court and the fine sentence; these are harder to gauge than are the monetary ones. Clearly, however, the court's image for the general public and for the offender population is not enhanced when fined offenders evade the enforcement process.

2. The Characteristics of Fine Failures

Who are these failures of the fine process? If full payment is more likely when amounts imposed reflect offenders' means, we would expect some of the fine failures to reveal such mismatches. They do. Over a third of the fined offenders who failed to pay had been fined more than £120, and over half had been fined more than £90 (see Table V-2). Of the 62 non-payers with over £90 to pay, two-thirds (40) had under £41 in weekly household income. Almost half of these are found at Midland Court. Chart V-2 describes some poorer non-payers at the four courts in order to illustrate the relatively large sums imposed despite their limited means. While not all these non-payers were unemployed, the finances of even the steadily employed non-payers reveal rather modest sums coming into the household each week.

3. The Traditionally Bad Fine Risks

The above analysis suggests that non-payers tend to be of poor or limited means (71% of all non-payers reported receiving

TABLE V-2

ULTIMATE NON-PAYERS: TOTAL SUM IMPOSED BY TOTAL HOUSEHOLD FUNDS, AND BY COURT

Total Weekly Household Funds	Court	TOTAL SUM IMPOSED (£)							Total
		£0-30	£31-60	£61-90	£91-120	Over £120			
0	C	1)	1)	1)	-)	1)	1)	4	
	E	-)	-)	1)	-)	-)	-)	1	
	M	1)	38%)	25%)	13%)	13%)	1)	8	
	W	1)	-)	-)	1)	-)	-)	2	
£1-20	C	-)	2)	1)	2)	1)	1)	6	
	E	-)	1)	1)	-)	1)	1)	3	
	M	-)	8)	9)	7)	10)	13	37	
	W	3)	22%)	24%)	19%)	27%)	15	(31%)	
£21-60	C	4)	1)	-)	1)	4)	4)	10	
	E	-)	2)	1)	1)	1)	1)	5	
	M	-)	8)	2)	4)	17)	15	39	
	W	4)	21%)	5%)	10%)	43%)	9	(33%)	
£41-60	C	-)	2)	-)	1)	1)	1)	4	
	E	-)	-)	-)	1)	5)	1	1	
	M	1)	27%)	5%)	23%)	36%)	10	22	
	W	1)	2)	1)	3)	-)	7	(19%)	
£61-80	C	-)	-)	-)	2)	1)	1)	3	
	E	-)	1)	0)	-)	7)	1	10	
	M	-)	10%)	-)	20%)	70%)	4	(8%)	
	W	-)	1)	-)	-)	1)	2		
Over £80	C	-)	-)	-)	-)	-)	-)	-	
	E	-)	0)	2)	0)	0)	1	2	
	M	-)	-)	100%)	-)	-)	-	(2%)	
	W	-)	-)	1)	-)	-)	1		
TOTAL	C	5)	6)	2)	6)	8)	27		
	E	16)	3)	4)	2)	3)	12	118	
	M	2)	8)	3)	4)	26)	43	(100%)	
	W	9)	7)	7)	7)	6)	36		

O= Capital

E= East

M= Midland

W= West

CHART V-2

ULTIMATE NON-PAYERS WITH
MODEST MEANS AND HEAVY FINES

<u>Court</u>	<u>Work Status</u>	<u>Total Weekly Household Funds(£)</u>	<u>Total Imposed (£) and terms (per week)</u>	
Midland	unemployed on benefits	£58	£137	@ £5 p.w.
		54	175	2
		26	125	3
		25	275	5
		22	155	5
		19	175	3
		17	230	7
		16	233	5
	steady employment	16	134	3
		60	227	8
		54	122	10
		51	200	1
		50	250	10
		50	225	5
		50	135	2
		31	155	5
24	145	5		
West	unemployed on benefits	53	100	@ £3 p.w.
		52	100	5
		40	208	4
		40	100	5
		25	150	3
		21	143	4
		20	151	3
		19	120	2
	13	100	3	
	employed on sporadic basis	52	100	10
	Capital	unemployed on benefits	37	115
34			155	@ £7.50 p.w.
30			180	in 28 days
11			180	@ £10 p.w.
partly employed		57	100	@ £15 p.w.
steadily employed		60	150	in 28 days
		35	150	in 14 days
		19	100	or 1 day
East		unemployed on benefits	30	100
	60		100	5 p.w.
	partly employed	31	145	4 p.w.
	steadily employed	50	125	10 p.w.

less than £41 per week, including that curious group reporting no funds at all), and that the offenders who are the failures of the fining system include many whose means do not match their financial obligations to the courts. Do such mismatches shed light on traditional notions about bad fine risks?

Both in England and in the United States there is consensus that the unemployed recidivist male is the prototypical bad fine risk (although in England many such offenders are, in fact, fined). Our earlier data on fine imposition patterns revealed that recidivists (offenders with four or more previous convictions) tended to draw heavier fines than their counterparts with less serious records. We have also remarked on the link between past record, work history and income level. This relationship suggests that the rather frequent imbalance between fine amount and financial circumstances is part of what lies behind the labelling of this offender type as a bad fine risk. Indeed, although there were few unemployed persons on benefits among the voluntary payers, many eventually respond to enforcement activities and pay. Among the unemployed men on assistance who were first offenders or had minor records (1-3 previous convictions), three out of five paid across the four courts. (The first offenders differed from those with minor records largely in that they required less action on the courts' part.)

In contrast, among the unemployed men on public assistance with more serious records (four or more past convictions), only one in three paid. Those with £40 or less per week were es-

pecially likely to be bad payers.⁴³ In many cases their fines were written off or left outstanding by the court. Although Midland and West Courts show high proportions of outstanding fines for these offenders, this is partly because their Fines Offices were slower to process cases for write-off authorization. The write-off rates for unemployed, on assistance, recidivist offenders were high at these two courts and higher than at Capital and East Courts because Midland and West Courts have a larger proportion of them in their offender population. This group may explain to some extent the overall lower payment rates at Midland and West Courts.

However, the committal rate for this recidivist, unemployed, and on-relief group of non-payers is also much higher than average. Midland Court in particular made considerable use of committal, though often as a technicality (the lodged committal warrant) because the offender was already serving time on another matter. Even leaving aside these technical committals, which tend to obscure the imprisonment issue, there are differences among the courts studied in their use of imprisonment for default. However, unemployed men on assistance, regardless of their prior records, tended to figure prominently among those serving time for default in all the courts.

⁴³ If we review those instances of out of work, recidivist offenders who do pay, we note the sentencing courts' harsh response to some of them and the fact that they paid the relatively large sums voluntarily within short periods of time. The court clerks interviewed report that this type of offender was often a street gambler or a pavement vendor, or, alternatively, a "fence." Apparently the explanation of a "mismatch" between fine and offender's means does not hold for these cases because the means data they report is viewed by the court as deliberately false.

The common link among the poorer offenders (on unemployment benefits or in low-paying jobs) whose fines were written off, still outstanding after a year or more, or cancelled by imprisonment is the combination of limited funds and high fines. But it was the unemployed men on public assistance in the fined samples who ended up in prison, especially at Midland and West Court. At West Court, without exception, all these men had been ordered to pay large sums, despite their reliance on public assistance: for example, one man owed £151 (£1 fine and £150 compensation) to be paid at the rate of £3 per week on declared public assistance of £13 per week, not including subsidized housing; and another owed £75 at £3 per week, payable from declared benefits of £18 per week. At Midland Court most of the offenders in this group were likewise fined large sums: for example, one owed £176 at £3 per week to be paid out of weekly assistance of £13 per week (with declared weekly outgoings of £25); another owed £220 at £3 per week payable out of £17 in weekly public assistance; and a third owed £176 payable in 60 days (adjusted to £2 per week at the means inquiry) from public assistance of £18 per week.

It is hard to avoid concluding that the combination of large fine amounts and declared low income from public assistance contributed substantially to the occurrence of ultimate default and prison time being served. The dynamics of the situation seem fairly clear, especially at Midland and West Courts where this outcome may have been hard to avoid. The Fines Offices' enforcement strategies lack diversity, and escalation

of enforcement action brings these courts rapidly to their last resort: committal. Thus the nature of the court's enforcement strategy appears to contribute to the problems seen in the sentencing stage of the process; together they make up a complex formula for ultimate non-payment. This may be difficult to avoid given the high fine amounts set by the sentencing court and the likelihood that the court will change only the terms of payment and not the original amount.

Assaultive Offenders. Another group of offenders whose payment record deserves attention is assaultive offenders. This group is particularly interesting from the American perspective because they represent a type more often dealt with by fines in the English than in American system, as far as we may judge from existing data.

Recall that assaultive offenders tended to draw large fines. Even at West Court, with its tendency to impose lower fines than the other three courts, more than a quarter of the fined assault offenders had total fines over £90 to pay; at Capital Court 30 percent had fines over £120 and at Midland and East Courts 68 percent and 70 percent of assaultive offenders were fined over £120. This pattern points to a sentencing philosophy in which the amount of the fine strongly reflects the gravity of the offense and in which assaultive offenses are viewed as per se more serious than property offenses.

Despite their relatively high fines, many assaultive offenders were good payers. Between a quarter and a half of assaultive offenders fined at the four courts paid without any

court action whatsoever (see Table V-3). However, these offenders tended to be in steady employment and/or to have relatively high levels of household income. Thus there is a sizeable group of the assaultive offenders across the courts who tend to be less problematic payers than the average offender. (Even when we examine the write-offs for these assaultive offenders we find that most are not true default cases; they are transfers to other courts whose fine administrators may eventually collect the fine.)

But there remains a sizeable minority of assaultive offenders (30%) who ultimately do not pay. What characterizes this subgroup is youth and lack of stable or continuous work, but not the magnitude of the fines imposed on them. Of the five assault offenders across the courts who served time in lieu of payment, three were unemployed and two had only sporadic employment. Four of those serving time were also young (18 to 25). Apart from their youth and inconstant work record these non-paying assault offenders have little in common, and an imbalance between means and fines does not appear to explain their default. Their fines range from the relatively small (£30) to the very high (£176) and the terms show an equal variety.

Enforcement strategy variables are more helpful in explaining non-payment than any mismatch between means and fine amounts. Of the substantial proportion of assault offenders with outstanding fines, particularly at Midland and West Courts (50% and 33%, respectively), many continued to pay their fines sporadically--not according to the installment terms laid down

TABLE V-3
PAYMENT OUTCOMES FOR OFFENDERS FINED FOR ASSAULT

	Capital Court	East Court	Midland Court	West Court	All
Paid voluntarily	13 (48%)	12 (43%)	6 (27%)	5 (33%)	36 (39%)
Paid after enforcement action	4 (15%)	9 (32%)	5 (23%)	4 (26%)	24 (24%)
Served time	1 (4%)	2 (7%)	2 (9%)	0	5 (5%)
Fine written off	4 (15%)	2 (7%)	0	1 (7%)	7 (8%)
Outstanding	5 (18%)	3 (11%)	9 (41%)	5 (33%)	22 (24%)
TOTAL	27 (100%)	28 (100%)	22 (100%)	15 (100%)	92 (100%)

by the court, but on an on-going, erratic basis which the Fines Office tolerated. Others were in total default, having ceased to pay even token amounts for some time, but suspended committal warrants remained unactivated. For others means warrants were issued but remained unexecuted, the inference being that these fines would eventually be written off "whereabouts of offender unknown." It is a somewhat haphazard enforcement process that offers the most plausible explanation for many of these fine failures.

In the next chapter we shall examine in detail how two of the most coercive enforcement measures operate: distress and committal. In discussing their advantages and disadvantages we shall return to the themes of this chapter. The use of distress and committal puts in relief the fundamental question of the appropriateness of the fine; in one sense these two coercive techniques are a test of the fine. If the initiation of distress and committal proceedings fail to elicit full payment of the fine, it is usually for one of three reasons: (a) mechanical failure--the offender has managed to disappear from the system either by evasion or accident; (b) offender failure--the offender chooses to defy the system directly; (c) fine failure--the offender simply cannot pay. If the third reason holds with any frequency, it calls into question the entire fine process.

CHAPTER VI

STUDIES IN COERCIVE ENFORCEMENT: DISTRESS AND COMMITTAL

Introduction

We have discussed the patterns of elicited payment that occur with the application of different enforcement approaches. Many interrelated reasons emerge as to why courts vary in the extent to which they induce fined offenders to pay. The most commonly used measures to elicit payment occur early in the enforcement process when courts are trying to reduce interim default by techniques applied on a large scale. Notable among these are reminder letters and means warrants, measures that are intended to work by threat and often do, despite some failures to maximize on their potential.

The most common overall enforcement strategy proceeds in a clear progression of the degree of coercion applied, from reminders and means warrants through the stage of the default court's means inquiry to an escalation of pressure in the form of the committal warrant. Committal to prison, of course, represents the ultimate deprivation--loss of liberty--and for this reason, at least, it cannot be relied upon until relatively late in the process. Some courts, however, introduce high levels of coercion, particularly distress, earlier in the enforcement process. In strategies embracing this option, enforcement changes quickly and abruptly after a single warning or a series of warnings transmitted impersonally through the mail (reminder, means summons, means warrant). Absent a distress

warrant (and short of committal), the worst that could happen to an offender is an arrest by the police (without bail) to enforce appearance at a default court. Distress brings into play an imminent threat of real deprivation.

Whereas committal is a phenomenon known to American criminal justice systems, distress is less familiar. While distress is more frequently used in England, it is not used in all magistrates' courts although interest in expanding its use is growing. In England as well as in the United States, there is concern that imprisonment not be a frequent outcome of the fining process, because it is viewed as a failure of the intent of the original sentence and because prison resources are scarce and costly. The main interest, therefore, from both the English and the American perspective is the same: how do the coercive measures actually operate, what determines the efficiency of their application, and what implications do their use have for the court and for the defendant. For despite the considerable experience of committal throughout the English system and the localized use of distress for a number of years by certain courts, there has been relatively little research about how these enforcement tools work in practice.

In this chapter we deal first with distress and then with committal, as the final recourse in the fine enforcement process. We consider the legal parameters within which both measures operate and the variations in practice at different courts, following the distress and committal procedures in detail through their chronological stages. We include a con-

siderable level of detail primarily because very little is known on either side of the Atlantic about the practical side of these procedures and nowhere does such a concrete description exist. In addition, only through an examination of how these mechanisms actually work can the policy questions they raise be addressed in a meaningful way.

Finally we discuss the costs and problems associated with these measures both in terms of system resources and impact on offenders. We conclude the chapter by identifying areas of particular concern to policymakers. We shall return to these points in our final chapter, when we discuss more fully the policy implications of our research.

A. Distress

Distress involves the court's issuance of a warrant empowering its agents to seize property belonging to an offender who is in interim default on payment of monies due the court; the property may be sold publicly to meet the debt.

For a long time distress has been a common remedy in civil cases and in the event of fine default by companies.¹ But it is only quite recently that courts have begun to use distress against individual offenders defaulting on fines imposed for criminal convictions, although the courts have been empowered for some time to use distress in such cases.

¹ For example, when a company does not pay sums adjudged against it for breach of tax (value-added tax or V.A.T.) regulations, health regulations, etc.

Over the last few years, the English criminal justice system has seen a marked resurgence of interest in this technique, and courts in various parts of the country have begun negotiations with private bailiff firms. East Court has had several years of experience working with bailiffs. Capital Court began a period of exploratory operations with bailiffs at the time of our research and has now instituted distress on a much fuller scale. Since completion of the research, Midland Court negotiated a contract with bailiffs to begin distress operations. The increasing interest in distress reflects the view that this forceful enforcement technique may reduce the burden on the court of fine implementation. Distress merits our special attention because experience with it is limited, and we believe it is important to examine its operation--its potential advantages and disadvantages--at a time when many courts in England (and some in America) are contemplating its adoption.

1. Law and Practice

The authority for levying distress on individual offenders who default on fines imposed for criminal convictions derives from legislation in the early 1950s² (re-enacted in 1980³). The courts are empowered to seize property in lieu of payment for outstanding sums owed.

² See Magistrates' Courts Act 1952, 64.

³ Magistrates' Courts Act 1980, Part III, 76.

There are, however, certain restrictions on the use of distress. The most important is the protection from seizure of certain necessities: chiefly clothes, bedding, and tools of trade.⁴ In addition, as property seized must belong to the individual offender against whom the distress warrant has been issued, practical problems may arise when bailiffs arrive at an offender's home. Apart from this, however, there is little statutory regulation of practices relating to distress.

2. Who Operates Distress?

Theoretically a number of different agents might operate distress on behalf of the courts: court enforcement officers, police officers or civilian bailiffs. Practice favors firms of civilian bailiffs.

In the English criminal justice system the idea of the police executing distress warrants is not popular either with the courts or with the police themselves. The police already act as agents in the courts' enforcement strategy in a number of ways: they execute means warrants and committal warrants; they may also be involved in short-term detention in lieu of payment for small fines with fixed alternatives. The police already claim difficulty in meeting the demands placed on them by their current role in the fine collection process, as witnessed by their practice at some courts of mailing written notification of

⁴ Magistrates' Courts Rules 1968, Rule 44. The English law is the same on this point as the Swedish and German laws governing items excluded from seizure.

means warrants to avoid executing them in person. Many courts, therefore, consider it of little practical value to involve the police in executing yet another warrant. Moreover, distress warrant execution can be an unpleasant duty, because it may involve marking people's household or personal possessions for seizure. It is not surprising, therefore, that the police, busy or not, are far from anxious to be involved.

Nevertheless, some proportion of the bailiff firms' operatives tend to consist of former policemen. If police officers opt for early retirement on pensions, bailiff operations may represent a further opportunity for work in which their knowledge of the community and local contacts are relevant assets. Other bailiff operatives are also part-time bouncers at clubs, and still others have experienced how the courts work from a defendant's perspective. Whatever their background, bailiffs are people who are prepared to make their presence felt and who do not shrink from work that succeeds chiefly by threat.

Civilian bailiff firms have gained business in recent years because of forceful salesmanship and because word of mouth in professional circles has reported the success of distress, especially in dealing with Fines Office backlogs.⁵ Aside from the claims for high success rates, the bailiffs recommend themselves to the court because they offer a service that removes the case from the Fines Office (until payment or failure), involves little paperwork on the court's part (the bailiffs keep

⁵ Some firms even advertise. For an example taken from a leading professional journal, see Appendix C, p. 311.

the subsequent files on the case, monitor progress and render final simple financial accounts to the court), and costs the court nothing.

3. Distress Case Selection

There appears to be some variation in how Fines Offices decide when to apply distress. Some favor pre-selection of cases; others theoretically apply distress across the board when an appropriate stage in their enforcement strategy is reached (usually after a reminder has failed to elicit payment).

For example, at the time of the research, Capital Court was experimenting with distress and had established rules to exclude certain types of cases. For instance, offenses such as non-payment of television licenses were excluded, and offenders in one-parent families were not considered suitable. At East Court, in contrast, the agreement was that the bailiff should receive all cases of outstanding fines, although this rule was not always followed in practice.

Some courts are selective in their use of distress. One court chooses cases for distress based on the following criteria: (a) fines against offenders with past histories of default; (b) small fines (under £50) with a fixed term of at least a month but no payment and no application for further time to pay. Courts which use enforcement officers as part of their Fines Office staff may also involve these experienced personnel in the selection of cases suitable for distress. The bailiffs do not tend to favor pre-selection because they believe the

success of distress is hard to predict. According to a bailiff servicing East Court:

"We have cases where the staff in the courts have said 'We didn't expect you to get the money' -- I don't think they can be selective, there is no real yardstick that they can use."

When cases are selected for distress, the Fines Office draws up distress warrants against the offenders for signature by the magistrates.⁶ From the time these warrants are handed to the bailiffs until the Fines Office receives a check for payment elicited or a returned unproductive warrant, the cases involve no further work on the part of the Fines Office for the court.

4. Distress in Operation

The routine practice of most bailiff firms is to call at the offender's home within seven days of their receipt of the distress warrant from the court. The bailiffs serve notification that they hold a warrant to levy distress for the outstanding fine amount plus costs; they usually give the offender a copy of the walking possession agreement entitling the bailiffs to seize property.

Access is not always easy to obtain. Some offenders or their relatives simply refuse to answer the door. Others slip out through the back door to neighbors (reportedly even carrying

⁶ For an example of a distress warrant, see Appendix C, p. 310.

valuables with them). Although operatives may lie in wait for offenders to return, the bailiffs will not force entry. Therefore, warrants are sometimes returned to court marked "no access." The traditional picture of the bailiff encamped on the doorstep does not correspond to modern business realities--bailiffs do not spend a great deal of waiting time on individual cases.

At the first visit the bailiffs may "mark" certain goods as seizable.⁷ If it is clear that there are no goods worth seizing, the bailiffs return the warrant to the court. In fact, however, it is rare for goods actually to be seized. At Capital Court this reportedly occurs in less than two percent of cases in which distress is used. One reason for this is the attitude of the bailiffs. When interviewed they generally expressed dislike for this part of the process. Their dislike springs less from distaste at removing personal property than from a sense of the disproportionate effort entailed in seizing, transporting, auctioning and administering the funds realized.⁸ The bailiffs must arrange for removal (usually contracted out to another firm) and liaise with public auctioneers. The costs

⁷ Goods seized should cover the fine. As one bailiff explained "We cannot take goods if we know they are not sufficient to cover the fine. Goods which raise excess could be seized because you can return the difference, but not too little, never."

⁸ At auction the sums raised by selling the property seized are applied to the auction fees, transportation and bailiff fees. Then the remaining amount is applied to the sum owed to the court. If any money is left over, this must be returned to the offender.

Sometimes the market value is not great, but the article may be marked because it is sentimental value to the family. As one bailiff remarked "Everyone has something they don't want to lose." The hope is that marking will bring the threat of loss home to the offender who will find the money for the fine.

The rarity of actual seizure must also be attributed to the fact that many offenders are unemployed and poor: "The type of people we get don't have many possessions and what they do have is not usually worth taking."

In Case B the twenty-two year old male first offender was sentenced for t.d.a. to pay a £20 fine with £10 costs and £20 legal aid contribution; he had weekly wages of £56 and an additional £5 paid to him by his father for board, and his weekly outgoings were £26. He was ordered to pay by Capital Court within 28 days. At the end of the fixed term he had not paid and the Fines Office sent out a reminder two weeks later. When he failed to respond, a distress warrant was issued to the bailiffs, who eventually returned it to the Fines Office after two visits during which they had come to the conclusion that the offender had no goods worth seizing. When Capital Court followed up the returned distress warrant with a means warrant, the offender paid the full amount £50 by cheque, rather than attend the default court.

The fact that the offender had a bank account suggests that he was not destitute. Nevertheless, the bailiffs felt that his possessions would not be worth auctioning. For fines of this order distress may not work except by threat. An offender may be able to raise £50, under pressure, but his movable assets may not merit the bailiffs' attention on a cost-effectiveness basis.

This problem of actual seizure is compounded by the fact that the offender must be the legal owner of goods seized; therefore, items owned by other members of the household, those being bought on hire purchase (installment) agreements, or being rented are not seizable.⁹

In Case C, the bailiffs contemplated seizure of goods against a woman fined for committing criminal damage. After a reminder letter had failed to elicit payment, East Court had issued a distress warrant. The bailiff went to the house and met the offender and her husband. "The house was very nicely laid out." Both partners were unemployed (the husband had just been released from prison). There were, however, goods in the house which were potential auction items. The husband claimed title to all the goods, saying he owned them before the marriage. He was reportedly very aggressive and threatened the bailiff. The wife promised to send the money in 7 days but when this failed the bailiff returned to the house. The husband said that he had forbidden his wife to pay and laughed when told that she might be arrested. It was impossible under the circumstances for the bailiff to dispute the husband's title. The warrant was returned to court. At that time, a means warrant without bail was issued to the police. The outstanding sum was paid to the police upon the threat of imminent arrest to appear before a means inquiry.

Bailiffs are not empowered to accept payment by installments, but they report that they generally will negotiate partial payments, giving the offender time to raise the rest of what is owed. A bailiff at Capital Court said: "We have to be

⁹ For this reason it is very unusual for distress warrants to be issued against persons under 21 years of age. Arguably the parents own the goods in the household and it is difficult to levy distress in these circumstances.

flexible, judge the circumstances. You get a feel for the genuine person who will complete. Most of them haven't got much money so you have to take that into account." A number of cases discussed in interviews demonstrate this practice in operation.

Case D involved an outstanding fine of £100 imposed at Capital Court for a theft offense. The distress warrant was issued and the bailiff collected it personally from the court three days later. An initial visit was made to the recorded address during the ensuing week when the offender's sister claimed he did not live there. Before the warrant had been return to the court the offender telephoned the bailiff to say he would come in and pay. He paid £70 into the bailiff's office and a fortnight later he submitted the remaining sum of £47.25 (£100 + 15% V.A.T.).

Our interviews unearthed the occasional instance of installment payments negotiated with the bailiffs.

In Case E, the East Court bailiffs received a distress warrant against a man who had been fined £80 for a theft. Before a visit had been made the man's mother telephoned the bailiffs to say her son had no goods to seize as he lived in the parental home. His father knew nothing about the fine and the mother wanted to keep him in ignorance so she offered to pay £10 each week until the fine was cleared. The bailiffs agreed to the arrangement and the fine was duly paid in £10 installments to the bailiffs.

Clearly the bailiffs must weigh the probability of full payment when agreeing to give offenders time to pay; installment terms tend to carry a greater risk of payment lapses an incomplete payment.

Thus in Case F, at Capital Court the offender lived in a small council flat. There was "nothing worthwhile to seize" according to the bailiffs. Soon after the first bailiff visit the offender telephoned and

asked for time to pay. The bailiffs gave her 3 weeks to pay. When the period elapsed she called again asking if she might pay £20 per week starting in a fortnight's time. "This was obviously ridiculous - not something that we could take on and we told her to go back to Court. If we had confidence in her ability to pay we would have tried it."

It is clear from the foregoing that a great variety of practices are associated with the operation of distress. It is also clear that courts know relatively little about the details of a bailiff's operations. Some courts receive money on a monthly basis by check from the bailiffs with a breakdown by fined offender and sums paid. There is not necessarily any more detailed accounting. The court may not know whether the money was obtained by threat of distress or actual seizure.

To the extent that we have information on the phenomenon of distress, we conclude that it works for the most part by threat. However, because it is used by relatively few courts, and some have been using it only for a short time, it is difficult to obtain detailed information from a variety of sources. This is particularly problematic when we try to gauge the success rate of distress.

5. The Outcome of Distress

In advertising for distress business in a professional journal, one firm of bailiffs claims a success rate of 86 percent (Appendix C). Although this sounds implausible, it may not be a gross exaggeration. We have conflicting reports and spor-

adic information to compare with this claim, but available figures suggest substantial variation across courts.

One court which uses distress reports a success rate of 77 percent and shows a rate of under one percent of cases involving seizure of goods. The rate of returned unproductive warrants for this court is 21 percent.

In our quantitative samples, distress was used at East Court in eleven cases and at Capital Court in nine cases. At neither court were distress warrants issued against offenders without support from work, public assistance or some other visible source.¹⁰ At East Court the success rate of the distress process for these sample offenders was 73 percent: eight offenders paid their fines to the bailiffs, seven in cash and one by seizure of goods.¹¹

At Capital Court the success rate for distress warrants was lower than at East Court: two out of nine offenders paid the bailiffs, a success rate of 22 percent (one other offender even-

¹⁰ However this did not exclude a variety of odd financial situations. At Capital Court one offender was receiving £10 per week from his aunt, another was living on the proceeds from working abroad and one was receiving £35 per week from her boyfriend. One offender had been on unemployment benefits but these had been suspended - indicating that some undeclared alternative income had come to light. However, there is also some evidence of negative effects of enforcement procedures. At East Court two distress warrant offenders lost their jobs as a result of their cases.

¹¹ The three other distress warrants had been returned to the Fines Office marked "no goods to seize." One offender eventually paid on a suspended committal. Only two offenders did not pay at all: one of these technically paid by time served on a lodged committal because he was already in prison on another matter. The other offender's whereabouts were untraceable and his fine was eventually written off.

tually paid his fine, upon means warrant execution). However, the research sample only covers the court's initial experimental period. Subsequent figures from Capital Court's Fines Office shows a success rate of 37 percent.¹²

These figures, although based on very small numbers, suggest substantial variation in distress outcomes among the courts using this technique. In part we must look for an explanation in different selection procedures. If a court is merely sloughing off all initial problem cases to see what impact the bailiffs have in reducing the numbers of offenders in interim default, one would expect fairly high rates of warrants returned without payment. However, this does not appear to be the general practice and the evidence suggests that a substantial proportion of offenders against whom distress warrants are issued respond by paying.

It is difficult to discern a type of offender who responds to distress both because we are looking at an extremely small number of cases and because the variability in the types of offenders involved is constrained by the relatively limited use of this type of threat. In most cases, the main selection criterion at the courts studied was simply whether the defaulter had failed to respond to the preceding measure in the court's strategy. We find that offenders against whom the courts issued distress warrants cover the entire spectrum from steadily em-

¹² Based on fines paid in full out of total number of warrants issued, excluding those outstanding at the time of calculation.

ployed to unemployed with and without public assistance. Bailiffs do report that various types of offenders are more or less likely to pay, and they indicate that they can often tell from the address whether or not the threat of distress will be successful. Bailiffs do not mean that offenders at poor addresses do not pay. They make rather more complex assessments of the probability of payment in the light of what they know of the amount due and the local populace. The bailiffs see the worst risks as those cases in which large amounts are outstanding from offenders living in poor neighborhoods--in other words, when the fine is disproportionate to the offender's means.

6. The Cost of Distress

The arrangements between court and bailiff firms are generally characterized by an emphasis on financial statements and a lack of scrutiny of operations. Not every clerk is apparently content with this lack of court control. Thus the clerk at Capital Court insisted that means warrants be issued after returned distress warrants. Whereas this might be viewed as a prelude to issuing a committal warrant at the ensuing means inquiry, in practice, it provided the clerk with an opportunity to check that no money had in fact been paid when distress warrants were returned. The bailiffs are aware of the practice at Capital Court and operations proceed without any problems arising from returned warrants.

On the whole, however, the relationship between Fines Offices and bailiffs is a simple business arrangement. The main

operational issue is the basis for the bailiffs' fees rather than mechanisms by which the Fines Office monitors their distress operations.

There is considerable variation in the fee arrangements across courts. In exchange for undertaking high volume work, bailiff firms at some courts agree not to charge fees for any warrant returned marked "no effects" (i.e., an unproductive warrant against an offender with no goods worth seizing). This means that the court does not pay for these unsuccessful cases. Some courts used to pay from £2.50 to £5 out of public local funds per unproductive distress warrant returned; the payment of this money to the bailiffs was questioned by some local authorities and eventually stopped. However, other courts apply to the Home Office for reimbursement of bailiffs' fees (approximately £2.50 per case) on unproductive distress warrants.

One bailiff commented: "£2.50 plus V.A.T. is the sum I've heard and I think that is about right. It is what we get for similar work for Customs and Excise. The argument I've heard against it is that a bailiff could do no work on it and still pick up the fees. I don't think it would happen because it is our bread and butter to work with the courts and the word would get around." This question of reimbursement from public funds for unproductive warrants and the temptation for warrants on unlikely cases to be returned without any effort to levy distress is controversial, and there is currently some confusion on the issue. But as the use of distress increases, the whole question of who pays for distress will be examined more carefully.

It is obvious that at those courts with no reimbursement arrangements someone else must carry the cost of the "bad" cases. It would appear the bailiffs do not. The firm operating at East Court charges a paying offender, in addition to collecting the outstanding fees, 15 percent of the amount outstanding plus V.A.T (17.25%); because this exceeds direct costs, these offenders are paying for their fellow-offenders with whom distress is unsuccessful. As one bailiff explained: "We say 15 percent because we don't get paid for every case. I have averaged it out and at present it works out at six percent per case.... We return 25 percent of the warrants - we're better off with 15 percent" (than a lower rate for successful warrants and a flat fee of £2.50 for returned warrants). What other options might work? A sliding scale for bailiffs' fees depending on the amount to be collected finds no favor with the bailiffs interviewed because of the complexity of calculating the fee.

A further complication in the matter of fees for unproductive distress warrants arises when the offender subsequently pays the fine to the court. Because the bailiffs have performed their function by trying to levy distress and the threat at least appears to have worked, they generally feel they are entitled to their fees. Some courts apparently add this to the sum due from the offender, thereby being in the position of collecting the bailiffs' fees. Other courts, such as East and Capital, refuse to do so.

The problem is an interesting one. One bailiff recounts that certain regular offenders would be warned by their friends that the bailiffs were on the way. The fined offenders would go to the court and pay the fine, thus avoiding the bailiffs' fee: "We were working for nothing. We were getting the right result for the court, but we weren't getting anything out of it and after all we are not public benefactors."

In Case G, a 17-year-old male first offender who was unemployed and on public assistance of £19 per week was fined £50 at East Court for theft, to be paid at £2 per week. When he defaulted on his installments the Fines Office sent out a reminder, but it elicited no response. The matter was placed in the hands of the bailiffs, but after their first visit and while they were still in the process of executing the warrant the offender went into the Fines Office and paid the fine in full.

In the light of this experience some courts, such as Capital Court, have agreed not to accept payment directly from the fined offender while the distress warrant is in the hands of the bailiff. This raises the curious scenario of courts turning away fined offenders, money in hand. This serves to underline the difficulties associated with contractual arrangements between bailiff firm and court: the former is operating a business, the latter attempting to administer justice.

7. The Pros and Cons of Distress

The foregoing description of some distress practices raises a number of questions as to the value of this method of fine enforcement. The fact that distress is operated as a business

has both advantages and disadvantages. Unlike those parts of the fine enforcement process managed by the court, the bailiffs operate distress in order to make a profit. The profit motive carries certain implications for efficiency: procedures tend to be streamlined, records up to date and action swift and incisive. There is not much wasted time: operatives aim at assessing rapidly the cost-effectiveness of pursuing a case forcefully to the bitter end -- the seizure of goods.

It is sometimes argued that the profit motive encourages excessive pressure, but from our observation, the popular image of the burly, sinister bailiffs arriving in pairs on the doorstep and inserting a foot in the door is a myth. Yet there are more subtle forms of pressure, nonetheless worthy of attention, if we remember that the person on the receiving end may be guilty only by association with the fine defaulter. The bailiffs are acting as agents for the court in its dealings with a specific convicted offender, but their dealings may be primarily or entirely with a third and innocent party. It is because of this that control and monitoring therefore remains necessary, but our observations suggest that courts know relatively little about the details of private bailiff's operations.

The fact that the bailiffs are businesslike and skilled in operating distress may evoke a number of responses on the part of the people who come into contact with them. They may be impressed by the greater air of efficiency and purposefulness about the bailiffs. Among the population of repeatedly fined offenders there is often a perception of the court and its Fines

Office as a bumbling, haphazardly-run piece of antiquated machinery; it is part of the game of "playing the system" to avoid fine payment for as long as possible. Some people succeed in playing the game against the bailiffs, too, but it is generally felt that this is a much harder matter, because one is "dealing with professionals."

Segments of the fined defaulter population know the bailiffs well. These same individuals may also default on hire purchase (installment credit) payments and have other debts. There is sometimes an ongoing relationship between families who live continually in debt and the bailiffs who metaphorically are breathing down their necks. Therefore, although the bailiffs may pose a more formidable problem to fine defaulters than the court, they are also a familiar if unwelcome part of life. For this reason, too, they are harder to evade.

In one respect, however, the bailiffs may encounter antagonism when they levy distress for the courts. Many offenders regard their punishment by the court as a fixed sum: the addition of the bailiff's fee is a matter of fierce resentment by some defaulters. The drawback of profit-motivated efficiency is that someone must pay for the profit. At present it appears that the contractual agreements between courts and bailiffs firms are generally based on the principle that fine defaulters who pay the bailiff must bear the main cost of distress operations, with small supplementary governmental support for unsuccessful warrants. It is a system open to charges of inequity: why should only the defaulters who finally succumb to the

pressure of distress have to pay the brunt of the costs for their more recalcitrant fellow defaulters? Why should defaulters who respond to distress have to pay more than their original fines when defaulters who pay on execution of committal warrants do not, although the cost of committal warrant execution is arguably comparable to distress warrant execution?

If distress is to be a fair and useful method of fine enforcement the inequities of existing contractual terms must be confronted and resolved. Yet, apart from the technical problems of paying for distress and controlling its operations, there is the more fundamental problem disturbing many courts: is it appropriate in the 20th century to resort to the ancient measure of seizing property to pay a debt to the court for criminal offending? Many practitioners are uncomfortable with the very notion of distress. However, those who argue that many fined offenders have little valuable property fail to confront the notion that such offenders have little extra cash to pay a fine. If distress is inappropriate on purely economic grounds, then so too is the original fine.

Behind this argument centering on the poverty of the fined offender lies a more profound discomfort arising from the uncivilized connotations of "distress." The courts' apparent distaste for the sordid image of seizing property (with its Dickensian flavor of pawn shops and families without the bare necessities of life) must be weighed against the alternative. If the introduction of distress into a court's fine enforcement

strategy reduced significantly its rate of committal, distress may be the less uncivilized option.

From our own observations it is not possible to state categorically that distress operates as an alternative to incarceration. We do know that at East Court, where distress has a relatively long history, committal is very rarely used. At Capital Court, where distress was still in its experimental stage during our research, committal was an important enforcement tool. It remains to be seen whether, once distress is firmly established as a major enforcement tool at Capital Court, the committal rate will drop significantly.

Apart from its use as an alternative to committal, the use of distress as a routine step in the escalation of court action to enforce fines will most likely depend upon the degree of control the courts develop over the operation of distress and upon the financial arrangements courts devise to pay for it.

There is a case to be made for standardizing arrangements between courts and bailiff firms to provide uniform guidelines with respect to:

- (a) the assignment of costs of distress;
- (b) reimbursement for unproductive warrants;
- (c) the exercise of discretion in the dealings between the bailiffs and offenders or third parties (e.g., in negotiations between bailiffs and offenders as to time to pay on installment payments);
- (d) the reporting of the course and outcome of distress operations to the courts; and
- (e) the methods by which courts monitor distress operations.

We turn now to a consideration of that final and most coercive measure: committal to prison for non-payment of fines. In examining how this process operates we find that committal, like distress, shows many variations in practice, some occurring outside the courts' scrutiny. Also like distress, committal works primarily by threat, but the degree to which its potential as a threat is currently realized depends less on a coordinated program under the control of a single group of motivated agents (as in the case of distress) than on a diffuse series of actions by various agents for whom committal represents a non-central and burdensome aspect of their work.

B. Committal

The final recourse of the fine process is committal to prison for non-payment. If the offender actually goes to prison, the fine process can be said to have failed, in the sense that the original sentence is recognized as wrong--whether responsibility for the mistake lies with the court, its enforcement agents, or the offender.

In our examination of the details of the committal process we shall discuss common practices in order to pinpoint problems and inefficiencies in the system, and to highlight some of the costs to the system of this ultimate breakdown of the fine process.

1. Law and Practice

The committal process may be initiated by issuing an order for committal at two stages in the fine process: at sentencing

or, more commonly, at means inquiry. At sentence, courts infrequently impose alternative fixed terms of imprisonment when imposing large fines.¹³ In such cases, the alternative terms are sufficiently long to entail committal to prison, if activated, rather than in-court detention.¹⁴ When the court does set fixed terms with relatively large fines, the offender is generally allowed time to pay; if he fails to pay voluntarily the alternative becomes immediately operative. However, it may take some time for the Fines Office to detect the interim default, prepare the committal warrant for signature by the magistrates, and have the police execute the warrant.

More commonly the committal process is initiated at a means inquiry. By law a committal order may not be issued unless the court has inquired into the offender's means in his presence and is satisfied that he is able to pay the fine. (The offense must also be an imprisonable one, and all other remedies but committal must have failed.¹⁵)

There are also restrictions on the length of time for which fine defaulters may be committed, corresponding to the amount owed to the court. The following scale of prison terms vis-a-vis fines holds for the period of our research:¹⁶

¹³ The circumstances under which the court might fix an alternative of imprisonment were set out in the Criminal Justice Act 1967, and restated in Magistrates' Courts Act 1980 82 (1).

¹⁴ See our earlier discussion of this phenomenon in Chapter V.

¹⁵ Magistrates' Courts Act 1980 82 (3).

¹⁶ Criminal Law Act 1977 59.

<u>Amount of fine</u>	<u>Maximum sentence</u>
Not exceeding £25	7 days
Over £25 not exceeding £50	14 days
Over £50 not exceeding £200	30 days
Over £200 not exceeding £500	60 days
Over £500 not exceeding £1000	90 days
Over £1000 not exceeding £2500	6 months
Over £2500 not exceeding £5000	12 months

At a means inquiry, the court may order immediate committal to prison or, more typically, suspends the committal warrant pending the outcome of a "last chance" grace period, when the offender is ordered to pay on the original terms or on terms adjusted (usually reduced) after the default court has considered the circumstances of his case.¹⁷ Such suspended committals, together with adjustment of the original terms of payment, appear to be the main ways the default court tries to elicit payment. Whereas many courts (including the four courts we studied) show a tendency to use means inquiries in this way, there are great variations in practices among the courts in activating and executing suspended committal warrants.

2. Activating Committal Warrants

Suspended warrants technically become active as soon as the terms of payment are violated. However, activation is often delayed considerably either as the result of administrative discretion on the part of the Fines Office or through oversight. Fines Office management techniques come into play here.

¹⁷ The court is not obliged to reconsider the offender's means after suspending a committal warrant on certain conditions of payment; if the offender's circumstances change, he is still liable to committal once the warrant is activated. See R. V. Clerkenwell Stipendiary Magistrate, ex parte Mays (1975) 139 J.P. 151.

At Capital Court the system is highly organized: suspended committals are routinely entered in the diary for review on a date six weeks after issue. Therefore the longest delay possible before activation is defined by: six weeks minus the time allowed for term payment or the first payment on which the offender defaults. At the three other courts, however, activation appeared more haphazard. Some committal warrants, for which suspension should have ended because the offender had not kept to the payment terms, were still not activated after many months. Apart from intentional administrative adjustments, the backlog of work is an element in the delay in activating suspended committals.

3. Executing Committal Warrants

Committal warrants are executed by the police or by civilian warrant processors. West Court uses a combination of police and civilians.¹⁸ English police interviewed remarked on the high public confidence in civilian processors:

"It is very high, in some ways greater than with the police.... It is obvious that we are the police when we go round, but the civilians are regarded as court officials. It was most obvious during the riots [in 1981]. We did not execute any warrants during the riots and the police had, and still have, to keep a low profile in one particular area, but the civilian processors

¹⁸ These handle warrants against all types of offenders, not only fine defaulters. The impetus for this practice apparently came from Home Office discussions on the issue. See Home Office, Report of the Working Party on Civilian Officers, 1977.

were able to resume their work very quickly without any problems."

The police tend to execute committal warrants in batches on a "purge day." At courts where the default court sessions (means inquiries) occur on one particular day each week, police tend to execute committal warrants to coincide with that arrangement. In this way they gather offenders arrested by warrants and offenders taken straight from court with the maximum efficiency.

Prior to arresting offenders on committal warrants, some police forces routinely write to those defaulters with warrants who might respond to a letter with payment. Officers get to know their area and their populations and they believe they can judge when a letter is worthwhile. As a police officer at West Court noted,

"It varies from area to area as well. It isn't even worth trying it in some areas, while in others you can use it in 90 percent of cases."

It is not uncommon, therefore, for committal warrant execution to elicit immediate cash payment to the police, who then hand the money over to the court. There is substantial latitude for discretion by the police, and some negotiation appears to occur in the four courts studied. At Capital Court the police may arrange to call back later in the day or on another day, if the offender or his family give sufficient assurances of intent to find the necessary sum. Reports vary as to whether the police would accept partial payment on the spot and the rest later. Unofficially this may occur in a few cases.

This discretion on the part of the police either in forcing the pace of committal or in allowing extra time for the threat of committal to take effect may result in different payment success rates for committal warrants, depending on the policy of the local force or the inclination of individual officers. Arguably, no one wants the committal process to proceed to imprisonment for non-payment, and everyone agrees that its threat creates powerful pressure to elicit payment. Yet the system is not geared to maximize this opportunity because there is no one person responsible for coordinating the diffuse parts of the committal process.

Despite the lack of coherence in the process and the paucity of mechanisms designed to foster payment under threat of committal, some offenders do pay under the threat. Our research samples are too small to yield stable figures at the four courts studied, but they parallel the findings of other research on English courts. If we set aside "lodged" committal warrants (where the offender is already imprisoned for another offense), the proportion of offenders paying under threat of committal ranges from 65 percent at West Court (paid out at prison reception); to 40 percent at Capital Court (paid at warrant execution); to 33 percent at East Court (paid during warrant suspension); to 25 percent at Midland Court (paid at warrant execution).

Data from NACRO for 35 courts in the English system show that at 20 courts two-thirds of committals did not result in actual prison receptions, and at nine courts the rate was half

or less.¹⁹ The entire process of committal is one in which the vagaries of local resources, circumstances and official policies have a large part to play in producing substantial variations in payment rates both outside and inside the prison gates. Illustrations of these are found in the following discussions.

4. Transfer to Prison and Communications with the Outside

When the police arrest offenders for committal to prison they generally take them to the police station, a local police lock-up (the Bridewell), or to half-way facilities (holding centers usually run by the police) when they exist for the transfer of offenders to prison. Local practices vary as to whether officers try to maximize the opportunity for offenders to pay the fine and get out of custody before transport to the prison. At the transit facility serving Capital Court, defaulters who appear to have a good chance of being paid out are processed last (e.g., when a parent has telephoned to say that he is on his way to pay his son out); but if payment is not made before the last van to the prison leaves at 6:30 p.m., the offender goes with the van.

At Capital Court the process is complicated by geographic factors. Prisoners under the age of 21 are sent to a prison some miles to the east of the city, while the older prisoners are dispatched to a prison near to the center of the city. The police make a tour of the courts and police stations to pick up

¹⁹ See NACRO Working Party on Fines Fine Default (NACRO, 1981), p. 51.

offenders on committals either directly from the court or from their homes on arrest. They hand over the offenders to prison officers, usually late in the day. Considerable time elapses between original pick up and arrival at prison.

At West Court, the Bridewell holds offenders until the end of the day, when they are transferred to prison and received into custody.²⁰ There is, therefore, normally a time lag during which paying out might occur for fined offenders.

In the prison serving Midland Court reception staff reported that very little time was spent at the police station en route to the prison during which the fined offender could contact the outside to effect a pay out. It often happens that someone is picked up off the streets without being able to make even the most basic domestic arrangements:

"We get them coming in here and telling us that they have dogs alone in the house or children to be picked up from school.... It is alright during office hours: we just pass it over to Welfare to sort out. It is more difficult after office hours and we have to liaise with the police to get something done.... If it was the daytime and someone was agitated about making a phone call to the outside for money, I'd get Welfare to sort it out. After office hours you have to leave it until the next day.²¹ We don't have an outside line in reception.... The problem is that they don't get a chance to make telephone calls from police stations - that's the story we hear anyway."

²⁰ If someone were picked up by the police very late in the day, he would be brought to the prison the next morning. Outlying police stations also bring their prisoners in the next day.

²¹ Most of the committals are received after the Welfare Department staff have left for home.

This recurring problem of lack of communication with the "outside" during the sometimes lengthy committal process is a crucial one, given the evidence that many fine defaulters can arrange for family or friends to pay them out. In one case the offender was brought to the prison in the van after he had told the police that his fine would be paid. In fact, the fine had been paid the same afternoon to the court and the offender was released at prison reception; but there had been no previous opportunity to verify his account.

There is general agreement among police and prison staff interviewed that offender's lack of communications with their families or associates at that critical moment results in wasted effort because at least some offenders do eventually arrange last minute pay-outs before completing the reception process at a prison or after only a short time there. Yet there is no clear line of responsibility for facilitating these communications and no one has an overall view of the process. The participants all see the value of encouraging pay out, but there is no systematic opportunity for it to occur. If it does occur, it is in a scrambling, haphazard fashion as a result of individual effort despite the lack of built-in channels.

At three of the four prisons we studied, there was no opportunity for a prisoner to contact anyone on the outside at the time of his reception into custody; at the fourth, some could make "unofficial" telephone calls. However, at each establishment the prison officers in reception expressed the wish that the police would take greater advantage of opportunities

for arrested fine defaulters to contact friends or relatives before bringing them into the prison. This was felt very strongly by officers in the prison for young fine defaulters from Capital Court. Here the staff repeatedly expressed their concern at the way someone could pass through the system without a telephone call being made to the outside:

"We don't have the lines or the time. If the buses are full we can be here 'til 10, 11 or even midnight and they don't arrive until sometime between 7:30 and 8:30...but we often hear someone coming in saying there hasn't been time to make a 'phone call."

If greater access to the telephone were given by the police it would not only help some of the defaulters but it would help to ease some of the pressure on prison staff. An officer at the prison serving West Court reported:

"Last Friday one magistrates' court committed eleven fine defaulters and out of these eleven eight had paid out by the next morning. By then they have gone through the prison process. If the police held a fine defaulter for 24 hours after he had been picked up on a warrant or committed from the court I think we could cut down the amount of prison committals by 40 percent. I think, in fact, I am sure, that the central police do have someone who will make phone calls out but it would help if the police could hold them for longer."

The same point was made by a group of officers working on the reception at the prison serving East Court. Here the defaulters were brought many miles away from their home city in the evening; nevertheless, a number were paid out the same night by relatives who had made the long journey. The prison staff knew that the police did not like holding prisoners overnight.

Furthermore, in order to discourage the use of police holding facilities for committals, a fee of £100 per night per offender is levied against the Prison Service to keep someone in police cells for this period.

"It would help enormously if possible pay outs could be held by the police until the next morning - it would save a lot of needless work, bail warrants, etc."

There is a lack of continuity about the system of committing a fine defaulter to prison that enhances its inefficiency. Because no one agent has overall responsibility for overseeing the process, small economies are realized at the expense of greater system resources: telephone calls are not made, but great public expense is incurred to receive the offender into prison and to hold him. In addition third parties incur considerable expense in the laborious paying out procedures because there are no facilities at the court to handle these financial matters and to communicate the results rapidly to the prisons.

5. Imprisonment and Paying Out

These inadequacies of the transferral process involve first the police and subsequently the prisons in unnecessary waste of resources. One has an idea of the amount of work and time taken to admit an offender to prison, from the following synopsis. Once a defaulter enters prison, like any other prisoner, he is checked in against his warrant; his property is taken from him and checked in. He is searched and a record is made out for him; his height and weight are taken, all his clothes are re-

moved, he is given a towel and told to take a shower. After the shower he is issued prison clothes. In some prisons he will always see a doctor at this point; in others it will depend on the time at which this process finishes. If it is very late it may be the next morning before he has a medical examination. If the fine defaulter is then paid out, much of the process must be reversed and a great waste of time and effort has been incurred.

Apart from prisoners committed in the evening (and this was the norm only at the prison located some distance away from the city it serves), an offender who said he was definitely going to be paid out on the same day would go through all the reception formalities up to the point of showering and changing clothes. If no one brought the money by the cut-off time for paying out, he would then be told to shower and change into prison clothes and he would pass on to the reception wing for his first night inside.

In all the prisons studied, when the offender appeared the next morning before the reception board,²² any cash he had with him was appropriated and set against the fine (but not cash subsequently sent in to him).²³ This automatically happened unless it could be proved conclusively that the money belonged to someone else. "He will often go mad when we tell him

²² The word 'board' is a misnomer for it seems to consist of one person, although who this person is does vary from prison to prison. In two of our four prisons the offender was interviewed by an assistant governor, in another by a senior officer of an Observation Classification and Allocation Unit and in the fourth by the Legal Aid Officer.

²³ Magistrates' Courts Act 1980, Part III, 80.

this."²⁴ During the course of discussions at one prison, it emerged that the prisoner was not told at admission that this would happen, so that he had no opportunity to lay claim to the money, and it would be too late to amend a decision the next morning. To the toll of wasted processing when an offender goes through the costly reception ceremonies only to be paid out next day, must be added the cost in frustration and resentment felt by fine defaulters caught up in the machinery of committal.

Admittedly these fine defaulters have been warned of the consequences of non-payment. It would seem that some arrive at a belated realization of the urgent need to pay their fines only to find that their efforts to do so are obstructed by the machinery of fine enforcement. The heart of the problem seems to lie in the way that committal, as a tool of fine enforcement, is grafted on to existing systems of prison administration, which understandably are geared to the offender originally sentenced to incarceration, rather than to the fine defaulter.

Thus once the defaulter is received into prison, arrangements for pay out require considerable effort on the offender's part. The prisoner would have to request specifically a meeting with a probation officer as the primary means by which any telephone call to secure a pay out would be achieved. One prison also operates a Welfare Liaison Office. The uniformed officer provides liaison with the Welfare Department who might decide to

²⁴ Curiously earnings from work performed in prison and money sent in for the prisoner during his term are not automatically applied to pay off the fine.

Speak directly with the prisoner. However, at no time is a prisoner allowed direct access to a telephone. If he tells the reception board that he has funds or that a relative or friend has money to buy him out, the officer would probably ask the Probation Service to see the prisoner or to contact the outside for him. In addition, the prisoner is allowed to write one letter on his reception. However, one probation officer reported that he had experienced prisoners asking him to make so many phone calls in the hope of finding someone who would buy them out that he had decided not to make calls for any of them,

"....unless it seems something has gone seriously wrong and then perhaps I would help to sort it out on the telephone."

He went on to say that he would usually ask a prisoner to write one or more letters to encourage some degree of self-motivation.

Despite the obvious difficulties attached to arranging for pay out, many defaulters reportedly did not serve their full term: somehow money did arrive to pay them out. The paying out process once an offender has been received into prison brings new participants into the fine payment/ enforcement process who otherwise have no involvement in the fining process. The prison system is not geared to handling defaulters and nowhere is this more clearly evident than in the prison pay out process.

The mechanics of the process are complicated by the fact that relatives or friends often work during the day and arrive

in the evening to pay an offender out, after the day staff at the prison have left. If a pay out can be made during the day the prison discipline office works out the amount outstanding according to a formula, communicates this to the reception staff who accept the money in some cases and in others arrange for it to be paid through a cashier's office.²⁵

The situation for relatives and associates is not made easier by restrictions on the form of payment. In the prisons studied, offenders could be paid out in cash, postal orders and checks from a "reliable source" (i.e., a government department). Although one prison officer said a banker's draft would be accepted, the staff in another prison said they had stopped accepting such drafts, as they could be stopped and therefore the Home Office had recently ordered no release to be made on them. Only one prison would accept a personal check if it was for £50 or less and backed by a banker's guarantee card. One prison refused any payment by personal check and the other two insisted on the check being cleared before any release; the amount demanded would then take account of the fact that it would be three days before clearance was completed. (Credit cards were not accepted and the majority of people interviewed could see no reason why it was necessary to introduce the additional administration which would accompany them.)

²⁵ See Appendix C for the instructions for applying a number of formulae to discount the amount owed by the time served according to the circumstances of the case.

It was repeatedly stressed that evening discharges could be made in a relatively short period, but that there were complicating factors. Reception staff in three prisons went off duty around 9 o'clock; after their departure even if a prison officer were already working on the case it might be difficult to get the released offender's clothes. All private cash and valuables were held in the cashier's office; in at least one prison the cashier worked flexi-time and was never there after 4:30 p.m. so prisoners released in the evening had to collect their valuables the next day.

Several staff in all the prisons seem to be trained to do the calculation of the outstanding amount but if no one were available who could do this, a prison officer had the authority to take the total fine (i.e., the amount outstanding on the day of committal). The amount overpaid (the amount written off by time served) would be reimbursed when the administrative staff returned to work. Although this power was reported in all four prisons visited, none of the staff interviewed said they knew of an instance in which it had been used:

"We do not take the full amount although we could. It is a matter of professional pride. Some officers do object to working out the formula but I think we should."

Efforts to release the offender without overpayment, even at late hours of the evening, were reported at all the prisons studied. However, the fact that the releases occur without the help of the office staff, did lead to error.

"We are very careful here but while some of the officers are very good, some are horrors and make lots of mistakes. We always check what they have done and refunds are common."

If a mistake occurred and too much was taken, all the prisons refunded the amount which had been overpaid, but there was no common procedure when too little had been accepted. One prison officer said he had known a man to be stopped before he reached the gate but no one interviewed thought any action would be taken if someone had left the prison grounds. One prison discipline office did notify the court that a mistake had happened, another did not:

"Courts don't understand how we calculate things, they don't query the amounts we send.... We massage the figures and tell the court he went out later than he did, we inflate the prison days."

This statement also indicates that overpayments are not always refunded.

When we consider that the amounts collected by prisons after hours for fine defaulters is considerable--one of the four prisons reported £100,000 per year collected after hours--it is clear that the system of paying out to the prisons directly may have important consequences in terms of money lost to the courts. One prison officer stated that in the past a shortfall fund had existed to cover loss of money from pay outs supervised by night staff:

"We had to make up any loss if we took too little so we either had a fund or we had a whip round.... I don't know what happens if a mistake happens. I don't think the court ever queries amounts sent in, they don't have the formula."

The cumbersome machinery of paying out seems a further reflection of the way in which the entire committal process lacks continuity and coherence. The financial records for individual offenders exist at the court; yet paying out terms are calculated by prison staff who are generally much less used to dealing with these aspects of administration.

6. Committal: Costs and Controversies

Imprisonment of fine defaulters is expensive, even apart from the cost of imprisonment itself.²⁶ The additional expense of the potential pay out losses and the release of a prisoner itself involve expense. When a man has no money (and after hours the Social Security office will be closed) although he is not entitled to a discharge grant, as other prisoners are, he is entitled to subsistence upon release. This may be as little as 75p if it is late at night and the Social Security office will be open the next morning; at a weekend he will receive £4.40 per day or £8.80 for a weekend (if he has an address to go to); or £8.80 per day or £17.60 for a weekend (if he has no fixed address).

Then, too, there are costs in terms of the effect on offenders of short term custody. Fine defaulters at the four prisons

²⁶ It has been estimated that during the period covered by our research the average cost of keeping a person in custody was circa £112 per week. See NACRO, Prison: Some Facts and Figures (NACRO, 1980). One prison officer in our interviews commented: "It is a futile exercise to lock someone up for not paying a fine. It costs a lot more than the fine to keep him here."

studied are put in with other prisoners. Officially, they should be allocated work but in three prisons staff shortages and pressure of numbers meant that "short term" prisoners were not working; workshops were not operating. It would appear unlikely that these conditions would have a positive effect on the offender.

The effect on the offender is a matter of particular concern in those cases in which committal occurs for first offenders. Although this is not a frequent happening, to judge from our sample data, the fact that it does happen is worrisome.

The case involved a male first offender aged 22 at Capital Court. He had been charged with theft and after being refused legal aid had pleaded guilty. His income derived from his family, but he had stated on his legal aid application form that he had only £10 left. He was fined £90 to be paid forthwith with a fixed alternative of 7 days imprisonment, which he served immediately.

In this case the court might have been expected to know that the student would be unable to pay the relatively large fine, unless his family came to his rescue. The seven days fixed alternative, seen in the light of the student's lack of funds, was virtually an immediate prison sentence for this first offender.

We find at Midland and West Courts, too, instances of first offenders committed to prison for fine default and serving 30 days or more in lieu of paying large fines. In these cases the offenders were unemployed on public assistance and were fined over £100 to be paid at the relatively high weekly rate of £3. It is a matter of importance that low-income offenders who have

had no other conviction and thus no other sentence than the instant fine should end up in prison for failure to pay large fines at rather high installment rates.

As we have pointed out in Chapter V the low-income male offender (especially the recidivist) is disproportionately highly represented among those committed to prison for failure to pay their fines. This suggests that there may be a core of offenders whom neither careful fining according to circumstances nor vigorous enforcement will deflect from a course ending in committal. However, that offenders who have never been sentenced before should end as failures of the fine process is a matter for grave consideration.

Given the high costs in money and other public resources as well as in the effect on offenders, it is not surprising that we heard many suggestions for reducing the rate at which fine defaulters were actually received into prison and for minimizing time spent in prison by facilitating the pay out process.

A number of suggestions for changes in the system arose in the course of our interviews. Some were of a minor and technical nature:

- (1) a standard warrant form to facilitate prison officers' task of deciphering details of committal and calculating outstanding amount;
- (2) restriction of paying out to daytime hours to reduce error and the cost of administering the system;
- (3) default court sessions (means inquiries) limited to the morning, to allow time for offenders to arrange to be paid out.

Others were of a more fundamental nature and somewhat controversial:

- (4) no paying out permitted at all:

"You stay here and serve your time. It is expensive to keep people in here. Perhaps we would not get as many if they knew they had to stay in."

The severity of this approach was not generally espoused by those interviewed. Another suggestion to obviate paying out at prison found more favor among participants:

- (5) paying out at court or to the police, with notification to the prison to effect release:

"It would make it much easier if money did not have to be paid here. I think it should be paid at a Magistrates' court or a police station, then once we have notification and confirmation we can let him go."

Clearly the impetus for this suggestion derives from a sense of the administrative burden placed on the prisons by paying out, the potential for mistakes to be made in the calculation of amounts owed and the difficulties imposed on those who bring the money to pay out an offender.

- (6) a holding center after pick-up.

Variations on this theme were suggested by a number of persons interviewed.²⁷ One proposed "some kind of local holding center" not operated by the prison authorities, where fine offenders would be kept in custody. This would serve to distinguish committal for fine default from imprisonment served as an original penalty for the offense of which the offender stood convicted.

²⁷ A similar proposal was put forward by Geoff Wilkins, Making Them Pay (NACRO, 1979).

A similar notion put forward by one administrative officer focused on the police as the natural administrators of such a holding center. The point would be to hold offenders for a short time without the extensive administrative red tape necessary for admission to prison. While those interviewed recognized that there were potential due process implications and that safeguards would be necessary, they still found this alternative preferable to the present system.

One officer noted that during the countrywide prison officers' strike²⁸ no fine defaulters were committed to prison and the local Bridewell had operated a system at this time to hold offenders on committals to see if money were forthcoming. "If the police held a fine defaulter for 24 hours I think we could cut down the amount of prison committals by 40 percent."

In its recent report on fine default, the NACRO Working Party considered the question of special facilities to expedite quick release, and came to the conclusion that these were already available within the system.²⁹ Our own inquiries tend to indicate that those working in the system would welcome any addition to the process to speed up paying out and to eliminate the waste of resources frequently attested. It may be that a proper and consistent use of existing facilities would enhance the ease with which offenders were released, but we suspect on

²⁸ In 1981 the prison officers went on an extended strike over a dispute concerning the overcrowded conditions in the prisons and the resulting burden upon staff.

²⁹ NACRO Working Party on Fines, Fine Default, op. cit., p. 28.

the basis of our discussions with police and prison personnel in different areas that the task of collecting numbers of fine defaulters and transporting them to the prisons is not always compatible with an orderly process that allows time for calls to the outside to arrange for payment.

Improvements are, however, possible. Our discussions indicate that apart from those offenders who, despite the difficulties, manage to pay before prison, a substantial number of others pay out after prison reception. It is for these offenders that better access to telephones or a longer holding period at an interim facility might mean the difference between admission to prison and paying out at or before reception.

In the final analysis committal should, and does, work more often by threat than by actual incarceration for the full term. As a police officer at West Court put it,

"The amazing fact that never ceases to surprise me is that you only have to lock someone up and the money usually appears, even if there has been ages to pay up."

The irony is, of course, that in all the cases in our samples, the fined offenders had had ample time and warning to arrange payment prior to committal. It would seem that for some nothing short of the clang of the prison gates suffices to stir them to action, and then the gates do not readily swing open even when payment is in hand.

CHAPTER VII
FINE ADMINISTRATION: POLICY SUGGESTIONS
FOR IMPROVING THE FINING PROCESS

Introduction

Examining the fining practices of English lower courts, we are struck -- as we were when we explored this process in American courts -- with how important the fine is as a criminal sanction, yet how often it is handled as a poor relation within the family of sentencing options.

Both practically and philosophically, the fine is nearer the core of English sentencing practice and policy than other sanctions. This includes occupying a place as the courts' major alternative to imprisonment. The fine is numerically the most frequent sanction imposed by those courts charged with adjudicating the vast majority of England's criminal cases. Most significantly, however, from both the American and the English perspective, fines are extensively used to punish offenders who otherwise are at risk of imprisonment, despite their often limited financial resources.

It is not surprising, therefore, that the process of imposing and enforcing fines occupies a significant amount of the English lower courts' time and energy, as well as engaging the efforts of many other criminal justice system personnel. What is somewhat surprising, however, is that compared to other sanctions, the decision-making processes involved in imposing

fining are among the least refined, and the operational processes intrinsic to successful implementation of this sentence are among the least well coordinated.

The reasons for this are many and, as with most other aspects of sentencing, not always easy to discern.¹ However, our work in both American and English courts suggests that a major source of this problem is that fine setting and enforcement practices are not subject to the same level of administrative and policy concern as are other important, but less frequently used, sanctions. Undoubtedly this is in part because fining involves large numbers of offenders more routinely processed than are the smaller number who have committed the most serious or violent criminal acts for whom liberty, often for long periods, is in jeopardy.

This lack of attention is particularly important because the imposition of a fine sentence, unlike the imposition of other sentences, involves the court directly in a complex set of administrative tasks that are different from the other administrative activities confronting the court. This is because the implementation of the sentence as well as its imposition is within the jurisdiction of the court itself. As this research

¹ In our recently completed study of fine sentences in American courts, we examined practitioners' attitudes as one set of factors affecting their use (Hillsman et al., 1984: 161 ff.). Many of the attitudes expressed about the use of fines, their appropriateness, their fairness, and their enforceability, were extremely ambivalent. Despite practitioners' often strong commitment to fines as a necessary part of the sentencing structure, an undertone tended to persist which seemed rooted in a sense that money transactions between the court and criminal offenders are, somehow, unseemly.

has documented in considerable detail, the successful execution of this responsibility is a demanding administrative assignment. If the fine is to be implemented credibly as a sentence, particularly as a custodial alternative, the court must develop greater professional expertise in the organization and oversight of coherent, flexible but ultimately coercive strategies to supervise offenders who are in the community. These strategies require substantial coordination across many different criminal justice and civilian agencies which act directly as the court's agents in this matter but which are ultimately not responsible for the outcome of the sentence.

Court administration in both England and the United States is an emerging field; but fine administration has not been anything like a major thrust of its development. This is less so in England, where skilled court administrators have been discussing problems of fining for some time, as well as policy issues such as adopting a day-fine system and wider use of distress and more technical issues such as the role of computers in fine collection and how to set bailiffs' fees. Nevertheless, professional fine administrators are quite rare in the English court system and virtually non-existent in America.

Fine administration is ripe for further professionalization and for the rationalization of process and procedures this would undoubtedly encourage. This is a central policy issue for England if fine enforcement is to be improved significantly. It should also be a primary focus for policy discussion in American courts if practitioners want to utilize fines more

effectively and if policymakers want to utilize fines as part of their strategy to reduce jail and prison overcrowding pressures on this side of the Atlantic. Professionalization certainly requires more specialization and different types of training. It may mean more court personnel as well; but even so, increased fine revenues and reduced reliance on incarceration for default would probably cover the added expenses. (See, for example, the Scottish experience introducing specialized fine enforcement officers, Millar, 1984). Fining is, after all, already a big business in both England and the United States.

As we shall discuss below, improvement of the fine process through greater professionalization primarily implies basic policy changes that make fine administration a higher priority in courts than at present and that centralize the responsibility for fine outcomes. Such centralization would provide an encouraging environment for experimentation with both incentive structures and new organizational linkages to facilitate successful fine outcomes.

In the remaining sections of this last chapter, we take a broader policy perspective on some of the issues raised in our detailed descriptions of fining practices in the four English magistrates' courts studied. In this brief discussion, we do not intend to review the materials contained in earlier chapters. Rather we shall focus first on some general characteristics of the fine administration process in order to identify what American policymakers should be particularly sensitive to in examining their own fining process. A second focus will be

to identify key points and specific issues within the fine setting and implementation process that require particular attention from policymakers and fine administrators. This discussion will end with some thoughts about what our examination of the most coercive enforcement techniques available in the English system suggest about the overall fine process itself.

We began this study with a focus on fine enforcement because this was the most significant gap in the American literature and because, for reasons already discussed, English magistrates' courts are a strategic site for such research. It quickly became obvious, however, that enforcement problems and successful strategies to overcome them could not be fully examined independent of fine setting. Fining must be viewed as a process in which the decision to impose a fine as the sanction of choice, the decision as to its amount and the terms for its payment, and the successive decisions about how to ensure payment, especially in the face of default, are inextricably intertwined. This is one of the major reasons why the professionalization of fines administration within the court itself is so crucial to the integrity of the fine as a sanction.

A. Is the Fine Process Successful in English Magistrates' Courts?

In selecting the English lower court system rather than American courts for a study of fine enforcement, our purpose was not only to examine courts that have paid greater attention to

the collection and enforcement of fines (and whose record-keeping systems reflect this). We also wanted to study courts that routinely use fines for a wider range of non-trivial criminal offenses than is typical of most (but not all) American courts, especially when the offenders are at risk of imprisonment. It is these cases that attract the attention of American policy-makers. Evidence of successful fining in such cases--successful at least from the perspective of punishment if not from evidence about crime control--is likely to encourage American practitioners to review current fine use and enforcement policies in their own jurisdictions. Crowded court calendars, even more crowded local jails, and judges' renewed interest in expanding the repertoire of available sanctions, provide a congenial environment for this process.

But overall, is fining successful in England? We know little about the crime control implications of most forms of sentencing (apart from imprisonment's direct incapacitation effect), and fines are no exception. Some British researchers suggest recidivism rates for fined offenders are no greater than, and very likely less than, those for offenders punished by other means (F.H. McKlintock, Crimes of Violence, London: McMillan, 1963; M. Davies, Financial Penalties and Probation, London: HORS £5, 1970; P. Softley, Fines in Magistrates' Courts, London: HORS £16, 1977); but such evidence is not compelling because it is based on comparing the behavior of offenders who are likely to be quite different. Therefore, in both England and in America, the primary criterion we have for

judging the "success" of a fine is data on collection. If fines are supposed to be punishment through payment, do offenders pay? If not, are they otherwise punished?

Across the four magistrates' courts we studied, looking only at fined offenders drawn from a sample of offenders characterized by conviction on the more serious types of cases sentenced in these courts, by the likelihood of imprisonment, and by considerable unemployment and limited financial resources, the evidence may be summarized as follows: one-third pay in full voluntarily (34%), and about another third pay in full after some official action is taken to elicit payment (30%). There remains a final third (36%) who do not pay in full, at least not within the rather reasonable 15 month follow-up period covered by the research.

Many, although not all, of this last third reflect some type of failure of the English fining process. Most of the 8-1/2 percent whose fine obligation was eventually discharged by punishment through a period of imprisonment nevertheless represent a failure of the fining system. The only exceptions to that characterization may be those few who had the fine lodged as a result of a rapid subsequent arrest on a new charge or who were recalcitrant, willful defaulters and who were, in effect, in contempt of court.

The five percent whose fines were written off by the court, either partially or entirely, also reflect the failure of the enforcement system to compel payment before so much time had passed that the court simply could not keep track of the offen-

ders' whereabouts. (The only exception here is the one person in the sample whose fine was written off as a result of death.) The four percent whose fines were written off because the case was transferred to the jurisdiction of another court are potentially failures of the fine system. Although we cannot be sure of the eventual outcome, we may assume, at the very least, that a change of address adds to the administrative delays involved in fine collection.

Finally, there are the 18 percent whose fines were still outstanding at the end of the 15 month follow-up period. Even the one percent of these who were still paying within the terms set by the court may be characterized as failure of the fining process. From both an administrative and from a punishment point of view, it would appear reasonable that punishment for crimes such as those included in this sample of cases should be completed within a fifteen-month time period. If it is not, either the amount of the fine was too high (apparently a pervasive problem as we have discussed in preceding chapters), or the enforcement process was too lax. In either case, the process cannot be characterized as fully successful.

What conclusion do we draw from these data? Obviously, one may regard this 36 percent as a glass two-thirds full: the fining process reaches successful conclusion--punishment through payment--for a significant majority of relatively serious offenders despite often high fines relative to their limited financial resources. Or one may regard the glass as a third empty: the fining process fails because a sizeable minority are not

punished through payment; either they were not punished at all, or punishment occurred only via the pain of the adjudication process and whatever enforcement activity occurred, or it took place via imprisonment which the court did not initially deem appropriate.

Whichever interpretation of the data one selects, English policymakers view the fine process as sufficiently successful both to continue encouraging high levels of fine use throughout the country and to have increased the use of fines as an alternative to custody for more serious cases over the past several decades. However, they recognize, and take seriously from a policy perspective, that regardless of how one views the enforcement picture, data such as these reveal substantial room for improvement. The evidence presented in the empirical literature generally, including the work described herein, are encouraging as far as the possibilities for improving both the way fines are set (especially in determining amounts that are appropriate in relation to means) and the way they are administered and enforced. It is to some of these directions for change that we now turn.

B. Fine Administration

The decision whether to fine or to impose another sanction has not been the main focus of this study. However, two rather obvious but important aspects of this initial decision deserve emphasis because they have important implications for fine administration policy.

First, the choice of the fine by the sentencing authority is essentially a decision to punish by means other than imprisonment. Therefore, the fining process, and especially its enforcement phase, should be assessed, at least initially, from a perspective that views imprisonment as an outcome to be a failure of the process itself and not exclusively a failure of the offender. This is not to say that imprisonment should never be viewed as an appropriate outcome; but the conditions under which it is considered as a logical outcome of the fined offender's failure to perform under sentence of the court should be carefully delineated. This can be a difficult administrative problem because virtually everyone agrees that the threat of imprisonment is an essential component of successful fine enforcement.

Second, the decision to fine is a decision that non-custodial punishment should be achieved by depriving the offender of property (money or otherwise). This places the court and its agents in a position easily seen as a bill collector. Collecting money (rather than supervising or rehabilitating offenders) is a task that is understandably distasteful to many court personnel, especially when enforcement requires increasingly energetic pursuit of the "bill" rather than merely the orderly keeping of records.

Stemming from this pervasive distaste for the bill-collector's role is an unwillingness in the court system to define fine administration as an important, professional task encompassing the organization and management of methods to

supervise offenders fulfill their obligation to the sentencing court, rather than as a primarily clerical role. As a result, courts rarely designate one person (or position) as having ultimate responsibility for overseeing the outcome of this sentence and for seeing to it that the fining process as a whole is rational and properly carried out.

Flowing from this fundamental administrative gap is a series of important, related problems. Enforcement tends to be a secondary activity rather than a priority for all those involved, and clear lines of authority running across the various parts of the process are rare. Thus, no one is responsible or accountable if it breaks down. In addition, few incentives exist in the system to make fining a success, by encouraging the collection of fines within a reasonable time period, rather than writing them off or occasionally imprisoning an offender. Instead, most incentives merely encourage people to pass the enforcement task on to someone else as quickly as possible, even if it returns to them eventually.

An important corollary of these problems is that the flow of important information into the fining process remains haphazard at all stages. There is little attention paid to ways of systematically providing information needed by the sentencing court to assess means adequately and to set the proper amount and terms of the sentence, including information on prior fine payment or default. Nor is there routine review of information relevant to whether the initial amount was properly set and, if it was not, relevant to adjusting it to permit an offender in

difficulty to comply with the sentence. Administrative (and judicial) review focuses instead on the amount of the "bill" that remains and on adjusting the terms of payment, thus avoid-ing what may be the more fundamental problem, the amount itself.

Finally, feedback of information on fine outcomes and with what levels and types of enforcement effort they were achieved is generally absent. This inhibits the ability of both the sentencing authority and the fine administrators to become more systematic and rational in their decision-making.²

The policy implications for fine administration are reasonably clear. Instead of the more typical fragmentation of responsibility and authority, some position within the court should be made accountable for the outcome of the fine process as a whole, not merely for the funds collected. The focus of this process should be the offender and his or her compliance

² In New York City's lower courts, for example, we found that judges had no idea how often or in what types of cases the fines they set were actually paid (i.e., the punishment they imposed was carried out) (Hillsman et al., 1984). Because of high levels of poverty among offenders in these courts, judges tended to assume fines were not being paid when, in fact, research evidence showed they often were. This was largely because judges received no feedback in terms of aggregate data on fine enforcement. It was reinforced because virtually the only fine offenders judges ever saw after imposition of the fine were those who were either having trouble paying or who were re-arrested on another charge and thus revealed to have an outstanding warrant for non-payment. Judges quite understandably assumed that the troublesome payers they saw would not complete their payments when, in fact, research data revealed many did, most within three months of the sentence. But again, without routine management reports on enforcement activities, and without any case-by-case feedback on the offenders each judge had sentenced, there was no way judges could develop an adequate understanding of the court's overall fining process or their decision-making role in it.

with the sentence of the court and not merely the collection of the sums themselves. At present, the tasks of enforcement too often are viewed primarily as ones of bill collection and fiscal accounting. While this is predictable given the way the fining process is typically organized, it merely reinforces the most distasteful aspect of this sentence for those who administer it.

Centralization of responsibility should encourage incentives to rationalize and coordinate effective enforcement strategies. The empirical materials contained in preceding chapters suggest that these strategies should emphasize continuous supervision of fined offenders, beginning with routine contact and notification procedures that make it clear to the offender that the court views the fine obligation seriously and unequivocally expects payment. Terms for payment should be short and, when they are not met, the court's reaction should be swift and personal, with a steady progression of responses characterized by mounting pressure and increased threat of more coercive methods.

All the evidence we have collected suggests that such "supervision" works. However, because its goal is not merely the collection of a debt but the enforcement of a punitive, non-custodial sentence, better mechanisms must be built into the enforcement system that encourage review of the initial sentence (that is, the total amount) if and when the offender appears in jeopardy of interim default. Over time, as information feedback improves the initial fine setting activities of the court (and we shall have some further suggestions below about how to

accomplish this), the administrative burden such review places on courts should lessen and enforcement should proceed more smoothly.

C. Specific Issues in Fine Enforcement Practice

1. Clarifying the Components of the Financial Penalty

As we have emphasized throughout this study, several key issues in fine enforcement begin with the initial sentence. Observing fine setting in both the United States and England suggests that the sentencing court needs to pay greater attention to differences among the various financial penalties typically imposed upon offenders. In both countries some combination of court costs and fees, restitution and fines are often imposed upon offenders whose primary sentence is officially classified as a fine, but these various components of the penalty are not readily distinguishable to the offender himself. One may assume, therefore, that this diminishes their effectiveness. Alternatively, the court should simply set a single amount for payment and distribute the revenues to various recipients according to an administrative formula. In effect, something like this happens now.

2. Focusing on Total Amounts

From the perspective of enforcement, the main implication of the court's lack of attention to the various components of the financial penalty is that the court itself fails to focus on the total burden it is imposing on the offender and on the match between that burden and the offender's means. Instead

the court tends to view the appropriateness of each component separately, emphasizing the severity and type of crime rather than the offenders' ability to pay, and then apportioning the final total amount among the potential recipients (including the victim).

3. Improving Means Assessment

The court's tendency not to focus on the total amount fined leads directly to a major theme emerging from the empirical materials presented in preceding chapters: the frequency with which courts set fine amounts that exceed offenders' ability to pay within reasonable time periods. Fortunately, most of the tools needed to improve this aspect of the sentencing process are already available to the court, or can be added without dramatic or costly changes.

As we have indicated throughout this report, the idea of experimenting with a day-fine system for setting the amount of the fine is appealing. Its feasibility rests primarily with ensuring that courts routinely have sufficient information on means to make the judgments they are already rendering more uniform and more coherent. Evidence from the magistrates' courts suggests that magistrates, and particularly lay magistrates, emphasize the type and severity of the offense more than the means of the offender in setting fine amounts. The evidence suggests further that from an enforcement perspective this situation is particularly problematic when the crime involves injury or loss to a victim that the court wishes to recompense.

All fining systems we have studied, including those in the Scandinavian and West German courts, as well as those in various parts of the United States and England, set the fine amount based upon financial information provided directly by the defendant. However, in the latter two countries, it is rarely compiled or presented in a systematic or complete manner. The courts do not routinely draw upon documents that either exist already or could be easily compiled by court personnel despite the swiftness with which the adjudication process takes place in many fine cases.

In the magistrates' courts, for example, detailed information on many defendants' financial status is already contained in the legal aid means forms; this could be used by the sentencing court with the offender's consent. In situations where such forms have not been prepared, parallel information could be requested by the court purely for the purpose of fine setting, as is done in the Federal Republic of Germany. Similarly, in the United States, such information is already gathered by some judges in a non-systematic manner and it could be obtained more routinely by all. Indeed, it might be augmented by data already provided to many courts by pretrial service agencies which often verify some of the information crucial to fines administration (such as employment and residence).

Finally, offenders' prior criminal history records should contain better information on their past fine payment behavior. In jurisdictions where arrest warrants are issued routinely as

part of the fine enforcement process, the court may know whether the offender is currently in default on an outstanding fine. However, this is not always the case. In England, for example, we found many instances of offenders with long overdue fines being sentenced to a fine yet again, without the magistrates being aware of the default.

Even adequate warrant information, however, is insufficient for a sentencing court which relies heavily on fines and seeks to improve their outcomes. In questioning whether to fine again and, if so, in what amount, the court needs to know more about the conditions surrounding previous non-payment: what enforcement activities had been used and whether the offender's failure to pay was related to the amount of the fine, recalcitrance or irresponsibility. Such information is equally as important to the fines administrator who must then supervise the offender sentenced by the court to another fine.

If sentencing courts focused on the total amount of the financial penalty (regardless of its distribution to, e.g., fine, costs, compensation) and did so in the context of an informed day-fine system, the overall outcome of fine sentences undoubtedly would improve. This would set the subsequent enforcement process in a context in which professional fine administrators could assume offenders' ability to pay and thus pursue their enforcement tasks vigorously.

files and diary systems, no matter how sophisticated, simply cannot meet this requirement in courts that rely on installments. Computerized tracking systems are essential, although they need not be elaborate or costly because micro-computer technology is well-advanced, widespread and increasingly inexpensive. Furthermore, computerizing fines administration sufficiently to ensure swift identification of non-payers does not require a court's commitment to computerizing its entire administrative system or even its entire fining process. The major task necessary for fine administration, and one for which small computers are singularly suited, is preparing daily lists of offenders in arrears and providing ready access to key details about the enforcement history of the case. The remaining dimensions of a successful enforcement process are mainly administrative, including creation of the incentives necessary for it to be carried out expeditiously.

D. Coercive Enforcement Techniques: Their Implications for Fine Administration

Returning to the notion emphasized at the beginning of this chapter--that the fine is essentially a sentencing decision to punish by means other than imprisonment--we would like to explore the policy implications that emerge from our examination of England's use of coercive enforcement techniques.

If committal is viewed generally as a failure of the fine process, then fine administrators are given an incentive to avoid it, that is to pursue other enforcement options to their

fullest before moving to imprison, even though the threat of imprisonment is probably a necessary coercive element. Nevertheless, committal for fine default deserves closer examination to clarify its position in the repertoire of enforcement techniques.

An offender facing committal for fine default is either unable to pay the fine, unwilling to do so, or irresponsible. If he is unable to pay, the thrust of both American and English law is to view imprisonment as impermissible. If, however, day-fine systems for setting the initial amount of the sentence and built-in review of the original fine amount after interim default are successful, the incidence of non-payment because the fine is out of line with means should be reduced.

Alternatively, if the offender is either unwilling or irresponsible, imprisonment is legally acceptable if other options to elicit payment have been tried and failed. The problem hinges on the distinction between these two. Apart from the blatantly defiant offender, the willful defaulter may be hard to separate from the feckless defaulter. There is no precise legal elucidation of the concept of mens rea for fine default.

From our observations and from case record data, we find few courts that now systematically exhaust all possible enforcement options before resorting either to actual committal or to threatening it even if they do not follow-through. In particular, many courts fail to take advantage of distress. We question whether it is appropriate to eschew an extreme measure of forcible material deprivation in favor of a measure that

entails deprivation of liberty. Surely in theory at least, material deprivation is more in keeping with the sentencer's intent when imposing a fine than is a prison sentence.

Although distress is ignored for a variety of reasons, many of which are discussed in the previous chapter, it is partly because courts and their agents are squeamish. Although distress generally works by threat, it conjures up vivid and squalid images of the court blatantly depriving a whole household which is already experiencing material need. Of course, the monetary deprivation involved in paying the fine may also affect other individuals regardless of their guilt. But when distress is rejected as an enforcement strategy, the comparison is not made between cash payment and payment in goods seized, but rather between seizing goods and seizing the person. Committal to prison, arguably a greater deprivation, is seen as affecting primarily the offender rather than his or her dependents. This may be an equally false image but it goes some way to explain the reluctance of some courts to see distress become an integral part of the fine implementation process. We believe it is time to rethink the logic of this position.

One way to approach the serious problem of unacceptably high rates of committal is to reappraise current fining practices so that distress, rather than imprisonment, is viewed as the appropriate coercive device toward which the enforcement process moves.

Distress is often dismissed as an effective enforcement tool, particularly by Americans, because the value of the property seized and sold often does not cover the outstanding fine or the costs of the distress process. This is an issue in England as well. However, it is not clear that this should be a primary stumbling block to the use of distress. As we have seen in both the United States and England, fine enforcement techniques generally, and distress in particular, work not so much by their use as by the threat of their use. For the threat to be effective, however, it must be credible. With distress, credibility means that the court must respond with a visit by a bailiff immediately after distress has been ordered, and the court must actually seize property of some sort in as many cases as possible when payment is not forthcoming. It is in this latter effort that the value of property seized tends to be perceived as a major drawback.

In assessing the property distrained, the current emphasis for the court is to ensure the state obtains the exact monies adjudged. However, we suggest the issue should not be the "bill" but the offender's punishment. A more appropriate emphasis for the court, therefore, would be the offender's compliance with the sentence. When goods are distrained, the offender may well be deprived of property which originally cost more than the amount owed or which will cost more to replace than it will bring the state at auction. It is, questionable, therefore, whether the amount obtained at the auction of the property is the right measure to apply in determining if the offender has

satisfied his obligation to the sentencing court. If the state is prepared to write-off fines owed by offenders whom the court is unable to track down, it ought to be prepared to write-off partial sums not covered by distress, at least when the replacement value of the article(s) seized covers the sum owed.

Similarly, the matter of bailiffs' fees and taxes (in England V.A.T.) tends to be viewed in ways that discourage distress. The usual method in England of reimbursing external agents by adding their fees and tax charges to the fine is patently inequitable. Fees and taxes should be deducted from the total amount due. If the court uses internal agents to implement the fine, the costs are assumed by the system rather than added to the sum adjudged to be paid. By analogy, fees and taxes should be assumed by the system when reimbursing external agents for services. It is not the amount received by the state that is crucial (although the revenue implications are of some secondary importance) but that the offender should suffer the material sacrifice intended by the court.³

Committal to prison is not a logical outcome of a fine sentence, unless the offender is totally recalcitrant. In the case of other penalties--probation, community service orders, conditional discharges, suspended sentences--there may also be breaches of the explicit or implied conditions. These breaches, however, generally bring about a reappraisal of the original

³ If the court wishes to penalize the offender financially for late payments, it should instead experiment with some across-the-board system of surcharges or interest payments which does not relate directly to the means of enforcement used.

sentencing decision only after which is the alternative of imprisonment viewed as appropriate. It is logical, therefore, to initially view persistent fine default as a breakdown of the original sentence, until it is determined that imprisonment is an appropriate penalty for the new offense of fine default.

This distinction is important. When any offender is considered for re-sentence to prison, there should be a review of the original decision and at least a minimal presentence report. This important piece of professional input into the sentencing decision is now missing when a fined offender is committed for default. In the present study we have found a few instances of first offenders sent to prison for fine default. The system thus allows a prison sentence without a presentence report for an offender not previously convicted, an offender for whom such a report might well present arguments for alternative treatment.

The routine introduction of a short-form presentence report into the review of the fine sentence before actual imprisonment would help answer whether yet some other non-custodial sentence is more appropriate than committal, or whether the offender is demonstrated to have willfully neglected to pay the fine. In these latter cases, prison sentences for default are analogous to imprisonment for contempt of a court order. If, however, the offender's default is merely feckless, it might be appropriate to provide more formal supervision as a substitute for or in conjunction with the fine. In the English system the purism of the rehabilitative approach to probation works against use of

this combination. Yet in other countries, such as Sweden, the trend is towards combined sentences.

In England and Wales probation services often resist attempts to involve them in the fine process. For this reason, the MPSO (money payment supervision order) has achieved scant use despite the arguments in favor of greater supervision of fined offenders in selected cases. While there may be good reasons for this, as English probation professionals claim, it is possible that similar supervision could be provided by the court to at least some offenders within a more professional fine administration system. Practical advice from trained court officials to an irresponsible offender on how to manage his affairs so as to cope with the financial obligation to the court, would represent a contribution to the integrity of the fine sentence as well as a potentially useful form of assistance to the offender.

APPENDIX A:

RESEARCH METHODS

I. Introduction

In the present study we focus upon the techniques used in English magistrates' courts to enforce payment of fines imposed for criminal offenses. One of the important arguments raised in the current debate on alternatives to incarceration and extended use of the fine centers on an alleged inability of courts to enforce fine payment. A corollary of this is the assumption that fine enforcement problems necessarily arise because many criminal offenders have very limited means. These issues are raised both in England and in the United States as prison overcrowding turns policymakers' attention to possible options to alleviate the crisis. Although our primary policy audience is in the United States, we hope to inform the debate both in America and in England.

A major concern is to provide information as to how various techniques of fine collection/enforcement work; however, we also wish to add information to the major policy question most often raised by Americans (though answered in the affirmative in much of Western Europe): whether the fine can be a viable alternative to incarceration. We cannot answer this question directly because it requires more detailed, comparative data on sentencing practices in the two countries that is provided by our research. But we have tried to collect data which shed some light on this question by identifying some offenders fined in

England who might be candidates for incarceration in the U.S. and then tracking the outcome of the fining process. We have done this by restricting our case record sample to convicted defendants in magistrates' courts who were high-risk candidates for incarceration and who were also of limited economic means. In this way, we simultaneously address the question of who among them is fined, imprisoned, placed on probation or community service orders, or discharged and the issue of what bearing limited means, past criminal record and seriousness of offense (among other factors) have on the sentencing decision.

Having developed evidence of the substantial use of fines in magistrates' courts even for offenders in relatively serious cases, with past conviction and with limited means/without employment, we have tried to address the question of whether this use of the fine appears justified in terms of the execution of the punishment, that is, the eventual payment of the amount imposed. By tracking the payment/collection/enforcement process for the subsample of relatively serious, fined offenders for whom this information was available from court files, we have developed some idea of the relative merits/problems associated with various fine sentence terms, various methods of administering fines and certain collection/enforcement strategies. We have also examined the question of which offenders present collection/enforcement problems and which offenders pay.

In order to explore the implications of the more coercive forms of fine enforcement, we also tracked a small number of default cases through each stage in the process and interviewed

all those who participated directly in enforcing the fines. The interview material provides for the first time substantial information of a concrete and detailed nature concerning the operation of distress and committal.

II. Research Strategy

A. The Quantitative Data

At four magistrates' courts we have collected information by document search on 1263 closed cases. A randomly selected sample was drawn in each court of about 300 cases from the universe of closed cases involving an apparently high risk of incarceration and offenders of limited means. For this reason, we have concentrated on certain property offenses (theft, handling stolen goods, criminal damage and trespass), and on the violent offense of assault. These offenses represent the major serious offense categories frequently dealt with in the magistrates' courts and are considered sufficiently grave for imprisonment to be a potential penalty.

As a further indication of the high risk of incarceration and of limited economic means we confined our samples to cases in which the defendant applied for state-funded legal aid (whether or not the application was granted). The fact that the offender applied for legal aid suggests that he was among the lower income levels. Moreover, one can safely assume that in most magistrates' court cases where there is a legal aid application there is some risk of imprisonment. Legal aid is not automatically available to defendants in magistrates' courts.

Except in the very rare circumstances of a highly complicated point of law, the main reasons for grant of legal aid relate to the seriousness of the case and the possibility of a sentence of imprisonment.

By adopting the above strategy we have derived a sample of cases which is particularly interesting from the comparative perspective in that the cases involve:

- offenders for whom imprisonment is a viable sentence option, and
- offenders at the lower income levels who, if fined, are said to present the greatest default problems.

Although existing data on the use of fines in the U.S. are sparse, it is generally held that the fine is less widely used by American than by English lower courts for major property and assault offenses. Official statistics compiled on a national aggregate basis in the English system yield information on the relative use of the fine vis-a-vis imprisonment (and other penalties) by offense. These data are broken down in some detail by individual offenses as defined in the English penal code, so that it is possible, for example, to note variations in the use of fines for different offenses within the broad category of theft.

It is possible to make only a general comparison between such data and their equivalent in the U.S., for example in the New York City court system, which is moderately advanced in collecting data on the administration of justice. Through information gathered from the New York State Unified Court System's Office of Management Support and from data collected in

New York City by the Vera Institute-Institute for Court Management (ICM) Fines in Sentencing Project, this kind of comparison is feasible and provides a general picture of broad patterns of sentencing variations. Thus we have drawn upon official statistics and existing research data in England and in the U.S. in order to place our own quantitative data in a comparative context.

Our own quantitative data were collected by a two part research effort. For the entire 1263 case sample of approximately 300 sentenced offenders randomly selected at each research site from among those who qualified by charge and legal aid application, we compiled data concerning the sentence, the offense, the case processing, the offender's socio-economic background and past criminal record. Secondly, for those offenders within the overall sentenced offender samples who received a fine sentence, we attempted to obtain data concerning the terms of the fine sentence and the payment-collection/enforcement process. We were unable to collect this information for all the 524 fined offenders in the overall samples. Thus the 444 cases of those fined on whom we were able to do so exist separately as a non-random subsample of the fined offender population (85%) within the overall randomly selected sentenced offender samples.

Our data collection involved examination of closed case papers in order to compile information to be coded using a modified version of the data instrument used from an earlier data collection project for the Vera-ICM Fines in Sentencing Project (see Appendix B). The modifications include:

i) A section concerning the offender's prior criminal record. From the case papers filed by the court and from Criminal Record office documents obtained from the local police forces, we have collected information as to:

- a) the number of prior convictions;
- b) past instances of fines or incarceration; and
- c) recent instances of offending similar to the current offense.

The existing literature on the use of fines in the English system indicates that these variables are highly correlated with sentencing variation, particularly with the choice between the fine or imprisonment. Access to such data was possible because of our close relationship with officials at the sites, as well as the Vera London Office's long-standing contact with the Home Office. We are extremely grateful for their cooperation.

ii) An expanded section relating to the offense, including:

- a) the offense label at conviction and sentence and the charges at arrest if different from the former (this gives us additional insight into the severity of the offense);
- b) extent of loss/damage in property cases (case papers and the court register often recorded the value of items stolen or broken) or extent of injury in violent offense cases (broken down crudely by whether or not medical/hospital attention was necessary and whether any permanent effect was caused); and
- c) other indications of the gravity of the offense such as location/nature of incident (e.g. shop-lifting versus purse snatching) and type of victim (e.g. elderly person).

iii) An expanded section on offender characteristics, including indications of economic status:

- a) employment status was sometimes indicated in the court register, but the information was inconsistently com-

piled and at times the offender's training/skill was indicated rather than actual current employment, so that the legal aid documents provided far more information on this point;

- b) income level was provided by the legal aid form which indicated whether the offender was receiving supplementary benefit, national insurance benefit and/or a family allowance at the time of sentence; and
- c) other economic details, such as the number of dependents and regular outgoings was provided by the legal aid form.

Thus the legal aid form (see Appendix C) provided us with detailed information concerning the offenders' general socio-economic situation. Together with the detailed breakdown of past convictions, this represents a body of data available for the first time for analysis in conjunction with information regarding sentencing, fine imposition and fine payment/collection/enforcement.

B. The Observational Data

Against this background we explored the practical details of the collection/enforcement process during the course of our document search and interviewing. Because our examination of case papers necessarily took place at the court offices, we had the opportunity of watching the interaction between fines office staff and fined offenders and the decision process concerning current fines. In our further dealings with others in the enforcement process including when we interviewed them extensively, notably bailiffs, police officers and prison staff, we assembled additional general information as to participants' modus operandi from observations.

C. The Interview Data

This part of our research consists of a set of cases chosen for the purposes of extensive interviews with participants. This was not a random sample because the number of cases was necessarily small, given the intensive work involved in interviewing. Despite the caution needed in generalizing from such a few cases, the interviews present important new information concerning the mechanics of coercive fine enforcement and the implications for fined offenders and their families/associates.

We selected ten cases at each of the four sites involving committal to prison for default, and ten distress cases at each of the two sites where distress was in use. We then interviewed the participants in these cases. The interviews aimed at discovering more about the nature of these coercive processes than could be learned from the quantitative samples which yielded details concerning when distress or committal occurred and the basic outcome: whether money was forthcoming as a result of the distress warrant and whether the committed offender served the full period in lieu of payment or paid his way out after serving part of the term imposed.

i) Distress. By interviewing court enforcement staff and bailiffs about distress warrant cases we tried to discover whether payment occurred as a result of bailiff reminder notices, delivery of the distress warrant or actual seizure of goods. The interviews elicited details of payment including type of property seized, amount of bailiff's fees added, auction and transportation costs, sums realized by auction, etc., as

well as information on varieties of arrangements for reimbursement of expenses incurred in unproductive cases.

ii) Committal. In committal cases we tried to discover more about the ways in which offenders paid their fines at various stages in the committal process. By interviewing police officers charged with executing committal warrants, we attempted to learn which offenders paid in cash at the point of warrant execution and how they did so. By talking with prison officials we tried to reconstruct the process by which certain offenders paid their fines at prison reception without actually serving time and to find out the source of the money; we also sought to discover details of the paying out process: how the offenders contacted the outside world to arrange for fine payment; who found the money and how; who arrived to pay the debt; and what were the effects on the offenders and their families.

The detailed picture which emerges from the interview data is intended to serve as an illumination of obscurities in the quantitative data and as a more sophisticated explanation of how the more severe elements of the collection/enforcement process actually operate. We hope it will also serve to highlight the material and psychological effect of the process upon the offender and reveal what are the possible due process implications of the use of coercive measures of fine enforcement.

The focus on coercive enforcement is based upon a number of considerations:

- a) the characteristics of the defaulting offenders are of prime interest to policy makers contemplating more extended use of the fine;

- b) coercive measures not widely used in the U.S. are especially interesting to the American audience as a potential additional recourse in difficult cases; and
- c) the adequacy of any system of fining ultimately must be judged by the extent to which the chosen sentence can be put into effect without recourse (beyond threat) to the more punitive measures of seizing property or actual imprisonment for default.

It is clear that both distress and imprisonment are a more severe penalty than the fine itself. Our previous research in England suggested that the fine is augmented by bailiffs fees and auction/transportation costs and that there is a low return on goods auctioned; thus the fined offender against whom a distress warrant is executed may find himself substantially worse off than if he had simply paid the fine. Actual incarceration for default is obviously a more serious punishment than originally intended by the sentencer, although the family of an imprisoned fined defaulter may arguably suffer less by this measure than from distress on goods or indeed from severe economies to pay the fine.

It is precisely because many fined offenders appear to be unemployed and in strained circumstances that we have explored carefully the implications of the coercive enforcement process. We wish to discover what percentage of offenders do eventually pay their fines after various enforcement measures and what proportion are unemployed/of very limited means. We have tried to examine the material and moral consequences of fine collection/enforcement procedures. If the case is to be made for extended fining, it is worth establishing the extent to which the offender and other related or associated persons may suffer

materially and psychologically from court action to ensure payment. The issue is whether sums imposed can be obtained without violating certain basic notions of due process.

The due process implications of the fine payment vis-a-vis the indigent offender are particularly striking when coercive enforcement techniques are adopted. Prior to the present study there were no hard data on the extent to which coercive enforcement works by threat or by actual deprivation of property or liberty. It is important to fill this gap in our knowledge if the extension of fines use is to be given practical consideration.

III. Working Methods

A. Site Selection

Since resources permitted us to collect data in four court sites, we decided upon the four locations for the research. (See Figure 1.)

a) East Magistrates' Court. This court was a natural choice because of the Vera Institute's long-standing good relations with court personnel and because it is situated in the only region in the English system known to have used distress extensively for some time. Given the fact that our pilot study of fines took place at this court, we were familiar with the recording and fine collection strategies in operation there and were guaranteed access to the relevant data. The site represents an example of a small town court.

b) Capital Magistrates' Court. This Inner London court likewise recommended itself because of the work carried out on

Figure A-1
Court Profiles

	Capital	Midland	West	East
Location	Inner City London	Urban Industrial	Heavy Industrial	Provincial Town
Unemployment	Heavy	Very Heavy	Very Heavy	Moderate
Dominant Social Class	Working Class	Working Class	Working Class	Middle and Working Class
Magistrates	Stipendiary	Lay	Stipendiary	Lay
Court Fines Office	Large, modern; highly impersonal	Small, old; somewhat personal	Large, modern; somewhat impersonal	Small, old; highly personal
Automation at time of study	Semi-automated	None	None	None
Total Fine Amounts Imposed	Medium	Highest	Low to Medium	High
Typical Payment Terms	Fixed terms	Installments	Installments	Installments
Weekly Rates	--	Low	Moderate	Moderate
Voluntary Payment (Research Sample)	40%	27%	30%	39%
Ultimate Payment (Research Sample)	62%	55%	62%	77%
Common Enforcement Measures	Reminders; Means Warrants; Committal Warrants	Means Warrants; Means Inquiries; Committal Warrants	Means Warrants; Means Inquiries; Committal Warrants	Reminders; Distress Warrants; Means Warrants
Research Sample Sizes				
• General Sample (f Fined)	369 (127)	292 (138)	304 (144)	298 (115)
• Fined Sample	104	122	103	115

the previous Fines in Sentencing Project there. In addition, the existence of a pilot distress scheme -- the only example of large scale use of distress in London -- offered us an opportunity of studying this enforcement technique in a metropolitan context. Moreover, the court's substantial use of committal made it additionally interesting.

c) Midland Magistrates' Court. Our choice of this court was dictated in part by the fact that this large urban court acknowledged itself as having serious administrative problems. It lies in a region heavily hit by the recession in the car industry and where we could therefore expect to find an offender population experiencing a high rate of unemployment.

d) West Magistrates' Court. Similarly, this court is a further example of a heavily burdened urban court in an industrial area characterized by high unemployment.

B. Quantitative Sample Selection

The quantitative sample was selected randomly from the courts' closed cases working backwards through the legal aid application files from the universe of cases within our offense categories in which conviction and sentence occurred at the magistrates' court and which were closed one year prior to the start of research. Our past research on fine enforcement had shown that the majority of fines were paid, collected/enforced or written off within a year of the sentence. By the time our research was concluded, the minimum time lapse from sentence to research cut-off date was 12 months. This ensured that most

sample cases were closed not only from the sentence but also from the fine collection/enforcement standpoint.

It was intended that the fined offender subsamples would be composed of those offenders within the overall sentenced sample on whom the courts imposed fines. However, because of missing record information, it was not possible to trace the full course of the fine payment/collection/enforcement history in every case. Thus the final fined offender subsamples were smaller in size than the totals of offenders fined within the randomly selected sentence samples.

C. Interview Case Selection

The interview cases were selected independently of the quantitative samples. The choice was dictated by most recently completed use of one or other of the coercive enforcement methods under examination, namely distress or committal.

In order to ensure that the enforcement process had been completed, we chose cases by conferring with the member of the fines office staff responsible for coercive enforcement cases. Thus we established the identity of fined offenders in whose cases the fine officer had most recently received either payment or returned distress warrants from the bailiffs. For committal cases we likewise established the identity of fined offenders in whose cases either payment had been received via

- a) the police charged with executing committal warrants;
- b) the prison reception staff;

- c) the prison authorities through the procedure established for paying out of prison after partially served time;

or full term had been served in lieu of payment.

In this way we obtained a set of recently concluded cases in which the instituting of distress/committal proceedings resulted either in payment by threat or property/liberty deprivation or in non-payment of the fine.

D. Interview Strategy

For our interview cases we compiled record data similar to that contained in the quantitative sample in order to have the formal information recorded about the fine, the offense, the offender and the collection process prior to the use of distress or committal, as background for our interviews.

The interviews usually began with questions mainly confirming data already known; this was intended as an exercise to verify the record data and to stimulate recall and also to put the subject at ease by discussing a series of uncomplicated, routine and non-controversial points.

The interviews then proceeded to a wider range of issues. By the close of the interview certain basic information was elicited:

- a) the precise details of the interviewee's modus operandi with this case;
- b) the exact sequence of events and perceived responses;
- c) the interviewee's perceptions of his/her own role and of the effect of these actions upon others involved.

We had hoped to persuade fined offenders to participate in interviews. Unfortunately, objections were raised at an early stage by officials in the magistrates' courts system, including two of the court clerks involved in granting access for our research. In view of their generous help with this project and the depth of their misgivings on the question of our invading the privacy of the fined offenders to be interviewed, we abandoned this aspect of the research after successive attempts to alter their attitudes failed.

Figure A-2

Conversion Chart: Pounds Sterling to U.S. Dollars
(1980-81)

<u>Pounds Sterling (£)</u>	=	<u>U.S. Dollars (\$)</u>
1		2.20
5		11.00
10		22.00
15		33.00
20		44.00
25		55.00
30		66.00
35		77.00
40		88.00
45		99.00
50		110.00
60		132.00
70		152.00
80		176.00
90		198.00
100		220.00
125		275.00
150		330.00
175		385.00
200		440.00
225		495.00
250		550.00
275		605.00
300		660.00
350		770.00
400		880.00

APPENDIX B:

FINE ENFORCEMENT DATA COLLECTION INSTRUMENT

CARD 1

FEDI, p.1.
I.D. _____

N.I.J. LONDON FINES STUDY

FINE ENFORCEMENT DATA INSTRUMENT

(General Instructions: for unknown/no mention, code 9's)

Identification Section

1
1

Card Number

2 3 4 5

Court Code and Index

- 1 = Capital
- 2 = East
- 3 = Midland
- 4 = West

6

Case Classification by Sentence Type

- 1 = Fine
- 2 = Imprisonment
- 3 = Suspended Sentence
- 4 = Probation
- 5 = CSO
- 6 = Conditional Discharge
- 7 = Absolute Discharge
- 8 = Other
(Specify details.....)

7

Status of Legal Aid Application

- 0 = refused
- 1 = granted (specify contribution,
if any.....)
- 2 = not pursued

8

Stage at which Legal Aid Application made

- 0 = before court appearances
- 1 = after first court appearance before conviction
- 2 = during first court day (case put back before
plea
- 3 = after plea/conviction but before sentence
- 4 = applied for after proceedings
- 5 = not pursued

CARD 1

FEDI, p.2.

Offence Section

9

Most serious offence for which sentenced
1 = assault
2 = sexual assault
3 = theft - shoplifting
4 = theft (auto - t.d.a.)
5 = theft (other
6 = handling stolen goods
7 = criminal damage
8 = trespass

10

Difference between charge at arrest and charge for which sentenced
0 = no difference
1 = more severe at arrest
2 = more severe at sentence
3 = different but no change in severity

11

Single/multiple Charges at Sentence
1 = single
2 = multiple

12

Plea
1 = guilty
2 = not guilty
3 = change of plea to guilty
4 = mixed
5 = change from guilty to not guilty
9 = unknown

13

Bail/Custody Status
0 = bail
1 = custody

15 16

Extent of Damage/Loss
000 = not applicable (i.e. assault case)
001 = none
002 = value in £ (round upwards)
999 = value unknown
(specify nature of damage/
loss.....)

17

Extent of Injury
0 = not applicable (i.e. property offence)
1 = no injury
2 = minor injury (no medical attention)
3 = semi serious (medical attention
4 = serious (broken bones/teeth,
permanent injury)
5 = fatal
9 = unknown

CARD 1

FEDI, p.3.
I.D. _____

18

Number of Victims

19

Victim's age (if multiple make notes in margin)
0 = institutional victim (e.g. business)
1 = child (under 16)
2 = elderly (over 60)
3 = 16 - 60

20

Victim's Sex (if multiple make notes in margin)
0 = institutional victim (e.g. business)
1 = female
2 = male

21

Location of Incident
1 = shop
2 = street
3 = business premises other than shop
(e.g. pub., office)
4 = private premises
5 = other

Offender Section

22

Sex of Offender
1 = male
2 = female

23 24

Age of Offender
1-98 = ~~of~~ of years
99 = not known/no mention

25

Residence of Offender
0 = n.f.a.
1 = address given
2 = squat, other non-permanent address

CARD 1

FBI, p.4.

26

Employment Status
 0 = unemployed, no benefits
 (specify.....)
 1 = unemployed, benefits
 (specify.....)
 2 = employed throughout past 12 months
 3 = employed at time of Legal Aid application
 but not throughout past 12 months
 4 = retired
 5 = housewife
 6 = student
 7 = was employed but lost job as a result of
 offence

27

Type of Work (whether employed at time or not)
 0 = no trade/skill
 1 = labourer
 2 = skilled worker
 3 = technician
 4 = clerical
 5 = semi professional
 6 = professional
 7 = artist
 8 = other
 (specify details recorded.....)

Means Section

£

 28 29 30

Weekly Work Income to Nearest £ (round upwards)

£

 31 32

Family Allowance to Nearest £ (round upwards)

£

 33 34 35

National Insurance Benefit - unemployment (round upwards)
 sickness
 pension
 (Specify.....)

£

 36 37 38

Supplementary Pension or Allowance From
 the Supplementary Benefits Commission (round upwards)

(Specify.....)

£

 39 40 41

Other Income (round upwards)

(Specify.....)

CARD 1

FEDI, p.5.
I.D. _____

£
[][][][][]
42 43 44 45 46

Realizable Value of Property Owned
(i.e. value minus mortgage outstanding)

£
[][][][][]
47 48 49 50 51

Amount of Capital Savings

[][]
52 53

Number of living in dependants with no means

[][]
54 55

Number of living in dependants with means

£
[][]
56 57

Total weekly outgoings for dependants not
living in (round upwards)

£
[][]
58 59

Weekly outgoings on accommodation (round upwards)

£
[][]
60 61

Weekly Work expenses (round upwards)

£
[][]
62 63

Other expenses (weekly) - (round upwards)

£
[][][]
64 65 66

Other Fines (total) - (round upwards)
888 = Other fine, amount unknown

£
[][][]
67 68 69

Total Weekly Income (round upwards)

CARD 1

FEDI, p.6

£
70 71 72

Total Weekly Outgoings (round upwards)

Prior History Section

73 74

Number of Previous Convictions
88 = has record, extent unknown
99 = not known whether record

75

Whether latest conviction was for same/
similar offence
0 = no previous convictions
1 = yes, same
2 = similar
3 = different

76

Number of previous fines
8 = 8 or more

77

Number of previous prison sentences
7 = 7 or more
8 = suspended, not served

78

Whether or not in breach of Suspended Sentence
0 = no
1 = yes
9 = unknown

79 80

Gap in months between last offence
conviction and present incident date
(Specify date of present incident,.....
.....
date of last conviction.....
.....)

CARD 2

FEDI, p.7
I.D. _____

2
1

Card Number

1 1 1 1 1 1 1
2 3 4 5 6 7

File Index #

Fine Section

Day Month Year
1 1 1 1 1 1 1
8 9 10 11 12 13

Fine Date

£ D
1 1 1 1 1 1
14 15 16 17 18

Amounts of Fine (Total of fines only)
(e.g. £1.50 codes as 001/50)

£ D
1 1 1 1 1 1
19 20 21 22 23

Amount of Costs

£ D
1 1 1 1 1 1
24 25 26 27 28

Amount of Compensation

£ D
1 1 1 1 1 1
29 30 31 32 33

Other Amount due, including additional costs of
appeal, legal aid (specify.....)

£ D
1 1 1 1 1 1
34 35 36 37 38

Total amount of monies due

1 1
39 40

Days allowed to pay
0 = immediate payment due/no time allowed

£ D
1 1 1 1 1 1
41 42 43 44

Instalment Terms per week
0000 = no instalments
0050 = weekly rate of 50p. etc.
0150 = weekly rate of £1.50 etc.

CARD 2

FEDI, p. 6

45

Downpayment
0 = no downpayment
1 = downpayment now
(specify amount

46

Alternative of imprisonment fixed at sentence
0 = not fixed
1 = fixed n.f.a.
2 = fixed, no specified reason

47 48

/// of days fixed as alternative term of imprisonment
00 = no alternative term fixed
01-98 = days fixed

Collection Section

49

Warning Letter
0 = no letter sent
1-8 = /// of letters sent

50

Result of Warning Letter
0 = no letter sent
1 = no result
2 = temporary re-establishment of payment
3 = permanent re-establishment of payment/full
payment
(specify dates when each letter sent
.....)

51

Means Summons
0 = not used
1-8 = /// issued
specify dates
.....

52

Means Warrant
0 = not used
1 = /// issued

Day Month Year
53 54 55 56 57 58

Date Means Warrant Issued
(if more than one means warrant, code issue date
for first warrant; specify issue dates of other
means warrants)
.....)

CARD 2

FEDI, p. 9
I.D. _____

Day		Month		Year	
59	60	61	62	63	64

Date Means Warrant Executed
 (if more than one means warrant executed,
 code date of first execution;
 specify other execution dates)
 }
 888888 = if means warrant outstanding at
 research cut-off date

65

Means Inquiry
 0 = no means inquiries held
 1-8 = # of means inquiries held

Day		Month		Year	
66	67	68	69	70	71

Date of first Means Inquiry
 specify dates of others)
)

72

Adjustment of Terms at Means Inquiry
 0 = no means inquiry
 1 = no adjustment of terms
 2 = terms adjusted,
 specify how

73

Suspended Committal/Alternative of Imprisonment
 fixed at Means Inquiry
 0 = no means inquiry
 1 = no suspended committal
 2 = committal suspended (specify term)

74 75

Period for which committal was suspended, in days
 00 = no suspended committal

76

Activation of suspended committal
 0 = no suspended committal
 1 = not activated, some/full payment
 (specify)
 2 = activated according to court terms
 3 = activated with administrative discretion,
 not according to court terms
 (specify.....)

CARD 3

FEDI, p. 11
I.D. _____

3
1

Card Number

2 3 4 5 6 7

Identification Code (repeat as boxes 2-7 on card 1)

Enforcement Section

8

Attachment of Earnings

- 0 = no
- 1 = yes, partial payment resulting
- 2 = yes, full payment
- 3 = yes, no payment (employer not follow through; employment ceased
specify reason
.....)
specify date and terms
- 4 = arny paid

9

Distress Warrant

- 0 = not used
- 1 = sent, no property seized
- 2 = sent, property seized (specify property
.....)
specify date sent

10

Result of Distress

- 0 = not used
- 1 = used, no payment forthcoming
- 2 = used, part payment forthcoming
- 3 = used, full payment forthcoming

11 12

Increase in Sums due as result of distress (to nearest £, round upwards)

- 00 = no distress
- 88 = distress used, no increase in sums due
specify nature of additional fees

13

Immediate In-Court Detention in lieu of payment

- 0 = no in-court detention in lieu of payment
- 1 = yes, during day of court appearance
- 2 = yes, overnight, prior to sentence
- 3 = yes, duration unclear

14

Subsequent In-Court Detention in lieu of payment

- 0 = no in-court detention in lieu of payment
- 1 = yes, during day of court appearance
- 2 = yes, overnight, prior to sentence
- 3 = yes, other duration
(specify.....)
- 4 = yes, duration unclear

CARD 3

FEDI, p. 12

15

Committal Warrant Issued
0 = no
1-8 = ~~no~~ issued

Day | Month | Year
16 17 18 19 20 21

Date Committal Warrant Issued
(if more than one c.w. issued, code issue
date of first warrant;
specify dates of other c.w.)

22

Committal Warrant Executed
0 = no
1-8 = ~~no~~ executed

Day | Month | Year
23 24 25 26 27 28

Date Committal Warrant Executed
(if more than one c.w. executed, code
first execution date; specify later
execution dates)

29

Committal
0 = not committed to prison
1 = committed, payment forthwith -
no time served
2 = committed, payment after part time served
3 = committed and full time served to cancel fine
4 = c/w lodged, already in prison

30 31

~~no~~ of days served on committal to prison

Payment Section

Day | Month | Year
32 33 34 35 36 37

First Payment Lapse - first date on which money
not paid/insufficiently paid when due
000000 = no lapse

Day | Month | Year
38 39 40 41 42 43

First Collection/Enforcement Action Date

44

Written off totally
0 = not written off totally
1 = totally written off - whereabouts unknown
2 = totally written off - dead
3 = totally written off - time served
(specify term)
4 = written off totally - transfer

WARD 3

FEDI, p. 13
I.D. _____

45

Written off partially

- 0 = not written off partially
- 1 = partially written off - whereabouts unknown
- 2 = partially written off - dead
- 3 = partially written off - time served
(specify term
- 4 = written off partially - transfer
- 5 = written off partially, remainder too small to pursue

46

Imprisonment for Default (not detention)

- 0 = no time served
- 1 = time served immediately
- 2 = time served after collection failed
- 3 = time served, in prison on other case

47

Remission

- 0 = no remission of fine
- 1 = fine remitted totally
- 2 = fine remitted partially
(specify reason (e.g. appeal)
.....)

48

Payment in Full or Continuing

- 0 = not paid in full/not outstanding
- 1 = fully paid after coercive enforcement
(attachment of earnings/distress/committal)
- 2 = fully paid after non-coercive enforcement
(letters, means inquiry, adjustments)
- 3 = fully paid after time allowed/not in
accordance with terms, but without any
enforcement action
- 4 = fully paid within terms but not on day of
sentence
- 5 = fully paid on the day of sentence
- 6 = outstanding with some enforcement action
- 7 = outstanding within terms
- 8 = outstanding without action but not within terms

Day Month Year					
49	50	51	52	53	54

Date of Final Payment

000000 = not paid in full or outstanding

APPENDIX C:

FORMS AND DOCUMENTS ASSOCIATED WITH FINE ENFORCEMENT

- I. Application to Legal Aid
- II. Reminder
- III. Means Summons
- IV. Means Warrant
- V. Adjustment of Payment Terms
- VI. Distress Warrant
- VII. Bailiffs Advertisement in Justice of the Peace
- VIII. Prison Formula for Discounting Fine by Days Served
- IX. Notice to Victim that Offender is in Default on Court-Ordered Compensation

APPLICATION FOR LEGAL AID

(a) Full name in
BLOCK letters.
State whether
Mr., Mrs., Miss.

1. (a) NAME

ADDRESS

.....

..... Date of Birth

If application is made on behalf of a child, state below full name of child or children with date(s) of birth. In criminal proceedings, a separate application must be submitted for each child.

..... D. of B.

..... D. of B.

..... D. of B.

..... D. of B.

2. I apply for legal aid for the purpose of proceedings before the (MAGISTRATES')
(JUVENILE) COURT.

My case is due to be heard on at a.m./p.m.

3. Is any other person charged with you in these proceedings?

YES/NO. If yes, please state name(s) of co-accused.

.....
.....
.....
.....
.....

Name of solicitor acting for co-accused if known

.....
.....
.....
.....

(b) If you do not
give the name of
a solicitor, the
court will select
the solicitor
assigned to you.

4. (c) The solicitor I wish to act for me is (state name and address).

.....
.....
.....
.....

(c) If you are under 16, either attach a statement of your parents' means or give their name and address.

- 5. (c) Describe shortly what it is you are accused of doing, e.g. "stealing £50 from my employer", "kicking a door causing £50 damage", or if other than criminal proceedings, please state the details.

.....

.....

.....

.....

I understand that I (or my parents if I am under 16) may be required to supply further information about my means to the Legal Aid Assessment Office of the Department of Health and Social Security. I also understand that the court may order me to make a contribution to the costs of legal aid or to pay the whole costs if it considers that my means enable me to do so and if I am under 16, may make a similar order with respect to my parents.

I ATTACH A STATEMENT OF MY MEANS.

signed

Reasons for wanting Legal Aid.

When deciding whether to grant you legal aid, the court will need to know the reasons why it is in the interests of justice for you to be represented. You are therefore requested to complete the remainder of this form to avoid the possibility of legal aid being refused because the court does not have sufficient information about the case. If you need help in completing this form, and especially if you have previous convictions you should see a solicitor. He may be able to advise you free of charge or at a reduced fee.

- 6. I am in real danger of a custodial sentence for the following reasons (give brief reasons: you should consider seeing a solicitor before answering this question).

.....

.....

.....

.....

- 7. If you are convicted of the present charge, will you be in breach of any court order, i.e. suspended sentence of imprisonment, conditional discharge, probation, community service order; or are you subject to a deferred sentence? (give brief details so far as you are able: you should consider seeing a solicitor before answering this question).

.....

.....

.....

.....

8. I am in real danger of losing my livelihood or suffering serious damage to my reputation because (give brief reasons).

.....
.....
.....
.....

9. A substantial question of law is involved (give brief details: to answer this question you will need the help of a solicitor)

.....
.....
.....
.....

10. I shall be unable to follow the proceedings because—

(a) my knowledge of English is inadequate YES/NO

(b) I suffer from a disability, namely

.....
.....
.....
.....

11. Witnesses have to be traced and interviewed on my behalf (state circumstances)

.....
.....
.....
.....
.....

12. The case involves expert cross-examination of the prosecution witnesses (give brief details:)

.....
.....
.....
.....
.....
.....

13. The case is a very complex one, for example, mistaken identity (explain briefly: to answer this question you may need the help of a solicitor)

.....
.....
.....
.....
.....

14. Any other reason (give full particulars)

.....
.....
.....
.....
.....
.....
.....
.....
.....

NOTE: If you plead NOT GUILTY, the information in this form will not be made known to the magistrates who try your case unless they convict you. If you are acquitted, only the financial information will be given to them.

STATEMENT OF MEANS BY APPLICANT OR APPROPRIATE CONTRIBUTOR
LEGAL AID ACT, 1974.

This form is for use by an applicant for legal aid. If the applicant has not attained the age of sixteen, the applicant's father or mother may also be required to complete the form.

The form requires the person completing it to give particulars of his financial position. This information is needed before legal aid can be granted. Failure to provide the information may lead to delay in considering the application for legal aid. If there is any material change in your financial position after completing this form and before the conclusion of the case you should inform the court.

WARNING—If you knowingly or recklessly make a statement which is false in a material particular or knowingly fail to disclose any material fact, you are liable to be prosecuted and, if convicted, to imprisonment for a term not exceeding four months or a fine not exceeding £100 or both. The Supplementary Benefits Commission may be asked by the court to investigate the accuracy of your statement of means.

PART 1

1. Full Name of person completing form.....
(Block letters)
2. Date of Birth.....
3. (a) Unmarried/Married/Married but living apart/Divorced/Widow/Widower.....
4. Permanent address
5. Present address (where different from above).....
6. Occupation (state normal occupation).....
7. Have you been unemployed during the last twelve months? YES/NO.
If your answer is "Yes", state periods of unemployment during the last twelve months.
.....
8. If you are under the age of eighteen years, are you being wholly or mainly maintained by a parent or guardian? YES/NO.
If your answer is "Yes", give his address.....
9. If legal aid is being sought for your child and he has not yet attained the age of sixteen years, give:
 - (a) his full name.....
 - (b) his date of birth.....
 - (c) your relationship to him.....
 - (d) his address (where different from yours).....

(a) Delete all but one.

PART 2—INCOME

Give below particulars of your income from all sources for the twelve months immediately preceding the date on which this form is completed. If you are married and living with your wife/husband, particulars of her/his income must also be stated.

The amounts stated should be the net amounts after deduction of income tax and National Insurance contributions.

Instead of giving amounts for the previous twelve months you may express amounts on a weekly or monthly basis if you state the basis in the remarks column.

Description of Income	Amount		Remarks	FOR OFFICIAL USE ONLY	
	Your income	Income of wife/husband			
1. Wages or salary including overtime, commission and bonuses.					
2. If in business on your own account, net profit					
3. Family allowances.					
4. National Insurance benefit— (a) Unemployment (b) Sickness (c) Pension.					
5. Supplementary pension or allowance from the Supplementary Benefits Commission.					
6. Net income from sub-letting house, rooms, etc.					
7. Other income (give details).					
			1		

Write "NONE" where appropriate.

If legal aid is being sought for your child, has he any source of income not included above? YES/NO.

If your answer is "Yes", give details below:

Description of Income	Amount	Remarks	FOR OFFICIAL USE ONLY	
			1	

PART 3—CAPITAL OR SAVINGS

Give below particulars of all your capital or savings. If you are married and living with your wife/husband, give details of her/his capital and savings also.

Description of Income	Yourselves	Wife/husband	FOR OFFICIAL USE ONLY	
1. Do you or your wife/husband own house property? (Answer Yes or No). If your answer is "Yes", state— (a) the value, (i.e. approximate selling price) (b) the amount of any outstanding mortgage. (c) whether you are living in the house.				
2. Give particulars of all capital or savings belonging to you or your wife/husband. You should state the amount and description (e.g. money in the National Savings Bank or other banks, National Savings Certificates, cash, stocks and shares, etc.).				
			2	

(2) Living accommodation (state whether payments are weekly, monthly, quarterly or annual):

Rent _____
Mortgage repayments _____
Ground rent _____
Rates _____
Board and lodging _____
Bed and breakfast _____

(3) Expenses in connection with your employment:—

Travelling _____
Tools _____
Other expenses _____

(4) Other expenses:—

(a) Hire purchase payments _____
Amount outstanding on hire purchase debt(s) _____
Nature of goods _____

(b) Insurance premiums _____
State sum insured and date policy taken out _____
Date policy due to mature _____

(c) Give details of any order of a court under which you are currently required to pay money and of amount involved _____

(d) Other debts or expenses _____

Write "NONE" where appropriate.

PART 5—ADDITIONAL INFORMATION

Give below any additional information which you think the court should know about your financial circumstances, including any changes which are likely to occur within the next twelve months _____

FOR OFFICIAL USE ONLY	
5	
6	
7	
8	
9	

PART 6—DECLARATION

I declare that, to the best of my knowledge and belief, I have given a complete and correct statement of my income, savings and capital (and that of my spouse)(c) (and that of my child)(d).

(c) Delete unless you are married and are living with your spouse.
(d) Delete unless legal aid is being sought for your child.

Signature _____
Date _____

MAGISTRATES' COURT

Solicitor
Clerk to the Justices

My ref.
Your ref.

FINAL NOTICE

Dear Sir/Madam,

I would inform you that the undermentioned fine imposed in this Court has not yet been paid and unless the outstanding sum is received forthwith, proceedings will be taken to enforce payment.

Yours faithfully,

Clerk to the City Justices.

No.	Date	Offence

Total due _____

Less Paid _____

BALANCE DUE _____



No.

SUMMONS TO DEFAULTER (FINE)

Magistrates' Courts Act, 1952, sec 70
Magistrates' Courts Rules, 1968, r 81.
Criminal Justice Act, 1967, ss 44, 47.

In the City of

To.....
of in the said City.

	f.	s.	d.
Fine			
Compensation			
Costs			
Total			
Part payments			
Balance £			

On the day of 19 .., you were adjudged by the CITY MAGISTRATES' COURT sitting at this City to pay the sum shown in the margin hereof, and you have failed to pay the said sum *balance of* pounds..... *shillings and* *pence*.

YOU ARE THEREFORE HEREBY SUMMONED to appear before the CITY MAGISTRATES' COURTS sitting at STREET, in the said City, on TUESDAY, the..... day of 19 .., at the hour of TWO in the afternoon, unless the said sums *balance* be sooner paid, for inquiry to be made as to your means.

Dated the day of 19 ..

Justice of the Peace for the City of

NOTE - The object of the inquiry as to your means is to enable the Court to decide whether or not to commit you to prison for default in payment. If, not having paid, you fail to appear personally in obedience to this summons, you will render yourself liable to arrest without further notice. Payment may be made either by post to the Court Collecting Office, Clerk to the Justices, or made personally at the office of the Clerk to the Justices at that address, during the following hours:-

- Monday, Tuesday and Wednesday - 9.30 a.m. to 4 p.m.
- Thursday and Friday - 9.30 a.m. to 6 p.m.

Any communication sent by post should be properly stamped; and cash should not be sent in unregistered envelopes. Cheques and postal orders should be made payable to the Clerk to the Justices, and crossed. The Court Collecting Office is CLOSED all day Saturday.

FORM 47
M. 1701



In the City of

To each and all of the Constables of the Police

(hereinafter called the defendant)
was, on the day of , 19
adjudged by the (Magistrates Court) (Crown Court)
for the said City
sitting at
to pay a fine of
(and for compensation,)
(and for costs):

AND the defendant has (paid
in part payment, but has) made default in payment (of a balance of
):

YOU ARE HEREBY COMMANDED to bring the defendant (forthwith)
(On day, the day of , 19)
at the hour of in the noon,) before the
MAGISTRATES' COURT, sitting at
for inquiry to be made in h presence as to h means, unless the said
(sum(s)) (balance) be sooner paid.

DATED the day of , 19

Table with 2 columns: £, p. and rows: Fine, Compensation, Costs, Total, Part Payments, Balance

Justice of the Peace for the City first above-mentioned.

Cat. No. M. C. 48
M.C. Act, 1952, s. 70.
C.J. Act 1967, ss. 44, 47.
M.C Rules 1952, rr. 72, 73.

Warrant for Arrest of defaulter:
fine. TC

N.B. - Strike out such of the words within the brackets as are not required.

(SEE OVER)

It is directed that the defendant on arrest be released on bail on h
entering into a recognizance in the sum of
with suret in the sum of
(each), for h appearance, unless the (sum(s)) (balance) specified in this
warrant be sooner paid, before the MAGISTRATES' COURT sitting at
at the hour of in the noon (of the next
day upon which such Court is open) (on the day of
, 19 .).

Justice of the Peace for the City first above mentioned.

Payment received by the Constable holding this Warrant:—

Date of Receipt	£		Signature

COURT COLLECTING OFFICE

MAGISTRATES'
COURT

Solicitor,
Clerk to the Justices.

Your Ref.

My Ref.

Dear Sir or Madam,

MAGISTRATES' COURTS ACT, 1952

Your application for further time in which to pay the sum due has been considered.

It was decided that you pay the amount by weekly instalments of

.....

Yours faithfully,

Clerk to the Justices

MAGISTRATES' COURT

Code: 2663

Date:

Defendant:

Date of Birth:

Address:

Convicted on:

By:

Magistrates' Court

Offence:
(particulars)

Ordered to pay: fine:
Compensation/costs/back duty:

Paid:

Amounts to be levied:

BAILIFFS FEE
VAT
TOTAL AMOUNT TO BE LEVIED

And on:

this court ordered that in default of payment the said sum(s) to be levied by distress.

AND a notice of fine having been served on the defendant and default having been made in payment:

Direction:

You the constables of the Police Force and the BAILIFFS of LTD are hereby required to

make distress of the money and goods of the defendant (except the wearing apparel and bedding of himself and his family, and to the value of fifty pounds, the tools and implements of his trade): and if the sum stated above, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then not earlier than the sixth day after the making of such distress, unless the defendant consents in writing to an earlier sale, to sell the said goods, and pay the proceeds of the said distress to the Clerk of the said Court, and if no such distress can be found, to certify the same to the Court.

Distress Warrant

Justice of the Peace :

By Order of the Court

Justices' Clerk

JUSTICE OF THE PEACE, MAY 30, 1981

OVERDUE FINES UNPAID FINES

QUESTION: Does your Court, like most in the country, have the problem of fines enforcement.

ANSWER: The latest figures available show that outstanding fines amount to 30 Million Pounds which does not include INNER LONDON.

QUESTION: DOES your Court have an effective enforcement method.

ANSWER: Most Courts still use Police Officers.

QUESTION: DOES your Court know of other methods of enforcement available to it.

ANSWER: (BAILIFFS) LIMITED provide a very effective method at no cost to the Court.

QUESTION: HAS your Court costed your enforcement service.

ANSWER: (BAILIFFS) LIMITED provide their services at no cost to the Courts, Judicial System or the Government.

QUESTION: HAS your Court thought of using the Magistrates' Court Act 1952 as a method of collecting overdue fines.

ANSWER: Section 64 of the Magistrates' Court Act 1952 states a Magistrate may issue a Warrant of Distress for the purpose of Levying a sum adjudged to be paid by conviction or order of the Court where Default has been made in the paying of such a sum.

QUESTION: DO you know what the success rate of Private Bailiffs could be.

ANSWER: (BAILIFFS) LIMITED have carried out Distress in accordance with the Act for over TWO YEARS and the success rate is 86%.

QUESTION: IF you are thinking of looking into this method what firm could you use.

ANSWER: (BAILIFFS) LIMITED act at this time for THREE COURTS in OUTER LONDON and ONE in INNER LONDON and are prepared to provide its services to any other court.

QUESTION: WOULD you like further information about methods and experience in collection of overdue fines. (BAILIFFS) LIMITED, its

ANSWER: CONTACT (BAILIFFS) LIMITED

1. FORMULA WORK WORKING OUT FINES

ORIGINAL FINE X NUMBER OF DAYS LEFT TO SERVE
Number of days in sentence - less one

EXAMPLE: Sentenced 21 August
Sentence £60 or 28 days
How much to pay out on 24 August?
4 days served - 24 to pay for
$$\frac{60 \times 24}{27} = \text{£}53.34$$

2. WHEN PART-PAYMENT IS MADE BEFORE RECEPTION

ORIGINAL FINE X NUMBER OF DAYS LEFT IN NEW SENTENCE
Number of days in original sentence - less one

EXAMPLE: Sentenced 21 August
Sentence £60 or 28 days
Part-Paid before reception £15
Balance and new sentence £45 or 22 days
How much to pay out on 24 August?
4 days served - 18 days to pay for
$$\frac{60 \times 18}{27} = \text{£}40$$

3. WHEN PART-PAYMENT IS MADE AFTER RECEPTION

ORIGINAL FINE X NUMBER OF DAYS LEFT TO SERVE
Number of days in sentence - less one

EXAMPLE: Sentenced 21 August
Sentence £60 or 28 days
How much to pay out on 24 August?
£15 paid after reception
4 days served - 24 days to pay for
$$\frac{60 \times 24}{27} = \text{£}53.34 \text{ less } \text{£}15 \text{ paid after reception}$$

$$= \text{£}38.34 \text{ to pay}$$

4. REMISSION FINE

EXAMPLE: Sentenced 21 August
Sentence £200 or 3 mths
How much to pay out on 2 October

August	11		days served	43
September	30		remission	21
October	31	= (43 days)	∴ Total served	64 days
November	20		∴ days to pay	28
			for	

L.D.R. 92 days in sentence
∴
$$\frac{200 \times 28}{91} = \text{£}61.54$$

REMEMBER : TO ATTRACT REMISSION HE MUST SERVE 5 DAYS OR MORE

Always divide by '2'	
ie 5 served (actually)	ie 15 served
2 remission	7 remission
= 7 days to count	= 22 to count etc etc

COURT COLLECTING OFFICE
Solicitor, Clerk to the Justices

My ref.

Your ref.

Date

Dear Sir/Madam,

With reference to the compensation of
awarded to you against
on the , I write to inform you that a Warrant issued to
the Police has been returned to me for the reason that

I am, therefore, transferring the sum of £ from the current records to a
dormant section.

Should further information be obtained as to the whereabouts of the Defendant, the warrant
to enforce may be re-issued.

Yours faithfully,

APPENDIX D:
SUPPLEMENTARY TABLES

TABLE II-1
GENERAL SAMPLE: OFFENSE DISTRIBUTION BY COURT

OFFENSE	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
Assault	82 (22)	57 (19)	54 (18)	61 (20)
Sexual Assault	-	2 (1)	6 (2)	-
Shoplifting	71 (19)	88 (30)	66 (22)	74 (24)
Taking and Driving Away	72 (20)	46 (16)	27 (9)	32 (11)
Other theft	115 (31)	69 (24)	104 (35)	81 (27)
Handling Stolen Property	17 (5)	10 (3)	(18) (6)	16 (5)
Criminal Damage	12 (3)	20 (7)	23 (8)	40 (13)
TOTAL	369 (100)	292 (100)	298 (100)	304 (100)

TABLE II-2
GENERAL SAMPLE: AGE DISTRIBUTION BY COURT

AGE	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
16-20	148 (40)	120 (41)	113 (38)	85 (28)
21-29	118 (32)	86 (30)	87 (29)	119 (39)
30-44	66 (18)	48 (16)	70 (24)	61 (20)
45 and over	36 (10)	38 (13)	26 (9)	38 (13)
TOTAL	368 (100)	292 (100)	296 (100)	303 (100)

N.b. The information was missing for 1 offender (0.3% of total sample, N = 369) at Capital Court; for 2 offenders (0.7% of total sample, N = 298) at East Court; and for 1 offender (0.3% of total sample, N = 304) at West Court.

TABLE II-3
 GENERAL SAMPLE: SEX DISTRIBUTION BY COURT

SEX OF OFFENDER	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
Male	296 (80)	240 (82)	238 (80)	231 (76)
Female	73 (20)	52 (18)	60 (20)	73 (24)
TOTAL	369 (100)	292 (100)	298 (100)	304 (100)

TABLE II-4
 GENERAL SAMPLE: DISTRIBUTION OF PREVIOUS CONVICTIONS BY COURT

NUMBER OF PREVIOUS CONVICTIONS	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
None	174 (48)	108 (37)	103 (35)	80 (26)
1	40 (11)	29 (10)	51 (17)	47 (16)
2	23 (6)	24 (8)	39 (13)	45 (15)
3	21 (6)	21 (7)	22 (7)	27 (9)
4	17 (4)	10 (3)	15 (5)	16 (5)
5	14 (4)	2 (1)	4 (1)	17 (6)
6	12 (3)	7 (2)	5 (2)	10 (3)
7	10 (3)	3 (1)	2 (1)	7 (2)
8	7 (2)	2 (1)	2 (1)	9 (3)
9	5 (1)	3 (1)	-	4 (1)
10	6 (2)	5 (2)	3 (1)	6 (2)
11 or more	7 (2)	15 (5)	3 (1)	14 (5)
Previous convictions but number unknown	17 (4)	45 (15)	25 (8)	8 (2)
Unknown	16 (4)	18 (7)	24 (8)	14 (5)
TOTAL	369 (100)	292 (100)	298 (100)	304 (100)

TABLE II-5
 GENERAL SAMPLE: INCIDENCE OF IMPRISONMENT FOR PREVIOUS CONVICTIONS BY COURT

NUMBER OF PREVIOUS SENTENCES OF IMPRISONMENT	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
0	269 (73)	187 (64)	207 (69)	229 (75)
1	24 (7)	12 (4)	19 (6)	20 (6)
2	12 (3)	5 (2)	7 (2)	9 (3)
3	5 (1)	5 (2)	1 (1)	10 (3)
4	3 (1)	4 (1)	2 (1)	2 (1)
5 or more	7 (2)	9 (4)	2 (1)	11 (4)
Suspended not served	16 (4)	7 (2)	8 (3)	6 (2)
Unknown	33 (9)	63 (21)	52 (17)	17 (6)
TOTAL	369 (100)	292 (100)	298 (100)	304 (100)

TABLE II-6
GENERAL SAMPLE: EMPLOYMENT DISTRIBUTION BY COURT

EMPLOYMENT STATUS	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
Unemployed no benefit	64 (17)	13 (5)	37 (13)	17 (6)
Unemployed on benefit	134 (37)	157 (54)	95 (32)	186 (61)
Employed throughout previous 12 months	76 (21)	59 (20)	79 (27)	51 (17)
Currently employed but not throughout previous 12 months	28 (8)	30 (10)	35 (12)	19 (6)
Retired	7 (2)	6 (2)	1 -	4 (1)
Housewife	22 (6)	14 (5)	25 (9)	20 (7)
Student	24 (6)	6 (2)	12 (4)	-
Lost job as a result of current offense	12 (3)	7 (2)	9 (3)	7 (2)
TOTAL	367 (100)	292 (100)	293 (100)	304 (100)

N.b. The information was missing for 2 offenders (0.5% of total sample, N = 369) at Capital Court and for 5 offenders (2% of total sample, N = 298) at East Court.

TABLE II-7
 GENERAL SAMPLE: OCCUPATIONAL SKILL DISTRIBUTION BY COURT

SKILL	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
No trade	35 (9)	129 (44)	68 (23)	7 (2)
Laborer	43 (12)	53 (18)	50 (17)	59 (19)
Skilled worker	125 (34)	58 (20)	55 (19)	50 (16)
Technician	6 (2)	-	2 -	4 (1)
Clerical worker	12 (3)	7 (3)	3 (1)	9 (3)
Semi-professional	1 -	-	2 -	-
Professional	2 (1)	3 (1)	-	1 (1)
Artist	1 -	-	-	-
Other	48 (13)	27 (9)	68 (23)	44 (15)
Unknown	96 (26)	15 (5)	50 (17)	130 (43)
TOTAL	369 (100)	292 (100)	298 (100)	304 (100)

TABLE II-8
GENERAL SAMPLE: WEEKLY WORK INCOME DISTRIBUTION BY COURT

WEEKLY WAGE (£)	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
None	261 (72)	203 (70)	178 (61)	234 (77)
1-10	1 (1)	-	6 (2)	-
11-15	-	3 (1)	1 -	1 -
16-20	4 (1)	1 -	2 (1)	1 -
21-30	3 (1)	18 (6)	14 (5)	8 (3)
31-50	39 (11)	32 (11)	42 (14)	25 (8)
51-75	37 (10)	32 (11)	38 (13)	26 (9)
76 or more	19** (4)	3 (1)	12** (4)	8 (3)
TOTAL	364 (100)	292 (100)	293 (100)	303 (100)

N.b. The information was missing for 5 offenders (1.4% of total sample, N = 369) at Capital Court; for 5 offenders (2% of total sample, N = 298) at East Court; and for 1 offender (0.3% of total sample, N = 304) at West Court.

** Only 2 offenders at Capital Court and 2 offenders at East Court earned more than £100 per week.

TABLE II-9
 GENERAL SAMPLE: DISTRIBUTION OF WEEKLY NATIONAL
 INSURANCE BENEFITS RECEIVED BY COURT

NATIONAL INSURANCE BENEFITS (£)	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
None	292 (80)	167 (57)	225 (78)	203 (67)
1-10	2 -	3 (1)	2 (1)	2 (1)
11-15	6 (2)	10 (3)	5 (2)	8 (2)
16-20	21 (6)	42 (15)	20 (7)	40 (13)
21-30	27 (7)	39 (14)	16 (5)	27 (9)
31-40	14 (4)	21 (7)	10 (3)	12 (4)
41-50	4 (1)	6 (2)	10 (3)	10 (3)
51-75	1 -	4 (1)	2 (1)	2 (1)
TOTAL	367 (100)	292 (100)	290 (100)	304 (100)

N.b. The information was missing for 2 offenders (0.5% of total sample, N = 369) at Capital Court and for 8 offenders (3% of total sample, N = 298) at East Court.

TABLE II-10
 GENERAL SAMPLE: DISTRIBUTION OF WEEKLY SUPPLEMENTARY BENEFIT INCOME BY COURT

WEEKLY SUPPLEMENTARY BENEFITS (£)	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
None	281 (77)	238 (81)	238 (81)	199 (66)
1-10	4 (1)	4 (1)	8 (3)	1 -
11-15	5 (1)	2 (1)	8 (3)	10 (3)
16-20	22 (6)	13 (5)	12 (4)	38 (13)
21-30	24 (7)	11 (4)	13 (5)	17 (6)
31-40	11 (3)	14 (5)	7 (2)	19 (6)
41-50	13 (4)	9 (3)	7 (2)	16 (5)
Over 50	4 (1)	1 -	-	4 (1)
TOTAL	364 (100)	292 (100)	293 (100)	304 (100)

N.b. The information was missing for 5 offenders (1.4% of total sample, N = 369) at Capital Court and for 5 offenders (2% of total sample, N = 298) at East Court.

TABLE II-11
 GENERAL SAMPLE: DISTRIBUTION OF TOTAL WEEKLY HOUSEHOLD INCOME BY COURT

WEEKLY INCOME (£)	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
None	72 (20)	12 (4)	32 (11)	15 (5)
1-10	11 (3)	7 (3)	14 (5)	3 (1)
11-20	58 (17)	68 (24)	46 (16)	89 (29)
21-35	69 (20)	87 (30)	61 (21)	68 (23)
36-50	65 (18)	50 (17)	58 (20)	50 (17)
51-75	47 (13)	49 (17)	54 (19)	52 (17)
76-100	25 (7)	7 (2)	8 (3)	18 (6)
101-150	5 (2)	8 (3)	13 (5)	6 (2)
151-200	1 -	1 -	1 -	- -
TOTAL	353 (100)	289 (100)	287 (100)	301 (100)

N.b. The information was missing for 16 offenders (4% of total sample, N = 369) at Capital Court; for 3 offenders (1% of total sample, N = 292) at Midland Court; for 11 offenders (4% of total sample, N = 298) at East Court; and for 3 offenders (1% of total sample, N = 304) at West Court.

TABLE II-12

GENERAL SAMPLE: SENTENCE BY OFFENSE COMMITTED

CAPITAL COURT

SENTENCE	OFFENSE							TOTAL
	Violence	Shoplifting	Taking and Driving Away	Other Theft	Handling	Criminal Damage		
Fine	35 (43%)	26 (37%)	21 (29%)	34 (30%)	6 (35%)	5 (42%)	127 (34%)	
Prison	9 (11)	7 (10)	15 (21)	15 (13)	0 (-)	1 (8)	47 (13)	
Suspended Sentence	14 (17)	10 (14)	5 (7)	16 (14)	5 (29)	0 (-)	50 (14)	
Probation	6 (7)	8 (11)	9 (13)	15 (13)	2 (12)	1 (8)	41 (11)	
C.S.O.	4 (5)	4 (6)	11 (15)	13 (11)	0 (-)	0 (-)	32 (9)	
Conditional Discharge	7 (9)	16 (23)	4 (5)	18 (16)	3 (18)	5 (42)	53 (14)	
Absolute Discharge	-	-	-	-	-	-	-	
Other	7 (9)	0 (-)	7 (10)	4 (4)	1 (6)	0 (-)	19 (5)	
TOTAL	82 (101%)	71 (101%)	72 (100%)	115 (101%)	17 (100%)	12 (100%)	369 (100%)	

X² Test, Significance = .0046

TABLE II-13
 GENERAL SAMPLE: SENTENCE BY OFFENSE COMMITTED
 MIDLAND COURT

SENTENCE	OFFENSE								TOTAL
	Violence	Shoplifting	Taking and Driving Away	Other Theft	Handling	Criminal Damage			
Fine	28 (48%)	35 (39%)	25 (54%)	30 (44%)	6 (60%)	14 (70%)			138 (47%)
Prison	1 (2)	2 (2)	2 (4)	5 (7)	0 (-)	0 (-)			10 (3)
Suspended Sentence	8 (14)	8 (9)	4 (9)	3 (4)	0 (-)	1 (5)			24 (8)
Probation	6 (10)	15 (17)	3 (7)	7 (10)	0 (-)	0 (-)			31 (11)
C.S.O.	6 (10)	5 (6)	8 (17)	6 (9)	2 (20)	0 (-)			27 (9)
Conditional Discharge	9 (15)	19 (22)	3 (7)	17 (25)	2 (20)	4 (20)			54 (18)
Absolute Discharge	0 (-)	2 (2)	0 (-)	0 (-)	0 (-)	0 (-)			2 (1)
Other	1 (2)	2 (2)	2 (2)	1 (1)	0 (-)	1 (5)			6 (2)
TOTAL	59 (101%)	88 (99%)	46 (100%)	69 (100%)	10 (100%)	20 (100%)			292 (99%)

TABLE II-14
 GENERAL SAMPLE: SENTENCE BY OFFENSE COMMITTED
 EAST COURT

SENTENCE	OFFENSE							TOTAL
	Violence	Shoplifting	Taking and Driving Away	Other Theft	Handling	Criminal Damage		
Fine	28 (47%)	24 (36%)	27 (56%)	31 (30%)	9 (50%)	8 (35%)	115 (39%)	
Prison	4 (7)	4 (6)	5 (18)	4 (4)	1 (6)	2 (9)	20 (7)	
Suspended Sentence	9 (15)	3 (5)	1 (4)	14 (14)	1 (6)	0 (-)	28 (9)	
Probation	8 (13)	10 (15)	2 (7)	20 (19)	1 (6)	1 (4)	42 (14)	
C.S.O.	2 (3)	5 (8)	4 (15)	11 (11)	2 (11)	2 (9)	26 (9)	
Conditional Discharge	2 (3)	18 (27)	0 (-)	21 (20)	4 (22)	8 (35)	53 (18)	
Absolute Discharge	0 (-)	2 (3)	0 (-)	2 (2)	0 (-)	0 (-)	4 (1)	
Other	7 (12)	0 (-)	0 (-)	1 (1)	0 (-)	2 (9)	10 (3)	
TOTAL	60 (100%)	66 (100%)	27 (100%)	104 (101%)	18 (101%)	23 (101%)	298 (100%)	

X² Test, Significance = .0001

TABLE II-15
 GENERAL SAMPLE: SENTENCE BY OFFENSE COMMITTED
 WEST COURT

SENTENCE	OFFENSE								TOTAL
	Violence	Shoplifting	Taking and Driving Away	Other Theft	Handling	Criminal Damage			
Fine	24 (39%)	26 (35%)	10 (31%)	46 (57%)	12 (75%)	26 (65%)			144 (47%)
Prison	2 (3)	2 (3)	1 (3)	4 (5)	0 (-)	1 (3)			10 (3)
Suspended Sentence	8 (13)	6 (8)	3 (9)	5 (6)	1 (6)	0 (-)			23 (8)
Probation	8 (13)	22 (30)	8 (25)	8 (10)	1 (6)	3 (8)			50 (16)
C.S.O.	2 (3)	3 (4)	7 (22)	7 (9)	1 (6)	1 (3)			21 (7)
Conditional Discharge	5 (8)	13 (18)	1 (3)	4 (5)	1 (6)	9 (23)			33 (11)
Absolute Discharge	11 (18)	2 (3)	1 (3)	7 (9)	0 (-)	0 (-)			21 (7)
Other	1 (2)	0	1 (3)	0	0	0			2 (1)
TOTAL	61 (99%)	74 (101%)	32 (99%)	81 (101%)	16 (99%)	40 (102%)			304 (100%)

TABLE II-16
GENERAL SAMPLE: AGE OF FINED OFFENDERS BY COURT

AGE	NUMBER OF OFFENDERS				
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)	All Courts (%)
16-20	51 (40)	61 (44)	44 (39)	37 (26)	193 (37)
21-29	41 (32)	40 (29)	36 (32)	60 (42)	177 (34)
30-44	24 (19)	22 (16)	21 (18)	26 (10)	93 (18)
45 or over	11 (9)	15 (11)	12 (11)	20 (14)	58 (11)
TOTAL	127 (100%)	138 (100%)	113 (100%)	143 (100%)	521 (100%)

TABLE II-17
GENERAL SAMPLE: SEX OF FINED OFFENDERS BY COURT

SEX OF OFFENDER	NUMBER OF OFFENDERS					All Courts (%)
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)	All Courts (%)	
Male	103 (81)	119 (86)	100 (87)	111 (77)	433 (83)	
Female	24 (19)	19 (14)	15 (13)	33 (23)	91 (17)	
TOTAL	127 (100%)	138 (100%)	115 (100%)	144 (100%)	524 (100%)	

TABLE II-18

GENERAL SAMPLE: EMPLOYMENT STATUS OF FINED OFFENDERS BY COURT

EMPLOYMENT STATUS	NUMBER OF OFFENDERS					All Courts (%)
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)	All Courts (%)	
Unemployed no benefit	21 (16)	6 (4)	12 (11)	7 (5)	46 (9)	
Unemployed on benefit	35 (28)	63 (46)	26 (23)	76 (53)	200 (38)	
Housewife	9 (7)	5 (4)	4 (3)	10 (7)	28 (5)	
Retired or Student	16 (13)	3 (2)	10 (9)	2 (1)	31 (6)	
Lost job though offense	3 (2)	1 (1)	3 (3)	6 (4)	13 (2)	
Employed at time of offense but not throughout past year	9 (7)	19 (14)	14 (12)	13 (9)	55 (11)	
Employed for previous 12 months	34 (27)	41 (30)	44 (39)	30 (21)	149 (29)	
TOTAL	127 (100%)	138 (101%)	113* (100%)	144 (100%)	522 (100%)	

*N.b. Information was missing for 2 offenders.

TABLE II-19

GENERAL SAMPLE: TOTAL WEEKLY HOUSEHOLD INCOME FOR FINED OFFENDERS BY COURT

WEEKLY INCOME (£)	NUMBER OF OFFENDERS					All Courts (%)
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)	All Courts (%)	
0	27 (22)	3 (2)	9 (8)	5 (4)	44 (9)	
Up to 20	15 (12)	29 (21)	19 (17)	38 (27)	101 (20)	
21-40	33 (27)	44 (32)	32 (29)	39 (27)	148 (29)	
41-60	20 (17)	42 (30)	26 (23)	38 (27)	126 (25)	
61-80	16 (13)	11 (8)	15 (14)	11 (8)	53 (10)	
Over 80	10 (8)	9 (7)	10 (9)	11 (8)	30 (6)	
TOTAL	121 (99%)	138 (100%)	111 (100%)	142 (101%)	512 (100%)	

TABLE II-20

GENERAL SAMPLE: PREVIOUS CONVICTIONS FOR FINED OFFENDERS BY COURT

NUMBER OF PREVIOUS CONVICTIONS	NUMBER OF OFFENDERS					All Courts (%)
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)	All Courts (%)	
None	71 (60)	62 (54)	54 (55)	50 (37)	237 (51)	1
1	16 (14)	15 (13)	20 (20)	28 (21)	79 (17)	335
2	7 (6)	8 (7)	10 (10)	18 (13)	43 (9)	1
3	7 (6)	10 (9)	10 (10)	11 (8)	38 (8)	
4	5 (4)	5 (4)	3 (3)	6 (4)	19 (4)	
5-10	9 (8)	8 (7)	2 (2)	16 (12)	35 (7)	
Over 10	3 (3)	7 (6)	0	6 (4)	16 (3)	
TOTAL	118 (101%)	115 (100%)	99 (100%)	135 (99%)	467 (100)	

TABLE III-1

FINED OFFENDER SAMPLE: AMOUNT OF FINE IMPOSED BY COURT

AMOUNT OF FINE (£)	NUMBER OF OFFENDERS			
	Capital (Cum. %) Court	Midland (Cum. %) Court	East (Cum. %) Court	West (Cum. %) Court
5 or less	-	-	-	3 (3)
5+ - 10	2 (2)	1 (1)	3 (3)	1 (4)
10+ - 15	4 (6)	1 (2)	3 (6)	2 (6)
15+ - 20	8 (14)	2 (4)	2 (8)	14 (20)
20+ - 25	12 (25)	8 (11)	9 (16)	19 (38)
25+ - 30	5 (30)	11 (20)	1 (17)	10 (48)
30+ - 50	25 (54)	33 (47)	35 (47)	24 (71)
50+ - 75	15 (68)	15 (59)	12 (57)	10 (81)
75+ - 100	18 (85)	20 (75)	20 (74)	15 (95)
100+ - 150	3 (88)	12 (85)	18 (90)	3 (98)
150+ - 250	9 (97)	17 (99)	6 (95)	2 (100)
250+ - 500	1 (98)	2 (100)	6 (100)	-
Over 500	2 (100)	-	-	-
TOTAL	104	122	115	103

TABLE III-2
FINED OFFENDER SAMPLE: COURT COSTS IMPOSED BY COURT

AMOUNT OF COSTS (£)	NUMBER OF OFFENDERS				West Court (Cum. %)
	Capital Court (Cum. %)	Midland Court (Cum. %)	East Court (Cum. %)	West Court (Cum. %)	
No costs	89 (85)	39 (32)	23 (20)	23 (20)	West Court followed a policy of not imposing costs.
5 or less	-	1 (33)	-	-	
5+ - 10	5 (90)	13 (44)	5 (24)	5 (24)	
10+ - 15	-	7 (50)	30 (50)	30 (50)	
15+ - 20	2 (92)	15 (62)	16 (64)	16 (64)	
20+ - 25	1 (93)	22 (80)	17 (79)	17 (79)	
25+ - 30	2 (95)	2 (81)	12 (89)	12 (89)	
30+ - 50	4 (99)	17 (95)	3 (92)	3 (92)	
50+ - 75	1 (100)	5 (99)	6 (97)	6 (97)	
75+ - 100	-	1 (100)	2 (99)	2 (99)	
Over 100	-	-	1 (100)	1 (100)	
TOTAL	104	122	115	115	

TABLE III-3
FINED OFFENDER SAMPLE: COMPENSATION IMPOSED BY COURT

AMOUNT OF COMPENSATION (£)	NUMBER OF OFFENDERS			
	Capital Court	Midland Court	East Court	West Court
No compensation	83 (79)	85 (70)	74 (64)	83 (80)
1 - 3	1 (80)	2 (72)	7 (70)	-
3+ - 5	2 (82)	4 (75)	3 (73)	1 (81)
5+ - 10	3 (85)	1 (76)	3 (76)	1 (82)
10+ - 15	3 (88)	3 (78)	3 (78)	2 (84)
15+ - 20	1 (89)	4 (81)	7 (84)	2 (86)
20+ - 25	-	8 (87)	3 (87)	2 (88)
25+ - 30	1 (90)	1 (88)	3 (90)	2 (90)
30+ - 50	5 (95)	6 (93)	3 (92)	3 (93)
50+ - 75	2 (97)	3 (96)	3 (95)	2 (95)
75+ - 100	-	2 (98)	1 (96)	-
100+ - 150	1 (98)	1 (99)	1 (97)	2 (97)
150+ - 250	1 (99)	2 (100)	1 (97)	3 (100)
250+ - 500	-	-	3 (100)	-
Over 500	1 (100)	-	-	-
TOTAL	104	122	115	103

TABLE III-4
 FINED OFFENDER SAMPLE: TOTAL MONIES DUE BY CHARGE
 CAPITAL COURT

TOTAL MONIES DUE (£)	CHARGE							TOTAL
	Violence	Shoplifting	Taking and Driving Away	Other Theft	Handling	Criminal Damage		
0-30	5 (19%)	7 (34%)	1 (6%)	10 (33%)	0 (-)	0 (-)	23 (22%)	
31-60	6 (22)	4 (19)	6 (35)	7 (23)	0 (-)	2 (50%)	25 (24)	
61-90	2 (7)	3 (14)	2 (12)	5 (17)	0 (-)	1 (25)	13 (13)	
91-120	6 (22)	4 (19)	4 (24)	3 (10)	3 (60%)	1 (25)	21 (20)	
Over 120	8 (30)	3 (14)	4 (24)	5 (17)	2 (40)	0 (-)	22 (21)	
TOTAL	27 (100%)	21 (100%)	17 (101%)	30 (100%)	5 (100%)	4 (100%)	104 (100%)	

TABLE III-5
FINED OFFENDER SAMPLE: TOTAL MONIES DUE BY CHARGE

MIDLAND COURT

TOTAL MONIES DUE (£)	CHARGE								TOTAL
	Violence	Shoplifting	Taking and Driving Away	Other Theft	Handling	Criminal Damage	TOTAL		
0-30	1 (4%)	4 (13%)	2 (9%)	0 (-)	1 (17%)	0 (-)	8 (7%)		
31-60	3 (12)	9 (29)	2 (9)*	13 (46%)	2 (33)	0 (-)	29 (24)		
61-90	2 (8)	3 (10)	4 (18)	3 (11)	2 (33)	2 (20%)	16 (13)		
91-120	2 (8)	6 (19)	2 (9)	3 (11)	1 (17)	2 (20)	16 (13)		
Over 120	17 (68)	9 (29)	12 (55)	9 (32)	0 (-)	6 (60)	53 (43)		
TOTAL	25 (100%)	31 (100%)	22 (100%)	28 (100%)	6 (100%)	10 (100%)	122 (100%)		

TABLE III-6
 FINED OFFENDER SAMPLE: TOTAL MONIES DUE BY CHARGE
 EAST COURT

TOTAL MONIES DUE (£)	CHARGE							TOTAL
	Violence	Shoplifting	Taking and Driving Away	Other Theft	Handling	Criminal Damage	TOTAL	
0-30	0 (-)	1 (4%)	0 (-)	3 (10%)	2 (22%)	0 (-)	6 (5%)	
31-60	1 (4%)	8 (33)	0 (-)	9 (29)	1 (11)	3 (38%)	22 (19)	
61-90	4 (15)	7 (29)	4 (27%)	4 (13)	1 (11)	1 (13)	21 (18)	
91-120	3 (11)	1 (4)	0 (-)	4 (13)	3 (33)	3 (38)	14 (12)	
Over 120	19 (70)	7 (29)	11 (73)	11 (36)	2 (22)	1 (13)	51 (45)	
TOTAL	27 (100%)	24 (99%)	15 (100%)	31 (101%)	9 (99%)	8 (102%)	114 (100%)	

TABLE III-7
 FINED OFFENDER SAMPLE: TOTAL MONIES DUE BY CHARGE
 WEST COURT

TOTAL MONIES DUE (£)	CHARGE							TOTAL
	Violence	Shoplifting	Taking and Driving Away	Other Theft	Handling	Criminal Damage		
0-30	4 (27%)	14 (67%)	0 (-)	10 (30%)	5 (63%)	6 (32%)	39 (38%)	
31-60	5 (33)	5 (24)	0 (-)	10 (30)	1 (13)	6 (32)	27 (26)	
61-90	2 (13)	0 (-)	2 (29%)	5 (15)	1 (13)	2 (11)	12 (12)	
91-120	4 (27)	2 (10)	2 (29)	6 (18)	1 (13)	1 (13)	16 (16)	
Over 120	0 (-)	0 (-)	3 (43)	2 (6)	0 (-)	4 (21)	9 (9)	
TOTAL	15 (100%)	21 (101%)	7 (101%)	33 (99%)	8 (102%)	19 (99%)	103 (101%)	

TABLE III-8
 FINED OFFENDER SAMPLE: TOTAL MONIES DUE BY SEX OF OFFENDER AND BY COURT

TOTAL MONIES DUE (£)	SEX OF OFFENDER									
	Capital Court		Midland Court		East Court		West Court		All Courts	
	M	F	M	F	M	F	M	F	M	F
0-30	14 (17%)	9 (47%)	5 (5%)	3 (17%)	6 (6%)	0 (-)	23 (30%)	16 (59%)	48 (13%)	28 (35%)
31-60	23 (27%)	2 (11)	23 (22)	6 (33)	18 (18)	4 (27%)	21 (28)	6 (22)	85 (23)	18 (22)
61-90	9 (11)	4 (21)	12 (12)	4 (22)	16 (16)	5 (33)	10 (13)	2 (7)	47 (13)	15 (19)
91-120	18 (21)	3 (16)	14 (14)	2 (11)	12 (12)	2 (13)	15 (20)	1 (4)	59 (16)	8 (10)
Over 120	21 (25)	1 (5)	50 (48)	3 (17)	47 (47)	4 (27)	7 (9)	2 (7)	125 (34)	10 (13)
TOTAL	85 (101)	19 (100)	104 (101)	18 (100)	99 (99)	15 (100)	76 (100)	27 (99)	364 (99)	79 (99)

N.B. For East Court, information was missing for 1 offender.

TABLE III-9
FINED OFFENDER SAMPLE: AMOUNT OF TIME ALLOWED TO PAY BY COURT

NO. OF DAYS ALLOWED	NUMBER OF OFFENDERS				
	Capital Court (%)*	Midland Court (%)*	East Court (%)*	West Court (%)*	
Payment forthwith	9 (11)	1 (4)	3 (11)	2 (13)	
1-7	6 (7)	-	-	-	
8-14	21 (25)	3 (13)	7 (26)	2 (13)	
15-21	5 (6)	1 (4)	-	3 (20)	
22-28	36 (43)	5 (22)	8 (30)	4 (26)	
29-42	4 (5)	3 (13)	3 (11)	1 (8)	
43-60	3 (3)	8 (35)	2 (7)	2 (13)	
Over 60	-	2 (9)	4 (15)	1 (7)	
TOTAL	84 (100)	23 (100)	27 (100)	15 (100)	

*The percentage refers to the percentage of offenders with fixed term fines.

TABLE III-10
FINED OFFENDER SAMPLE: WEEKLY INSTALLMENTS IMPOSED BY COURT

WEEKLY INSTALLMENTS (£)	NUMBER OF OFFENDERS			
	Capital Court (%)	Midland Court (%)	East Court (%)	West Court (%)
50p		4 (4)	-	-
50p - 1.00	Imposed mainly fixed term fines	31 (32)	3 (3)	13 (15)
1.00+ - 1.50		14 (14)	12 (14)	-
1.50+ - 2.00		2 (2)	12 (14)	31 (35)
2.00+ - 3.00		24 (24)	34 (38)	16 (18)
3.00+ - 5.00		2 (2)	20 (23)	21 (24)
5.00+ - 10.00		2 (2)	4 (4)	5 (6)
10.00+ - 15.00		5 (5)	3 (3)	1 (1)
15.00+ - 20.00		-	1 (1)	-
20.00+ - 30.00		15 (15)	-	1 (1)
TOTAL		99 (100)	89 (100)	88 (100)

TABLE III-11
 FINED OFFENDER SAMPLE: TOTAL MONIES DUE BY TERMS OF PAYMENT
 CAPITAL COURT

TERMS OF PAYMENT	TOTAL MONIES DUE						TOTAL
	£0-30	£31-60	£61-90	£91-120	Over £120		
Fixed Term	21 (96%)	20 (80%)	11 (85%)	17 (81%)	15 (75%)	84 (83%)	
Installments	1 (4)	5 (20)	2 (15)	4 (19)	5 (25)	17 (17)	
TOTAL	22 (100%)	25 (100%)	13 (100%)	21 (100%)	20 (100%)	101 (100%)	

N.B. Information was missing for 3 offenders.

TABLE III-12
 FINED OFFENDER SAMPLE: TOTAL WEEKLY INCOME BY RATE OF PAYMENT
 EAST COURT

RATE OF PAYMENT (P.W.)	TOTAL WEEKLY INCOME							TOTAL
	0	£1-20	£21-40	£41-60	£61-80	Over £80		
Up to £1 p.w.	1 (17%)	1 (7%)	0 (-)	1 (5%)	0 (-)	0 (-)	3 (3%)	
Over £1 - £2 p.w.	1 (17)	4 (27)	2 (7%)	4 (18)	1 (11)	0 (-)	12 (14)	
Over £2 - £3 p.w.	1 (17)	4 (27)	3 (11)	2 (9)	1 (11)	1 (13%)	12 (14)	
Over £3 - £10 p.w.	2 (33)	5 (33)	22 (82)	14 (64)	4 (44)	5 (63)	52 (60)	
Over £10 p.w.	1 (17)	1 (7)	0 (-)	1 (5)	3 (33)	2 (25)	8 (9)	
TOTAL	6 (101%)	15 (101%)	27 (100%)	22 (101%)	9 (99%)	8 (101%)	87 (100%)	

TABLE III-13
 FINED OFFENDER SAMPLE: TOTAL WEEKLY INCOME BY RATE OF PAYMENT
 WEST COURT

RATE OF PAYMENT (P.W.)	TOTAL WEEKLY INCOME							TOTAL
	0	£1-20	£21-40	£41-60	£61-80	Over £80		
Up to £1 p.w.	0 (-)	4 (16%)	4 (22%)	3 (12%)	2 (18%)	0 (-)	13 (15%)	
Over £1 - £2 p.w.	2 (67%)	12 (48)	3 (17)	8 (32)	4 (36)	2 (50%)	31 (36)	
Over £2 - £3 p.w.	1 (33)	5 (20)	4 (22)	5 (20)	1 (9)	0 (-)	16 (19)	
Over £3 - £10 p.w.	0 (-)	4 (16)	7 (39)	9 (36)	3 (27)	2 (50)	25 (29)	
Over £10 p.w.	0 (-)	0 (-)	0 (-)	0 (-)	1 (9)	0 (-)	1 (1)	
TOTAL	3 (100%)	25 (100%)	18 (100%)	25 (100%)	11 (99%)	4 (100%)	86 (100%)	

TABLE III-14
 FINED OFFENDER SAMPLE: TOTAL WEEKLY INCOME BY RATE OF PAYMENT
 MIDLAND COURT

RATE OF PAYMENT (P.W.)	TOTAL WEEKLY INCOME							TOTAL
	0	£1-20	£21-40	£41-60	£61-80	Over £80		
Up to £1 p.w.	0 (-)	2 (12%)	5 (15%)	2 (14%)	3 (50%)	1 (20%)	13 (17%)	
Over £1 - £2 p.w.	0 (-)	5 (29)	9 (27)	7 (50)	1 (17)	0 (-)	22 (29)	
Over £2 - £3 p.w.	0 (-)	5 (29)	6 (18)	1 (7)	1 (17)	1 (20)	14 (19)	
Over £3 - £10 p.w.	0 (-)	0 (-)	2 (6)	0 (-)	0 (-)	0 (-)	2 (3)	
Over £10 p.w.	0 (-)	5 (29)	11 (33)	4 (29)	1 (17)	3 (60)	24 (32)	
TOTAL	0	17 (99%)	33 (99%)	14 (100%)	6 (101%)	5 (100%)	75 (100%)	

TABLE III-15
 FINED OFFENDER SAMPLE: PAYMENT OUTCOME BY TOTAL MONIES DUE
 CAPITAL COURT

PAYMENT OUTCOME	TOTAL MONIES DUE						TOTAL
	£0-30	£31-60	£61-90	£91-120	Over £120		
Written off	5 (22%)	5 (20%)	2 (17%)	3 (14%)	6 (27%)	21 (20%)	
Time Served	1 (4)	2 (8)	1 (8)	1 (5)	1 (5)	6 (6)	
Paid after coercive action	0 (-)	2 (8)	0 (-)	2 (10)	0 (-)	4 (4)	
Paid after collection action	1 (4)	6 (24)	4 (33)	4 (19)	4 (18)	19 (18)	
Paid without action	15 (65)	8 (32)	4 (33)	8 (38)	6 (27)	41 (40)	
Outstanding	1 (4)	2 (8)	1 (8)	3 (14)	5 (23)	12 (12)	
TOTAL	23 (99%)	25 (100%)	12 (99%)	21 (100%)	22 (100%)	103 (100%)	

N.B. Information was missing for 1 offender.

TABLE III-16
 FINED OFFENDER SAMPLE: PAYMENT OUTCOME BY TOTAL MONIES DUE
 MIDLAND COURT

PAYMENT OUTCOME	TOTAL MONIES DUE						TOTAL
	£0-30	£31-60	£61-90	£91-120	Over £120		
Written off	0 (-)	0 (-)	0 (-)	0 (-)	3 (7%)	3 (3%)	
Time Served	1 (17%)	3 (12%)	0 (-)	0 (-)	5 (11)	9 (9)	
Paid after coercive action	0 (-)	0 (-)	0 (-)	0 (-)	1 (2)	1 (1)	
Paid after collection action	2 (33)	7 (28)	7 (47%)	5 (36%)	7 (16)	28 (27)	
Paid without action	1 (17)	10 (40)	5 (33)	5 (36)	7 (16)	28 (27)	
Outstanding	2 (33)	5 (20)	3 (20)	4 (29)	22 (49)	36 (34)	
TOTAL	6 (100%)	25 (100%)	15 (100%)	14 (101%)	45 (101%)	105 (101%)	

N.B. Information was missing for 17 offenders.

TABLE III-17
 FINED OFFENDER SAMPLE: PAYMENT OUTCOME BY TOTAL MONIES DUE
 EAST COURT

PAYMENT OUTCOME	TOTAL MONIES DUE						TOTAL
	£0-30	£31-60	£61-90	£91-120	Over £120		
Written off	2 (33%)	1 (5%)	1 (5%)	2 (14%)	3 (6%)	9 (8%)	
Time Served	0 (-)	2 (9)	2 (10)	1 (7)	2 (4)	7 (6)	
Paid after coercive action	0 (-)	2 (9)	1 (5)	3 (21)	3 (6)	9 (8)	
Paid after collection action	3 (50)	7 (32)	6 (29)	3 (21)	16 (31)	35 (31)	
Paid without action	1 (17)	9 (41)	9 (43)	4 (29)	22 (43)	45 (40)	
Outstanding	0 (-)	1 (5)	2 (10)	1 (7)	5 (10)	9 (8)	
TOTAL	6 (100%)	22 (101%)	21 (102%)	14 (99%)	51 (100%)	114 (101%)	

N.B. Information was missing for 1 offender.

TABLE III-18
 FINED OFFENDER SAMPLE: PAYMENT OUTCOME BY TOTAL MONIES DUE
 WEST COURT

PAYMENT OUTCOME	TOTAL MONIES DUE						TOTAL
	£0-30	£31-60	£61-90	£91-120	Over £120		
Written off	7 (18%)	3 (11%)	3 (25%)	2 (13%)	0 (-)	15 (15%)	
Time Served	1 (3)	0 (-)	1 (8)	1 (6)	1 (11%)	4 (4)	
Paid after coercive action	3 (8)	2 (7)	0 (-)	1 (6)	0 (-)	6 (6)	
Paid after collection action	11 (29)	10 (37)	2 (17)	3 (19)	1 (11)	27 (27)	
Paid without action	15 (40)	7 (26)	2 (17)	4 (25)	3 (33)	31 (30)	
Outstanding	1 (3)	5 (19)	4 (33)	5 (31)	4 (44)	19 (19)	
TOTAL	38 (101%)	27 (100%)	12 (100%)	16 (100%)	9 (99%)	102 (101%)	

N.B. Information was missing for 1 offender.

TABLE III-19
 FINED OFFENDER SAMPLE: PAYMENT OUTCOME BY TERMS OF PAYMENT
 CAPITAL COURT

PAYMENT OUTCOME	TERMS OF PAYMENT		
	Fixed Terms	Installments	Total
Written off	18 (21%)	3 (19%)	21 (21%)
Time served	5 (6)	1 (6)	6 (6)
Paid after coercive action	3 (4)	1 (6)	4 (4)
Paid after collection action	13 (16)	6 (38)	19 (19)
Paid without action	38 (45)	3 (19)	41 (41)
Outstanding	7 (8)	2 (13)	9 (9)
TOTAL	84 (100%)	16 (100%)	100 (101%)

N.B. Information was missing for 4 offenders.

TABLE III-20

FINED OFFENDER SAMPLE: PAYMENT OUTCOME BY TERMS OF PAYMENT
MIDLAND COURT

PAYMENT OUTCOME	TERMS OF PAYMENT		
	Fixed Terms	Installments	Total
Written off	0 (-)	3 (4%)	3 (3%)
Time served	3 (15%)	6 (7)	9 (9)
Paid after coercive action	0 (-)	1 (1)	1 (1)
Paid after collection action	6 (30)	22 (26)	28 (27)
Paid without action	9 (45)	19 (22)	28 (27)
Outstanding	2 (10)	34 (40)	36 (34)
TOTAL	20 (100%)	85 (100%)	105 (101%)

N.B. Information was missing for 17 offenders.

TABLE III-21

FINED OFFENDER SAMPLE: PAYMENT OUTCOME BY TERMS OF PAYMENT
EAST COURT

PAYMENT OUTCOME	TERMS OF PAYMENT		
	Fixed Terms	Installments	Total
Written off	2 (8%)	7 (8%)	9 (8%)
Time served	0 (-)	7 (8)	7 (6)
Paid after coercive action	1 (4)	8 (9)	9 (8)
Paid after collection action	5 (19)	29 (33)	34 (30)
Paid without action	17 (65)	28 (32)	45 (40)
Outstanding	1 (4)	9 (10)	10 (9)
TOTAL	26 (101%)	88 (100%)	114 (101%)

N.B. Information was missing for 1 offender.

TABLE III-22

FINED OFFENDER SAMPLE: PAYMENT OUTCOME BY TERMS OF PAYMENT
WEST COURT

PAYMENT OUTCOME	TERMS OF PAYMENT		
	Fixed Terms	Installments	Total
Written off	3 (20%)	12 (15%)	15 (16%)
Time served	1 (7)	3 (4)	4 (4)
Paid after coercive action	1 (7)	5 (6)	6 (6)
Paid after collection action	2 (13)	23 (28)	25 (26)
Paid without action	7 (47)	24 (29)	31 (32)
Outstanding	1 (7)	15 (18)	16 (17)
TOTAL	15	82	97

N.B. Information was missing for 6 offenders.

TABLE V-1
FINED OFFENDER SAMPLE: MEANS WARRANTS ISSUED
MIDLAND AND WEST COURTS

NO. OF MEANS WARRANTS	MIDLAND COURT		WEST COURT	
	N	%	N	%
0	46	(44)	48	(47)
1	50	(48)	44	(43)
2	8	(8)	8	(8)
3	-	-	1	(1)
4	-	-	1	(1)
TOTAL	104	(100)	102	(100)

N.B. At Midland Court the information is missing for 18 offenders (i.e. 15% of total sample, n=122). At West Court the information is missing for 1 offender (i.e. 1% of total sample, n=103).

TABLE V-2
FINED OFFENDER SAMPLE: MEANS INQUIRIES HELD
MIDLAND AND WEST COURTS

NO. OF MEANS INQUIRIES	MIDLAND COURT		WEST COURT	
	N	%	N	%
0	69	(66)	79	(77)
1	20	(19)	16	(16)
2	9	(8)	5	(5)
3	3	(3)	-	(-)
4	2	(2)	1	(1)
5	1	(1)	1	(1)
6	1	(1)	-	(-)
TOTAL	105	(100)	102	(100)

N.B. The information is missing at Midland Court for 17 offenders (i.e. 14% of total sample, n=122). The information is missing at West Court for 1 offender (i.e. 1% of total sample, n=103).

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GLOSSARY OF TERMS

Administrative adjustment - modification of terms of payment set by court by fines office staff without referral to court.

Advisory Council on the Penal System - "the Wootton Committee" reported in 1970 on Non-Custodial and Semi-Custodial Penalties.

Attachment of earnings - court order specifying amount of weekly installment to be paid by named employer, by deduction ab initio from wages, on behalf of the fined offender.

Collection strategy, Fines - persuasive method, e.g. reminder letter, means summons/warrants, means inquiry, money payment supervision order.

Committal order/warrant - an order signed by the court for the arrest of an offender for committal to prison authorities for specific term of imprisonment.

Committee on the Enforcement of Judgement Debts - the "Payne Committee" reported in 1969 on the payment of civil debts.

Community Services order - a court order requiring offender to perform a certain number of hours of work to the benefit of the public/local community.

Compensation order - in addition to imposing a fine upon a convicted offender, the court may decide to award compensation for loss or damage incurred during the offense. The compensation order specifies an amount to be paid to the individual victim or to the parties incurring the loss/damage; this amount is added to the fine together with any amounts ordered to be paid for legal aid contributions or costs and the offender is liable for the total due. Compensation takes first priority over sums received.

Crown Court - court of superior criminal jurisdiction, having trial jurisdiction over offenses not triable summarily (i.e. in the magistrates' courts). Offenders may elect to be tried in Crown Court for either-way offenses in order to obtain trial by jury. Either-way offenses tried in the magistrates' courts may be referred to Crown Court for sentencing, if the magistrate considers his sentencing powers too limited in the particular case.

Day-Fine system - system of fining in which the amount of the fine is determined by reference to the offense and the means of the offender. The term was derived originally from the idea that a specific offense warrants a certain number of day units of the offender's income/yearly funds available.

Distress Warrant - warrant issued by fines office for seizure of property in lieu of payment; often executed by civilian bailiffs who auction publicly any goods seized and render the returns to the court with a percentage charge for services.

Either-way offenses - or indictable offenses triable summarily for which the offender may choose to be tried in the magistrates' court or in the Crown Court.

Enforcement strategy, Fine - embraces any coercive method of ensuring fine payment, e.g. distress, attachment of earnings, committal.

Home Office - the ministry responsible for criminal justice in the UK and, in particular, the overall functioning of the magistrates' courts.

House of Commons Expenditure Committee - in its 15th report, in 1978, the committee considered the problem of reducing pressure on the prison system.

Installment order - condition of fine payment ordered by court as a fixed amount, usually payable on a weekly basis.

Justices' Clerk - acts as general advisor on matters of law. In addition to performing oral tasks in court -- putting to the defendant questions regarding his identity, plea, etc. -- he has overall responsibility for the administrative work of the court.

Justices' Clerks' Society - national professional association of clerks to the magistrates/ courts.

Justices of the Peace - see "Lay magistrates."

Lay magistrates - justices of the peace drawn from the ranks of prominent members of the local community who receive a short training course with periodic revision. Unlike stipendiary magistrates, they may not sit alone. A bench of lay magistrates must have at least two, typically three, justices of the peace.

Legal Aid - an offender meeting the requirements of the Legal Aid means test may be granted legal aid out of public funds to pay for recognized defense expenses.

Magistrates' Court - roughly analogous to U.S. misdemeanor courts. The court of original criminal jurisdiction in England and Wales. Besides trying summary and either-way offenses in which the offender elects summary trial, it handles initially even very serious offenses, committing them to Crown Court after written or oral procedures; it also deals with certain administrative matters such as licensing, rates, etc.

Means Inquiry - an official inquiry into offender's circumstances taking place in court.

Means summons/warrant - procedure taken by fine office usually following the failure of reminder letter, to bring offender to court for means inquiry; summons issued by post, warrant issued by police.

MPSO - money payment supervision order. Usually a fines supervision officer is assigned to monitor payment; in some instances he is authorized to modify payment terms without reference to the court.

National Association for the Care and Resettlement of Offenders (NACRO) - Formed in 1966 as the national charity concerned with the care of offenders and prevention of crime.

National Association of Magistrates - professional association of the judges of the criminal courts of original jurisdiction in the English system.

Process of Fines Collection - when a fined offender fails to pay the fine within the terms specified, the usual first step taken by the Fines Office is a reminder letter. Failing this the office may resort to a means summons or warrant to bring the offender to court for a means inquiry, an official inquiry into the offender's circumstances. The summons is issued by post and invites the offender to present himself at court on a specific date. The warrant is issued to the police, who execute it either by going to the offender's home and bringing him to court or by notifying the offender that they hold a warrant to bring him to a means inquiry. Police policy concerning execution of means warrants tends to vary with caseload. (For examples of means summonses and means warrants, see Appendix B.)

Reminder letters - usual first step by fines office if offender fails to pay his/her fine within the terms ordered.

Social Enquiry Report - a report on the social circumstances of an offender, similar to the pre-sentence investigation report in the American system.

Stipendiary magistrate - professional judge of the magistrates' courts with training and experience of practice as a lawyer.

Summary offense - offense for which the offender may be tried only in the magistrates' court by a single stipendiary (professional) magistrate or a bench of at least three lay magistrates (justices of the peace): he may not elect trial by jury in the Crown Court.

Tagessatz - day unit for day fine in German system. (Plural: Tagessatze).

Term Payment - condition of fine payment by virtue of which the offender must pay the full amount by a given date/within a given period.

