
FINES

A review of the sanction, its use and operation, and
research evidence

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EXECUTIVE SUMMARY

- Criminal fines are the most common criminal sanction and account for about 75% of principal sanctions issued by courts. As a principal sanction, fines are most commonly used for relatively less serious offences where an out of court disposal (OCD) or discharge is not appropriate or possible. However, fines can also be used as a complementary sanction to another disposal - such as a community order for more serious offences.
- Research is needed to understand the most effective use of fines compared to other sanctions (e.g. community orders, compensation orders, etc.) and OCDs (including those which result in a non-criminal fine). Such research could inform guidelines and our understanding of the most suitable thresholds for each option.
- Research should seek to understand in what cases using a fine along with another disposal (such as a community order) may be more effective. Such research might usefully seek to understand sentencers and offenders' perspectives and current practices (for which there is little data).
- There is a need for the law to provide better clarity concerning the most appropriate role for criminalisation. Most notably, there could be better clarity about the relationship between criminal fines issued by courts and non-criminal fines issued by criminal justice personnel (e.g. police officers and prosecutors) by way of an OCD.
- The use of fines will have important effects on the use of other disposals such as discharges and community orders. Further data is needed to understand the complex factors that lead to a fine or another disposal being issued and the implications this has on the effectiveness of sentencing.
- In the past, defaulting on a fine frequently resulted in the next step being a custodial sentence. Today, other sentencing disposals have to be considered first, ameliorating this issue. However, currently, there is no available data on how many people default on a fine, are given another order (e.g. a community order) which they also fail to comply with, and are ultimately given a custodial sentence for what was initially a finable offence. This matter requires urgent clarification and it should also be investigated whether it contributes to the high number of short custodial sentences.
- Fines, more than any other disposal, raise questions of fairness given the socio-economic inequality in society. Without care, fines risk disproportionately punishing the poor who may suffer more from a fine of a given amount. The Sentencing Council provides crucial guidance in this respect, but it could be taken further.

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1. SCOPE OF REVIEW

This paper examines trends in the use of court-issued fines in England and Wales. It pays particular attention to the magistrates' courts as they impose the vast majority of fines, which are often used as a lower-level sentencing option for relatively less serious offences. This paper begins by setting out the background to fines and notes the purposes they may fulfil as a sentencing disposal. It also notes the complex relationship between fines and other disposal options open to the courts. Next, it details how the amount of a fine is calculated and examines issues of equality. It then looks at trends in the use of fines over time. Finally, it concludes by highlighting gaps in knowledge that require further research.

2. BACKGROUND

At various times in much of Europe, either criminal fines or imprisonment have been the predominant criminal sanction (O'Malley 2009; 2017). Today, fines are the most common disposal utilised by courts in England and Wales. Fines accounted for 75% of principal sanctions in the year ending June 2021 (Ministry of Justice 2021a, p. 7). More offenders still will receive a fine in addition to another court disposal such as a community order.

In several European countries, fines are linked to the means of the offender through what are known as "day fines" (also known as "unit" or "structured" fines). In these systems, fines are set in two stages. First, the number of days or units to be fined is determined based on the severity of the offence. Secondly, the pecuniary value of these days/units is determined based on the wealth or income of the offender. For example, Finland was the first to implement day fines in 1921 and one "day" is 50% of the offender's daily income. The effect of this is that proportionality and parity in punishment are sought through days/units to be fined rather than the absolute amount of the fine. England and Wales briefly experimented with a system of unit fines in the early 1990s but this was short-lived and they were abolished after seven months.¹ As will be explained below, the current system in England and Wales does not ignore a person's ability to pay, but it is less flexible to income or wealth than unit fines.

There are several objectives that fines as a sentencing option can seek to achieve. Section 57 of the Sentencing Act 2020 provides a selection of several functions sentences ought to achieve: protection of the public; punishment; reform and rehabilitation; reparations; and crime reduction (including by deterrence). With regard to fines specifically, the Sentencing Council advises that a 'fine should

¹ 'It was not for a lack of support of them as a pecuniary sanction that unit fines failed to take roots in England and Wales; rather, it was for a lack of political willingness to choose construction instead of destruction and resolve the faults that emerged out of their initial implementation.' (Mitsilegas and Mouzakiti 2021, p.19).

meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence'.²

Proportionate punishment and context

Providing proportionate punishment involves matching the punishment an offender receives to the seriousness of their offence and their particular circumstances. Given that offences can dramatically vary in seriousness, courts require a wide range of disposals. Fines play an important part in facilitating a punishment that fits the crime. To understand the role of fines it is worth briefly contextualising some of the lower-end responses to crime to explain where fines fit in.³

While the media often focuses on the most serious offences (such as those resulting in immediate imprisonment), these are relatively rare compared to more minor offences. Indeed, it is important to understand that for many minor offences (such as a young or vulnerable person engaging in their first instance of low-level shoplifting), even formal prosecution may be deemed unnecessary by the Crown Prosecution Service. In such a situation, an out of court disposal (OCD) may be used (see Gibson, 2021). This use of OCDs may be beneficial in several ways: such as for the efficient administration of justice, for avoiding unnecessarily criminalising people, and for managing problematic behaviours.

Where an OCD is not sufficient or appropriate then formal prosecution through the courts may be pursued. Yet, upon conviction for a minor offence, further punishment may be unnecessary, and the offender discharged.⁴ The reasons further punishment may be unnecessary will depend on the specifics of the case. However, factors may include if the offence is minor or if there are mitigating factors. Moreover, the process of being charged and prosecuted can itself be perceived of as punitive. For many offenders, the experience of being prosecuted (such as the uncertainty of the process) will be burdensome and highly stressful (Bottoms and McClean 1976). Therefore, for a minor offence with mitigating factors (such as where the offender evidence genuine remorse and is unlikely to reoffend), no punishment may be necessary to achieve penal aims.

If the case is more serious (but overall still minor), then some punishment will be required. Yet, for several reasons, disposals such as a community order or custodial sentence, may be inappropriate. Indeed, many of the crimes processed through the magistrates' courts will not justify the imposition of a community order or a custodial sentence for punitive purposes. These offences will also, given their limited seriousness, often fail to justify the expense of more onerous disposals on the grounds of effectiveness and efficiency. Indeed, a fine is among the most cost-effective sanctions since it is cheap to administer and results in tens of millions of pounds each being collected each month. Thus, it is in this area of low offence seriousness where the fine is commonly used as the main disposal. Moreover, if the offence is more serious, a fine may still be used in addition to another disposal (such as a community order) to provide a sentence better tailored to the specifics of a given case.

² <https://www.sentencingcouncil.org.uk/droppable/item/band-ranges/>. See also section 125 of the Sentencing Act 2020, which is to the effect that the amount of a fine must reflect the seriousness of the offence.

³ For simplicity we can conceptualise these responses to crime (OCD, discharge, fine, etc.) as existing in a hierarchy of punitiveness.

⁴ In 2019, 41,883 offenders received either an absolute or a conditional discharge. Ministry of Justice (2021) *Sentencing Data Tool*.

Punishment and reducing offending

Fines can be punitive in two ways. Firstly, there is the experience of being prosecuted which can be perceived as onerous. Secondly, there is the loss of income that will be detrimental. Additionally, indirectly, fines may support a reduction in reoffending by providing alternatives to disposals that may be criminogenic or associated with higher rates of reoffending. For example, short custodial sentences typically have poor outcomes in terms of reoffending compared to community orders (Hamilton 2021; Eaton and Mews 2019). If the availability of a fine helps to make a community order more likely as the main disposal (by increasing the ‘punitive bite’ of the overall sanction without the need for a short custodial sentence) then it may help reduce reoffending.

To the extent that some offences may be logical or financially motivated (such as some environmental offences being business decisions based on risk/rewards in a way that many other individual offences are not), fines tailored to the benefits accrued may support deterrent penal objectives. While the complexity of deterrence is not discussed here, it should be noted that in this regard, much would depend on the size of the fine and the causes of criminal behaviour (see Schell-Busey et al. 2016). Indeed, the use of fines for serious offences is possible. For example, while the focus here is on individuals, the use of fines for “lower-level crimes” can be juxtaposed to the use of fines for some corporate offences where the seriousness of the offence may be exceptionally high. For instance, money laundering is a serious offence that supports other offending, such as organised crime, terrorism and people trafficking. Money laundering offences can be resolved with the use of a fine such as that imposed on NatWest for £265 million for three money laundering offences.⁵

⁵ See *Regina (The Financial Conduct Authority) -V- National Westminster Bank Plc* (<https://www.judiciary.uk/wp-content/uploads/2022/07/FCA-v-Natwest-Sentencing-remarks-131221.pdf>).

3. THE USE OF FINES IN PRACTICE

In practice, the use of fines is complicated by their interaction with other disposals. Even where a fine is used as the main disposal, it can be used alongside a range of ancillary orders. Some orders are relevant to property: such as forfeiture,⁶ restitution,⁷ and deprivation orders.⁸ Some orders are relevant to problematic behaviours.⁹ Indeed, the range of orders is so wide that fines are not the only financial orders. Fines can be used alongside financial orders such as cost orders,¹⁰ compensation orders,¹¹ confiscation orders,¹² and surcharges.¹³

Using fines and ancillary orders

In order to understand the general use of each order and their interactions, it is helpful to consider the aims of each order. Notably, fines are (arguably) primarily intended to be punitive and to provide a deterrent to offending behaviours. In many cases, this will create a straightforward delineation between where a fine is useful and where, for instance, a compensation order is better suited - since although both fines and compensation orders are financial measures, the purpose of the latter is different. However, while the aims of various orders may be generally clear, in some instances the boundary between the various orders (especially financial orders) can become blurred.

The Sentencing Council advises that fines should meet ‘in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; *it should not be cheaper to offend than to comply with the law* [original emphasis]’.¹⁴ There is arguably a matter of principle in that it should not be beneficial to break the criminal law.¹⁵ However, other orders also result in the removal of gain. For instance, confiscation orders under section 76 of the Proceeds of Crime Act 2002 can be used to ‘recover the proceeds of crime and disrupt and deter criminality’. Similarly, if there is a need to provide redress, then this may be achieved through other means (e.g. compensation orders for offences such as theft, where stolen goods are not recovered, and criminal damage). Doing so would free fines to serve punitive and

6 Forfeiture orders result in ownership property being lost (the loss of title). For more information see Crown Prosecution Service (2022).

7 A restitution order allows courts to restore goods, or the value of goods, to victims from offenders. See the Power of Criminal Court (Sentencing) Act 2000, sections 148-149.

8 Deprivation orders allow courts to deprive an offender of property used to facilitate an offence (e.g. a vehicle). See the Sentencing Act 2020, sections 152-155.

9 For example, Criminal Behaviour Orders (CBOs) are designed to prevent anti-social behaviour. See the Anti-Social Behaviour, Crime and Policing Act 2014.

10 For example, to recoup wasted costs. See the Prosecution of Offences Act 1985, section 18.

11 Rather than punishment, this is intended to make the offender financially compensate the victim of a crime. See the Sentencing Act 2020, Part 7, Chapter 2.

12 Intended to make the offender pay sums related to the benefit gained from their offence. Where possible a forfeiture order is preferable. See the Proceeds of Crime Act 2002.

13 The Victim Surcharge is paid into a fund to provide victim services. See the Sentencing Act 2020, sections 42-43

14 <https://www.sentencingcouncil.org.uk/droppable/item/band-ranges/>.

15 An analogy may be made to an ‘efficient breach’ of a contract whereby the consequences of a breach cost less than adherence to the law.

deterrent aims. It is also worth considering that, although the Sentencing Council advises that fines should achieve the removal of gain, there is little evidence to suggest that they are purposely used in this way in practice.

This question of how fines interact with other orders (especially other financial orders) is taken no further here. Instead, it will simply be reiterated that the possibility of a complex interplay between the various orders means that fines are not as simple as they appear. For less serious matters, it may be more expedient simply to deal with the case via a fine rather than use multiple orders. This is particularly relevant to magistrates' courts proceedings. Sentencing hearings are usually placed in slots lasting for around twenty minutes and there is limited court time for magistrates to receive and apply advice from their legal advisers. This makes consideration of complex sentencing exercises practically difficult. Additionally, multiple orders can increase the complexity of the disposal and entail different procedures. For example, in the case of a confiscation order, this would require the case to be remitted to the Crown Court. Remitting a case is slower and more costly with implications for the justice system, victims, and offenders. As such, it may make little sense to use a confiscation order if the values are low and one order (a fine) can suffice.

How is the amount of a fine determined?

For many offences, there is a statutory limit on the amount of fine that may be imposed. However, specifying a maximum for every offence would be time-consuming and it would also make updating amounts (e.g. in line with inflation) difficult. Therefore, statutes and guidelines for specific offences often make use of external referents such as 'the prescribed sum' or 'levels'.

For summary offences in the magistrates' courts, the maximum fines are often set based on levels contained in the 'standard scale', which is set out in section 122 of the Sentencing Act 2020. For example, a speeding offence has a maximum fine of Level 3 (Level 4 if on a motorway).¹⁶ By changing the standard scale, various offences' maximum fine amounts can be updated at once. Moreover, the standard scale can also be used to ensure proportionality more easily between offences.

The current standard scale levels are shown in Table 1 below. Notably, since 2015 the level 5 maximum is no longer capped at £5,000 and references to £5,000 fines now mean an unlimited fine is possible in the magistrates' courts. However, fines imposed remain altered by considerations of the income of defendants and the seriousness of offences. The change to unlimited fines is therefore more likely to impact companies than defendants who are individual people.

¹⁶ <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/speeding-revised-2017/>.

Table 1: Maximum Fine Levels on the Standard Scale

Level	Maximum fine
Level 1	£200
Level 2	£500
Level 3	£1,000
Level 4	£2,500
Level 5	Unlimited for offences committed after 13 March 2015 (£5,000 for offences committed before 13 March 2015)

The levels of the standard scale provide upper limits, but a court will not always issue the maximum fine possible. As mentioned above, they will instead consider factors like the seriousness of the offence and the culpability of the offender and the court will decide the appropriate amount of a fine within the maximum range available. To assist in this, sentencers will follow any applicable offence specific guideline created by the Sentencing Council.

The Sentencing Council's guidelines consider fines within 'bands' that indicate an amount based on the relevant weekly income of the offender. The current bands range from 25% of the relevant weekly income (the lowest end of Band A) to 700% (the highest end of Band F).

Table 2: Fine Bands

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 - 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 - 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 - 175% of relevant weekly income
Fine Band D	250% of relevant weekly income	200 - 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 - 500% of relevant weekly income
Fine Band F	600% of relevant weekly income	500 - 700% of relevant weekly income

As an illustration, consider the offence of possessing a controlled drug. Firstly, the judge will decide what category the offence falls under. As can be seen in Figure 1, the category for this offence is based simply on the class of the drug: Category 1 for class A drugs; Category 2 for Class B drugs; and Category 3 for Class C drugs. Next, the judge will look to the guideline to determine the appropriate

starting point and the category range.¹⁷ In this instance, the starting points are a fine in either Bands A, B, or C.

Figure 1: Possession of a Controlled Drug Sentencing Guidance

Offence category	Starting Point (applicable to all offenders)	Category Range (applicable to all offenders)
Category 1 (class A)	Band C fine	Band A fine – 51 weeks' custody
Category 2 (class B)	Band B fine	Discharge – 26 weeks' custody*
Category 3 (class C)	Band A fine	Discharge – Medium level community order*

* When heard summarily, the maximum penalty is 12 weeks' custody

Where a person is convicted of possessing a Class B drug, for example, it will fall into Category 2 of the guideline. For offences in Category 2, the starting point will be a fine in Band B and mitigating or aggravating factors may suggest variation within the category range (ranging from a discharge to 26 weeks in custody). In the absence of any reason to deviate from the starting point, Band B will be selected for a fine of 100% of the offender's weekly income.

Where possible, the fine will be paid immediately. However, many offenders will be of limited financial means and in these circumstances may pay the fine in instalments: the total value of outstanding financial impositions was about £1.21 billion in the first quarter of 2021 (Ministry of Justice 2021b, p. 15). The Courts Act 2003 provides means through which fines may be collected and there is also guidance on repayment terms.¹⁸ Where payment of a fine is ordered in instalments, the fine will be a priority debt.

Equality when using fines

A key challenge that fines present concerns equality and fairness. There are two key, but related, strands to this. Firstly, it is essential that poorer offenders are not likely to receive a more severe sentence (particularly a custodial sentence) due to their lesser ability to pay a fine. This is not only fundamental to rule of law values but also acknowledged in the guidance for fines: 'care must be taken to ensure that the overall sentence is proportionate to the seriousness of the offence and that better off offenders are not able to 'buy themselves out of custody'.¹⁹

Second, it is important that fines do not disproportionately punish those with fewer resources. This is a persistent limitation with fixed fines and raises debates about how the proportionality of punishment is to be assessed (Kantorowicz-Reznichenko 2021). For court fines, there is some guidance on how to approach fining offenders on low incomes and some protection is provided by

¹⁷ <https://www.sentencingcouncil.org.uk/offences/crown-court/item/possession-of-a-controlled-drug-2/>

¹⁸ <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/12-payment/>.

¹⁹ <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/11-imposition-of-fines-with-custodial-sentences/>.

the assessment of the relevant weekly income.²⁰ However, some offenders receive very little and sometimes no income, as they may be unemployed and have no recourse to benefits. For this, the assessment of relevant weekly income provides little effective assistance as the defendant simply has no means to pay the fine. Further research is needed into how such cases might be dealt with but, in theory, two challenging possibilities exist.

Firstly, a defendant who cannot pay may be given another disposal such as a community order or discharge and this is problematic from the point of equality. A discharge may mean the offender who cannot pay receives inadequate punishment compared to what the judge determines is appropriate. By contrast, a community order may mean that the poor offender receives more punishment than a wealthier offender - given fines are conceived of as less severe punishments than community orders. The second possibility is that the offender is given a fine anyway even though they cannot pay. This risks either the defendant defaulting on payment and being brought back to court or them having to rely on other means to provide them with sufficient funds which may create its own issues (such as borrowing the money). If offenders lack means then a fine arguably sets them up to fail and also uses more court time if the offender has to return for the court to deal with the non-payment. Consequently, while there is guidance on the use of fines for those on a low income, the issues related to the fair use of fines are among the most challenging. Indeed, further guidance for those with virtually no income may be warranted to ensure consistency in dealing with the above issues.

A final issue to note with equality concerns the punitive effect of a fine when offenders are of different means. For example, would it be proportionate to fine both a person living in absolute poverty and a person with £200 million each £50 for the same offence? On the one hand, the answer is yes since the offences are the same and merit the same punishment. On the other hand, the answer is no since the impact of the £50 fine on each offender is so dramatically different. There are no easy answers to this question. The day/unit fines, noted above, are commonly used in Europe and more directly tailor the fine to the wealth of the offender with fewer restrictions on upper limits. This approach to fines can mean that especially wealthy offenders receive fines far in excess of what the average person would receive. In England and Wales, while speeding fines can be a percentage of weekly incomes, for example, the current maximum fine is £1,000 (£2,500 if driving on a motorway) regardless of the wealth of the offender.

It has been suggested that the use of fines based on days/units could enable them to be used more extensively in order 'to replace some of the more repressive sanctions and to increase the fairness of the criminal sentencing system' (Kantorowicz-Reznichenko and Faure 2021, p. 381). However, while acceptable in much of Europe, in England and Wales whether the day/unit fine violates or ensures equity in punishment is debated. Indeed, as noted above, England and Wales briefly implemented a system of unit fines in the 1990s. Additionally, the links between offending and socio-economic deprivation mean that many offenders are likely to be of limited means and so, in many cases, there is less often a need for theoretically higher fine amounts.²¹

²⁰ <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/5-approach-to-offenders-on-low-income/>.

²¹ Summary motoring offences may be somewhat different. By virtue of motoring the person is more likely to own a vehicle and, therefore, have sufficient income to own a vehicle.

In sum, part of the reason fines are such a challenge is that they can reflect pre-existing economic inequalities that exist within society and the potential for disparate impacts raises pivotal questions. There remains an unresolved tension with fines in terms of equality and how proportionality in punishment ought to be conceptualised. Should an offence justify a specific quantum of fine, or should the quantum of the fine be based on achieving a specific impact on the offender? This tension is especially acute in the context of fines given pre-existing economic inequalities in society.

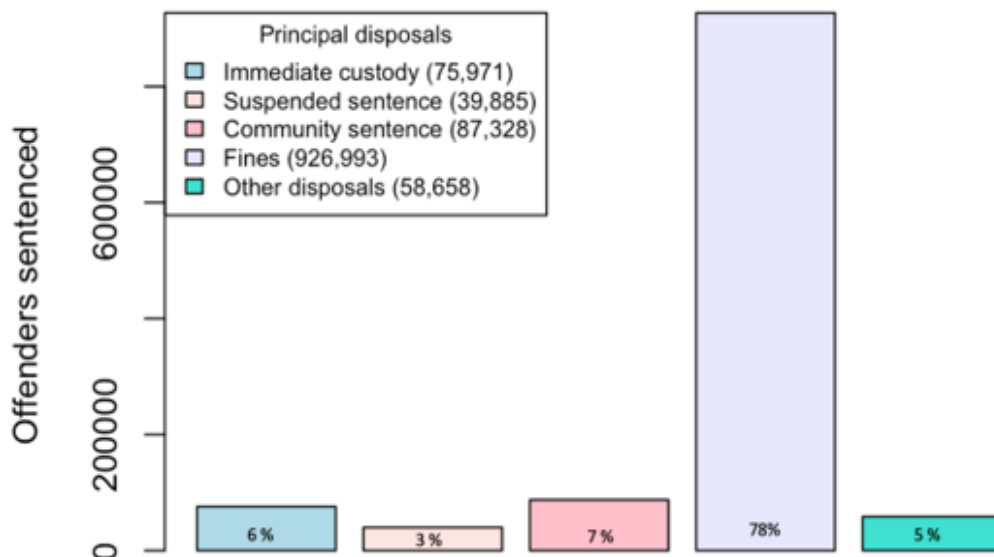
Trends in use of fines

This section examines the empirical data on the use of fines in England and Wales. Four key factors to consider are the proportions of cases attracting a fine as the principal sentence over time; the use of fines in the magistrates' courts and the Crown Court; the types of offences attracting fines as the principal sanction; and the value of fines imposed over time when used as the principal sentence.

The proportion of cases attracting a fine over time

Figure 2 provides an overview of the relative use of the principal sanctions across all courts in the most recent year before the COVID-19 pandemic. As can be seen, of the 1,188,835 offenders sentenced in 2019, 78% received a fine as the principal disposal.

Figure 2: Use of the Principal Sanctions, 2019, all courts²²



Comparing Figure 2 with Figure 3 reveals that the dominance of fines as principal sanctions has changed little since 2002, when 69% received a fine as the principal sanction. Therefore, while fines accounted for a smaller proportion of all disposals in 2002 than in 2019, fines were still by far the

²² Source: Table Q5_1 Overview tables, Criminal Justice Statistics Quarterly December 2019; Ministry of Justice Statistics.

most common disposal. The data might also suggest some relationship between trends in the use of fines and trends in the use of community orders, which have declined over this period.

Figure 3: Use of the Principal Sanctions, 2002, all courts²³

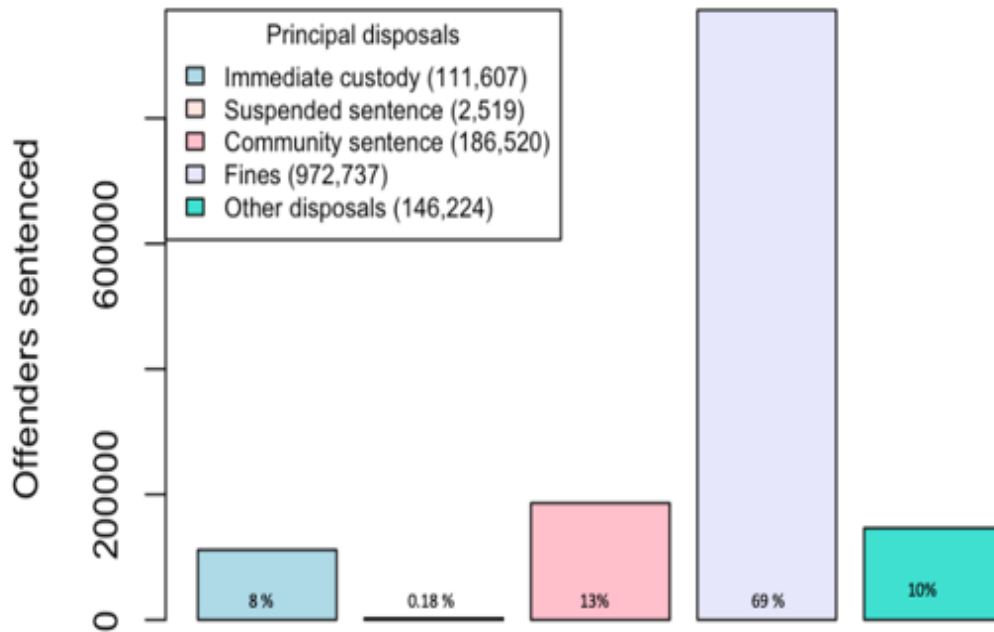
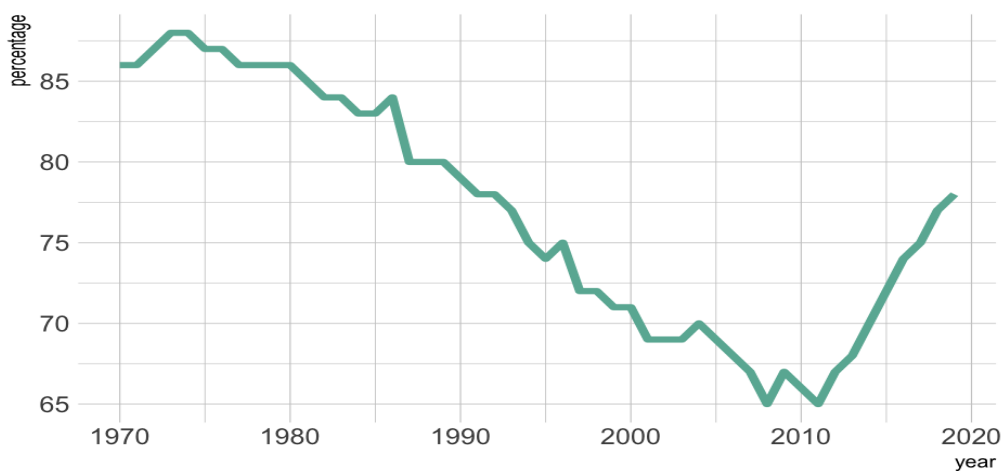


Figure 4 summarises the use of fines across all courts over the period 1970 to 2019. This reveals significant trends concealed in the comparison made between Figure 2 and Figure 3. As can be seen, the percentage of cases attracting a fine decreased steadily over the period 1975 to 2010.

Figure 4: Percentage of all cases attracting a fine as the principal sanction, 1970-2019²⁴



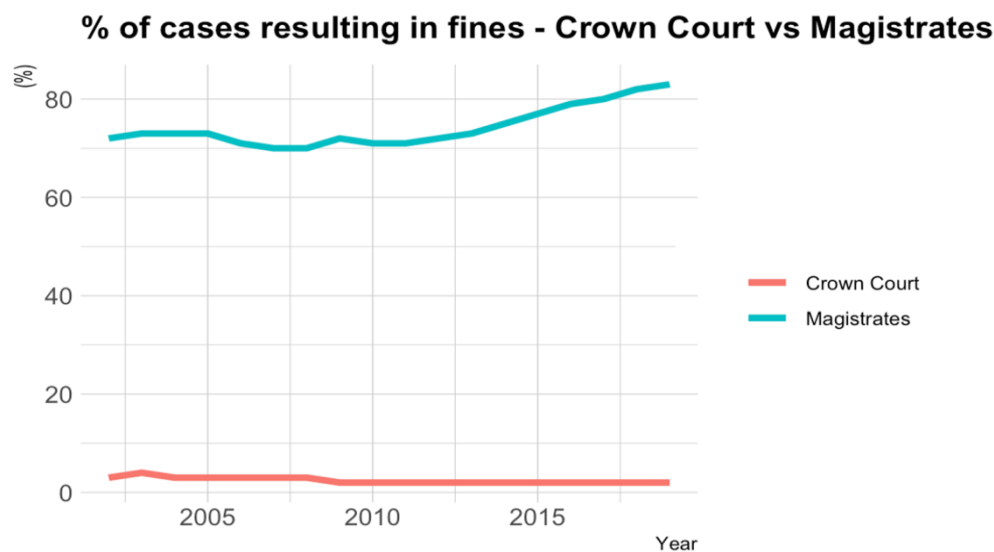
²³ Source: Table Q5.1 Sentencing tables, Criminal Justice Statistics Quarterly December 2012.

²⁴ Source: Table A1.1 Overview tables, Criminal Justice Statistics Quarterly December 2013; Table Q5_1 Overview tables, Criminal Justice Statistics Quarterly December 2019; Ministry of Justice Statistics.

Use of fines in the magistrates' courts

As would be expected, fines are most common in the magistrates' courts and are only rarely imposed as the principal sanction in the Crown Court. Reviewing the Ministry of Justice overview tables shows that between 2002 and 2019, a fine was imposed as the most severe sanction in less than 5% of Crown Court cases every year. In the magistrates' courts, a fine was imposed in 83% of cases in 2019. Although the percentage of cases resolved by a fine was stable over the period 2002 to 2012, this rose from 73% in 2013 to 83% in 2019 (see Figure 5).

Figure 5: Comparative use of fines as the principal sanction, Crown Court and magistrates' courts, 2002-2019



From the data, it is clear that fines are the dominant disposal. It is also clear that the number of fines as a principal sentence is driven by cases in the magistrates' courts. However, courts can impose multiple sentences for a given case. For example, an offender who has been assessed as not being suitable for unpaid work or a curfew may receive a fine as well as a community order. Where multiple sentences are imposed, the most severe will be the principal disposal. Therefore, fines are likely to be a key component of even more sentences than this data suggests.²⁵

Types of offences attracting fines

Table 3 lists the 10 offence categories attracting the highest volumes of fines in 2019. As can be seen, the use of fines is highest for summary offences. The figures today in England match those commented on by O'Malley in 2009 and it is still the case that 'by far and away the largest single class of such 'technical' offenders fined consists of motorists' (O'Malley 2009, p. 73). This makes sense, as many motoring offences, such as speeding and driving otherwise than in accordance with a licence carry a fine as the maximum penalty. It appears to be a consistent trend, in multiple jurisdictions, that fines are most prevalent for summary offences - especially summary motoring

²⁵ Data on the use of fines as an ancillary sentence option or as a disposal where there are multiple charges is more limited. See Ministry of Justice (2021c, pp. 13-14). 'A Guide to Criminal Justice Statistics', 13-14.

offences. Table 3 also shows that even a proportionally small change in the use of fines will affect a large number of cases.

Table 3: Ten offence categories attracting highest percentage of fines, all courts, 2019²⁶

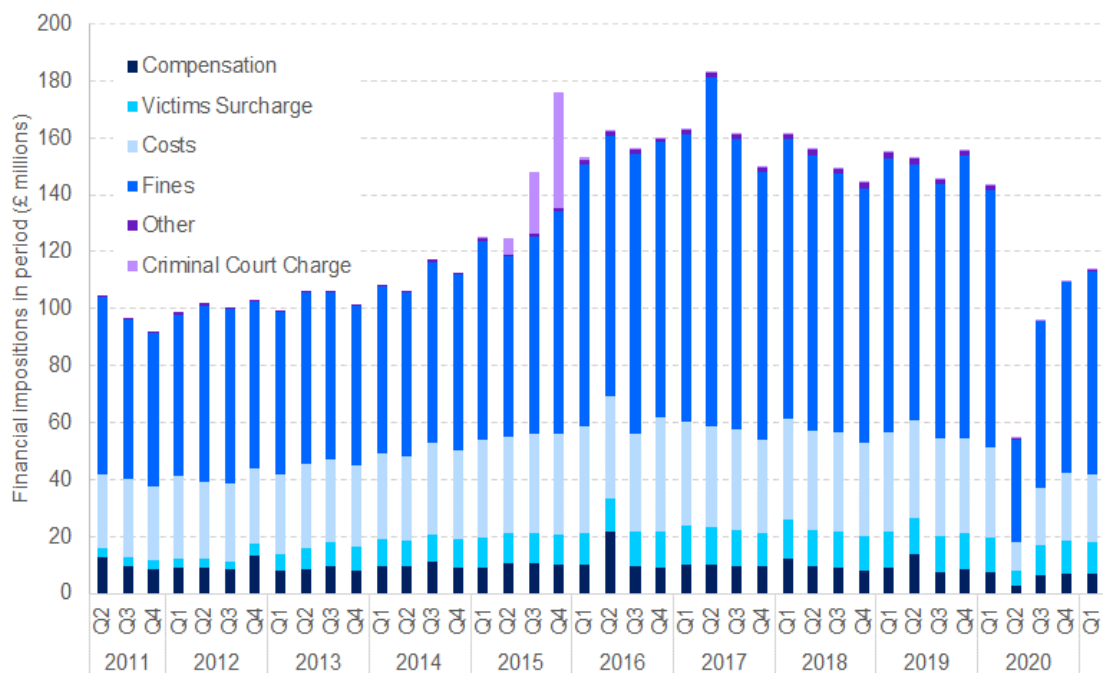
Offence Category	Number of cases receiving a fine	Percentage of cases receiving a fine
Summary motoring	502,789	95%
Summary non-motoring	380,941	85%
Drug offences	14,457	38%
Theft offences	7,747	14%
Miscellaneous crimes against society	4,583	20%
Violence against the person	3,714	11%
Public order offences	2,856	18%
Fraud	703	10%
Possession of weapons	456	3%
Criminal damage and arson	121	8%

Value of fines imposed over time

Figure 6 shows that fines account for most of the financial impositions made by the courts. The total value of financial impositions issued in the first quarter of 2021 was £114m. Of this total, 63% (£71.4m) were fines. This figure was a significant increase over the second quarter of 2020 when £54m of financial impositions were made. However, disposals in the magistrates' courts and the Crown Court were much lower than normal during this quarter due to COVID-19. As the number of disposals increases so too do the number of financial impositions imposed, which are primarily fines. From the available data, it remains to be seen whether the total value of fines imposed will return to pre-pandemic levels, remain lower, or increase. Regardless, the value of fines imposed is significant.

²⁶ Source: Table Q5_3 Overview tables, Criminal Justice Statistics Quarterly December 2019; Ministry of Justice Statistics.

Figure 6: HMCTS management information: Financial impositions by imposition type, England and Wales, Q2 2011 – Q1 2021²⁷



How do fines relate to the use of imprisonment?

Whatever the relationship between fines and imprisonment might be, it is likely complex. In practical terms for normal cases, the use of a fine as the main disposal will normally be in cases very different to those attracting a custodial sentence since the latter ought to be serious. However, there are some matters worth drawing attention to.

Even with the possibility of a repayment period and consideration of a person's means, offenders may fail to pay a fine.²⁸ Most fines, and other financial orders, are enforced in the magistrates' courts which must deal with defaults. In the Crown Court, the court will make a 'term in default order' with a fine.²⁹ This is the term to be spent in prison if the fine is not paid. Therefore, in law, provision is made for some equivalence between fines and custodial sentences. The maximum terms are set out in the table below.

²⁷ Source: Criminal Court Statistics Quarterly: January to March 2021, p. 14. Ministry of Justice statistics.

²⁸ If an offender is unable to pay (e.g. due to financial circumstances) then the court may remit the fine (Magistrates' Courts Act 1980, Section 85(4)).

²⁹ A term in default order is required by section 129 of the Sentencing Act 2020.

Table 4: Term in Default Maximums

Amount of sum		Maximum term
More than	Not more than	
	£200	7 days
£200	£500	14 days
£500	£1,000	28 days
£1,000	£2,500	45 days
£2,500	£5,000	3 months
£5,000	£10,000	6 months
£10,000	£20,000	12 months
£20,000	£50,000	18 months
£50,000	£100,000	2 years
£100,000	£250,000	3 years
£250,000	£1,000,000	5 years
£1,000,000		10 years.

While the magistrates' courts will not normally fix a custodial term to be served in default,³⁰ provisions remain that enable the courts to imprison upon default on a fine in certain circumstances. This may occur where, for example, the court is satisfied that the default is due to the offender's wilful refusal or culpable neglect, and the court has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful.³¹ Imprisonment may also occur where the offender has the means to pay and the initial offence was punishable by imprisonment,³² or where the offender is already serving a custodial sentence.³³ Schedule 4 to the Magistrates' Courts Act 1980 sets out maximum custodial periods for a given amount of a fine default. These periods are the same as those found in section 129 of the Sentencing Act 2020 up to £10,000.

In the past, fine defaults directly leading to imprisonment were much more common, however 'the volume of offenders imprisoned for defaulting on a fine decreased by 94% between 1995 and 2002' (Ministry of Justice 2018, p. 19). Today, imprisonment on default of a fine is seemingly far less common (Mitsilegas and Mouzakiti 2021). Indeed, prison receptions for fine defaults have continued to decrease from 462 in 2015 to 118 in 2019 and 57 in 2020.³⁴ There are a few reasons for this. First, *Cawley*³⁵ emphasises the need to consider all other disposals and section 82(4) of the

30 Magistrates' Courts Act 1980, sections 82(3) and 77(2).

31 Magistrates' Courts Act 1980, section 82(4)(b).

32 Magistrates' Courts Act 1980, section 82(4)(a).

33 Magistrates' Courts Act 1980, section 82(3).

34 Offender Management Statistics Quarterly: October to December 2020, 'Prison Receptions: 1990 to 2020', Table A2.1i. Ministry of Justice statistics.

35 *R v Oldham Justices, Ex p Cawley* [1997] QB 1 (noting that reasons must be given why no method other than prison was appropriate). See also *Norwich Magistrates' Court, ex parte Lilly* (1987) 151 JP 689 (noting the need to consider all other methods of enforcement).

Magistrates' Courts Act 1980 requires all other methods of collecting a fine to be tried. Secondly, though a default may be a serious matter, section 230 of the Sentencing Act 2020 requires that before a custodial sentence is issued, the offence must be 'so serious that neither a fine alone nor a community sentence can be justified for the offence'. Given these criteria, it would, in principle, appear far more likely that another fine or a community order³⁶ would be appropriate on default of most fines.

Yet, a key gap in the present data is that we do not know how many people default on a fine, are given another order that they fail to comply with, and are then imprisoned. This would not be captured under the prison receptions data noted above. Unfortunately, while the Ministry of Justice holds this information, it has not chosen to publish it. Moreover, as the data is held by virtue of court records it is deemed to have an absolute exemption from the Freedom of Information Act 2000 under section 32. This means that no public interest considerations apply, and this key question remains unaddressed. Additionally, beyond Freedom of Information Act restrictions, depending on how the data is held and in what format, it may be difficult to extract and require a researcher's time. Therefore, there is still a key gap and we do not have any meaningful insight into this question.

4. CONCLUSIONS AND RESEARCH QUESTIONS

Fines are the most common criminal sanction imposed in England and Wales. They are often used as the main sentence where something further than an OOC or discharge is required. For less serious offences, or those with mitigating factors, fines can achieve penal aims and ensure that punishment is commensurate with the seriousness of the offence. For more serious offences, fines can also be combined with other disposals, such as community orders, to provide more precision when setting the severity of the sentence. In both these cases, fines can also make more efficient use of the justice system's resources while achieving penal aims.

However, given the prevalence of fines and the varied ways they can be used, making better use of them could have a number of advantages for the criminal justice system. There are several research questions that should be addressed to help ensure the best use of fines.

Understanding the appropriate scope of *criminal* sanctions

What the law considers criminal and how it responds are two important decisions. While, to a large extent, these are political decisions not made by sentencers, they are important – especially for less serious offences. Of particular relevance here is that we need to better understand how criminal fines interact with OOCs, which are not *criminal* sanctions but may still be regarded as a sanction of sorts.

This paper has highlighted uncertainty over the purpose of fines and how they interact with OOCs. Indeed, the distinction between criminal and non-criminal measures becomes even more

³⁶ Although it may be problematic if an offender 'fails to express willingness' to comply with a community order. See Section 230(4) and 230(5) of the Sentencing Act 2020.

indeterminate when considering financial OOCDS. Notably, many fines will be for minor offences and their use can overlap with financial OOCDS (e.g. Fixed Penalty Notices, and Penalty Notices for Disorder).³⁷

More effort in research and policy thinking is needed to explicate the appropriate relationship between these criminal and non-criminal measures. This would enable law and guidance to provide better conceptual clarity and consistency regarding the proper purpose(s) of criminal and non-criminal fines. This need is not only driven by theoretical concerns but pragmatic ones. Given that fines entail criminalisation and criminal records in a way that OOCDS do not, there are real practical implications for the effects on people's lives. Consideration should also be given to defendants on low or no income regarding whether they can realistically pay fines that are imposed. It is questionable whether the allowance for varying fines based on defendants' income is enough to counter this issue and the economic hardship, reoffending, and use of court time that may result from it.

Understanding equality concerns

While the law endeavours to treat everyone fairly, inequality in society is a challenge. While this challenge is not exclusive to financial sanctions, fines most evidently reflect socio-economic positions in a way that, for example, custodial sentences do not. Whilst there is guidance for fining those on low incomes, this could go further to provide clarity concerning those with virtually no income. It would also seem beneficial if there were greater empirical evidence concerning the use of fines on those with low income focused on what sentencers do in practice and how offenders react (e.g. how they may attempt to secure the funds). While there are no easy answers, there is at least merit in transparency and ensuring consistency.

Understanding how to best use fines and OOCDS in practice

Further evidence is needed concerning when fines are more effective in achieving penal aims such as punishment or rehabilitation compared to other disposals. In some cases, a fine may be a lighter touch than a community order but achieve penal aims while saving the justice system the resources a community order expends.

Additionally, more research is needed on how fines can be best used as a complementary order - such as when they are attached to a community order. Fines can be used to add an additional punitive bite to community orders or suspended sentence orders. In this way, the option of a fine may help improve the effectiveness of community orders or other disposals.

To achieve an improved understating of how fines can be best used, more empirical data on the current use of fines and the rationales sentencers have for using (or not using) a fine would be a prudent first step.

The high use of financial OOCDS during the pandemic (especially for COVID-19 offences) was noteworthy (see National Police Chiefs' Council, 2021). Certainly, most COVID offences were dealt with by OOCDS and, emphasising links between OOCDS and fines that are worth examining, fines were by far the most common disposal following successful prosecutions for COVID-19 offences

³⁷ For more details on OOCDS, see Gibson (2021).

(99% of those convicted received a fine and the average value was £374) (Ministry of Justice 2021d, p. 5).

In conclusion, considering the high prevalence of the use of fines in England and Wales, comparatively little attention has been paid to who receives fines, why they receive a fine rather than another disposal, and what effect being fined has on future behaviour.

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