Enforcement, extension, and entanglement:

Punishing non-payment of financial penalties in Scotland

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Abstract

Taking the neglect of fines and financial penalties within contemporary criminological research as its starting point, this thesis examines fines enforcement as a distinct part of financial punishment processes in contemporary Scottish criminal legal practice. Using empirical evidence from 9 qualitative interviews with practitioners working in community justice in Scotland, this study offers evidence of the processes, practices, and outcomes of fines enforcement action.

The findings indicate that, for those who cannot pay, fines enforcement can involve an extended entanglement with the criminal legal system that can produce significant barriers to progress for those subject to fines enforcement action and/or living with unpaid financial penalties. Contextualising these findings within 40 years of policy and practice developments in Scotland, this thesis demonstrates how different and conflicting principles concerning the nature and purpose of non-custodial alternatives in Scotland have produced a fractured subfield where fines enforcement appears to undermine the goals of community justice.

This project contributes to a wider international resurgence in critical criminological research concerning of fines, financial penalties, and financial punishment, providing an up-to-date account of practice in Scotland and demonstrating how findings can be used to inform theorisation about the role of fines enforcement in contemporary legal systems – especially in systems where decarceration and progressive alternatives are promoted as central and formative principles of criminal legal practice.

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This thesis is dedicated to Dr James Cullen, and to Alma Cullen.

Author's declaration

I declare that, except where explicit reference is made to the contribution of others, that this thesis is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

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Signature: -

List of abbreviations

ASB-FPN	Anti-Social Behaviour Fixed Penalty Notice
COPFS	Crown Office & Procurator Fiscal Service
CPO	Community Payback Order
DWP	Department of Work and Pensions
FEO	Fines Enforcement Officer
FPN	Fixed Penalty Notice
SCTS	Scottish Courts & Tribunals Service
SJR	Summary Justice Reform

Introduction

Paradoxes and problems in fines research

The phrase 'much used…little studied' (Young 1987, 2) has become a type of recognisable trope to summarise the paradoxical nature of mainstream criminology's general disinterest in fines and financial penalties. Though a large proportion of punishment taking place in the criminal legal systems of the Global North[1](and, especially, Europe, the United States, and Australia) is financial, considerations of the nature, role, or outcomes of fines and financial penalties remain rare, scattered, and poorly integrated into the mainstream criminological canon. Young (ibid.) argues that the concepts of money and punishment ''turn away' from each other; they face away from each other like strangers.…', with the recognition of criminology's neglect of fines and financial penalties appearing as a standard feature in most accounts that engage with the topic. Addressing this estrangement is necessary for a number of reasons – firstly, because descriptions of contemporary criminal legal practice remain partial (and, in some cases, inaccurate) when a diverse and robust body of evidence is lacking. Where practice might change, evolve, and expand, the ability of research to explain and analyse these changes in practice remains static and out of date.

Secondly, and more importantly, lack of representation and integration of evidence about fines and financial penalties from across the various factions that constitute broader field of criminology has pushed fines and financial penalties to the margins of punishment research – even within critical traditions that have sought to critique the purpose, operations, and consequences of criminal legal power, and ways in which the structures of the criminal legal system often disproportionately impact already marginalised groups and communities. The result of this 'relative neglect of the obvious is a sociology of punishment constructed largely in ignorance of the type of punishment most in use' (Young 1992, 432) is that there are very few conceptual or theoretical frameworks offered by criminology to explain, articulate, or analyse how fines and financial penalties work to produce punitive effects. When criminology 'talks' about punishment, it is very unlikely that consideration of fines and financial penalties are included within influential theories of

1 Following on from Kaba (2021) and Campbell's (2022) critiques of the commonly used term 'criminal justice system', this thesis uses the term 'criminal legal system' in place. Occasionally, 'criminal justice' will be referred to – primarily in response to how systems, institutions, and individuals self-describe their operations/work.

punitive practice and penal power – even though fines and financial penalties typically represent the most common and prevalent forms of punishment taking place in contemporary criminal legal systems.

Underpinning this fundamental paradox at the heart of criminology's conceptualisation of punishment (Young 1987) is the 'problem of fines and inequality' (Munro and McNeill 2010, 219). For as long as there have been debates about the purpose of punishment, policymakers, reformers, and (proto) criminologists have recognised and accepted that fines are inherently unfair when disparities in ability to pay are not adequately addressed. Nonetheless, repeated acknowledgement has done little to unsettle the prevalence of fines and financial penalties in practice. A lack of scrutiny – academic or otherwise – brought to bear on the processes and practices taking place throughout the criminal legal system has allowed a set of assumptions about the nature and outcomes of being exposed to fines and financial penalties to remain broadly unchallenged.

This does appear to be slowly changing, primarily through the work of international scholars who are using empirical evidence to articulates the experience and impacts of punishment via financial deprivation, often from the perspectives of those subjected to it (see Boches et al. 2022; Gålnander 2023; Harris 2016; Harris et al. 2010, 2022; Pattillo et al. 2022; Todd-Kvam 2019). This work challenges and critiques many of the dominant narratives surrounding fines and demonstrates the unseen punitive consequences of financial punishment. International research is making significant contributions to the study of fines and financial penalties but, even whilst as there appears to be a growing interest internationally, fines research remains poorly integrated into critical criminological debates about criminalisation, punishment, and the role that the criminal legal system plays in reproducing and enforcing existing forms of oppression.

Academic research risks supporting problematic processes of socialisation when it participates (knowingly or not) in the proliferation of grand narratives about the social world that do not adequately and equitably show the range of ways in which domination, control, and deprivation are achieved (hooks 2000). What underpins the work undertaken in this thesis is not purely a drive to understand and explain neglected and overlooked forms of punishment and their outcomes and impacts. This thesis (as well as this researcher's continuing preoccupation with fines and financial penalties) is driven by concerns about the representational power of academic research and the role that it can play in both reproducing, and challenging, existing models of the social world. Decisions

about which stories to tell, and why, should not be considered abstract and conceptual and, instead, can have significant consequences in the social world. Especially when academic research is presented as neutral, expert, and objective knowledge, and used as a touchstone for specific practices and ways of seeing and knowing the social world. When there are some stories that criminology *chooses* not tell, or to tell inaccurately, partially, or without attempt to adequately contextualise, there remains a substantial risk that research becomes complicit in harmful practices taking place within the criminal legal system.

To begin to craft a more critical approach to fines and financial penalties, this thesis conceptualises the 'exchange or enforced deprivation of resources as a way of paying for harms done' (Young 1987, 8) as a *process* of financial punishment, rather than simply engage with fines and financial penalties as static and fixed entities. The imposition of a fine or financial penalties is understood as producing a set of events that surround an exercise of power – an enforced exchange or deprivation. Within this framing, the purpose of this thesis is to develop and analyse data that specifically engages with the processes of financial punishment that affect those who cannot pay fines and financial penalties, and to provide an account of what happens in these situations. As such, this thesis treats the problem of fines and inequality as a starting point for developing accounts of contemporary practice, rather than a taken for granted feature of the design of many systems of financial punishment. The question of what happens in the case of non-payment is the broader structuring concern of this thesis, acknowledging from the outset that there are, potentially, different versions and experiences of the effects of financial punishment and that these are, primarily, decided by someone's ability to pay.

This framing of the dynamic of financial punishment re-orients ways in which the punishment effects of fines and financial penalties might be articulated, asserting that the imposition of a fine and financial penalty might represent *the start* of an interaction with the criminal legal system, rather than *the conclusion* of a punishment process that results in the imposition of a fine or financial penalty. Analysing what is taking place throughout this interaction might then help to develop more nuanced and informed descriptions of the outcomes and impacts of fines and financial penalties for those who cannot pay them. This, in turn, might allow for evaluation of the ways, and extent to which, contemporary criminal legal systems have meaningfully engaged with the problems of fines and inequalities. Additionally, framing financial punishment as a (potentially differential) process offers opportunities to examine whether the punitive effects of fines and financial penalties are purely financial, or if, perhaps, the nature of the financial punishment process

produces other punitive outcomes – ones that are under-acknowledged in research and, in some cases, under-considered in policy and practice design and evaluation.

Equally, whilst some of the most influential and formative earlier theorising on fines and financial penalties has been based on research in the United Kingdom (Bottoms 1983; Carlen and Cook 1989) and – importantly for this project – in Scotland, (Duff, 1993; Young 1987, 1999), the 'new school' of critical empirical research has yet to fully make its mark on criminology in the UK. With prisons in Scotland currently at a 'crisis point' (The Scottish Parliament Public Audit Committee 2024, 32) of overcrowding, and prisons in the rest of the UK in a 'profound state of crisis' (Rowland 2024), there is an urgent need for proactive evidence concerning the range of non-custodial alternatives that may be co-opted into policy and practice, and offered as emergency responses to bring down prison populations. Further, whilst the urgency of these crises might be presented as sudden and emerging, the role that fines and financial penalties play as non-custodial alternatives is little recognised or considered in current debates about the purpose and nature of punishment in the UK. Nor is it included in more pragmatic political and rhetorical discussion about reforms to the criminal legal system.

Awareness of an international resurgence of critical criminological approaches to fines and financial penalties is a key inspiration for the research project. International research provides a basis upon which to design and plan the empirical element of this thesis which, at its most fundamental level, provides evidence of contemporary practice that is sorely needed – especially at a time when non-custodial alternatives may increasingly be offered as a 'solution' to prison crises in the UK. Whilst this thesis purposefully and carefully engages with the socio-economic, political, and penal context of Scotland, its focus on evaluating fines and financial penalties and financial punishment as part of a broader field of non-custodial alternatives has implications for criminal legal practice in the UK and internationally.

Financial punishment processes and fines enforcement practices

To understand processes of financial punishment affecting those who cannot pay, this thesis orients focus onto how the 'enforced deprivation of resources' (Young 1987, 8) that characterises the operations of financial punishment is achieved. Namely, this thesis engages specifically with how criminal legal systems attempt to 'recover' or 'collect'

outstanding amounts and, especially, the 'measures, procedures and sanctions have been introduced in response to long-standing problems of default and low recovery rates' (Quilter and Hogg 2018, 12), now known as fines enforcement. Engagement with fines enforcement assists in conceptualising the effects of financial penalties on those who cannot pay, as exposure to enforcement action is exclusively a result of non-payment. A focus on fines enforcement also brings this research in line with calls in contemporary international fines scholarship to recognise that the,

> 'administrative character [of fines enforcement action] has sheltered them from public scrutiny at the same time as it often renders them peculiarly insensitive to the hardships imposed on the vulnerable.' (ibid.)

Whilst there is increasing recognition of engagement with fines enforcement action as a way of uncovering the 'more hidden, arcane domains of administrative practice under novel enforcement systems that produce their own punitive effects' (ibid., 17), there are significant issues with the accessibility and consistency of data concerning fines enforcement action and measures of its effects on those exposed to it (ibid., 12). This data issue affects both quantitative and qualitative measures, for, whilst sparse quantitative data is available, much of it is almost impossible to contextualise without additional qualitative detail. This lack of evidence belies the soaring growth of fines and related financial penalties since the 1980s, and the 'growing reliance on out-of-court, infringement or penalty notice provisions as an alternative to criminal prosecution for a constantly growing number of offences' in many criminal legal systems (ibid., 12). Whilst large reforms and changes to the ways in which fines and financial penalties operate are 'generally assumed to be benign because they effectively remove imprisonment as an option in the event of default' (ibid.), Quilter and Hogg point out that there is little evidence, academic or otherwise, to substantiate the impact of these changes on those coming into contact with the criminal legal system (ibid.).

Consequently, in criminal legal systems that rely heavily on a range of financial penalties, and on fines enforcement as a way of administering financial punishment, there is a clear gap in available evidence about the operations, nature, and outcomes of these methods. Quilter and Hogg's description of the development of fines enforcement models is, in many ways, is a mirror image of developments in Scottish criminal legal policy and practice since the 1980s, where, as this thesis will show, a focus on fines enforcement has become characteristic of financial punishment within Scottish criminal legal policy and practice. So, whilst this thesis sets out to provide an empirically-informed account of the

development and current operation of financial punishment and fines enforcement in Scotland, doing so will enhance the work of fines scholars internationally. Whilst existing comparative accounts of practice and histories of punishment have included greater consideration of fines and financial penalties (Faraldo-Cabana 2019, 2020; O'Malley 2009; Quilter and Hogg 2018), these have, so far, not engaged with Scotland's particular penal context. They have also only minimally engaged with the role that scholarship from Scotland played in developing early and influential accounts of fines and financial penalties and issues surrounding enforcement (Young 1987, 1989, 1999).

Research aims

Whilst there have been large scale accounts of the development of the fine in other jurisdictions (Faraldo-Cabana 2019), work undertaken in Scotland to trace the changes and developments in policy and practice is currently out of date (Munro and McNeill 2010). This thesis aims firstly to provide a comprehensive, up-to-date, and critical overview of policy and practice in Scotland. This overview will refer specifically to developments in the last 20 years, demonstrating how punishment for non-payment of financial penalties has changed since the 1980s and examining how closely aligned this is to wider developments in Scotland's penal field. By providing this type of overview, the work of this thesis situates fines and financial penalties within a broader penal history in Scotland, providing a critical analysis of developments of policy and practice that have produced the contemporary model of fines enforcement. By tracing the trajectory of developments that have led to current practice, as well as contextualising financial punishment within broader narratives about the purpose and principles of criminal legal practice in Scotland, this thesis aims to establish the role that fines and financial penalties play in the contemporary criminal legal system in Scotland and, especially, as a non-custodial alternative to imprisonment.

Additionally, this thesis then aims to use empirical evidence of contemporary process and practice to better understand, explain, and analyse specific effects on those who cannot afford to pay them. Evidence of what is happening in contemporary practice is envisioned as a way of offering more detailed and evidence-based analysis of the outcomes of financial punishment, allowing for more robust theorisation of how, and why, fines and related financial penalties have specific outcomes for those who cannot pay. Specifically, this research aims to provide qualitative evidence of the process and effects of fines enforcement action, using this as a basis to analyse the impacts and outcomes of financial

punishment. Within fines enforcement, the deprivation of financial resources is understood as an inherent punishment effect following the imposition of a fine or financial penalty, with analysis of the process of fines enforcement offered as one way of establishing whether there are additional punitive effects of financial punishment that cannot only *and* exclusively be defined as financial deprivation. By focusing on fines enforcement action, this thesis recognises that there may be specific practices, experiences, and outcomes that do not necessarily affect everyone who is subjected to a fine. Attempting to describe and analyse these features adds depth to discussions of potentially disproportionate effects of fines and financial penalties, allowing for these effects to be conceptualised as not only financial in nature, but more broadly within the context of people's lives and their interactions with the criminal legal system.

This thesis also aims to provide much needed qualitative evidence of contemporary financial punishment practice in Scotland, making a significant contribution to existing literature concerning fines and financial penalties in Scotland. Whilst sparse quantitative data is available in Scotland (and much of what is available will be referenced throughout this thesis), much of this data focuses on 'financial' aspect of financial punishment – primarily, information about collection rates of fines and financial penalties, how much is paid, when it is paid, and how it is paid. Whilst the evidence that will be outlined in this thesis is from a small and limited research population, it still represents a significant contribution to the existing base of available data in Scotland. The process of combining this evidence with what is currently available will indicate clear possibilities for more relevant and robust data to be collected and/or made more accessible.

Blending this qualitative empirical evidence with an overview of policy and practice in Scotland across the previous 40 years will offer a framing upon which to site analyses of financial punishment. Existing empirical evidence from Scotland provides points for comparison and discussion concerning changes in practice, principles, and stated purpose within Scotland. Contemporary international empirical evidence, equally, shows how and where issues in practice in Scotland diverge and converge with what is being revealed about financial punishment and fines enforcement in international research. Drawing all this evidence together with qualitative evidence of contemporary fines enforcement practice allows for critical evaluation of the ways in which policy has been implemented, offering a more integrated and critical account of the punishment of non-payment of fines in Scotland. Moreover, this account draws directly on the early and influential work of fines researchers in Scotland whose descriptions of financial punishment, this thesis

argues, remain useful and relevant for analysing and evaluating contemporary practice, as well as changes and developments in the use of financial penalties across the twentieth century.

Using this account, the final aim of this research is to examine the role that fines and related financial penalties play within the contemporary criminal legal system in Scotland, through evaluation of whether and to what extent current practices fit within broader debates about the purpose and justification of this form of punishment within criminal legal practice in Scotland. This involves engaging with stated purposes of fines and financial penalties in policy, then synthesizing this with analysis of the outcomes of financial punishment and evidence of the distinct punitive effects of fines enforcement action. This allows for consideration of the outcomes, impacts, and effects of fines enforcement on those subject to these measures – one that takes into account the broader subfield of non-custodial alternatives used within the contemporary Scottish criminal legal system.

Methodology and scope

This thesis uses evidence from online interviews with community justice practitioners who worked in Scotland as its primary empirical data. Though there is a much more substantive discussion of methodology offered later in this thesis, it is necessary to outline some key limitations of the methods used in this project and to clarify the scope of this project. Firstly, the dataset used in this project is small, comprising 9 in-depth interviews. 4 of these interviews were with practitioners who worked only with women, the remaining practitioners did not work within gender-specific services. Whilst many research projects change and evolve during the process of data collection, and researchers should always be prepared and willing to adapt, preparing for the effects of a global health emergency was not something that was covered in any methodological training received prior to starting this project. The Covid-19 pandemic had significant implications for recruitment and design of this project and adaptations made in response to challenges in recruitment changed the content and context of data generated – these issues are discussed at length in **Chapter Three** (69-71) of this thesis.

Identifying these clear methodological challenges from the outset is purposeful as ‘research as nearly always a pragmatic activity, shaped and constrained by the time and resources available to the researcher’ (Braun and Clarke 2021, 211). Researching during

the Covid-19 pandemic was invariably constraining in a number of ways and, as a result, forced pragmatic decisions about the scope of this research. The inclusion of a number of practitioners working with women in community justice within the research population was part of early plans for an analysis that examined potentially differential outcomes and impacts of fines and financial penalties on women as part of the broader aims of the project. Delays in the research process, limits on face to face research, and issues in recruitment meant it was not possible to generate a large enough number of interviews with practitioners working with women to deliver some of the analysis that was planned. It was also not possible to access women who had experienced fines enforcement, which had also been part of the original planning of this project. Data from all practitioners has been included in the findings and analysis of this project, but this thesis does not directly compare similarities and differences between what was reported by practitioners who worked with women and those who did not.

This is not considered a methodological concern affecting the validity of the arguments put forward in this thesis – after all, the traditional approach of academic research, and of the scientific method, which has often used evidence solely from research with men, generated theories from this data, and then simply transposed these theories onto women has only begun to be critiqued comparatively recently. Rather than default to an 'add women and stir' (Moore 2008, 50) approach, this development of this thesis was led by repeated and pronounced themes that arose from the data concerning the process of financial punishment and, in particular, the consequences of being exposed to fines enforcement action in the case of non-payment. The findings of this project offer empirical evidence of contemporary practice in Scotland, providing much needed evidence of how fines and financial penalties intersect with the lives of those subjected to them. This includes engaging with how the effects of financial punishment intersect with various inequalities, including those that might arise out of gendered differences, that affect those in regular and sustained contact with the criminal legal system.

From the perspective of those working everyday with people who have been fined in Scotland, however, the central inequality that defines, drives, and exacerbates negative experiences and outcomes of financial punishment is long-term poverty and entrenched economic marginalisation. This thesis does not claim to present a complete representation of the ways in which various intersections of inequality and marginalisation might produce distinct experiences of the processes, practices, and impacts of financial punishment. Nor does it claim to represent the multi-dimensional nature of inequalities affecting women in

the criminal legal system or as a complete account of how financial punishment might affect women in distinct and specific ways, especially given that economic marginalisation has been shown to be a key motivator for women's lawbreaking (Carlen 1988; Grover 2008; Heimer 2000; Pemberton et al. 2019). The findings of this project suggest that the processes and practices that shape and define contemporary fines enforcement in Scotland leave the problem of fines and inequalities remains broadly unaddressed, even in the wake of substantial reform in the last 25 years. In fact, recognition of the effects of a range of inequalities that underly contact with the criminal legal system often appears broadly absent from practice. This thesis asserts that the current model separates people from broader contexts and, in doing so, remains unresponsive to a range of multi-dimensional and intersecting inequalities that may be affecting an individual.

Whilst this thesis does not offer an analysis of financial punishment that treats gender as a primary variable, it does draw attention to a set of problems and issues in contemporary practice that should be included in broader considerations of women's justice and the differential experience and outcomes of punishment for women. As it stands, the last piece of research that looked specifically at fines and financial penalties as a feature of criminal legal practice affecting women in the UK was in 1989 (Allen 1989). There has never been one in Scotland. This lack of engagement stands in stark contrast to evidence of their use in the criminal legal system – as per latest national statistics from Scotland, financial penalties were the sentencing outcome for women in 46% of all convictions at court in 2021-22 (Scottish Government 2023). Findings outlined in this thesis provide starting points for further research, as well as useful and relevant observations of process, practice, and outcomes that could be used in the design of future research that recognises and explores fines and financial penalties as a part of women's experiences of criminal legal power.

Whilst evidence from practitioners gathered in this project offers some insight the inequalities that exist in the lives of those who cannot afford to pay fines, an over-emphasis on examining and analysing the conditions of those subjected to criminal legal power risks obfuscating the ways in which exposure to this power creates and perpetuates inequalities. Additionally, many of the practitioners interviewed in this project are aligned with the criminal legal system through their professional practice and, as such, are implicated in the power dynamics that are discussed in this thesis. Their perspectives on the lives, contexts, behaviours, and feelings of criminalised people and people receiving fines are developed through encounters taking place within these dynamics. Equally, for all practitioners

interviewed in this project, their interpretations of the experiences and challenges faced by those exposed to the processes and practices of financial punishment are necessarily influenced by the remit, ethos, and prescribed goals of their professional role. All these factors put necessary limitations on any claims that what is reported in this thesis might represent the *direct experiences* of those who have been subject to a fine, financial penalty, or to fines enforcement.

Nonetheless, the tangible value of the evidence generated in this project is that it comes from those in professional practice who hold a degree of insider and expert knowledge of how individual elements fit into the broader context of the networks of agencies, institutions, and groups that constitute the criminal legal system. Their perspectives on criminal legal practice in action allow for observations of gaps that exist between policy and practice, offering a more holistic and inclusive view of the ways in which different forms of punishment intersect and influence each other. Their evidence allows for systemic and institutional analysis and critique of contemporary criminal legal practices taking place in Scotland, with a focus on how fines and financial penalties represent specific types of interactions with the system – interactions that can produce distinct outcomes for criminalised people in repeated and cyclical ways. That the practitioners interviewed in this project have seen the same problems and issues arise out of the imposition of a fine again and again – both in the lives of individuals and across the span of their work with people who have been fined and cannot pay – suggests that the problems of fines and inequality remain *unaddressed* within policy and practice in Scotland. They do not, however, remain *unnoticed* by those coming into contact with criminalised people on a regular basis.

The extent to which practitioners are aware of the effects of fines and fines enforcement action on those they work with comes through clearly in the data. This is, again, one of the reasons that this thesis takes the critical approach that it does – it is led by what the practitioners chose to share and reflect on in interview. For many, participating in interviews for this project was the first time that they had been asked about fines and financial penalties and it was clear that there was a lot that they wished to impart in the limited time and space that was offered in interview. The interviews gave participants the opportunity to reflect on the issues that fines and financial penalties raised in their professional practice and, more generally, on the appropriateness of fines as a criminal legal intervention. As a result, this thesis also uses practitioner evidence to interrogate policy and practice in Scotland, examining assumptions about the meaning, purpose, and

legitimacy of financial punishment and the extent to which these are reflected in the workings of the system.

Thesis structure

This thesis begins by discussing how fines are still often positioned in relation to imprisonment, **Chapter One** explores how this relationship of difference frequently positions fines as inherently less punitive than imprisonment – leaving little space to theorise distinct harms and/or specific contexts in which forms of financial punishment might produce their own punitive outcomes. To begin the work of better understanding and critiquing the harms of financial punishment and bridging the gap between theoretical and empirical accounts of these methods, this thesis argues that a focus on fines enforcement is one way in which to do so, especially within criminal legal systems that have consciously and publicly reduced the use of imprisonment as a response to non-payment.

Scotland is offered as an example of a criminal legal system where an expansion of a range of financial penalties has been justified through the reduction of the use of imprisonment in cases of non-payment. However, little to no evidence has been offered to support a set of assumptions about the outcomes of financial punishment and, especially, about the outcomes of being exposed to fines enforcement action. Consequently, the basis upon which policy and practice changes are justified beyond their relationship to reductions to the use of imprisonment are unclear. Engagement with existing literature and research, outlined in the literature review in **Chapter One**, contextualises significant developments in policy and practice relating to fines and financial penalties in Scotland in the last 40 years. Placing fines and financial penalties within a broader history of penal developments, this thesis reveals debates and developments that have shaped contemporary financial punishment practices and, particularly, highlights what has not been included in decision-making about how fines and financial penalties operate in practice. It also allows for a broader examination of how fines and related financial penalties have been positioned with and, ultimately, defined by their relationship with other forms of punishment – notably, imprisonment.

However, in Scotland, where the ways in which non-payment of fines is punished have significantly altered in the last two decades, definitions and models offered to explain the punitive effects of financial punishment remain partial, outdated, and distanced from the increasingly administrative and bureaucratic character of fines enforcement tactics,

measures, and sanctions. This chapter asserts that theoretical literature concerning the operations and outcomes of financial punishment is broadly separate and delineated from contemporary international empirical studies that, increasingly, demonstrate the negative consequences of being exposed to fines and fines enforcement for many who cannot afford to pay.

Chapter Two argues that in Scotland, though there have been significant developments in policy and practice concerning fines and financial penalties in the last 20 years, these have done little to acknowledge and address the issue of inequality. Instead, the focus has been on designing systems that work to achieve priorities set by the criminal legal system itself, priorities that do little to nothing to engage with questions about the meaning and purpose of this form of punishment. Instead, the current system is justified on the basis of what the system itself has considered 'fair' and 'effective' and, more importantly, what offers the quickest and most simple way to dispense 'justice' (see McInnes Committee 2004, 6). Within statistical data and a small body of research available from Scotland, evidence of the extent to which fines enforcement action has always affected economically marginalised people in Scotland in disproportionate and distinct ways (see Bradshaw et al., 2011; Munro and McNeill 2010; Young 1987, 1999) appears to have been overlooked by policy-makers when making key decisions about how to make fines more fair and effective.

Using empirical evidence available from Scotland (see Bradshaw et al. 2011; Young 1999), this thesis asserts that the space created between individuals and the criminal legal system following the imposition of a fine is now one in which administrative and bureaucratic priorities overwhelm and define the operations of this part of the criminal legal system – but that the processes, practices, and outcomes for those involved in the system are poorly explained. The bureaucratic character of fines and related financial penalties has, this thesis argues, always been part of wider academic considerations of the fine (see Bottoms 1983; Young 1999) but this should not produce inherited and narrow representations of the effects of financial punishment in practice – especially when little contemporary empirical evidence is offered in support of these claims. By examining fines enforcement as a distinct and specific part of a process of financial punishment that primarily only affects those who cannot afford to pay them, there are opportunities to re-examine who these processes are imagined to be fair and effective for, and why they are imagined to be so.

By describing and analysing the basis upon which the current system of fines enforcement is suggested to work, through engagement with literature, the meanings of these various claims appear contested – especially, in terms of their relevance and legitimacy for those who cannot pay and are more likely to be impacted by the punitive outcomes of fines enforcement action. The detailed, up-to-date, and critical overview of policy and practice relating to fines and related financial penalties, offered in these two chapter provides context and parameters for the empirical aspect of the project. However, gaining access to the 'more hidden, arcane domains of administrative practice' (Quilter and Hogg 2018, 17) to evaluate processes and outcomes is understood as a task which requires entering the space that is created between the individual and the criminal legal system through the imposition of a fine or financial penalty and getting a view of fines enforcement in action.

In **Chapter Three**, this thesis outlines how and why community justice practitioners in Scotland are in a unique position to provide evidence about processes of fines enforcement and the impact these measures have on those who cannot afford to pay them. Firstly, there is an overlap between fines and financial penalties and community sentences in practice which allows for an examination of fines enforcement as a process that takes place across the time and spaces of people's lives. Community justice practitioners are in a unique position to observe this process in its entirety, showing how criminalised people come into contact with these forms of punishment and are effected by the outcomes of fines enforcement. Additionally, they can provide perspectives from within the boundaries of the criminal legal system, providing expert knowledge of the more administrative and bureaucratic aspects of processes, practices, and systems that can be difficult to pierce into.

Aside from outlining the relevance and usefulness of including evidence from community justice practitioners in analyses of the operations and outcomes of financial punishment, this section also provides a detailed explanation of the methods used in interview and analysis, as well as a brief overview of challenges in recruitment and planning that affected the design of the project and the resultant thesis. A description of the process of coding and analysis that shaped the ways in which findings and evidence are discussed in later sections is also included. This chapter includes reflections on the challenges, and unexpected benefits, of researching with community legal practitioners during a global lockdown and, specifically, of employing online interviewing as a way of accessing and working with practitioners.

Overarching findings are outlined in detail in **Chapters Four and Five** which offers an account of the impact and outcomes of fines and related financial penalties from the perspective of community justice practitioners in Scotland. The primary significance of the evidence generated in this project is that it demonstrates that intersections of various inequalities increase the likelihood of exposure to a specific set of processes and practices that arise as a result of fines enforcement action. Exposure to these processes and practices change the nature, extent, and duration of people's involvement with the criminal legal system and, often, exacerbating existing contextual challenges that typically affect those in regular and sustained contact with the criminal legal system. Economic marginalisation *is* central amongst these challenges, but the evidence from practitioners will show that it is not the *only* form of inequality that should be considered when evaluating the effects of fines and financial penalties.

Chapter Four outlines how the negative outcomes of being exposed to fines enforcement action, as per evidence from those working with people who have been fined, are primarily found within an extension of contact with the criminal legal system which arises out of the imposition of multiple fines and long re-payment periods, as well as through complicated entanglements with the criminal legal system due to a set of bureaucratic and administrative demands that are placed on those under fines enforcement action. This extension and entanglement produces a number of barriers to change, keeping criminalised people in a type of stasis or inhibiting movement away from contact with the system. Fines enforcement becomes a space in which it becomes possible to observe and examine the outcomes of punishment via financial deprivation and to re-consider how these outcomes intersect with both imprisonment and supervisory methods of punishment, especially those taking place within the area of community sentences and community justice practice more broadly.

Consequently, the evidence that emerges out of this project places fines and financial penalties within a nexus of competing and overlapping forms of punishment, taking place both inside and outside of prison, that affect criminalised people repetitively and cyclically. This evidence provides new avenues with which to think about the relationships between various forms of punishment taking place within Scotland and to re-imagine the effects of financial punishment as not *only* deprivation of economic resources and, instead, remain open and curious about what else might be at stake in processes of fines enforcement. Taking these findings about operations and outcomes of fines enforcement action, this chapter expands on specific elements of policy and practice in Scotland to contextualise

qualitative evidence of the long-term effects of exposure to fines enforcement, identifying key features of current practice that help to produce extension and entanglement described by practitioners as facing those exposed to fines enforcement action.

Having established these features, **Chapter Five** examines findings that demonstrate **i**nability to comply with the various demands that arise out of the imposition of a fine are nominally linked to lack of economic resources but, in many cases, this is subsumed below narratives that cast those unable to pay as 'chaotic' or living 'chaotic lives'. Whilst practitioners can acknowledge the fundamental challenges of fines enforcement action for criminalised people who cannot pay, as well as the issues these raise in their own professional practice, the system itself remains understood as primarily rational – it would work for those the practitioners describe, if only they were different people. Employing 'chaos' in this way acts to make those who cannot pay responsible for non-payment, an assertion that is compounded by the recurrent assertion in interview evidence that those who are repeatedly and cyclically exposed to financial penalties and fines enforcement action do not 'care' about this form of punishment.

According to much of the evidence gathered in this project, criminalised people only begin to 'care' about punishment via financial deprivation when they become less 'chaotic'. At this point, a renewed attack on the security and stability represented by the availability of economic resources commences – one that, paradoxically, threatens to undermine change and progress. Extension and entanglement within fines enforcement action often ensures this renewed attack is taking place at a point far separated from whatever events/behaviours led to the imposition of the financial penalty/penalties in the first place, leading to a lack of meaning and purpose within a punitive cause and effect relationship. This thesis asserts that, in these cases, fines enforcement enacts supervision, surveillance, and a curtailment of autonomy that acts as a final tie between the individual and the criminal legal system. This is a punishment for non-payment (rather than for any discernible 'offence') that risks re-exposure to financial punishment but, more importantly, it is a form of criminal legal control that can extend into the lives of criminalised people long after custodial and community sentences have been served.

This chapter examines the ways in which exposure to fines enforcement and the resultant barriers to change this produced might be better theorised by drawing on existing criminological literature concerning desistance processes and the meaning of punishment for those sentenced (see Armstrong and Weaver 2013; Gålnander 2023; Nugent and

Schinkel 2016). Recognising this aspect of fines enforcement brings the work of this project closer to descriptions of persistent and pervasive punishment (see McNeill 2019; Armstrong and Weaver 2013) that have, so far, not been adequately accounted for in the existing literature on punishment in Scotland.

Having offered a more detailed vocabulary through which to articulate the processes that were observed by practitioners and the effects and outcomes this had on those exposed to extended fines enforcement action, this thesis examines the process in its entirety, using the practitioner perspective on 'chaos' and 'chaotic lives' to provide a critique of purpose and legitimacy of fines and financial penalties in Scotland. Rather than accept the bureaucratic characterisations of fines and financial penalties as 'fair' and 'effective' as outlined in policy rhetoric, the evidence offered in this project suggests that that the system itself is operating as a type of chronic and normalised chaos. Refusals to acknowledge and engage with the socio-economic context of those who cannot pay fines have resulted in a system that remains legitimate only on the basis of its efficiency at providing *a* response to criminalised behaviour with little to no justification for how or why this response should be understood as fair or effective for a majority who cannot pay. Practitioner evidence also shows that in the gaps that emerge between how the system is assumed to operate and the effects it produces in the lives of who cannot afford to pay, the meaning and purpose of fines and financial penalties becomes increasingly difficult to discern.

On the basis of evidence from this project, fines appear to serve very little penal 'purpose' for those who are regularly coming into long contact with them and, instead, trap those who cannot afford to pay in repetitive cycles of contact with the criminal legal system in Scotland. The inability to escape or avoid these cycles is devolved onto individuals themselves – positioned as 'chaotic' and, therefore, incompatible with the supposedly rational bureaucratic model of fines enforcement. This approach turns away from broader structural and contextual causes and motivations for criminalised behaviour and turns those who cannot comply with this supposedly ordered system into a problem – 'chaos' must be converted into order and, only then, will the process work as it should.

Through the framing of the operations of contemporary financial punishment as directly related to developments in policy and practice that affect the criminal legal system in Scotland in its entirety, and through the inclusion of evidence from community justice practitioners that has not previously been examined as part of research on fines and financial penalties in Scotland, this thesis provides evidence suggesting that one of the

largest parts of contemporary penal practice in Scotland appears wholly divorced from broader political rhetoric concerning progressive penal practices (see Buchan 2020; Buchan and McNeill, 2023) and ‘person-centred’ justice (Scottish Government 2022, 5). Instead, a whole network of management techniques, a ‘parallel system’ (Munro and McNeill 2010, 221) of criminal legal practice is affecting those who cannot afford to avoid nor escape it, leaving structural conditions surrounding the problem of fines and inequality minimally noticed or addressed.

Chapter One – 40 years of financial punishment in Scotland

From fines to fines enforcement

Though most punishment taking place in the criminal legal systems of Europe, the US, and Australia is financial, the fine has emerged as 'a neglected feature of contemporary penal systems' (Bottoms 1983, 166) in the last 40 years. Indeed, the 'fine' itself is a slightly hazy and underdefined character in criminological work. Referring to 'a fine' could cover a range of methods and mechanisms that are incredibly prevalent in most contemporary criminal legal systems in the Global North (Faraldo-Cabana 2019; Lappi-Seppälä 2012, 2014) – whether through more 'traditional' court-administered fines; the growing numbers of diversionary sanctions and on-the-spot penalty notices that require no contact with court systems; or even through more indirect methods such as unpaid work which have convincingly been described as a 'fine on time' (Munro and McNeill 2010, 220). By broadening definitions to include a variety of mechanisms, taking place in various parts of criminal legal systems, it becomes possible to see just how prevalent financial punishment is within contemporary legal practice.

This chapter will demonstrate, that across 40 years of reform to financial punishment in Scotland, an ever expanding range of financial penalties throughout the criminal legal system have produced a corresponding system of fines enforcement – a bureaucratic apparatus that sits at the centre of criminal legal practice in Scotland. This chapter argues that operations taking place within this apparatus are instrumental in explaining 'the everyday, routine aspects' (Young 1999, 186) of the criminal legal system, affecting a majority of those coming into contact with the Scottish criminal legal system on a regular basis. However, the processes, practices, and consequences of being exposed to this form of criminal legal intervention have remained overlooked and poorly articulated within critical criminological account of contemporary practice in Scotland.

Instead, a set of assumptions generated within criminal legal policy and rhetoric have been offered to justify significant changes to the ways fines and financial penalties operate in contemporary Scotland. These assumptions are bolstered by the relegation of fines and financial penalties to the marginalia of mainstream criminological stories of punishment, where theorisation of fines and financial penalties as far away and separate from the operations of penal power has produced a distancing that limits or reduces their punitive

impacts. In Scotland, this chapter argues, expansions of financial punishment have been empowered by models of 'hard' and 'soft' justice and a faulty comparative relationship between imprisonment and financial penalties. This allows for justification of financial punishment on the basis that fines and financial penalties are 'inherently lenient' (Quilter and Hogg 2018, 11), primarily because they appear so distant and separate from imprisonment. Assertions about the leniency of fines have been bolstered by mainstream criminological theories of financial punishment in the last 15 years. This theoretical work offers an account of the nature and consequences of financial punishment that, this chapter argues, is partial and incomplete. It serves to further distance fines and financial penalties from criminal legal power and minimises potential harms for those exposed even further.

'Inherently lenient' – describing financial punishment in criminological research and criminal legal practice

As a general rule, fines and related financial punishments are most often reserved for 'less serious' offences as defined by legal and normative standards and, in Scotland, are found most often at the level of diversion from court or at summary court proceedings. The Scottish Government and COPFS list offences such as 'speeding, shoplifting and breach of the peace' (Scottish Government 2022, 22) or 'more minor road traffic offences' (Crown Office & Procurator Fiscal Service 2022) as examples of less serious offences. Summary proceedings in Scotland are heard only by a sheriff and the maximum sentences allowed are up to 12 months imprisonment or a fine of £10,000 (Crown Office & Procurator Fiscal Service 2022). In solemn cases that are presided over by a Sheriff and a jury, the Sheriff has the power to 'impose a fine of any amount' (Crown Office & Procurator Fiscal Service 2022). According to the Scottish Sentencing Council (no date), the decision to impose a fine and set a fine amount can also be 'based on how serious the crime is'.

Whilst there is a lack of clarity about what exactly is defined as a less serious offence, potentially due to a lack of publicised sentencing guidelines for summary proceedings in Scotland, the recently published guidelines on the Sentencing Process from the Scottish Sentencing Council (2021, 5, bold in original) state that:

> 'The seriousness of an offence is determined by two things: the **culpability** of the offender and the **harm** caused, or which might have been caused, by the offence. As either or both culpability and harm increase, so may the seriousness of the offence'.

Here, harm and culpability are directly linked to seriousness. Less serious offences are conceived of as less harmful, appearing to confirm the assertion that 'the vast majority of the events which are dealt with within the [criminal justice system] in the sphere of crime…would not score particularly high on an imaginary scale of personal hardship' (Hulsman 1986, 65). Most of what is being 'dealt with' by fines and financial penalties is not hardened, violent, threatening criminality. Instead, it is traffic offences, breaches of the peace, and shoplifting that make up the bulk of what is taking place when we talk about 'crime' and 'criminal justice' – the 'many petty events' (Hillyard and Tombs 2007, 10-11) that come together under definitions of 'crime'. Arguably, the prevalence of financial punishment adds weight to the assertion that that,

> 'the definitions of crime in the criminal law do not reflect the only or the most dangerous of antisocial behaviours…[and] sentencing decisions do not reflect the goal of protecting society from the only or the most dangerous of those convicted' (Reiman 1998, 60).

The prevalence of fines and financial penalties reveal that the majority of crime is minimally harmful and dangerous, and those engaged in these criminalised behaviours neither are, nor need to be, controlled through excessively repressive measures.

This is, potentially, one reason why mainstream criminology is so uncomfortable addressing the topic of financial punishment because to do so would hint at the much larger issue affecting the entire discipline – the notion that 'criminology cannot…deconstruct crime' (Smart 2003, 160). Much of the discipline relies on the hazy, unclearly defined concept of crime to validate its own existence. It does so only through a process of representational construction that gives strength to the myth that crime is something that can be controlled and, by extension, to the expansion of crime control, criminalisation dynamics, and the maintenance of existing power relations located in the state (Hillyard and Tombs 2007). This has further consequences with what is thought of as crime becoming intrinsically linked to conceptions of punishment, with criminological accounts playing a central role in shaping stories about punishment.

Additionally, through criminalising certain behaviours, 'the state – via the criminal legal system – proceeds to seek to inflict suffering, once a crime, and a criminal, has been defined. It inflicts punishment on offenders, of which the prison sentence is the ultimate option and symbol' (ibid., 13-14). The criminological acceptance of 'crime' transposes these narrow and often unclear notions of harm and seriousness onto representations of

punishment, in ways that re-cast fines and related financial penalties as unimportant and uninteresting precisely because they respond to ‘less serious’ and ‘less harmful’ behaviours. They are acknowledged as part of the punishment story but are given a bit-part in the action, one that belies the fact that they are a central character in the action taking place. The relegation of fines and financial penalties to the marginalia of mainstream criminological stories of punishment is produced through a set of narratives about fines and financial penalties that theorise fines and financial penalties as far away and separate from the operations of penal power, a distancing that limits or reduces their punitive impacts.

‘Hard’ and ‘soft’ justice: imprisonment and financial penalties

This distancing is firstly achieved through assumptions and descriptions of financial punishment that place fines and financial penalties in a relationship with imprisonment (Faraldo-Cabana 2019). This relationship positions imprisonment as the ‘pinnacle’ of punishment in a conceptual hierarchy and is influential in shaping how punishment is thought and talked about – both in academia and, more broadly in contemporary culture, as a whole. The symbolic power of the prison within representations of crime and punishment, and especially in criminological representations, is sharply thrown into focus when engaging with the existing literature on fines and financial punishments. Canonical fines scholars such as Peter Young (1987, 1989, 1999) and Patricia Feraldo-Cabana (2019, 2020) have identified that, for fines and similar types of financial punishment, estimations about both the process, experience, and pains of these types of sanctions are typically defined ‘not by reference to what they are, but by reference to what they are not’ (Young 1999, 185). As a result, fines and related financial punishments are most often categorised and described via their relationship to imprisonment in criminological literature, as well as in policy and practice.

One of the reasons that this hierarchy has been able to develop is that contemporary legal and criminal legal systems are built around the notion that each person has an equal and inherent amount of liberty – ‘the same ‘quantum’ of freedom’ (Young 1989, 63). Add to that the high value that is placed on autonomy in modern Western liberal societies (Faraldo-Cabana 2019), and the removal or restriction of liberty is assumed to be a universally painful experience for all. Furthermore, the hierarchal ordering of punishment is influenced by cultural and collective normative and moralistic expectations about what punishment should ‘look’ like. Ideas about transgression and legal are linked to the ‘values

and mores at the heart of group life' (Young 1989, 64) and, again, autonomy and personhood emerge as some of the more cherished and sacred values. Consequently, transgressions that directly impact these and are assumed to cause the most harm, such as murder and sexual assault, require responses from the legal and criminal legal systems that appropriately reflect the threat to group value (Young 1989). Imprisonment is assumed to fulfil these emotive and representational requirements, and its reputation as the ultimate punishment becomes a key structuring point for legal and criminal legal systems, as well as for society as a whole.

Young (1989, 193) argues that what is typically offered as a representation of punishment is 'largely modelled on what happens in serious crimes and punishments' and, in a sort of feedback loop, this highly influential representation is then used as a standard for evaluation of existing and current practice. This ensures that whilst there may be localised reforms or alterations to the constituent parts of the system, the overall hierarchal model remains constant. Criminal legal processes and practices that respond to 'minor, regulatory offences' (Young 1989, 46) – i.e. those that are assumed to be less harmful to the values of group life, are relegated to the bottom of this hierarchy where punishment is automatically assumed to be less painful and, ultimately, less interesting. They become the ''trivial' business' (ibid.) of criminal legal practice and their neglect becomes part of a process that upholds existing narratives of punishment.

Whilst it has been established that fines and similar financial penalties are typically used in response to non-violent offences of a smaller and more localised scale in terms of harm to the public, it does not automatically follow that makes them less significant as a method of punishment or as a way of understanding how penal control and power manifests. As has been described in the previous section, these offences make up the bulk of what the law and criminal legal systems engage with, so exploring and analysing this sphere of transgression and accompanying responses seems likely to offer robust and relevant insights into punishment. Furthermore, an approach to financial punishment that adopts the '*generally accepted fact* that the fine is a less severe punishment than imprisonment' (Faraldo-Cabana 2019, 2, italics added) limits the scale and nature of critical engagement with the processes and consequences of financial punishment. By establishing comparative measures of 'severity', the ability to conceptualise and describe one form of punishment without reference to the other all but disappears – even as the former is specific, distinct, and requiring of its own unique language. An apple and an orange are both fruit, after all, but it seems unlikely that you would be able to adequately describe either one using only

terms of reference derived from the other. Moreover, a comparative dynamic (particularly one which concerns how bad or 'severe' something is) runs the risk of promoting the idea that the 'less bad' option is, by extension, the 'good' option.

When poorly evidenced estimations of harm and severity are inextricably tied to conceptualisations of the fine and related financial punishments, fines are relegated to the 'bottom' of an imagined hierarchy of punishment, their neglect forms part of the mainstream criminological buy-in of 'the myth of 'crime'' (Hillyard and Tombs 2007, 11). If financial punishments are accepted as the 'apparently unexciting initiatives…taking place at the 'soft end' of the criminal legal system' (Duff 1993, 483), then this produces a representation of suffering on a continuum that suggests that 'soft' punishment is somehow acceptable. Even more concerningly, an adoption of this hard/soft continuum suggests that whatever is happening at the 'hard' end is, in some ways, exciting and appealing to those who want to explore, explain, challenge, or change punishment. The mainstream criminological fascination with the prison, regardless of the intentions and outcomes of individual studies and researchers, can serve to bolster its symbolic power and, by extension, serve the interests of those who rely on this power. Nowhere in this representation is it easy to discern that there might be distinct harms suffered by those who are experiencing financial punishment. Nor is there much capacity to recognise that the widespread prevalence of this form of punishment might be saying something distinct about the operations of contemporary penal power.

'Hard' and 'soft' justice in Scotland: imprisonment and reforms to fines and financial penalties

In Scotland, the primacy of the prison has played a central role in defining approaches towards fines and financial penalties. From the late 1980s onwards, Scotland has pursued a programme of reforms to summary level justice that have significantly changed the nature, purpose, and role of fines and financial penalties within the broader criminal legal system. Scotland has a specific approach to financial punishment that is not readily observable elsewhere in the United Kingdom. In Scotland, the prosecution of less serious offences is diverted from court through direct action from the Crown Office and Procurator Fiscal Service (COPFS). Disposals imposed by COPFS are a feature of the Scottish criminal legal system wherein the prosecution of less serious offences is diverted from court through direct action. COPFS action is almost entirely financial, with fines, fixed penalties, and compensation orders making up the bulk of action that can be taken in a case – a level of

criminal legal practice where financial penalties are, almost unanimously, the outcome of the processes of justice. Thus, whether via the police tackling 'on-street' and 'real-time' behaviour with fixed penalties, via COPFS as a diversion away from court proceedings, and/or via court proceedings, the number of financial penalties currently available at various levels of the Scottish criminal legal system is substantial. In 2022/23, the total number of outstanding financial penalties was a little over 50,500 across various parts of the criminal legal system – representing nearly £14 million owed to the criminal legal system from those who had received a fine or financial penalty (Scottish Courts & Tribunals Service 2023, 9-10).

The expansion of financial penalties in Scotland has emerged as one strategy in Scotland's 'sustained…commitment to penal reductionism' (Buchan and McNeill 2023, 326), forming part of the range of non-custodial alternatives promoted 'to impact upon Scotland's traditionally high reliance upon the sanction of imprisonment' (McIvor 2010, 41) from the late 1970s onwards. A key motivation for reforms to the use of fines and financial penalties was the recognition of high numbers of individuals imprisoned for non-payment of fines was identified as contributing to imprisonment rates, especially in the case of women (see Scottish Executive 2002; Tombs 2004). Key reforms included, in 1990, the introduction of supervised attendance orders (SAOs) as a recommended alternative to imprisonment and, later, the Summary Justice Reform (SJR) introduced in 2007, which promoted the 'wider use of direct measures…and the diversion of less serious cases from court' (Bradshaw et al. 2011, 11). The introduction of police-issued fixed penalty notices and an substantial increase in the number of monetary sanctions and methods of delivery available across Scotland signalled a large shift towards making financial penalties a sort of default response to most criminalised behaviour making its way into contact with the Scottish criminal legal system.

The reforms did not only expand the use of financial penalties, and, essentially, mandate a preference for their use in matters of summary justice. They also served to establish a whole new apparatus focused on enforcing payment of these range of new penalties, transferring responsibility,

> 'to a single criminal justice agency – the Scottish Court Service[2]…[as well as] the creation of a new post dedicated to the recovery of unpaid fines – the Fines

[2] Now the Scottish Courts & Tribunals Service (SCTS).

> Enforcement Officer (FEO) – and the provision of enforcement powers to the FEO' (Bradshaw et. al 2011, 8).

There can be no doubt that in 40 years of reforms, imprisonment for fine default has decreased substantially, with receptions to penal establishments dropping by approximately 85% between 2004-05 and 2013-14 (Scottish Government 2015). The reforms in the last 25 years appear to have reduced the number of people going to prison for not paying a fine, via both diversion from court, and through a concerted drive to reduce the use of custodial sentences as a response to non-payment of fines. However, whilst imprisonment for fine non-payment has reduced in the intervening period, the widespread use of financial punishment does not appear to have contributed to reductions in overall imprisonment rates which have remained 'stubbornly high' (McNeill and Buchan 2023, 325)[3]. What the reforms have not done, however, is reduce the number of people receiving a financial penalty. Instead, the SJR appears to have increased the likelihood that a financial penalty will be the most likely outcome in most cases of summary justice, whilst simply moving the parameters of operation to different parts of the criminal legal system.

Additionally, the creation of a centralised collection 'hub' based within the heart of the Scottish criminal legal system to attend to the business of extracting unpaid financial penalties hinted at the expectation that this new and expanded menu of financial penalties might produce a new set of problems surrounding payment and collection. The focus on 'enforcement and pragmatic alternatives to custody for default' (Munro and McNeill 2010, 220) in the reforms of the 1990s and 2000s hinted at a preference for practicality and effective implementation rather than recognising and addressing issues of inequality in relation to fines or any potential factors underlying non-payment (or, indeed, offending itself).

Fair, effective, efficient, quick and simple: justifying financial penalties

In the Scottish reforms of the 2000s, financial penalties were envisioned as the primary method of delivering fair, effective, efficient, quick, and simple justice. Although this was

[3] Incidentally, there are still people being imprisoned for fine default. Though published statistics have ceased to record prison admissions for non-payment of fines,13 people were liberated from custody in 2022-23 on the basis of paying an outstanding fine (see Scottish Government 2009, 2023a). This is imperfect evidence, certainly, but it does suggest a change in practice when compared to comparable figures from a decade ago – figures that show that 344 people were liberated from 'fine default' custody in 2013-14 (Scottish Government 2015a).

mainly evaluated on the basis that greater use of direct measures (almost all financial in nature) would reduce delays and congestion at courts, these being understood as,

> 'not helpful to the interests of justice [because] it makes it difficult for there to be any immediacy in the link between offence and consequence. Nor is it welcome to busy practitioners, including those representing the accused' (Summary Justice System Model 2007, 2).

Imagined as equally unhelpful to the interests of justice were issues of fine enforcement and collection, which needed to be more effective and efficient, 'minimising unnecessary court involvement' (ibid., 3). Fines Enforcement Officers (FEOs) were envisioned to play a key role in efficient collection processes, given,

> 'a range of actions, powers and tools at their disposal, the majority of which are made available through the attachment to the fine of an Enforcement Order (EO). The EO allows the FEO to change the payment terms of a fine, arrest a defaulter's bank account, arrange for fine payments to be deducted directly from employment earnings, or seizure of a vehicle belonging to the defaulter. FEOs can also make a request to a Justice of the Peace (JP)/Sheriff to arrange to have fine payments deducted from the defaulter's benefits. They may also refer the case to court'(Bradshaw et al. 2011, 2).

This continued emphasis on pragmatism was heavily aligned with the stated aims of the SJR. In earliest consultation form, the ideal summary-level criminal justice system was described as one that should be '**fair** to victims and the accused; **effective** in deterring, punishing and helping to rehabilitate offenders; and **efficient** in the use of time and resources', as well as a preference for simplicity consistency, and accountability in principle and practice (McInnes Committee 2004, 6, original emphasis). By the time the new model of summary justice was in the drafting stage, a fourth aim had been added – that the reforms should be '**Quick and simple** in delivery' (Summary Justice System Model 2007, 2). In 2011, when changes to fines enforcement were the subject of a government evaluation, any mention of rehabilitation as a stated aim of the reforms to fines enforcement had been quietly dropped (see Bradshaw et al. 2011, 8).

Here it becomes possible to observe how the inaccurate and constraining comparative relationship between financial punishment and imprisonment has served to contribute to a set of assumptions that minimise and limit estimations about the impacts and harms of financial punishment reconfirming the underlying assumption that because, ''only' money is at stake rather than personal freedom…fines are inherently lenient' (Quilter and Hogg 2018, 11). The assumed leniency of fines and financial penalties can be summarised into

three key points that have been identified in criminological literature as underlying justifications offered by criminal legal systems for the prevalent use of fines and financial penalties:

1) Fines and related financial penalties are 'readily understood as imposing a hardship but one which is (supposedly) not excessively disruptive to the lives of wrongdoers' (Quilter and Hogg 2018, 12).

2) Fines and related financial penalties are broadly acknowledged to have little, if any, rehabilitative potential but do not have a 'dissocialising' effect on those who are subjected to them (Faraldo-Cabana 2019).

3) Fines and financial penalties are quick and efficient. Their use is also economical for the criminal legal system as revenue generated can be plumbed back into the system (see Faraldo-Cabana 2019; Quilter and Hogg 2018).

These assumptions about financial punishment bolster the reputation of fines and related financial penalties as the 'ideal penalty' (Faralda-Cabano 2019; Quilter and Hogg 2018) for responding to 'less serious' types of transgression. Arguably, though, even when considered in isolation from the lives of those subjected to them and without qualitative and empirical evidence offered to support these assumptions, fines and financial penalties already appear as ideal in very distinct ways. They are framed as a compromise – punitive but not too punitive, unlikely to rehabilitate, but minimally damaging to social inclusion and community participation. These overarching assumptions about the leniency of financial punishment appear strikingly similar to stated justifications for expansions of fines and financial penalties and the creation of a fines enforcement apparatus in Scotland in the early 2000s.

At the same time as the 'significant reorganisation' of fines enforcement in Scotland was being finalised (Quilter and Hogg 2018, 12), criminology had begun to notice similar trends in changes to sanctioning practice across the 20th century (Feraldo-Cabana 2019). Attempts to theorise financial punishments had been undertaken by a select group of criminologists and sociologists, producing convincing (albeit now outdated) descriptions of the role of money in punishment (Young 1987). At the start of the 21st century, it was clear that criminology needed to take stock of macro-level changes in the use of fines and related financial penalties on a macro-level. Arguably, though, much criminological work

of this type focused on '*content* rather than on the social, political and economic *context* of the production of the regimes of truth' (Hillyard and Tombs 2007, 11) in its treatment of the fine.

What this means is that much of what is presented about the use, operations, and outcomes of financial punishment is presented as a set of widely accept truths or facts, rather than contested sites of social process, criminal legal power, and human experience. Whilst these accounts are often innovative, interesting, and conceptually sound, they have primarily been produced with little to no empirical engagement with criminal legal policy or practice, nor with those who have been subjected to financial punishment. These lengthy and complicated theoretical accounts often treat fines and financial penalties with a degree of abstraction, as fixed and homogenous phenomenon that exist on an entirely separate plane from the range of processes and practices that encompass and define criminal legal punishment. The macro-level focus, distance from concrete policy and practice, and abstraction of human experience from the study of financial punishment contributes to a narrowing of the parameters of fines scholarship, producing work that is less easily integrable into criminological critiques of the meaning, purpose, and legitimacy of punishment.

A 'taken for granted imposition': financial punishment in contemporary mainstream criminological theory

Arguably, the most influential example of this type of macro-level abstracted theorising is offered by Pat O'Malley in *The Currency of Justice: Fines and Damages in Consumer Societies* (2009). O'Malley asserts that consumer culture has bridged the gap between financial civil and criminal legal sanctions. The outcome, according to O'Malley, is a society where 'money is sufficiently ubiquitous' that the 'impositions' that arise from fines and related financial punishments 'may be taken for granted' (O'Malley 2009, 158). Thus, punishment via financial deprivation becomes more widespread and, as more and more are subjected to this form of governance, it converts those subjected to it into 'responsible consumers' who 'pay for choices and for the routine mistakes and failures of foresight that characterize everyday life' (ibid.). Drawing on theories of governance and disciplinary power (Foucault 1975/2020), as well as the ways in which capitalist imperatives shape contemporary society, O'Malley suggests that this form of governance is insidious and ostensibly 'softer' than the carceral technologies of prison and supervision. Fines and financial punishments do not affect the body or the liberty of the individual. Instead,

behaviour is managed and regulated, and responsible choice-making is softly conditioned into the populace.

O'Malley's work has been hugely influential, playing a key role in the contemporary research agenda (see Faraldo-Cabana, 2019; Quilter and Hogg, 2018), and rightly so. By exploring, in detail, the role of money and the context of consumerist society, he develops a theory that explains many of the ways in which societies are regulated and managed through financial methods. However, by presenting the economic context as the backdrop to detailed explanations of governance machinations and neoliberal politics, his theory disengages from concrete local processes and individual experiences of punishment via financial deprivation, as a result the top-down view offered suffers from a lack of qualitative evidencing. It *is* fair to suggest that forms of financial punishment are becoming increasingly intertwined with what has traditionally been defined as civil legal practice – others have made a convincing case for recognising the shifting boundaries between criminal and civil punishment (c.f. Beckett and Murakami 2012), but these have argued that civil process is becoming increasingly punitive and penal, not vice versa.

In many jurisdictions, a fine or financial penalty imposed by the criminal legal system involves engagement with a set of institutions, processes, and practices that are formally, normatively, and conceptually very different from the civil legal system. Whilst fines and financial penalties are *most often* used to respond to 'less serious' non-violent offences, it is not the case that are *only* used in these cases. The characterisation of fines as a taken for granted imposition disregards that fines *are* used in criminal courts as a response to more serious challenges to the social order and that their imposition can result in high sums owed. *The Currency of Justice* serves to both further distance fines and financial penalties from sites of penal power, and to minimise the effects of financial punishment into a homogenous experience. Even if cases of higher fines for more serious transgressions are treated as the exception and not the rule, the suggestion that a fine of any amount – whether £50 or £10,000 – might be universally experienced as a taken for granted imposition emerges as a bold claim. Especially alongside the assertion that what is generally being responded to with fines and related financial penalties are, most often, matters of either choice or routine mistakes of 'foresight'. These claims sits uncomfortably within a range of critical criminological literature on the structural causes and motivations of offending, as well as the differential and punitive effects of criminal legal intervention on economically and socially marginalised people.

Certainly, O'Malley (2009, x) is careful to state that his work focuses on 'how money is imagined and intended to be used rather than…questions of actual impact on the subjects of government'. This stated approach exemplifies top-down theorising, appearing to disregard the role that subjects of government play in determining both how money is imagined and how it is used, especially within a consumerist culture framework that emphasises individual agency and action through consumption. More importantly, though, it is crucial to acknowledge that different groups in society have varying degrees of access to the resources needed to participate in consumer culture and, by extension, are likely to have different experiences of the process of being converted into responsible consumers that is described in O'Malley's account. O'Malley (2009, ix) identifies who some of these groups might be and acknowledges that they are fundamentally excluded from his theorisation – stating that his work does not consider 'whether…[fines] bear harder on minorities, the poor and women'.

Thus, assuming minorities in this context means racial and ethnic minorities, O'Malley's theory of financial punishment explicitly excludes groups who have been shown to be more at risk of criminalisation (c.f. Hall et al. 1978/2013; Tufail and Poynting 2013; Williams and Clark 2018), as well as disregarding the differential, distinct, and specific harms of criminalisation and experiences of punishment that affect both women and racial and ethnic minorities (c.f. Carlen 1988; Daly 1992, 1994; Malloch and McIvor 2013). His work also presents a theory of punishment that does not include consideration of any disproportionate impact on the poor – an issue that has been acknowledged by philosophers, sociologists, and criminologists since the 1800s (c.f. Carlen and Cook 1989; Faraldo-Cabana 2019; Munro and McNeill 2010). This theory divorces the very material 'enforced deprivations' at work in financial punishment, from the structural conditions in which they are rooted, thereby obscuring the 'exercise of power' that is taking place in these cases (Young 1999, 184).

As a result, O'Malley's application of the principles of disciplinary power to processes of financial punishment appears underdeveloped. His account tells half of the story, theorising disciplinary aspects of financial punishment based, almost exclusively, on the idea that people subjected to fines can pay them with little stress or hardship. This theorising purposefully ignores complex inter-connections between state, class and power (see Hunt 1990; Russell 1997) by excluding large groups in his analysis. As such, his theory disregards that different social classes are subject to different forms and intensities of disciplinary practices within society and, often, experience these practices in different ways

(Foucault 1975/2020, 1976/2020a). When attempts are made to explain and theorise a disciplinary society that lacks adequate recognition of these differences (see Hunt 1990; Russell 1997), dimensions of individual human experience are missed and concrete impacts of power and social control can become increasingly abstracted. Arguably, in this attempt to engage financial punishment from a disciplinary and governance perspective, certain abstracted notions of power emerge as 'incomprehensible as well as nihilist [with] no immediate relevance to…daily life' (Russell 2002, 118). Here, an influential theory of financial punishment has been crafted without reference to any differential or disproportionate impacts on those punished. This theory has also been offered on the basis of little empirical evidence offered to support assertions about how fines and financial penalties are experienced or the proposed outcomes they have on those subjected to them.

This type of theorising also serves to bolster hierarchical models of hard and soft punishment and, in fact, separates fines and financial penalties even further from networks of criminal legal power and penal control. Once again, fines and financial penalties are at risk of being defined by what they are not but, increasingly, that definition appears shaped by criminological interpretations of the character and operations of civil justice. Any potential punitive outcomes and experiences of financial punishment have been pushed further and further down the hierarchy of punishment until they are, now, almost never considered within the realm of criminal legal practice – all whilst these forms of punishment are affecting people in contact with criminal legal systems every day.

In such cases, criminological theorising is at risk of playing a role in crafting a 'regime of truth' (Hillyard and Tombs 2007, 11), becoming a powerful voice in re-affirming justifications for certain types of punishment and for confirming the legitimacy of certain types of criminal legal power. Theorising financial punishment in this way assists in the reification of certain assumptions about the leniency of fines, their lack of severity, and their potential to cause harm. It also serves to flatten the diversity of those experiencing financial punishment, disregarding the context of the lives of criminalised people. Criminological representations that rely on macro-level theorising and abstraction from tangible practice, policy, and experience contribute to the bolstering of these assumptions about the processes and effects of financial punishment that have gained traction in criminal legal practice, sentencing policy, and in the societal imaginary. More concerningly, though, there is a growing range of contrasting evidence of the consequences of being subjected to financial punishment, and, especially, fines enforcement, that strongly challenge existing justifications for the use of fines and financial penalties. This

work has significant implications for contemporary criminal legal practice in Scotland and presents new avenues for critical criminological research concerning fines and financial penalties – these are outlined in the following chapter.

Chapter Two – Non-payment of fines, fines enforcement and inequality

Though, so far, this thesis has levelled strong criticisms at existing criminological research, it would be inaccurate to suggest these accounts totally ignore 'the problem of fines and inequality' (Munro and McNeill 2010, 219). There is recognition that financial punishment affects the 'poor' disproportionately, and is likely to be felt differently across a range of identity categories, such as gender, race, and class, as well as in different economic, legal, and social/political contexts (cf. Faraldo-Cabana 2019; O'Malley 2009). Nonetheless, questions surrounding fines and inequality are not treated as an injustice operating within one of the most prevalent forms of criminal legal practice, but, often, as an awkward function of the ways in which these systems work, or, occasionally, as a design flaw that might be ameliorated. There is little focus on whether or how this injustice might act to fundamentally challenge to the legitimacy of this type of punishment, or question and unsettle assumptions that guide criminal legal practice and shape decision-making around sentencing and practice. Instead, representations of the leniency of financial penalties and their minimally damaging outcomes have been transposed onto a set of justifications for the expansion of financial punishment in Scotland across the last 40 years – justifications that have remained broadly unchallenged.

Very recently, however, critical and empirical international criminological scholarship that has started to reveal a range of harms produced by fines and financial penalties that affect those who cannot pay. These findings, this chapter asserts, reveal the extent to which policy and practice developments in Scotland have avoided engaging with the problems of fines and inequality. Engaging with what little empirical evidence that exists concerning fines enforcement in Scotland, this chapter demonstrates that economic and social marginalisation are, and have long been, recognised as contextual features affecting those exposed to fines enforcement. Nonetheless, across 40 years of reforms, the Scottish criminal legal system has re-organised its model of summary justice in ways that appear justified almost primarily on the basis of its own definitions of fairness, efficiency, and effectiveness – all of which serve the interests of criminal legal bureaucracy, rather than meaningfully engage with the context of those subjected to these forms of punishment. Whether in criminological theorising or in the type of decision-making taking place in Scotland's criminal legal system, this chapter will argue that the identification of certain problems of fines and inequalities does not necessarily produce corresponding actions that might address them.

Now that the dust has settled on 40 years of changes to financial punishment, this chapter asserts that there is an urgent need for evidence that re-examines the space created between the individual and the criminal legal system following the imposition of a fine and financial penalty. Specifically, up-to-date qualitative evidence concerning the processes, practices, and outcomes affecting those who cannot pay and are subjected to fines enforcement in contemporary Scotland is necessary. This chapter sets out how these processes and practices are best articulated within frameworks of bureaucracy, a re-framing of what might be happening at the level of fines enforcement that broadens out definitions of harm and violence enacted through criminal legal bureaucratic mechanisms.

Such evidence, this chapter asserts, would allow for an evaluation of the degree to which reforms to financial punishment are justified on the basis of the original aims set out in policy and rhetoric. Evidence of contemporary practice that acknowledges that the 'shape of the sanctioning structure' in Scotland has not changed substantively since the late 19th century, remaining a structure where financial punishment is (and has always been) the most prevalent form of punishment, might finally allow for adequate articulation of how the 'fine fits into the contemporary penal system' in Scotland (Young 1999, 182). Rather than conceptualised as separate and marginalised within practice, financial punishment must be examined within the broader nexus of contemporary penal practice and on the basis of the aims of contemporary rhetoric and policy in Scotland. The chapter concludes by drawing on existing empirical evidence from Scotland to help identify missing and underdeveloped evidence about the nature and outcomes of fines enforcement and financial punishment in contemporary Scottish criminal legal practice.

International empirical research

In the last decade, a small but robust empirical turn seems to be taking place in the field of financial punishment via a range of research that directly engages with people who have been fined, the broader context of the lives of those fined, and the ways in which various criminal legal systems manage and administer financial punishment. Research of this type has produced very different representations of financial punishment that explain and explore a range of harms experienced by those who cannot afford to pay them. These international accounts demonstrate that fines and financial penalties operate in different ways in different jurisdictions, producing different outcomes within the various social, political, and economic contexts in which criminal legal systems exist. This work acts to disrupt any homogenising tendency to see fines and financial penalties as inherently less

serious and more lenient, re-focusing attention on the 'injustice that arises from imposing fines that do not reflect differences in ability to pay' (Munro and McNeill 2010, 219). International empirical research reveals the processes and practices that disproportionately and negatively affect those who cannot pay, as well as articulating a range of impacts of being exposed to financial punishment that go beyond a narrow focus on the deprivation of financial resources.

Researchers from the United States and Europe have started to use qualitative and mixed methods to explore and articulate the experiences of people who have been fined, and (to a lesser extent) the perspectives of lawmakers, sentencers, and criminal legal professionals (Boches et al. 2022; Harris 2016; Harris et al. 2010, 2022; Pattillo et al. 2022; Todd-Kvam 2019). Their work has begun to seriously challenge representations of the operations and outcomes of fines that are reproduced in the gaps left by many of the theoretical accounts. These accounts shed light on policy and practice issues in financial punishment, and better articulate the impact of fines and related penalties on different groups of people. The findings generated by this new school of empirically led financial punishment research offer new insights into unrecognised and poorly articulated impacts of financial punishment. They also present robust and compelling evidence that challenge key assumptions about the process, outcomes and experience of financial punishment.

Financial punishment does not emerge as a proportionate and minimally disruptive hardship for those sentenced to these types of penalties. Instead, for those experiencing punishment via financial deprivation, the hardship generated is often chronic, rather than acute, as people who have received fines, fees, and/or charges are trapped by debt they owe to criminal legal systems (Harris 2016; Todd-Kvam 2019). In some cases, this debt is carried throughout a lifetime and, even when it is not, those with this type of debt remain under extended supervision and surveillance until it is cleared (Harris 2016; Todd-Kvam 2019). The resulting disruption this can produce can be concrete, such as in the examples from five counties in Washington State that Harris (2016) draws on, where those with 'punishment debt' (Todd-Kvam 2019) are subject to court summons, warrants, and jail stays based on lack of payment.

The disruption wrought by unpaid financial penalties can also be expressed in social and emotional ways, more akin to barriers to a personal sense of progress and development for those trying to come to terms with their involvement with criminal legal system and/or desist from offending. In interviews with Norwegian desisters and probation caseworkers,

Todd-Kvam (2019, 1485) found that living with punishment debt produced a 'fear of getting started in dealing with debt, a sense of unfairness and double punishment, undermining job motivation and a feeling of inescapability' in those experiencing it. These negative emotional states 'erode [a] sense of self-efficacy and agency' (Todd-Kvam 2019, 1486) and can contribute to potentially harmful coping-strategies, such as drug and alcohol use. Here, the impact of financial punishment is not only *not* rehabilitative, but also a tangible barrier to desistance, playing a central role in generating damaging emotions and actions long after sentences have been imposed.

Whilst financial punishment might not be 'dissocialising' in the same way as imprisonment, since it does not remove individuals from the community and expose them to the well-documented 'pains of imprisonment' (Crewe 2011; Downes 1988; King and McDermott 1995; Sykes 1958), international findings suggest financial punishment does render those with punishment debt unsocial within the community. Though those sentenced are typically regarded as 'atomistic individuals', this overlooks 'the fact that they are largely embedded in social networks' (Boches et al. 2022, 99). Evidence generated by the new school of empirical financial punishment research suggests that the burdens generated by financial punishment extend beyond the individual sentenced and out into their own communities, causing social, emotional, and material disruption to those closest to the individual sentenced.

Drawing on interviews with 140 people who had debt from fines, fees, and/or charges, as well as 96 court and legal professionals across two states in the US, Boches et al. (2022) were able to demonstrate several symbiotic harms caused by financial punishment. These 'unintended negative effects of punishment on the intimate associations of legal-involved individuals' (ibid., 99) included coercion of family to pay outstanding debts and family relationships being used as leverage to encourage payment. The process of trying to pay punishment debt caused friction and conflict between those sentenced and their families, as well as between families and criminal legal actors. Threats and coercion from these actors caused 'emotional distress and fear among family members' (ibid., 111) and the financial strain experienced by families caused economic hardship and stress. Boches et al. (ibid., 112) argue that through 'indirect …interaction with the criminal legal system, families are often harmed, suffering economic hardship, poor mental and physical health, and strained intimate relationships'. Abstract representations of financial punishment dehumanise this very human experience and make it easier to overlook the social and emotional context in which people living with financial punishment exist. The harms described in contemporary

empirical research remain broadly unrecognised in theorising about financial punishment and its assumed impacts.

Based on this evidence, fines and related financial punishment clearly can have a dissocialising effect on those subjected to them, as well as on the social networks that individuals are embedded in and rely on for economic and emotional support. The hardships and disruptions described in these examples are long-lasting and spread out from the individual sentenced into their broader life context. These individuals live with a chronic burden, one that often robs them of a sense of agency and progress. They may exist in states of extended supervision or under conditions that tie them to the criminal legal system for as long as it takes to pay their debt. They may live with this burden without the help or support available to those in prisoner re-entry programmes or serving community sentences; support that is often essential in 'handling the practicalities of getting oversight, for navigating the debt bureaucracy, and for moral support and encouragement' (Todd-Kvam 2019, 1486). Their relationship with their family and social network may become strained, leaving them even more isolated.

Subjection to financial punishment is clearly not a quick and efficient experience for those left with debt, economic hardship, anxiety, stress, and strained interpersonal relationships – experiences that can and do last well beyond the period of repayment. The rehabilitative potential in this scenario seems minimal, these experiences seem likely to produce 'antisocial rather than prosocial outcomes' (Harris et al. 2010, 1792) for the individuals experiencing financial punishment, their families, and (assuming desistance is the goal of the criminal legal system) the system that is responsible for their punishment. The alternative representation that emerges out of contemporary empirically-driven research into financial punishment focuses on the context of local criminal legal policy and practice, as well as on the socio-economic context of those subjected to fines and financial penalties. In doing so, these accounts are able to acknowledge that the harms of financial punishment are both exacerbated and exacerbating for those already existing in strained financial circumstances. Many of these scholars provide direct evidence of the disproportionate effect of financial punishment on people with low incomes or who are facing economic hardship.

Again, in the US, Pattillo et al. (2022) weave together qualitative evidence, courtroom ethnography and survey data that identifies a nexus between financial punishment and housing instability. This data is extrapolated out to a national level to demonstrate that

there is ‘a caustic churn whereby a population with identifiable housing hardships is saddled with a punishment that deepens financial strain and thus weakens housing stability’ (Pattillo et al. 2022, 58). The example of housing instability is one way of making more clear exactly who is disproportionately harmed by financial punishment but it is the work of US scholar Alexes Harris that aligns the new school of empirical fines research with critical criminological approaches. Harris’ monograph, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* (2016) brings together extensive sentencing data, legal documents, observations of court hearings, and interviews with defendants, judges, prosecutors, and other court officials from five counties in Washington State to robustly demonstrate how fines and related LFOs (Legal Financial Obligations) sustain existing economic and racial inequalities. Harris’ findings provide compelling contemporary evidence of how financial punishment reproduces and exacerbates ‘dominant political, economic and ideological discourses…[and] the structural effects of class, gender and racism’ (Carlen 1989, 6).

In Harris’ work, financial punishment is recast as a ‘permanent punishment’ for already marginalised groups, it serves to ‘reinforce poverty, destabilize community re-entry, and relegate impoverished debtors to a lifetime of punishment because their poverty leaves them unable to fulfil expectations of accountability’ (Harris 2016, 17). Harris’ account reinforces the concept of financial punishment as chronic harm, elongated and burdensome in ways that are not as immediately recognisable when contrasted with the pains inflicted by imprisonment. Harris demonstrates that these harms are inflicted on specific groups who are already at risk of criminalisation and punishment and that the infliction of this pain both increases the likelihood of further criminalisation and punishment, as well as contributing to harm caused by existing inequalities and social exclusion.

Harris’ research also provides evidence that further demonstrates the existence of a ‘two-tiered legal system’ (Link et al. 2020, 200) when it comes to financial punishment in the United States, one that places additional burdens on Black populations specifically. Fines and related financial penalties, ‘are part of a long history of racialized wealth extraction and state and municipal predatory practices that unfairly attempt to generate revenue on the backs of Black residents’ (Harris et al. 2022). In recent years, Harris has begun to expand her work on financial punishment and LFOs to include considerations of gender alongside race (Harris et al. 2022). She is leading calls for ‘more research to examine the intersectionality of race and gender and how monetary sanctions disparately impact Black women’ (ibid.) and, in doing so, is laying out a blueprint for a reinvigorated

critical empirically informed approach to financial punishment. The findings of Harris and others, though tied to the history and context of the US, echo similar research in the UK in the late 1980s (Carlen and Cook 1989), who also found that the experience and impacts of financial punishment was differentiated across race, gender, and class.

The strength of critical and empirically evidenced research concerning financial punishment is that, through a rejection of hierarchical models of punishment and to inherited assumptions about the processes and outcomes of financial punishment enact a 'political act of recognition…in knowledge construction' (Aliverti et al. 2021, 307). They recognise that financial punishment is not a homogenous experience, and that many of the ways in which the common and prevalent use of fines and financial punishment are justified by criminal legal systems may not be accurate reflections of the experiences of those who cannot pay fines. The tentative international calls for an up-to-date and empirically evidenced research agenda (Faraldo-Cabana 2020; Harris et al. 2022) prompt an orientation of fines and financial punishment research towards what is happening to those who cannot pay fines. International scholarship concerning financial punishment and its impacts on marginalised populations has been steadily expanding, and it is demonstrating that fines and financial penalties *do* produce negative outcomes. However, there are still significant gaps in research that demonstrates how and why financial punishment works to produce negative outcomes.

Research that uncovers the processes and practices that affect those who cannot pay fines provides a solid basis upon which to build critiques of the meaning, purpose, and legitimacy of fines and financial penalties – primarily by using qualitative evidence of practice and outcomes to challenge key assumptions that are used to justify a reliance on these types of sanctions within contemporary criminal legal systems, and bolstered by certain kinds of criminological theorisation. Honing in specifically on what is happening to those who cannot pay fines and financial penalties subverts and challenges assumptions about the leniency of financial penalties and estimations of the harms of financial punishment. Fortunately, there is some evidence of this kind available in Scotland and, notably, the body of existing data to draw on includes early and influential attempts to use empirical evidence to explain the operation and outcomes of financial punishment or, more succinctly, to craft an 'appropriate vocabulary' of financial punishment (Young 1999, 185). The data also provides a view of Scottish criminal legal practice at various waypoints on the 40 year long programme of reform and developments in the delivery of fines, financial penalties, and fines enforcement.

Empirical research in Scotland

Peter Young's body of work on the fine in Scotland in the late 1980s and 1990s remains, arguably, some of the most significant and influential research on the topic. It is one of the only attempts to theorise financial punishment outside of the framework of later influential criminological theorising, analysing financial punishment using observations of criminal legal practice, including interviews with 'fine-defaulters' (Young 1999) and Sheriffs (Young 1989). Young's primary argument is that a focus on the somatic, bodily nature of pain has been cited as one reason for why there is such a struggle to articulate how fines and related financial punishments achieve their effects, even within criminological frameworks that acknowledge the unseen violence of criminal legal processes. Though financial punishments are 'enforced deprivations and thus involve an exercise of power', the 'commodity being removed' has a fundamentally different relationship to the body, and, by extension, the personhood of the subject of punishment (Young 1999, 184-185). Money, the commodity under attack, is considered 'separate from the body' and less directly linked to 'sense of self or basic autonomy' (ibid., 184-185). Thus, the 'power-liberty-body' (ibid., 185) vocabulary that dominates much of the way punishment is conceptualised cannot and should not be transposed onto financial punishment.

In some respects, this is argument is further complicated by the 'de facto presupposition' (ibid., 187) that the individual sentenced will and must co-operate with the conditions of their punishment, i.e. deprivation of money. Within this framing, deprivation of liberty via imprisonment will take place whether an individual resists or not. The embodied constraint of liberty within the prison building is an attack on personhood that cannot be avoided or negotiated. Drawing on interviews with 21 men imprisoned for non-payment of fines in 1983, Young asserts that fines and financial punishments 'create a space' where 'administration of the fine is effectively handed over, in large measure, to the person who is being punished' (ibid., 186). He conceives of fines as an 'auto-punishment…one in which the person punished self administers the punishment' (ibid., 196). His arguments concerning co-operation and choice in the process of financial punishment relied on observations of the participants balancing 'a portion of their liberty against a sum of money' and reaching 'the decision that the exchange is worthwhile' (Young 1999, 186). This led to what was considered a trading dynamic with the criminal legal system wherein the participants saw themselves as 'calling the shots' (ibid., 191), choosing imprisonment rather than paying a fine.

Here, Young attempts to conceptualise the effects of fines and financial penalties in ways that acknowledge deprivation of money as key factor in the punishment process, but also increase the explanatory power of criminology to account for additional experiences of the kind found in the international empirical scholarship described above. Young's original conception of 'auto-punishment' accepts the potential for individual agency, resistance, and negotiation inherent in, recognising those experiencing financial punishment as something other than a homogenised group of powerless 'offenders'. Equally, rather than relegating fines to the bottom of an assumed hierarchy of punishment, stepping into the space created in the process of financial punishment offers a panoramic view of 'the everyday, routine aspects' (Young 1999, 186) of criminal legal process. These aspects constitute the forms of criminal legal power that are most common and affect a large proportion of those coming into contact with the criminal legal system. The size of this population increases the likelihood of a set of distinct and differential effects – both within the groups that have been shown to be disproportionately exposed to financial punishment, as well as those who have experienced negative consequences because of the imposition of a fine or financial penalty.

Within Young's work, paying or not paying a fine is presented as a choice and non-payment results in imprisonment – a dynamic which is expressed as a negotiation. What is compelling about Young's model of financial punishment is that it undermines attempts to cast financial punishment as a speedy, efficient, and minimally disruptive transaction taking place between individuals and the criminal legal system. His work demonstrates that the imposition of a fine or financial penalty is not an endpoint in a punishment process, but rather the starting point of a new set of interactions between an individual and the criminal legal system. As a result, the *process* of financial punishment is broadened to include what is happening in between two points – the point where a fine is imposed and the point where a fine is paid. To understand the process of financial punishment involves stepping into the space created between the individual who must pay and the criminal legal system who has set the price and demanded co-operation with their conditions.

Young is purposefully cautious about his theorising of the fine, describing his account as 'obviously incomplete' (ibid., 196). Nonetheless, his attempt to 'develop a more sensitive, appropriate and better vocabulary' (ibid., 186) still remains one of the only proposed theories of financial punishment that is based on empirical evidence. Further, his work acknowledges that the experience and outcomes of financial punishment are differential and disproportionate, but goes a step further in offering a tentative explanation for why this

might be. Young acknowledges that this type of theorising might 'open up a different and…more accurate way of thinking about the penal system' as a whole (ibid., 196), one that is based on the specific operations and experiences of financial punishment, as opposed to a comparative and hierarchical binary approach of prison versus not prison.

Young's research on the fine takes place well before Scotland's programme of reforms to financial punishment, when imprisonment for non-payment of fines was a standard mode of fines enforcement. Whilst his work is focused on agency and choice, the choice proposed in this case is between one form of punishment or another. Young (1999, 186) accepts that the conditions surrounding those faced with the exchange of money and liberty 'are not completely of their choosing', but his account does not adequately explore the broader conditions in which his participants operate. There are clues offered that indicate who is typically offered this choice. Young (ibid., 190) states that most men in his study 'were unemployed and on social security payments', he indicates that some had multiple outstanding fines and that, on the whole, they were 'experienced and knowledgeable about how the criminal justice system worked' (ibid., 191). Here, it is possible to begin to see economic marginalisation and previous or regular contact with the criminal legal system as potential features that reoccur in those subjected to fines enforcement in Scotland.

Nearly 30 years later, in 2011, following the implementation of the SJR, the Scottish Government commissioned a broad evaluation of changes to fine enforcement, the *Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement.* This report reviewed implementation of new policy and practice as it was in the process of integration and standardisation – most significantly, for this project, the report included 'the views and experiences of 'end users' of the enforcement system – namely, defaulters' (Bradshaw et al. 2011, 53). A group of 22 fine 'defaulters' were interviewed about the fines enforcement process, as well as their reasons and motivation for payment and non-payment for fines. The evaluation suggested that,

> 'the profile of the defaulter interviewees for the study was probably fairly typical of those in default. All except one of those interviewed (who ranged in age from 21 to 65), were unemployed, or on sickness or incapacity benefit. Some, but not all, had experienced fines enforcement prior to the reforms. Several were, or had recently been, in poor physical or mental health including addiction to non-prescription drugs (usually heroin) or alcohol. This was associated with job loss, periodic homelessness, poverty and generally, a 'chaotic lifestyle'. Most had been subject to other criminal penalties, including imprisonment, as well as fines.' (ibid.)

Many of those interviewed had ‘complex histories of financial penalties or multiple current fines of various kinds’ (Bradshaw et al. 2011, 53) resulting in accumulated debt owed to the criminal legal system. The main reported reasons for not paying fines were that they were unaffordable, or it was a struggle to keep up with multiple repayments. The evaluation also found that there were practical obstacles to payment, such as making payments when they did not have a bank account or could not open one. There was a common lack of awareness about what happens after a fine is imposed and what might happen as a result of default. And, whilst fines were broadly described as a ‘a fair punishment in principle’ (ibid., 58), there was an overall impression that they were unaffordable for those on low incomes and, especially, those whose income was solely or primarily from benefit payments. Whilst the prevailing view was that fines were preferable to other criminal legal outcomes, especially imprisonment, the fine was characterised, by this group, as largely ‘irrelevant in terms of preventing reoffending’ (ibid.) and as ‘a way of putting off consequences’ (ibid., 54).

The evaluation concluded that the ‘reforms have produced a system which is fairer than that which existed pre-reforms’ (ibid., 68), due to consistency in approach to non-payment and the potential for the system to respond to individual circumstances. However, the report also concludes that,

> ‘There is a strong case, on efficiency grounds, for tailoring the use of financial penalties more closely to ability and willingness to pay. While it would be important to remain alert to the implications for fairness of such an approach, it does not seem to make good financial or judicial sense to impose fines on individuals with multiple existing penalties or without the means to pay’(ibid., 68)

Arguably, there are already hints within early evaluation that the system, whilst more consistent in its approach to fines enforcement, remained disconnected from any responsiveness within the criminal legal system to individual context, whether economic or more broadly related to previous/regular contact with the criminal legal system. Equally, the evaluation was hesitant to conclude that the speed of the new system of enforcement action could ‘fit well within the SJR definition of a ‘quick’ system’ as collection of fines was taking an average of three years in most cases (ibid.). Delays in the system were primarily attributed to a lack of access to information about those who had not paid which would allow FEOs ‘to pursue defaulters effectively’ (ibid.). The report suggests that access to better information, as well as ‘a slightly more targeted use of fines as a disposal’ (ibid.) would improve the speed of the enforcement and collection process.

Whilst the reforms to financial punishment in Scotland in the 1990s and 2000s made significant changes to policy and practice, they appeared to do little to address identified inequalities shown to affect those repeatedly and regularly receiving fines and financial penalties. Nor did they appear to mitigate the likelihood of the burden of expansion of financial punishment falling disproportionately on those who might struggle to pay. Within the small samples used, whether in 2011 or 1983, the 'typical' profile of those who were at sharp end of fines enforcement and collection consistently included low incomes and serious struggles to afford re-payment. There was also evidence that multiple financial penalties were common, as was previous/regular contact with the criminal legal system. Thus, whilst fines enforcement might have changed substantially, the reliance on fines and related financial penalties within Scotland's criminal legal system remains uneasily at odds with what has been offered as evidence about the context of those subject to fines enforcement.

There has been little reconsideration of the effects of an expansion of financial penalties and the effects of collection and enforcement on those who are most likely and most frequently receiving financial penalties that engages more directly with the 'plethora of material confirming that crime of all kinds is linked to inequality, relative deprivation, and unemployment' (Reiner 2007, 362; see also Box 1987; Carlen 1988; Carlen and Cook 1989; Grover 2008a), as well as evidence from Scotland that demonstrates links between offending, income inequality and relative poverty (Croall and Mooney 2015). Criminal legal policy and practice in Scotland has appeared to remain disconnected and unresponsive to socio-economic context and fundamental problems of inequality when designing and implementing reforms to fines and financial penalties in the last 40 years.

Early work on the SJR recognised that 'targeting fines more precisely on the basis of better information about means should in itself help to reduce the likelihood of default' (McInnes Committee 2004, 240) by making fines more proportionate to individual means. This had also been a consideration included in the earlier reforms of the 1990s, where there was tentative support for the introduction of a unit or day fine system in Scotland. The unit or day fine system is 'an internationally accepted approach' (Munro and McNeill 2010, 220) to fine setting. Within the day or unit fine system, fines amounts are set 'proportionate to offence… and reflective of the offender's means' (Faraldo-Cabana 2019, 107). Rather than assigning a fixed amount, fines are calculated on a daily rate across a number of days or months to produce a total sum that acknowledges both offence severity and capacity to pay. Across the period of reforms to fines and financial penalties in Scotland, this more radical

and equitable approach to fine-setting and sentencing practice was twice diluted on the basis of feasibility and problems in envisioning how implementation would work. Firstly, in the 1990s, with the introduction of SAOs and, again, in the 2000s, with the promotion of SAOs as the most viable alternative for those who were on very low incomes (see Munro and McNeill 2010, 220-221).

There continues to be 'no formal guidance to setting fines in Scotland', with sentencing processes for fines being both inconsistent and at the discretion of the sentencer in each individual case (Munro and McNeill 2010, 219). This sentencing issue, identified over 35 years ago (see Young 1989), means that whilst financial circumstances should be taken into account when setting a fine, in practice this may not always the case. Offence severity and prior convictions have been shown to play a more prominent role in deciding the amount that an offender should pay (Munro and McNeill 2010; Young 1989). Even where there is some attention given to means, the resulting fine is not always equitable relative to financial resources and income (Munro and McNeill 2010; Nicholson 1994). And, in the case of direct measures, there is no 'consideration of means' at all (Munro and McNeill 2010, 221) when fixed penalties or fiscal fines are imposed. This is, in fact, in-built feature of their design as diversionary methods – aiming to make them quick and efficient in enforcing a response to offending that does not require the scrutiny of court processes.

The extent to which contextual factors are included in sentencing practice in Scotland remains unclear, with suggestions of inconsistent approaches, and poorly applied definitions of proportionality. In a study of fines in magistrate's courts in England, Allen (1989, 83) uses court reports to argue that though fines are most often the 'sentence of default' used in response to women's offending, the administrative nature of the processing of low-level offences leaves little time or space to consider contextual factors when making sentencing decisions. When provided with information about circumstances that may negatively affect a defendant's ability to pay, such as parental responsibilities and employment status, research has identified a reluctance on the part of sentencers to fine women (Allen 1989; Gelsthorpe 2006). In the case of direct measures in Scotland, there appears to be a preference for speedy, automated procedures rather than careful consideration of the ability to pay and the additional hardships imposed (see Duff 1993). Opportunities for reflection on the ability of those sentenced to pay, whether based on financial means alone or through more detailed consideration of holistic context, are seemingly not characteristic features of the sentencing practices that surround various forms of financial punishment in Scotland.

The significant changes to financial penalties and fines enforcement in Scotland in the last 40 years have been cast as wholly benign – based, primarily, on the waning use of imprisonment for non-payment (see Quilter and Hogg 2018), as well as an increased ideological distance between court processes and custodial outcomes. There has been an emphasis on the benefits for criminal legal systems, rather than assessing the appropriateness of financial penalties as a way of responding to criminalised behaviour (and/or the socio-economic conditions that underly certain behaviours). What was proposed and enacted in the SJR was presented as definitively not 'hard' justice so, ultimately, the re-vamped system was imbued with a 'soft' reputation – fair, effective, efficient, quick, and simple. Relying on the 'preconception that the major problem presented by minor crime is essentially administrative' (Duff 1993, 501), evidence of these positive qualities has been broadly self-defined and, then, evaluated by the criminal legal system itself. The new approach derived (and, arguably, continues to derive) legitimacy, permanence, and power from critiques of imprisonment, rather than evidence-based evaluations of the operations, outcomes, meanings, and purpose of financial punishment for those subjected to it.

Equally, rather than adopting reform measures that might have made the system more equitable in practice – including addressing sentencing procedures, or placing greater weight on integrating considerations of individual means in fine setting – the Scottish reforms opted for a system of greater efficiency and consistency in payment extraction. Arguably, this has been possible because there has been no challenge to the ways in which definitions of fair, effective, efficient, quick and simple criminal legal practice have been operationalised. Instead, in contemporary Scotland, both the model and processes of financial punishment are highly bureaucratic. Financial punishments are valuable to the efficient running of the bulk of the work of the Scottish criminal legal system, serving the interests of justice by reducing court delays, minimising 'unnecessary' court action, and diverting cases from court.

Bureaucracy and financial punishment

Contemporary fines enforcement processes appear to take place within a bureaucratic organisational structure that is increasingly focused on 'attaining the highest degree of efficiency and is in this sense formally the most rational known means of exercising authority over human beings' (Weber 1922/1968, 223). Though Weber has offered an influential model of formal organisational structures, bureaucracy can also be understood

as ‘an empirical process of rationalization’ (Armstrong 2003, 289) with a focus on ‘orderliness; taxonomic propensity; general and autonomous organisability [and] predictability’ (Bottoms 1983, 188). Moving beyond the confines of Weber’s ideal model of bureaucratic organisation, bureaucracy can be further understood as an ‘impersonal, rational and efficient routine’ (Sarangi and Slembrouck 2013, 2) – one that is adopted by ‘certain types of centralized social order, of a modern organised kind, as distinct not only from older aristocratic societies but from popular democracy’ (Williams 1983, 49). It is also possible to understand bureaucracy as a mind-set or mentality that is auto-legitimating, seeing success and legitimacy only within the narrow parameters of rationality, efficiency, and impersonality (Bottoms 1983; Armstrong 2003). The role of bureaucracies in social order and social control is typically recognised as result of economic shifts to capitalist modes of production, especially those following the Industrial Revolution in the late 18th and 19th centuries (Foucault 1975/2020; Weber 1947/1964, 1922/1968, 1930/2001).

In the wake of these substantial and significant economic, social, and cultural transformations, bureaucratic governance has become the way in which many areas of social life are managed and regulated, most often through the centrality and influence of large state institutions. Large-scale practices ensure oversight and management of the behaviour of large groups but, increasingly, become harder to discern due to their ‘every day [and] routine’(Young 1999, 186) character. Arguably, this is a relevant framework for conceptualising and analysing the operations of fines enforcement in contemporary Scotland. Outside of the parameters of efficiency, the value of financial punishment in Scotland as both a distinct punishment and as a part of the larger criminal legal system remains unclear. Fines and related financial penalties have come to represent a landscape of criminal legal operation that is defined, managed, and evaluated on founding principles that emphasise efficiency, speed, simplicity, and effectiveness. Admittedly, though, the suggestion that fines and related financial sanctions exist as an administrative-bureaucratic form of social control and penal power is hardly a revolutionary criminological claim.

Most fine scholars acknowledge bureaucracy as relevant to understanding fines and financial penalties, primarily as the apparatus through which most financial punishment is achieved. Fundamentally, the consensus across various theoretical accounts is that fines, as a mode of punishment, are ‘consistent with…rational bureaucracy as the predominant mode of organisation in modern society’ (Young 1999, 194, see also Bottoms 1983). Whilst there has been recognition of the close relationship of fines and financial penalties

to the ‘bureaucratic-administrative law-enforcement system’ (Bottoms 1983, 186), this is predominantly offered as shorthand for the space where civil and legal power meet. The archetypes of this relationship are the use of fines for motoring offences or around television licensing offences (see Bottoms 1983; O’Malley 2009). Whilst this may have imbued fines and related financial punishments with a bureaucratic-administrative flavour, nuanced accounts of actual bureaucratic processes and practices are sparse (Harris 2016 is a notable exception). Instead, fines and related financial penalties take on a synonymity with poorly defined and often dismissive estimations of the operations, outcomes, and experiences of bureaucracy and bureaucratic practices.

Highly influential accounts of how institutions often employ a range of bureaucratic practices that contribute to a broader pattern of supervision, examination, and standardisation have focused on specific examples – the most criminologically relevant one being the prison (Foucault 1963/2003, 1975/2020). There have been longstanding debates about the application of concepts of Foucauldian concepts of governmentality and discipline to processes of financial punishment. Young (1987, 301) argues that,

> ‘money has its own type of power, its own calculus of discipline, the fine has a much more complex relationship to power than normally imagined. The relationship to power is complex and, in some ways, elusive, but it constitutes a sociological phenomenon of the first order of importance’.

Across the period of developments to fines enforcement in Scotland that this thesis has focused on, the academic stance on the ‘disciplinary nature’ of fines has shifted from treating them as fundamentally non-disciplinary (see Bottoms 1983) to fully disciplinary, with the caveat that this characterisation can only be applied in accounts that do not consider what happens to those who cannot pay (see O’Malley 2009). The complexities and elusiveness of the disciplinary power enacted through financial punishment remains, this thesis contends, partially described and analysed – primarily through a lack of empirical evidence. Especially, a lack of empirical evidence focused on those groups who cannot pay and might experience the power of money and the consequences of financial deprivation differently (Young 1987).

The extent to which this partial and incomplete considerations of the power of financial punishment can be blamed on a failure to ‘capture the banality and to express the everyday operations of bureaucracies’ (Mathur 2017, 7) is unclear. There is a tendency, within theoretical accounts, to see fines and financial punishments as very much exemplary of the

‘metaphor of the machine of the state…with all its connotations of a unitary system working on automaton’ (ibid., 4). This is a misleading misconception of both the processes and outcomes of financial punishment. Young’s account of auto-punishment demonstrates the complexities of the process and his work is bolstered by the numerous contemporary empirical demonstrations of the messiness of fines enforcement and the effects of the processes of extraction on those who do not pay. Ultimately, it appears as though the administrative-bureaucratic practices at work in processes of financial punishment become increasingly synonymous with regulation, rather than punishment. This absorption comes to infuse these methods and their potential outcomes on those subjected to them with a type of banal legitimacy as an acceptable and unquestioned technique of social control.

Accepting that bureaucracies are ‘instruments of power’ (Heyman 2004, 488), they are structures of state authority that have the power to control and shape the societies they serve. How state power is enacted through bureaucratic structures, processes and practices provides insight into the social, political, and economic context of individual societies. Bureaucracies often wield ‘coercive, material, and ideological power’ (ibid., 489) in the lives of individuals and social groups that are drawn into them through their involvement with state powers. When ‘bureaucratic officialism legitimates and disguises power relationships’ (ibid.), there needs to be careful scrutiny given to the interactions between individuals and the bureaucracies that bring state intervention into their lives, such as in processes of fines enforcement. Recognising, and then articulating, the bureaucratic operations of fines and financial penalties becomes one way of excavating financial punishment out from the monolithic metaphor of state machinery and evaluating techniques and socio-political dimensions of institutions with the ability to punish and oppress already marginalised people.

Bureaucratic violence and punishment

A range of evidence has demonstrated the unrecognised violence inherent in the practices and processes of many contemporary bureaucracies. This includes Bosworth’s (2013, 2014, 2017, 2019) extensive research in immigration detention centres, as well as an explosion of literature that has explored various aspects of state welfare in the UK (c.f. Cooper and Wright 2017; Fletcher and Wright 2018; Redman and Fletcher 2022), and bureaucratic institutions internationally (c.f. Dubois 2016; Gupta 2012; Norberg 2022). These studies have provided insight into how bureaucratic processes, bureaucratisation, and exhaustive paperwork enact violence on already marginalised individuals and groups

by making the process of navigating agencies and institutions ever more complicated and burdensome. In many cases, the violent function of bureaucracies lies in the inability of those that need to access and understand its workings to figure out how and why the processes work the way they do. Often there is an implicit assumption at work that those caught up in these systems should instinctively know what they need to do to 'progress' through the bureaucratic channels.

The emphasis on the violence of bureaucracy and the practices and techniques that enact this violence has also been adapted into criminological research, with specific reference to prisons and the ways in which penal policy, practice, and reform employ bureaucratic logic to oppressive and violent ends (Armstrong 2003, 2018, 2020). Central to penal bureaucratic practices is an adherence to arbitrary rules that governs how bureaucracies treat individuals in a way that ends up severely curtailing or even removing their rights. In a persuasive example, Armstrong (2020) uses the case of Billy Brown to show how prisoners can end up serving much longer sentences than have been court mandated where they are unable to access courses and services that are deemed necessary to allow them to become eligible for parole. Here, legal bureaucracies in the form of the courts, the Scottish Prison Service (SPS), and parole boards are found to be 'imposing material and psychic burdens in the pursuit of legal claims, creating both hope and the basis of destroying it' (ibid., 85), as conditions of release become impossible to meet due to the very nature and internal workings/failings of the agencies and institutions themselves. Armstrong convincingly argues that the violent and chaotic nature of prison coalesces with a more subtle, but equally punishing, bureaucratic violence that turns human rights and rehabilitation into checkboxes that prisoners must take personal responsibility for.

Inherent in these criminological and broader sociological critiques is the recognition that 'bureaucracy can enact state violence'(Norberg 2022, 657). Many of these accounts draw on Bauman's (1989, 22) framework of bureaucratic violence, emphasising that bureaucracies rely on 'inner-organizational rules as the source and guarantee of propriety'. These structures essentially legitimise their processes and practices through a set of rules that are generated within the structures themselves. Additionally, interactions with those that bureaucracies set out to manage are rendered invisible, distanced, and depersonalised (see Norberg 2022, 657) which becomes one way in which violence remains unrecognised. The nature of bureaucratic logic, relying as it does, Weber (1922/1968, 225) argues, on 'a spirit of formalistic impersonality…[wherein] [e]verybody is subject to formal equality of treatment; everybody is in the same empirical situation' contributes to an approach that

flattens and homogenises the contexts of those encountering various bureaucracies. This homogenisation gives rise to bureaucratic practices and techniques that are often justified within a rationale that everybody gets the same treatment, equality displacing equity and ensuring that the 'same' treatment is an entirely different experience for some and not for others.

However, bureaucratic practices often do not a treat an individual as 'a whole person' (Bottoms 1983, 190), but rather as an idealised subject that is then used as a defining model for all subjects who interact with bureaucracies. This is the model for everybody in the same situation – a model that is, in turn, then used as the reference point for the version of equality that is promoted throughout the bureaucratic structure and, for whom, the practices and techniques are designed for. The consequences of this are a form of dehumanisation that affects both form and function of bureaucracy; processes are designed for a presupposed subject and expectations of interactions with this subject define both bureaucratic practices and their idealised outcomes. As Ferguson (1984, 33) argues, bureaucratic practice can bring together 'technique and procedure with a substantive concern for reshaping the lives of clients, especially the poor'. In this configuration of bureaucracy, human beings and human life are converted into 'objects and events' (Ferguson 1983, 56) to be managed by bureaucratic interventions. The nature of bureaucracy is hierarchical by design, with dominant and subordinate positions applied, respectively, to those within and operating the structure, and those out with and attempting to access the structure.

Interactions with bureaucracies are often instrumental to human survival on the most basic levels. They can stand between access to resources essential to safety and security – citizenship status, housing, financial assistance and, in some cases, liberty. Those seeking access to these resources are, very often, doing so because they have little to no choice other than to do so and, in the case of the criminal legal system, this is certainly the case. Criminalised people have no choice but to comply with the conditions of the system. Here the routine aspects of bureaucratic power and, potentially, violence are converted into consistent practices that are performed by 'specialists' (Norberg 2022, 6) who manage and administer specific aspects of the system. These critiques surrounding dehumanisation and idealised subjectivity have been consolidated into ways of thinking about criminal legal bureaucracies, specifically how bureaucratic techniques can exacerbate the experience of punishment, inflicting additional harm and pain on top of deprivations instituted as a result of penal and legal intervention.

Bureaucracy and fines enforcement in Scotland

In many convincing ways, the reformed model of financial punishment in Scotland reflects the assertion that,

> '[t]he success of the bureaucracy lies not in its perfection of the art of efficiency, but its success in creating a system whose value is efficiency, and fundamentally, its success in convincing people that this value is the most important basis of its legitimacy' (Armstrong 2003, 288).

The increasing bureaucratisation of financial punishment in Scotland over the course of 40 years has produced a system where management of non-payment has become the primary function. This is a level of bureaucratic justice where low incomes and strained economic resources remain a prominent feature affecting those who are targeted for fines enforcement action. In over a decade since these reforms were enacted, and evaluation work highlighted potential effects of new practices on a specific groups, there has been little to no change in approach.

The figure re-produced below (**Figure 1.**) from the *Quarterly Fines Report - 57* [4] (Scottish Courts & Tribunals Service 2023), produced by the Scottish Courts & Tribunals Service (SCTS), and part of

> 'a long-running series of bulletins and tables about fines and financial penalty collection rates in Scotland…[which] covers fines imposed in Sheriff and Justice of the Peace courts as well as fiscal direct penalties and police fixed penalties' (Scottish Courts & Tribunals Service Website, no date a).

This figure lays out the types of enforcement action carried out in the three months leading up to 17th July 2023. It shows that deduction from benefits was the most common form of enforcement action in the 3-month period leading up to 17th July 2023. The report also provides additional data covering 'financial penalties imposed or registered between 01 April 2019 and 31 March 2023, with fines collection up to 17 July 2023' showing that nearly 41% (74,488) of the 181,807 enforcement orders granted in this period were Deduction from Benefit Orders (DBOs) (Scottish Courts & Tribunals Service 2023, 7). DBOs that claim funds for outstanding fines directly from people's benefits are the most

[4] In the middle of 2024, as this thesis was being finalised, the STCS changed the format of how data on fines and financial penalties was presented. What was known as the *Quarterly Fines Report* is now known as *The Courts Data Scotland: Fines (CDSF)*, and is delivered as an Excel workbook. Bulletins produced up until March 2024 were done so under the title of the *Quarterly Fines Report* and are referred to as this throughout. Any data post March 2024 will be referred to under the new title of *CDSF*.

common method of fines enforcement action. These statistics demonstrate that, at a very basic level, fines are primarily being enforced and collected from those likely to be existing on low incomes and in receipt of state support as a main contributor to available economic resources.

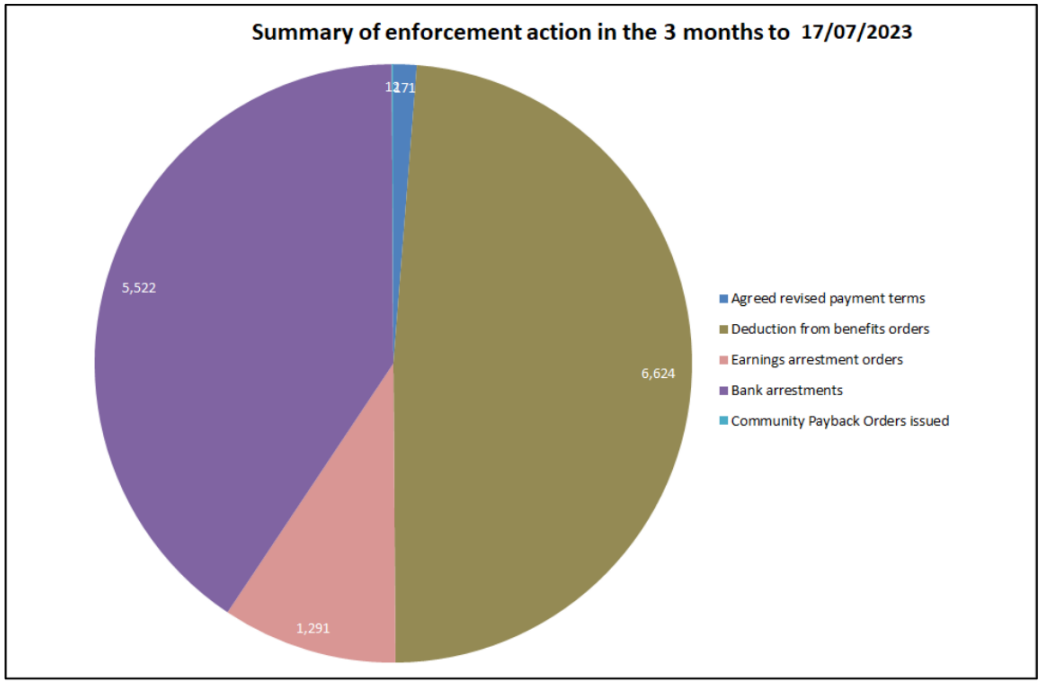

Figure 1. 'Summary of enforcement action in the 3 months to 17/07/2023', taken from Scottish Courts & Tribunals Service, *Quarterly Fines Report 57 – Quarter 4 2022/23* (Scottish Courts & Tribunals Service 2023, 7).

Nonetheless, the bureaucracy of financial punishment in Scotland appears to remain focused and self-evaluated only on the basis of how well it manages the business of extraction from a population who cannot pay. *The Quarterly Fines Report*[5] stands as testament to this – exhaustive, extensive, detailed, and regular data that details the business of extraction expressed in time taken to repay, amount repaid, amount outstanding, by both area and type of financial penalty. A novice researcher might struggle to find publicly available criminal legal statistics that shed light on financial punishments beyond offering evidence of prevalence and scant general detail about offences, gender, and age of those receiving fines. If they wanted to know obscure details about fine repayment rates in Aberdeen across years and years, that information is carefully recorded, collected, and published on a regular basis.

[5] *The Quarterly Fines Report* has very recently been replaced by its successor, *Courts Data Scotland: Fines (CDSF)* introduced in the middle of 2024 as this thesis was being finalised. The primary difference between the two data sources appears to be presentation. The *CDSF* is an Excel workbook, *The Quarterly Fines Report* was a PDF bulletin. This thesis uses data from *The Quarterly Fines Report* consistently throughout.

The example of the *Quarterly Fines Report* is included here because it is a perfect illustration of the nature and practices of the financial punishment bureaucracy in contemporary Scotland. Its very existence, alongside the staggering detail and rigid regularity with which it is published, demonstrates that 'documents are not simply instruments of bureaucratic organizations, but rather are constitutive of bureaucratic rules, ideologies, knowledge, practices, subjectivities, objects, outcomes, and even the organizations themselves' (Hull 2012, 253). In Scotland, people who cannot pay their fine appear to be subsumed into a process focused on extraction and compliance, with the predominant emphasis given to the efficiency with which this extraction is undertaken. The sustained refusal in Scotland, throughout decades long programmes of reform, to engage with the issue of inequality has produced a bureaucracy of financial punishment that appears to have taken poverty for granted and continued on regardless. This appears to have been treated as an uncomfortable aside, rather than a definitive structural challenge of criminal legal power and legitimacy in Scotland.

Researching fines enforcement in Scotland

The previous two chapters have summarised 40 years of reforms to financial punishment in Scotland, identifying ways in which policy developments that have shaped contemporary practice have received little criminological attention. Influential criminological accounts in the last 15 years have done little to engage with the outcomes and impacts of financial punishment, especially in the case of those targeted for non-payment and, as a result, a set of assumptions about the leniency and harms of financial punishment have remained largely unchallenged. In Scotland, evidence of the influence of these assumptions can be found in a set of policy prerogatives that focus on benefits of fines and financial penalties as a way of efficiently and fairly dispensing justice, through a highly bureaucratised system of fines enforcement practice. Very recent findings from international empirical research concerning fines and financial penalties has established a range of harms produced through exposure to fines, financial penalties, and, especially, various types of fines enforcement action. These have been shown to primarily affect those who cannot afford to pay, contributing in some cases to differential experiences and impacts based on the availability of financial resources.

The effect of re-vamped processes and practices taking place in Scotland on those subjected to them has not been scrutinised qualitatively, even though available evidence suggests that many of those targeted for fines enforcement action in Scotland may already

be experiencing a degree of economic and social marginalisation. As a result, research is necessary to establish both the practices and processes of fines enforcement within the highly bureaucratic context of contemporary practice in Scotland. Accepting that, in Scotland, the likelihood of imprisonment may be (nominally, at least) reduced, these every day, routine aspects of fines and related financial punishments become the largest constituents of the process of financial punishment.

Potentially, they also form a set of additional conditions imposed upon those sentenced to a fine or related financial penalty. In these circumstances, the condition that the fine must be paid is inherent, but there is additional scope for criminal legal power to decide how, when, and in what manner the payment takes place – generating new conditions and constraints that change the process of financial punishment, its outcomes, and, possibly, the punishment effect. All of which are demonstrably affecting those who experience economic marginalisation and, based on a small body of previous empirical evidence, are potentially experiencing forms of social marginalisation and exclusion that both underly criminalised behaviour and repeated/regular contact with the criminal legal system.

To paraphrase Young, the space created between the individual sentenced and the Scottish criminal legal system is now increasingly a space of bureaucratised practice which rationalises the process of extracting financial resources, especially when individuals do not pay. Designing research that addresses ‘the neglected question of enforcement’ (Quilter and Hogg 2018, 12) of fines and financial penalties provides opportunities to uncover how criminal legal systems respond to non-payment of fines and how this affects those who cannot pay. In contemporary Scotland, this has emerged as a significant gap in existing literature. The empirical evidence outlined in previous sections suggests that, whilst deprivation of money is one effect of fines and related financial punishments, their imposition produces a number of additional outcomes including chronic debt, barriers to desistance, and symbiotic harms in the broader communities of people subjected to fines enforcement.

As a result, the first key aim of the empirical work is to establish what impact fines and financial penalties have on those who cannot pay and, in Scotland, are exposed to fines enforcement action. To begin to develop a clearer understanding of this process, it is essential to establish what precisely the practices and techniques of managing non-payment might be within the bureaucratic framework of fines enforcement action. Existing empirical research from Scotland has already identified key features such as time to pay,

payment in instalments, and the ability for others to pay on someone else's behalf as distinct practices in the space of financial punishment (Young 1999, 186). Additionally, evidence from those experiencing enforcement and collection action interviewed in the 2011 Scottish Government commissioned evaluation of reforms to fines enforcement action adds as access to information, payment methods, and contact with avenues of support and guidance as key features affecting the financial punishment process (Bradshaw et al. 2011, 53-59). Consequently, the second aim of the empirical work is one that treats the everyday and routine practices and features of the process as central to understanding what effects these produce on those who cannot pay, focusing on these previously identified practices as a way of explaining the process and its outcomes in more detail.

The focus in these aims is firmly and purposefully on the *how* of fines and related financial penalties, the implication being that more detail about the substantive nature of the everyday and routine aspects of financial punishment will provide a basis for evaluations of the process that are more firmly rooted in contemporary practice. Additionally, accepting that, in Scotland, many individuals experiencing a range of enforcement and collection procedures are already experiencing economic marginalisation, it is possible that these procedures themselves contribute to and further exacerbate other forms of social exclusion in conjunction with enforced financial deprivation. These may contribute to further criminalisation and exposure to more harms as a result of interactions with criminal legal power via fines, financial penalties and, especially, fines enforcement action.

With more evidence available concerning the practice and outcomes of fines and related financial penalties, it becomes easier to offer evaluations of the nature, purpose, and meaning of financial punishment in ways that challenge criminal legal bureaucratic rhetoric as, potentially, both an inaccurate representation of reality *and* as a technique that obscures coercive and disadvantaging punitive practices. To make any evaluations more targeted at Scottish criminal legal policy, this project engages primarily with examining the fairness and effectiveness of fines, financial penalties, and fines enforcement action through analysis of evidence of process, practice, and outcomes. The adoption of language and concepts used in the original aims of the SJR is a conscious choice, allowing for a re-examination of these aims with the benefit of additional perspectives – in this project, the perspectives of community justice practitioners. Aspects of the methodological approach of this project also contributed to the refinement of research aims relating to evaluations of fairness and effectiveness that are described in the following chapter.

Chapter Three – A new perspective on financial punishment: community justice and financial penalties

Engagement with existing literature outlined in the previous chapter has demonstrated that the space created between the individual and the criminal legal system following the imposition of a fine and financial penalty presents opportunities to gain insight into the processes and practices, as well as providing a perspective from which to examine the effects of financial punishment (Young 1989). The following chapter outlines the methodological approach adopted by this project, beginning with a brief outline of the ways in which the Covid-19 pandemic affected certain methodological choices taken throughout the research process. It then outlines how the perspective offered by community justice practitioners was envisioned as a new way of stepping into the space of financial punishment in contemporary Scotland.

Though both financial penalties and community sentences are recognised as non-custodial alternatives within Scottish criminal legal practice, there is little acknowledgment of potential overlaps in practice. This chapter argues that community justice practitioners are in a unique position from which to offer perspectives on the processes, practices, and outcomes of fines and financial penalties. This includes the potential for an end-to-end view of processes in their entirety – from sentencing to fines enforcement to repayment, as well as an overview of how fines and financial penalties intersect with people's lives in the community. Equally, practitioners working in the broadly defined sphere of Scottish community justice nominally operate under a professional ethos that emphasises the rehabilitative purposes of punishment (see McNeill 2016, 2019), as such their perspectives on fines and financial penalties might offer new ways to evaluate the operations, outcomes, and purpose of financial punishment.

Having established the value of engaging with community justice perspectives as a way of expanding and enhancing existing accounts of fines and financial penalties in contemporary Scotland, the chapter moves on to describing how in-depth online qualitative interviews were planned and conducted, producing the empirical evidence that forms the basis of findings in this project. Summaries of key aspects of the research process including interview design, recruitment, and sampling are provided, with reflections on methodological issues that arose during the course of planning and fieldwork. The chapter also considers potential limitations of methodological choices made throughout the

research process. This chapter concludes with a description of the coding and analysis process, showing how interview data was thematically coded and analysed to produce findings that are detailed in this thesis.

Researching during the Covid-19 pandemic

Planning and fieldwork for this project took place between September 2019 and March 2023. Throughout much of the research process, the Covid-19 pandemic was at its height, with successive global lockdowns taking place and producing a number of disruptions to the research. The pandemic had a profound effect on the course of this project, especially around initial plans to provide evidence of fines and financial penalties as an aspect of criminal legal practice affecting women. The delivery of this project, and the evidence generated in the course of the research, is smaller in scale and scope than was originally envisioned as, necessarily, plans had to be changed and adapted in line with unexpected and unprecedented global events.

At some points it was doubtful whether any empirical element to this project would be possible and even when empirical research did, once again, become a viable option, the significant disruption and delays to around 18 months of the research process had continuing effects. There were a number of issues with recruitment of participants in this project. Overall, recruitment was slow and it took a long time to recruit even the small group of practitioners who volunteered for interview. Opportunities and methods of recruitment were severely limited during lockdowns, and continued to be difficult throughout earlier iterations of social distancing requirements enacted by the Scottish Government throughout 2021. All of the fieldwork in this project took place online and, whilst this chapter will later outline the unexpected benefits of shift in methods, it is fair to state that this was not the experience that was anticipated when this project was initially designed.

Within some of the research materials referenced in this chapter, there are references to women's experiences of fines and financial penalties. This is evidence of the changes and adaptations that the project went through during the long, frustrating, and often disappointing process of doing research during the pandemic. This is flagged here because, firstly, it is valid to question whether the same answers would have been generated had this project not included organisations working with women, or asked questions specifically about supporting women with fines and financial penalties. Of the 9 practitioners

interviewed for this project, 4 worked for services or organisations that only worked with women. The remaining 5 worked with services who did not specify gender in their working practices. Both the focus in the research questions and aims on better understanding the outcomes of fines enforcement and more about the processes and practices, and the number of interviews undertaken, meant that analysis was centred around these. As such, it has not been possible to offer a detailed comparative analysis on what was reported by practitioners working only with women.

As will become clearer when findings are described and analysed in the following chapter, common themes and issues that arose out of the interview data are remarkably similar to those described in earlier empirical work from Scotland. This adds some weight to claims about the robustness, reliability, and relevance of these findings to broader assertions about fines and financial penalties in Scotland. Considering there has been scant inclusion of fines enforcement processes within existing literature in Scotland, opening up this project to include perspectives from those working in community justice with women provides basis upon which to craft further research questions that engage with gender as a distinct variable. As always, more research is necessary to establish the transferability of the findings of this project to other contexts within Scottish criminal legal practice, as well as to more general theoretical and empirical research findings concerning fines and financial penalties.

Equally, though, these reflections are included here, not simply as justification of the choices made throughout the research process, but instead to make explicit the 'conversation that takes place within the researcher's inner self; … [the] conversation that always takes place whether a researcher is conscious of it or not' (Peredaryenko and Krauss 2013, 5). It is an attempt at more transparency about the ways in which the context of the pandemic affected the research and the researcher – one which is necessary because so many of the methodological decisions were shaped by what was possible and achievable in the given conditions. Certainly, doing research is often (if not always) messy, but when the messy parts are 'cleaned up, hidden, discarded or outright ignored before, during or after the research process' (McLean 2022, 23), the risk of misrepresentation of both the process and the findings increases. The messiness of doing this research during a pandemic needs to be acknowledged because this thesis strongly critiques both a discipline and a criminal legal system for the ways in which they hide, minimise, or otherwise overlook certain aspects of contexts in which they operate. It would be impossible to divorce the context of the pandemic as both a defining backdrop, as well as a limiting factor in the

research process. However, even with certain methodological limitations, which are discussed later in this chapter, this thesis maintains that the empirical work undertaken in this project represents a significant contribution to criminological research in Scotland and, more generally, to the broader field of research concerning fines and financial penalties.

A 'third space' of punishment in Scotland: financial penalties and community justice

Existing criminological analyses have suggested that fines and financial penalties have been defined by their relationship with imprisonment, imbued with a 'soft' power that is decided primarily by the dimensions of the 'hard' power of imprisonment (see Feraldo-Cabana, 2019; Young 1987, 1989). More recent mainstream criminological theorising has further 'softened' the penal nature of fines and financial penalties, pushing them further away from criminal legal power by drawing comparisons with civil penalties (see O'Malley 2009). In both cases, as the previous chapter argued, the punishment effects of fines and financial penalties are defined and understood via reference to what they are not, with estimations of their operations and effects are produced primarily through comparison.

Arguably, in Scotland, neither approach reflects the position of fines and financial penalties in contemporary practice. 40 years of reform has been structured around changing the relationship between imprisonment and financial penalties, primarily through attempts to reduce the use of imprisonment as response to non-payment of financial penalties. The expansion of financial penalties in Scotland across this period has seen an increasing characterisation of fines and financial penalties as 'diversionary measures' (Duff 1993, 498) or, increasingly, as direct measures. This is specifically the case for the range of fines and financial penalties that operate at the COPFS level in Scotland – these measures have been described as a 'half-way house' (ibid., 493), a stop-off point on the journey to prosecution which work to keep people out of court and reduce the risk of further and/or more intrusive criminal legal intervention. It remains unclear how much of this diversionary potential is at the service of the bureaucratic prerogatives of the courts and how much of it is focused on strategically keeping people away from prosecution and, by extension, the risk of custody. Nonetheless, fines and financial penalties of all kinds have been positioned in Scotland as fundamentally a non-custodial alternative, dealing directly and immediately with the high-volume business of summary justice.

These changes in practice affecting fines and financial penalties have not been broadly considered within the distinct and specific context of non-custodial alternatives at work in Scotland and, especially, have not been examined in relation to the influential role that community punishment and, latterly, community justice have come to play in Scottish criminal legal policy and practice more widely. Community justice in Scotland is defined as 'the collection of agencies and services in Scotland that individually and in partnership work to manage offenders, prevent offending and reduce reoffending and the harm that it causes, to promote social inclusion, citizenship and desistance' (Scottish Government 2014, 1). This collection, in Scotland, includes criminal justice social work (CJSW) as a primary agency alongside a range of 'public and third sector services' (Buchan and McNeill 2023, 328) and has increasingly come to play an influential role in the assertion of a distinct penal identity in Scotland, one that is typically presented as more progressive than that of other jurisdictions in the UK (see Buchan 2020; Buchan and McNeill 2023). It has also become an increasingly preferred and promoted alternative in policy and rhetoric since the 1950s (McNeill 2016).

Non-custodial alternatives in Scotland fall primarily within the penal 'subfield'(Buchan 2020, 75) of community justice, and, although fines and financial penalties are not defined as a community sentence, there is a degree of overlap between the two forms in practice. The primary method of community justice, the Community Payback Order (CPO), can be imposed alongside a fine (Scottish Government 2022a, 14). It is also perfectly possible for an individual to be paying a fine for one offence and then to receive a separate community sentence for a further offence. This is not a 'combined' sentence as such, but, rather, two forms of practice taking place at the same time. Equally, when an individual is under supervision by criminal justice social work (CJSW), they may also be repaying outstanding fines or financial penalties. Thus, whilst the two methods are separated formally in legal definitions, those working in community justice have a great deal of exposure to the processes and practices of financial punishment, especially when working with those who are paying them back and, in the case of CJSW, in sentencing processes through the preparation of pre-sentencing reports ahead of trial (McNeill and Whyte 2007; Tata 2010).

In Scotland, CJSW is both 'a criminal justice service and a local authority social welfare agency' (Buchan 2020, 76), and has been since the abolition of the probation service in the late 1960s. Many of those involved in supervising and supporting people who have offended in the community, especially those from the third sector, are typically not 'primarily or traditionally concerned with punishment but nonetheless involved to some

degree with community penalties'(ibid.). Consequently, those working within a broadly defined area of community justice in Scotland offer a unique perspective through which to examine the defined purposes of criminal legal policy, providing detailed and informed knowledge of the practices of financial punishment, and, in some cases, an end-to-end view of the process of sentencing, imposition, and payment/repayment period.

Additionally, the broad collection of agencies that constitute community justice and the ways in which various agencies work to address needs in different areas of community life might offer new and broader opportunities to understand the effects of financial punishment that add to and/or properly contextualise these effects in the lives of those experiencing them. Their perspectives on the effects of fines and related financial penalties might include considerations of the individual as not simply an 'offender' who needs to be processed efficiently through a set of mechanisms and stages of the process of financial punishment. Instead, they might include an acknowledgment and appreciation of the 'complex and overlapping nature of criminogenic needs among people supervised in the community' (Buchan 2020, 76), providing insights into how fines and financial penalties intersect with and generate barriers to addressing these needs.

Aside from overlaps in practice and the potential for greater depth and context concerning the lives and needs of those subjected to financial punishment, integrating views from community justice might offer evidence on the effects of fines and financial penalties that from a different philosophical and professional perspective. McNeill (2016, 186) argues that, across the history of community punishments in Scotland, '*reductionism* has progressively come to be displaced as the main aim by another objective that was once its subordinate – *rehabilitation*'. Community justice in contemporary Scotland is certainly framed in contemporary rhetoric as a growing and preferred rehabilitative criminal legal intervention (see Scottish Government 2022). The strong emphasis in the narratives surrounding community justice on rehabilitation and reintegration (see McNeill 2016; Scottish Government 2022) represent a framing of the meaning and purpose of this form of punishment that is both ideologically and substantively different from those offered as justification for fines and financial penalties.

Though the emphasis in Scottish criminal legal policy and practice has reconfigured fines and financial penalties as much less likely to result in imprisonment, it does not follow that they are, or can be aligned, with the more rehabilitative focus that is increasingly employed in rhetoric related to community justice. Fines and financial penalties, in Scotland, are

envisioned as primarily producing a 'deterrent effect' (Bradshaw et al. 2011, 16), with enforcement action being the most likely in most cases. Nonetheless, there remains a risk of a warrant for arrest, appearance at court, and, in some cases, conviction and further or additional forms of punishment. Equally, the processes and practices of fines enforcement themselves have been presented as fair, efficient, and effective with little questioning of how these concepts are defined in ways that take in the broader socio-economic context of those who regularly or commonly receive fines. Whilst both forms of non-custodial punishment – financial penalties and community sentences – have been employed in the service of a penal reductionist agenda in Scotland, the ethos that underpins their respective claims to legitimacy is highly different.

For these reasons, the 'unusual position in Scotland's penal field' (Buchan 2020, 76) that is occupied by the collection of agencies that make up community justice is an ideal position from which to explore fines and financial penalties in ways that go beyond the narrow definitions of efficiency, effectiveness of delivery, and ease of implementation that are characteristic of the bureaucratic definitions and evaluations currently offered in criminal legal policy. As a result, focusing on the ways in which community practitioners perceive the fairness and effectiveness of financial penalties offers another way to evaluate fines and financial penalties, as well as opening up space for their perspectives on changes in policy and practice that are informed by their experiences of working with people who have been fined, including those who cannot pay. This thesis does not claim to assert that fines and community sentences are comparable, rather it suggests that examining financial penalties as a part of a broader landscape of non-custodial alternatives might unsettle ideological hierarchies, articulating the nature and effects of this form of punishment based more solidly on evidence of its own attributes as a non-custodial alternative.

There have been calls to establish the 'the precise relationships between the fates of the three main sorts of penalties (financial, supervisory and custodial)' (McNeill 2019, 99) as a way of enhancing and expanding current critiques of contemporary punishment. Financial penalties currently exist in an awkward 'third space' in the penal landscape of Scotland - no longer easily explained in relation to imprisonment but, still, noticeably estranged from other non-custodial alternatives. Including the perspectives of those working in community justice might assist in better locating how and where the 'fine fits into [a] contemporary penal system [in Scotland, where the] sanctioning structure' (Young 1999, 182) is increasingly defined as much by the prevalence of community supervision as it once was by imprisonment (see McNeill 2019). In Scotland, community sentences and, more

broadly, the area of community justice has received a level of engagement and scrutiny, both in academic research (c.f. Malloch and McIvor 2011; McIvor 2010; McNeill 2016, 2019; Weaver 2011) and in policy and practice-based rhetoric, that, arguably, stands in stark contrast to the corresponding lack of attention paid to reforms affecting fines and financial penalties. Approaching financial penalties via community justice might reveal insights about the intersections of these supposedly estranged aspects of Scottish criminal legal practice that could be beneficial for understanding, analysing, and critiquing both forms.

Researching criminal legal bureaucracies in Scotland

Within the existing international and empirical literature, there is an increasingly common focus on using qualitative data from those with direct experience of being sentenced to fines and financial penalties and/or being subject to fines enforcement action as a result of non-payment. In the 2011, the Scottish Government evaluation of reforms to fines enforcement, it is suggested that 'relatively little research has focused on the views and experiences of 'end users' of the enforcement system [in Scotland] – namely, defaulters – rather than professionals' (Bradshaw et al. 2011, 53). This is a generous interpretation of a relatively small body of research and, more generally, of the research landscape concerning fines and financial penalties in Scotland. Influential research in Scotland has, in fact, relied primarily on perspectives of criminal legal 'professionals' (Bradshaw et al. 2011, 53) in work concerning fines and financial penalties. Much existing research has typically included perspectives of those working within the formal boundaries of the criminal legal system, including across various studies, Sheriffs; FEOs; and various representatives from COPFS, SCTS, and Police Scotland (see Bradshaw et al. 2011; Young 1987, 1989, 1999). Research has only minimally and rarely included contributions of those working in community justice, even though, as the previous section has outlined, they play an increasingly influential role in the Scottish criminal legal system.

One of the main challenges facing research into more administrative and bureaucratic forms of criminal justice is that their operations are less visible and accessible. In fact, a significant part of what maintains bureaucratic structures is that,

> 'organizations' rules and hierarchies are often clearly spelled out, and yet bureaucracies are always at some level opaque, inscrutable, and illogical to both 'insider' and 'outsider' alike. This opacity empowers bureaucracies and bureaucrats – they become gatekeepers, with control over the flow of information and resources.' (Hoag 2011, 82)

Bureaucratic processes and practices are really only understood by those who work within the structure. These 'insiders' are usually (though not always) privy to the rules, guidelines and conceptual logic that ensures systems work as they are expected and, often, this boundary between insider and outsider plays a role in making these structures hard to navigate. When these systems are subjected to scrutiny from an 'outsider' perspective, the picture that emerges is often without the benefit of this insider knowledge – the reverse is equally true. As a result, research on bureaucracies typically consists of 'partial perspectives of partial perspectives' (ibid., 88).

The approach adopted in this project seeks to answer questions of how and why systems work the way they do by studying 'the institutions, policies, and practices [of the powerful] instead of focusing only on those whom the powerful govern' (Harding and Norberg 2005, 2011). In Scotland, existing research has captured both 'insider' and 'outsider' perspectives on fines and financial penalties, but, most recently, this has only been captured within the parameters of a social research report (see Bradshaw et al. 2011). The evidence offered in this report serves a much more instrumental purpose and is necessarily limited, very narrowly focused, and not presented with reference to broader criminological or theoretical debates. Arguably, also, as state commissioned research, the report is also presented in service of the bureaucracy it investigates. It must adopt the rules, process, and practices of the bureaucracy of fines enforcement as they are presented and evaluate them on that basis[6].

If the aim is to craft a language that best expresses the everyday reality of bureaucracies (see Mathur 2017), then an 'insider' understanding of the rules and hierarchies that govern the bureaucracies under investigation is essential. Access to these internal logics helps in identifying,

> 'the conceptual practices of power and how they shape daily social relations…[and] understanding how our lives are governed not primarily by individuals but more powerfully by institutions, conceptual schemes, and their "texts," which are seemingly far removed from our everyday lives' (Harding and Norberg 2005, 2011).

[6] This should not be interpreted as a criticism of the work of Bradshaw et al. 2011. The report reaches a set of conclusions about the fairness, efficiency, and speed of the new system that could be described as *cautious* at best. These conclusions are presented with a number of qualifiers about potential problems with implementation (68-69). There are also no conclusions presented on the effectiveness of the new measures in 'deterring, punishing and helping to rehabilitate offenders' (68).

The contention of this thesis is that those working in community justice should be considered 'insiders' to some extent, and, as such, inculcated with specific and distinct knowledge of fines enforcement in Scotland. Their views of processes, practices, and effects of fines enforcement would also encompass a broader context, as interactions with those experiencing fines enforcement might take place outside the formal boundaries of the criminal legal system. Equally, the focus on rehabilitation that has been described as underpinning and justifying the Scottish approach to community justice (see McNeill 2016) represents a different perspective through which to examine the bureaucratic logic that appears to govern the operations and consequences of financial punishment.

As a result, qualitative semi-structured interviews were planned within a research population consisting of those working within the collection of agencies that have been broadly defined as community justice. This project deliberately employed a broad definition of services and organisations within community justice who might be coming into contact with those who were experiencing/had experienced fines and financial penalties. This definition was kept broad so as to garner a range of perspectives, seeking participation from those who worked with and/or supported those who had experienced fines and financial penalties, those working with women, and those working more generally with people who had experienced fines and financial penalties. As described in the previous section, CJSW plays a fundamental and central role in the structuring of community justice so it was assumed that this might be an appropriate place to begin seeking participation. However, to gain a better overview of the processes of financial punishment, a multiplicity of perspectives was necessary and so a range of organisations across the third sector were also included in recruitment plans.

Interview design

What emerged as most helpful in designing and navigating early interviews was an interview theme guide drafted in advance. Interviews were designed to give practitioners space to respond to general themes, rather than a rigid set of questions that must be answered. Though suggested questions were included, these were rarely rigidly adhered to and, primarily, included as reminders of the substantive topics that were ideally to be covered in interview. The extent to which this guide was adhered to also varied greatly based on the content of the interviews and the degree to which participants seemed comfortable and confident in interview. They were arranged into four areas (for suggested questions and themes, see Appendix i.):

1) Service/organisation information

2) Practitioner perspectives

3) Services and resources

4) Reflecting on the fine as a practitioner

The themes that were planned to guide interviews were developed in conjunction with close-reading of existing literature in Scotland which highlighted key aspects of the fines enforcement process, as well as specific practices that were identified as distinct and specific to fines enforcement. These included time to pay, payment in instalments, the ability for others to pay on someone else's behalf, access to information, payment methods, and contact with avenues of support and guidance. A focus on services and resources was envisioned as the primary way of establishing the ways in which various community justice agencies and organisations might observe how processes and practices of fines enforcement came into contact with any support and guidance that was offered by community justice practitioners to those who had fines and financial penalties.

Questions about services and organisational information were planned as a way of capturing the different dimensions of the various kinds of work that community justice practitioners might undertake. Allowing practitioners to articulate their own definitions of the work they and their service did allowed for them to define their practice in their own terms. These types of introductory questions also helped to put their observations about fines, financial penalties, and the effects of fines enforcement action into the broader context of specific professional frameworks, allowing for analysis of how practitioners understood the purpose of their work with those who had experienced fines and financial penalties.

The inclusion of questions about women and fines outlined in the interview guide was originally planned as a way of examining specific effects of fines and financial penalties on women. Due to challenges in recruitment, outlined in the following section, and to a growing body of responses throughout the interview process that emphasised similar challenges and issues facing people who could not pay fines, questions about the issues that practitioners faced in their work with people who had been subject to a fine or financial penalty were broadened to allow practitioners who did not work regularly or

primarily with women to offer their perspectives. Suggested questions focused on how often or regularly practitioners came into contact with those who been fined through the course of their work and whether there were common challenges that they observed.

The final interview theme was designed to get a better sense of how practitioners about felt fines and financial penalties as a form of punishment. The focus was on the appropriateness of fines and financial penalties as a criminal legal response and the effects of financial punishment on those who had been subject to them. Again, the suggested questions were not always strictly adhered to in interview, especially in cases where participants led conversations with their opinions on the appropriateness or effectiveness of fines and financial penalties.

Recruitment

Ethical approval for this project was granted by the University of Glasgow College of Social Sciences Research Ethics Committee in June 2021 (see Appendix ii.). After this point, numerous organisations that are typically closely aligned to what is defined as community justice in Scotland were approached. These included various CJSW departments and community justice partnership organisations who were primarily contacted in the first phase of recruitment, which focused on accessing practitioners who were likely to have had exposure to individuals subjected to fines and financial penalties as a result of involvement with the criminal legal system.

Reviewing the existing research literature on fines and financial punishment, it was clear that those working in throughcare and post-custody supervision had been able to provide valuable insights into the experiences of those in receipt of fines and related financial punishments, especially concerning the barriers that so-called ‘punishment debt’ can present to re-entry (c.f. Gålnander 2023; Harper at al. 2021; Todd-Kvam 2019). There is existing evidence in Scotland about the interplay of fines and imprisonment as contrasting alternatives (Young 1987, 1999). There is also evidence to suggest that those who are most often experiencing enforcement action as a result of unpaid fines have had previous convictions, including periods of imprisonment (Bradshaw et al. 2011), all of which suggest that community justice practitioners in Scotland who worked with people experiencing post-custodial supervision and support might also be working with people who had also received a fine or financial penalty.

Equally though, it seemed likely that CJSW practitioners involved in pre-sentencing support might be able to provide a view of the factors affecting sentencing decisions surrounding the imposition of fines and financial penalties, so, it would be as important to include their perspectives if possible. There has also been recognition, in existing literature outlined in detail in the previous chapter, of the long-standing challenges surrounding sentencing and financial penalties in Scotland (Bradshaw et al. 2011; Munro and McNeill 2010; Young 1989). Based on this evidence, the choice to try and access practitioners who were also working at the pre-sentencing phase, and, specifically, those involved in providing contextual information about the motivations, underlying drivers, and economic context that might underly the imposition of a fine or financial penalty seemed sound. For these reasons, the first phase of recruitment attempted to engage criminal justice social workers from across Scotland, as well as those involved with post-custody support.

Initial approaches were made using existing contacts within the Scottish Centre for Crime and Justice Research (SCCJR) who introduced the project to managers at high levels of criminal justice social work and peer mentoring. The call-out for recruitment was then circulated internally to staff and, from this first round of recruitment, five interviews were arranged and carried out. The choice to make approaches with the support of existing networks was partially influenced by the context of researching in the pandemic. Remaining cognisant of the issues with demand and capacity that was offered as regular feedback from organisations and agencies approached during recruitment, having the buffer of an already known contact who could make introductions (and, if necessary, manage expectations around participation) emerged as a positive strategy.

Recruitment took place in two phases as the timing of the pandemic greatly affected recruitment processes in this project and produced long delays. During Phase 1, most organisations were still stretched or working beyond their capacities, even as late as the summer of 2021 when ethical approval for this project was granted. Many of the organisations that were contacted did not reply. Many of those who did reply were supportive, but open and direct about the added burdens of facilitating research during the period when social distancing restrictions were being relaxed and shared spaces were slowly opening again. Several of the organisations contacted had changed their working practices in line with social distancing guidelines and were trying to re-establish previous networks, or had implemented new, remote ways of working that required a period of re-adjustment before they felt settled enough to facilitate research. Some smaller organisations expressed a degree of uncertainty about the future of their work and were

focused on ensuring their survival and the sustainability of their work whilst the national situation remained in flux and subject to sudden changes in social distancing restrictions.

The experience of trying (and failing) to access these organisations, many of whom were third-sector or community-based reflected the degree to which these types of organisations had proved essential during lockdowns in Scotland, as well as during the wider periods of uncertainty and lack of clarity around relaxation of social distancing guidelines that existed throughout the 2020 and 2021 (see Armstrong et al. 2020). Recruitment for research projects is often difficult, but within the context of the pandemic, there were additional considerations around organisational capacity whilst navigating the uncertainty that existed in the period directly after the relaxation of social distancing restrictions. It was clear from many of the organisations that were contacted that the 'big impact of small measures of aid [during lockdowns], and…the often very small and sometimes precarious, grassroots nature' of third-sector and community organisations had left resources and capacity diminished (ibid., 36). Nonetheless, these organisations proved themselves to be valuable resources for recruitment, making recommendations for further suitable organisations and, where they could, sharing details of the project and publicising it through their own networks.

Having reached the end of this first phase of recruitment and taking stock of the perspectives gathered so far, it became clear that, as it stood, there was plenty of data gathered about how fines and financial punishments affect the broader context of lives outside criminal justice, but not enough to offer a more lateral view of the outcomes of fines and financial punishments. Furthermore, the data was so far dominated by the perspectives of those working at a post-custody stage and/or within a type of desistance narrative which, whilst valuable, was very much linked to specific understanding of criminalised behaviour and a set institutional and professional prerogatives. There had also been, within the interviews themselves, the suggestion that practice (particularly within CJSW) was not necessarily uniform and standardised, and it would be beneficial to try and include perspectives from practitioners working in different areas of community justice.

The second phase of recruitment focused on trying to access more practitioners from CJSW to provide additional evidence to support what had already been shared. There was also effort given to trying to access practitioners who were working outside of CJSW, within the collection of agencies that constitute community justice, as well as those that were supporting people with experiences of fines and financial punishments in the broader

community. The experience of recruitment in Phase 1 had demonstrated that many of these broader agencies and organisations worked with people who had experienced financial punishment, and could provide valuable information about the processes, practices, and outcomes of fines and financial penalties. As a result, there were also approaches made to public and third sector organisations who were working with people in the community in areas such as housing, addiction support, benefits/money management advice and, also, more broadly, community organisations that were focused on bringing individuals together for social, creative, and leisure activities.

This second phase of recruitment was much more lengthy and involved cultivating a degree of resilience to non-engagement. This appeared to be the case, firstly, because practitioners seemed much busier with greater demands on their time than in 2021. This was potentially a result of changes to government advice around self-isolation and a general relaxation of public health guidelines following the Covid-19 vaccination programme. It appeared to be much harder to schedule interviews and to get in contact with interested participants once the return to in-office working was complete. Secondly, some of the community-based organisations that agreed to participate during the second phase of recruitment were, understandably, a little more cautious about negotiating access as their work relied more on providing a secure and private space for those they were working with.

In an attempt to garner more interest in participation in the project, a Request for Amendments was submitted and approved by the University of Glasgow College of Social Sciences Research Ethics Committee in April 2022 (see Appendix iii.). This allowed for open recruitment on Twitter. The open recruitment via Twitter was, primarily, not a success – it did result in one interview, this seemed mainly down to Rachel (a participant from Phase 1 recruitment, see **Table 1.**) seeing the post and promoting it to colleagues. Much more successful were a set of direct approaches made to various organisations between May and October 2022, which resulted in three interviews with individuals from two different organisations.

Research population

The tables below gives information on job type and location in Scotland for the nine participants who were interviewed for this study. All names are pseudonymised and job titles/locations have been generalised.

Table 3. Job title and location of interview participants recruited in Phase 1 (August - September 2021)

Interview	Name	Job Title	Location in Scotland
1	Isabelle	Post-custody support worker	Central
2	Rachel	Manager, CJSW	East
3	Fraser	Employment support worker	Highlands
4	Stephen	Employment support worker	South
5	Ailsa	Post-custody support worker	South

Table 4. Job title and location of interview participants recruited in Phase 2 (May-October 2022)

Interview	Name	Job Title	Location in Scotland
6	Ann-Marie	Social worker, CJSW	West
7	Helen	Case worker	West
8	Angela	Co-ordinator	West
9	Robert	Lead practitioner	West

In Phase 1, it was predominantly those in post-custody and post-conviction support who volunteered participation in interviews. Of the four interviewed, two practitioners – Isabelle and Ailsa – worked within a service designed to support women who have recently left custody and/or were undertaking community sentences. The remaining two – Stephen and Fraser – provided support around employment and work to those with convictions, those who had recently existed prison, and those who were undertaking community sentences. During interview, Stephen disclosed that he had been involved with the criminal justice system in the past and included his own experiences in some of his reflections. Whilst he did not talk in detail about his own experiences, where relevant to the research aims, his reflections were included in the findings. This group of practitioners offered viewpoints that focused on facilitating desistence processes or, at least, encouraging a reduction in/management of offending behaviour as the primary aim of their work and provided perspectives on how fines and related financial punishments intersected with people's lives as they navigated the challenges of life after involvement with the criminal legal system, whether this meant post-custody or post-conviction.

Rachel worked in a management position within a dedicated women's team in broader CJSW taking place in the area she was based in. Rachel provided more information on the

demands faced by those in the pre-sentencing period, offered information about the preparation of pre-sentencing reports in relation to fines and financial punishments, reflected on aspects of the court process, and gave a general sense of the lives of the women she worked with. She also offered a clear perspective on what alternatives she considered more appropriate as a response to offending based on her professional experience and provided details on how these alternatives were being promoted and incorporated into practice in her area. However, through interview, it became clear that the benefits of having a dedicated team for women who offend might impact working practices, and she was not necessarily confident that the ways in which her team worked were duplicated in other areas throughout Scotland.

Helen worked for an organisation that supported women who sell sex. Angela and Robert both worked for an organisation that helped those who have or are subject to criminal legal intervention with housing and community living. Both organisations were keen that those using the services were not going to be adversely affected by their participation in the project and took more time to agree to participate, reviewing the study carefully with broader team input before they agreed to interview. It is likely that having the support of an established criminological and social work colleague from the SCCJR helping to introduce the study had eased some of this entirely expected and necessary scrutiny that the project might have been exposed to in Phase 1. In Phase 2, though, having already completed a number of interviews already appeared to reassure some potential participants about the validity and appropriateness of the study, providing opportunities to demonstrate that a number of practitioners had already agreed to participate and had offered favourable feedback about their participation in the project.

Helen was the only practitioner interviewed whose work with women who sell sex did not specifically focus on the goal of desistence or a reduction in offending/criminalised behaviour. The perspectives she offered about her and her colleagues' work suggested their work fell much more within a harm reduction model, seeking to 'reduce individual, community and societal harms including harms to health, social and economic functioning' (Cusick 2009, 3) for those involved in the sale of sex. Helen described the ethos of the organisation she works for as not seeking to encourage anyone selling sex to stop or move away from doing so unless that is the choice of the person they are working with. Instead, they provide support and services that are most useful to those selling sex. Most of Helen's perspectives were around fines and financial penalties as the primary criminal legal

response to the selling of sex on-street or on-street solicitation and how that impacts on the women she works with.

It is worth noting that Helen's contributions to this project raise a range of questions and issues around the criminalisation of the selling of sex and sex work, as well as the intersections of financial punishment and the sale of sex that are not addressed in this thesis. This is due to the limited evidence that was generated in the course of a wider focus for this research project and to the limits placed upon the study by the research questions. There is clearly much more contemporary research needed, especially research that acknowledges that fines and financial penalties are now the primary sanction through which the Scottish criminal legal system responds to both the sale and purchase of sex and on-street solicitation. This was, in fact, Helen's primary reason for participating in this study, as she hoped to draw attention to many of the issues surrounding fines that she felt were adversely affecting the women she worked with.

Angela and Robert's professional practice fell more closely within a desistance paradigm, working in partnership with criminal legal agencies such as the police and the prison service to support those with experience of imprisonment with finding and sustaining housing. The nature of this partnership that included reporting breaches of sentencing conditions to these agencies so there was an element of formal supervision and sanctioning to the services they were providing. Robert was open about the fact that he had come from a background that included regular and repeated contact with the criminal legal system and this was one of the reasons he had ended up working within professional practice. Robert drew more explicitly on his own experiences than Stephen – a mentor from Phase 1 who also shared his personal experiences of the criminal legal system. Robert spoke candidly about his perspectives as both someone who had experienced fines himself and what he had witnessed during his professional career. His perspectives played an important role in the development of some of the findings of this project and his evidence is referred to often in the following chapter. Whilst it is important to acknowledge that Robert is a solitary voice in this study, albeit with a relatively strong and strident perspective on fines and financial penalties, his willingness to offer insights on how these punishments made him feel added a further dimension to the observations of the practitioners interviewed. By the time Robert was interviewed, commonalities and reoccurring themes had already started to emerge from the data and his perspective offered both detail and counterpoint to what had been generated so far.

Angela and Robert were interviewed in October 2022. They were the first practitioners to speak about the cost of living crisis more so than they spoke about the impact of Covid-19. Angela, in particular, expressed a lot of concerns about the financial context and the challenges that were facing the people she worked with, especially as the winter was approaching and rising fuel costs were heading into their height at that time. It was striking to observe the difference that a year of fieldwork had made in terms of changing working practices and the demands placed on the practitioners. By the time of Angela and Robert's interviews, the last interviews that took place, it was possible to detect a note of concern and anxiety about the broader economic context that was potentially not as obvious in earlier interviews. At this point, it felt as though they were expressing concern that any recovery from the disruption wrought through lockdowns might be threatened by rising inflation and the ongoing cost of living crisis.

It is important to acknowledge that a small research population was used to generate data in this study. As such, it is not possible to generalise these findings as representative of the views held by all those working in community justice in Scotland. It is also not possible, on the basis of the number of interviews, to assert that the data and findings generated in this study are representative of the heterogeneity of experiences of the processes and consequences of fines enforcement in Scotland. The research population was also self-selecting and mainly facilitated by close professional networks. As a result, there is the possibility that this population includes participants who had particularly strong perspectives that they wanted to share in interview and therefore do not reflect an 'average' or 'general' community justice perspective on fines, financial penalties, and fines enforcement. If the research population does include those with particularly strong perspectives, some of these perspectives are, as data will show, shared across professional boundaries, and are not constrained to one form or area of community justice. Nor are they necessary limited to one location as, whilst almost half of the research population consists of practitioners from the West of Scotland, it does include the perspectives of practitioners from other areas in the country.

Equally, though, previous empirical research from Scotland has barely incorporated the views of those working in community justice. Nor has it expanded operational definitions of community justice to include third-sector and non-statutory agencies. The evaluation of the reforms to fines enforcement that took place in 2011 did not include any data collection from community justice agencies or organisations. Findings were presented at a validation event with 2 attendees from social work present, the inclusion of community justice

perspectives in research about significant changes to criminal legal practice in Scotland taking place at the very final stages of the research process (Bradshaw et al. 2011, 79). The findings of this study indicate that, even within a small and limited number of interviews, community justice practitioners can offer rich insights into the workings of the criminal legal system at the level of summary justice, as well as the effects of fines and financial penalties on those coming into contact with community sentences.

By the time that interviews were completed, it was possible to see that each of the organisations that participated were offering a point of view from waypoints across a period of involvement with the criminal legal system, as well as across the process of financial punishment. There was evidence about fines and financial punishments from those working with individuals who were entangled within a network of criminal legal intervention, whether through sentencing, the experience of a range of criminal legal sanctions (including community sentences and imprisonment), and out into life post-conviction within the community. What was useful about generating this range of data is that it allowed for the imposition of a fine or financial penalty to become unstuck from the moment of imposition and, instead, take on a more dynamic and extended character, appearing at various points in the lives of those coming into contact with the criminal legal system.

Further, this range of data helped demonstrate that the impact and outcomes of fines and financial punishments run alongside a range of other forms of punishment, with the outcomes and impacts of each intermingling and intersecting with each other. It also helped later in the analysis stage, where it was possible to see how issues that were raised in the supposedly ‘earlier’ stages of the journey were either repeating or had been left unaddressed, only to resurface with new consequences at ‘later’ stages. These observations would not have been possible if one group of practitioners had been the focus of the project, as involving a variety of perspectives from within a broadly defined collection of community justice practitioners allowed for a more holistic and contextualised view of the processes and practices surrounding fines and financial penalties.

Gathering data from a broadly defined rage of community justice practitioners also allowed for a set of micro-representations of the process of financial punishment that fit together to highlight common themes and threads that exist across the entire process, as well as demonstrating how conceptions of a simple transaction between an individual and criminal legal system can be narrow and not include meaningful considerations of what happens

when an individual cannot pay. With a variety of perspectives from different professionals, working in different areas and with often quite different goal and motivations, it is also easier to discern which issues are common to the overall experience of fines and financial punishment, as well as issues that are specific barriers to certain types of community justice practice, such as those focused on supporting desistance processes.

Interview process

Online interviewing

Interviews were conducted online using video conferencing software, with the exception of one interview (Interview 8, Angela – see **Table 2.**), which was an audio only interview due to technological difficulties. The shift to online methods was both abrupt and non-negotiable due to new social distancing guidelines and public health policy which was nationally mandated as a result of the Covid-19 pandemic. Original planning for the project had envisioned face-to-face interviewing with any participants who were involved in the project, primarily because so much qualitative methodological scholarship promotes an idealised ‘‘research relationship’ where spontaneous and genuine rapport supposedly leads more naturally to reciprocal mutual disclosure’ (Duncombe and Jessop 2012, 119). Many accounts emphasise the need to develop trust and rapport in this relationship, as well as communicating respect for participants as essential for encouraging candidness and openness in those with whom you are researching with (Duncombe and Jessop 2012; Jorgenson 1992; Kvale and Brinkman 2009; Oakley 1981; Weller 2017). These accounts, as well as the sheer number of qualitative research projects that use in-person interviewing, seem to suggest that not only is, ‘physical co-present interviewing…the accepted practice’, but it is also regarded as the ‘‘gold standard’ of qualitative research’ (Weller 2017, 613).

Consequently, online interviewing was approached with a degree of trepidation and, initially, regarded as a pragmatic compromise to ensure that some data collection would be possible throughout the period where lockdowns and social distancing had become the norm. However, over time, and through the experience of carrying out online interviews, this method revealed unexpected benefits, particularly as a way of effectively engaging with professionals and practitioners. Firstly, it was practical and logistically sound, allowing for engagement with practitioners without the need to travel and in a way that respected their schedules and the demands of their jobs. At the time of Phase 1 recruitment in 2021, online meetings were increasingly becoming a common and regular part of many

working days and all the practitioners interviewed for this project appeared comfortable and familiar with the technology and with the experience of meeting a stranger for the first time in a screen-mediated environment. Further, whilst this project includes a relatively small population, the range of locations throughout Scotland that are included within the dataset is potentially wider than might have been achieved in-person with a research team of one travelling to various locations. Having a range of locations included was helpful in evaluating claims about varied and inconsistent practice, as well as identifying themes and issues that appeared generalised to the process of financial punishment, rather than area or location specific practices and problems.

Rapport and online interviewing

The 'pragmatic' (Weller 2017, 614) benefits of online qualitative interviewing have already been identified, they can expand access and inclusivity for participants (Hewson et al. 2003; Oliffe et al. 2021; Weller 2017). However, it is not simply the benefits of online qualitative interviewing that emerged through using these methods in this project. Rather, the specific experience of interviewing online in amidst the post-lockdown period of the pandemic was one in which the level of openness offered by the practitioners was surprising and unexpected. Most surprising was the way in which the practitioners interviewed were often very open and explicit in their criticisms of fines and related financial penalties as a response to both the socio-economic context that underlay and motivated criminalised behaviour, and the lives and experiences of those they worked with. Their explicit criticisms of how fines and financial penalties were commonly and, often, repeatedly used as criminal legal intervention in the lives of those they worked with highlighted that any measure of the efficacy of financial penalties appeared debatable, and, often, the effects of these types of penalties were considered to be contributing to further contact with the criminal legal system. Further, many practitioners interviewed were clear from the outset that, often, they did not see fines or financial penalties as assisting with their work to address needs that might underly why people broke the law and, in fact, being exposed to the process of financial punishment actually caused additional problems and issues in the lives of those they worked with.

In fact, in the earlier stages of interviewing, the candidness offered was such that it felt appropriate, at the end of interviews, to re-iterate consent procedures and remind practitioners that their words (anonymised in line with procedures approved by the University of Glasgow College of Social Sciences Ethical Committee) could be used in

this thesis. These reminders were not simply offered as a way of fulfilling an ethical checklist, it was that their candidness and openness was such that it felt important to confirm, at the end of interviews, that they were still comfortable with what had been shared. Ailsa, who works in post-custody support and who provided one of the longest interviews in this project, responded to these concerns saying:

> 'I think to be perfectly honest because there is only me in my project…it's not going to take, you know, there is a likelihood that people could put two and two together but I haven't said anything that I wouldn't stand by in front of anyone'.

Similar responses were received from most practitioners throughout the first phase of interviewing, although not always expressed as directly and stridently as Ailsa's. As more interviews were undertaken, though, it became clearer that many of the practitioners who volunteered for this study did so precisely because they had a lot to say about fines and financial penalties, wanted to share their perspectives and, potentially, learn new information and best practice that could benefit those they work with.

This presents certain challenges to claims of representativeness, some of which have already been discussed in the previous section of this chapter. Whilst this project highlights many criticisms levelled by practitioners, it also engages with the benefits of fines and financial penalties that were identified by practitioners, including consideration of when a financial penalty was often considered a more appropriate and less intrusive criminal legal response. These are outlined in detail in the findings in following chapters and are treated as instrumental in demonstrating that there are clear divergences in who is typically exposed to certain processes, practices, and outcomes and who is typically not. The criticisms of the challenges that fines, financial penalties, and, especially, fines enforcement action presented to community justice practice, form the basis of certain key findings in this study. However, these findings are not presented as conclusive evidence of financial punishment as homogenously a harmful experience. Overall, the practitioners interviewed in this project appeared to want to identify and explain the issues and challenges surrounding fines and financial penalties for a specific group who, whilst comparatively small in number, presented a significant and persistent proportion of their broader work in the community justice sphere. The identification of distinct differences in experiences and outcomes of being exposed to financial punishment deserves further scrutiny, as does the evidence that practitioners offer about who is most harmed by exposure to financial punishment and who is not.

In reflecting on the experience of online interviewing, it seems likely that the openness demonstrated by the participants in this project was a result of a number of factors, some of which are directly linked to online interviewing in the post-lockdown phase. Research using online interviewing has been described by participants as 'less formal or personal' (Weller 2017, 618), and, whilst the interviews in this project felt less formal, the extent to which they felt less personal is debatable. In many cases, interviews were happening with both parties in the personal spaces of their homes and there was a shared sense of navigating the challenges of home-working together and meeting in spaces (albeit virtual) that were familiar, introduced a sense of ease, and contributed to a more relaxed interview style. There were numerous interruptions, on both sides of the conversation – packages arrived, doorbells rang, one participant was having her roof repaired and had to leave briefly in the middle of interviewing, and one participant even included her baby daughter in the interview (much to the joy of this researcher, a joy which is reflected extensively in the interview transcripts).

These felt like very human experiences – funny, awkward, endearing, frustrating. They were also shared experiences, moments that were recognisable to both parties and decreased distance and separation, both the distance of remote interviewing and the conceptual distance that can exist between researcher and participant. Weller (2017, 618) suggests that, in building rapport during online interviewing, what seems to matter is 'visible co-presence or the feeling of co-presence rather than being physically situated in the same place'. In this project, feelings of co-presence most prominently arose out of these shared human experiences of disruption and of being able to acknowledge the struggles of working from home together. They created moments of commonality and, arguably, helped to make the interview process more comfortable and less pressurised as both parties got an insight into each other's personal spaces and the respective demands of day-to-day life. Writing about the benefits of online interviewing, Oliffe et al. (2021, 3, italics in original) suggest that it is 'ever clear that *there is no place like home* for aiding interviewee's comforts, movement and some visual control in freely talking'. The experience of online interviews for this project suggests that online interviewing can be used to promote participant comfort and develop rapport, especially when there are common or shared experiences in the digital interview space.

Reflecting on rapport

Of course, not every interview featured moments of shared human experience. Both Stephen and Fraser's interviews, both comparatively short interviews, took place when they were in their offices. These were, arguably, more difficult interviews as both men seemed unsure about how to respond to certain questions which they felt fell outside their remit and experience. They were encouraged to share their reflections more generally and feel free to challenge any of the questions which seemed to put them more at ease. At the time, these were interviews that were evaluated as ones in which building rapport was unsuccessful. It was noticeable, also, that these were, so far, the only interview held with men which raised questions about the extent to which an unconscious gender bias existed in the rapport-building techniques used in the interview process.

Though rapport is often championed as yet another ideal in the qualitative interviewing process, strong critiques of this idealisation have included characterising rapport and rapport-building techniques as a 'socializing and manipulative disposition designed to transform interviewees into passive, data-yielding machines' (Campbell 2003, 290). Though there was a sense that rapport-building had 'failed' at the time, the interviews with Fraser and Stephen turned out to be ones in which interesting and worthwhile counterpoints to many of the criticisms that arose from much of the other data and, in analysis, forced questioning and evaluation of some of the main claims that make up the findings. With time and immersion in the transcript data, it became clearer that Stephen and Fraser's reflections on their work made a significant contribution to a growing expansion in the focus of this project. It is likely that the discomfort felt at the time was more a result of trying to integrate new and contradictory data into thinking about the data, than it was strictly about gender bias in rapport building.

This is further supported by the experience of interviewing Robert, an interview that was very personal and open in a way that was led by Robert and his willingness to share his own history, feelings, and experiences. Robert asked a lot of questions about both the research and about what had motivated the researcher to address this topic. These were asked in a way that made the interview much more conversational – so much so that, in fact, towards the end of the interview, it came much closer to a conversation than felt entirely comfortable. Potentially, this situation arose out of Robert's professional practices that rely on cultivating empathy and, by his own description, getting the people he works with to open up and trust him. He is a natural storyteller, very friendly, and does not shy

away from asking questions or expressing his opinions in ways that invite conversation. The discomfort around the conversational tone of interview resulted from concerns that researcher input might be over-represented in this interview, that there would be too much researcher voice. Ultimately, though, it seemed important for Robert to understand the motivations and purpose of this research and to probe the researcher's values as part of a shared participation in the interview process.

In reflecting on the discomfort felt during Robert's interview described above, it is possible to suggest that the points where Robert's interview shifted into reflections on his personal, as well as professional, experiences with the criminal legal system provoked a shift in the nature of the rapport that was being co-created. In these cases, the hesitancy felt on the part of this researcher to get 'personal' about their values and motivations for their work, as well as the experience of doing it, was ultimately not as a result of wanting to safeguard 'the dominant position of the researcher – who knows all the questions to ask and by implication all the answers' (Yow 1997, 67). Instead it was the converse – a nervousness about revealing vulnerabilities and insecurities concerning the challenges of research during the pandemic, and these potentially being subject to external scrutiny. There was the fear that parts of the 'messiness' of research would emerge in interviews and that '[m]ess tends to have connotations of being sloppy, of not being a good researcher' (Cook 2009, 279).

There are, of course, no simple answers to these tensions and dilemmas the arise in the process of qualitative research – as Yow (1997, 71) suggests, 'we can never gather all the evidence, we can never be completely aware of all researcher intrusion'. Reflexivity around this aspect of the research process is included here because, later, data from Robert's interviews will be used in discussion of key findings and, in some cases, used to add instrumental detail to many of the reflections of other participants. These discussions are contextualised carefully within the broader data and, whilst Robert's perspective included considerations of the topic from the angle of being someone who had been fined, much of what he reported was echoed in previous interviews.

These reflections are also reported here because, in retrospect, they may have provoked less discomfort had it been more possible at the time to discuss these issues with other researchers. One of the most difficult parts of researching during the pandemic was feeling separate and isolated from broader communities of researchers and not easily being able to have conversations with colleagues about the challenges and dilemmas of the research

process. Having struggled with ‘getting personal’ in interview, this researcher’s ability to open up about these more personal aspects, knowing they will be subject to external scrutiny, is one way to acknowledge a greater degree of confidence in interviewing, and in research practice overall, that developed as a result of completing this project.

Overall, whilst critiques of rapport-building suggest that ‘building rapport has nothing to do with ‘being friendly’ but is, instead, a means of manufacturing distance, detachment and objectivity; rapport embodies the impersonality of ‘scientific method’’ (Campbell 2003, 290), experiences in this project suggest that rapport between researcher and participant is primarily co-produced and collaborative. It is not necessarily something that a researcher can bring to a research interaction and force upon participants. All relationships are complex and just because a researcher might wish they could build rapport does not mean it is always happening in practice. Though rapport can assist in enhancing the research process, it is not always necessary to produce useful and significant data (as in the cases of Stephen and Fraser) and, in fact, can sometimes introduce potential dilemmas and discomfort in the interviewing process (as in the case of Robert). By reflecting on the interactions that take place in interview, researchers are also provided with opportunities to reflect on their own practices and learn more about how and where they see themselves within the research process.

Structure of interviews

Interviews typically started with broad questions about the organisation or agency that participants worked for. Asking participants to describe their organisation and their role served as a way of both easing them into the interview, as well as providing contextual information about the nature of their role to helped to guide what follow-up questions may or may not be suitable as the interview proceeded. It also helped to put practitioner perspectives within the context of the specific goals and ethos of their professional practice.

For participants like Ailsa and Isabelle, their professional practice relied on trying to encourage reduced contact with the criminal legal system for which there were clear metrics for what was defined as progress and/or development. For Helen, her professional practice relied on making sure the people she was supporting felt safe, healthy, and more able to articulate and achieve their own self-defined goals for their lives. The ways in which the various practitioners conceptualised their work was often defined by the extent

to which they could help those experiencing financial punishment within the parameters of their professional practice and, as such, it was not always described as a priority for them or a central aspect of what they considered their work was. Through exposure to the differing goals and aims of the range of professional practice described, it became increasingly clear that fines and financial penalties were often being described by practitioners in this study in terms of the role they played in supporting or inhibiting desistance processes, and this was a theme that eventually became significant in the data analysis stage.

The ways in which participants responded to questions about common challenges and issues faced by those sentenced to a financial penalty, and, especially, faced fines enforcement action were highly varied and typically represented the least structured part of the semi-structured model. Participants sometimes led with their reflections on their service and resources before explicitly referring to how the life context and previous involvement with the criminal legal system intersected with and influenced experiences and outcomes of fines and financial penalties. Some practitioners called on specific examples or stories from their professional practice that they felt exemplified common challenges. Others spoke more generally about problems in the whole system that intermingled with specific aspects of what happens after someone is fined.

The focus in interview on services and resources available to those who had received a fine or financial penalty was developed as a way of trying to gain an insight into the process that follows receiving a financial punishment and how those receiving financial punishments navigate this process, as well as the support that is available and the challenges that they face. However, in interview, this theme appeared to provide practitioners with an opportunity to also evaluate their own work and the frustrations of navigating this process alongside those they were working with. They also provided insights on working with other services and agencies, including the Scottish court system, the welfare system, and housing/homeless services – interactions which were all implicated in processes of punishment via financial deprivation. Practitioners also spoke about what they witnessed of the broader context of the lives of those they worked with, about the impacts of financial punishment, and about the effects that these impacts could have on the broader work they were doing to support those they worked with.

Interviews typically ended with broader questions about practitioner perspectives on fines and financial penalties and about their appropriateness as a response to the people that

practitioners were working with. Often, though, these kind of reflections were outlined in earlier responses, particularly when asked to identify common challenges and issues that arose when working with and supporting people. In these cases, interviews ended with a chance for practitioners to add or discuss anything they felt was relevant. In some cases, this produced reflections on what practitioners felt would be a more appropriate or effective alternative. There were no planned or direct questions asked about alternatives to fines and financial penalties, instead, the suggestions offered by practitioners seemed prompted by the opportunity to reflect on fines and financial penalties within the context of their professional practice. The suggestions that were offered are included in discussions in the findings of this thesis (see **Chapter Five**, 155-157) as they offer insight onto what basis practitioners evaluated fines and financial penalties and their purpose as a punishment, as well as why and how practitioners felt about the effectiveness of fines.

There were also occasions during interview where practitioners asked questions about general practice observed by the researcher. In two cases, participants from CJSW directly asked questions about dissemination of findings and whether findings from this project would go towards a briefing or a practice summary that could be shared with them. In one case, a participant asked if what she had shared was in line with what had emerged out of previous interviews. Though it was made clear to participants that the findings from interviews were primarily to be used in the preparation of this thesis, there was a small group for whom the space to reflect on their own observations and experiences seem to have produced a curiosity about what was happening more broadly within their professional practice and, in some cases, a focus on improving practice and sharing approaches. For these participants, sharing good practice and awareness of issues that might be similarly affecting those working with people in contact with the criminal legal system was one of the ways in which practitioners took responsibility for helping navigate the challenges and impacts of unpaid fines and exposure to fines enforcement action.

Regardless of whether fines and financial penalties are formally ‘claimed’ as part of the community justice subfield in Scotland, interviews revealed that many of the practitioners in this study appeared to be trying to manage and ameliorate the effects of exposure to fines enforcement action on those they were working with/supporting. Practitioners described in interview a whole range of ad-hoc, informal, and additional support and work that they were undertaking with people with unpaid fines and/or who were under fines enforcement on an individual 1-to-1 basis. Details of the kinds of work, support, and strategies undertaken by community practitioners are included in findings of this project as

they form a part of a body of evidence about the processes, practices, and effects of fines enforcement action.

Arguably, this evidence shows that acknowledgement of overlaps in practice should not be limited to simply recognising that fines and financial penalties might be imposed in conjunction with or alongside a community sentence. Instead, expansion of recognition of overlaps could include recognition that people under community supervision or a community sentence can also have unpaid fines and or currently be under fines enforcement action. This intersection of two different forms of punishment and discussion of the outcomes and effects of this intersection on either community justice practice or on the experience of those under supervision in the community has been minimally addressed in existing literature (see McNeill 2016; Munro and McNeill 2010).

Analysis

Data preparation and management

Interviews lasted between 44 and 90 minutes, with an average time of just under 60 minutes. 9 interviews produced 8 hours and 42 minutes of audio recordings. These recordings of online interviews were professionally transcribed verbatim by University of Glasgow approved transcription services. Transcripts were re-checked against audio recordings to ensure accuracy and, following this process, audio recordings were deleted as per the data management plan approved by the University of Glasgow College of Social Sciences Ethical Committee. The transcription process produced 177 pages of transcribed text that was used for coding. Prior to coding, pseudonyms were applied to transcripts, as well as the removal of locations, organisation names, and the generalisation of identifiable job titles. Anonymised transcripts were stored securely online at the University of Glasgow whilst coding was ongoing.

Coding

During interview, it became clear that the practitioners were articulating a range of evidence that related to both fines enforcement processes, as well as evidence that related to their observations of what living with unpaid fines could be like. The breadth and depth of information and evidence offered was noticeable, even during interview, where explanations of complicated and intersected processes often prompted further questioning to clarify elements of these processes. Braun and Clarke (2021, 210) suggest that when

‘working with rich, complex, ‘messy’ data, it will hopefully burst with potential. The challenge will be choosing *what* to explore’. This was, in fact, not a source of anxiety as much as it was a source of excitement. Working within the narrow field of fines scholarship where empirical evidence is limited, meant that having access to descriptions of current practice and insights into the processes did, even before coding commenced, already produce relevant and useful information for the research aims. The experience in interview was one where the richness and complexity of the data was already clear and the challenge in analysis was finding a way to organise and manage this dataset.

To aid in organisation and management of this data, the method chosen to assist in coding was a ‘computer-based application for the storage and retrieval of data’ (Coffey et al. 1996, 84) – namely, NVivo 14 which was licensed for use by the University of Glasgow. The decision to use qualitative data analysis software was influenced by the potential for this kind of software to assist in organising data, themes, and materials related to analysis in one place. It also allowed for the effective management of transcription material, and, with a smaller number of interviews, encouraged deep and detailed engagement with the data through the coding process. However, Coffey et al. (ibid., 85) point out, qualitative analysis software offers ‘a variety of useful ways of organizing data in order to search them, but coding data for use with computer programs is not *analysis*’. The development of codes assisted in developing themes and organisation of these themes, but how these themes were then transposed into findings was a result of ‘deepening engagement with…data and…evolving, situated, reflexive, interpretation’ (Braun and Clarke 2021, 207) through an iterative process that was informed by coding, but not defined by it.

Anonymised transcripts were imported into NVivo 14 and coding was undertaken on an inductive basis. In the initial phase of open coding, multiple common thematic codes were developed in response to the data and then, through a phased approach, these were gradually reduced into three main nodes around which the data was organised. Initial open coding was centred around trying to identify specific processes and practices identified by practitioners through their observations of working with people who had been fined. In this initial phase of coding, it became clear that practitioner data illustrated the differential processes and outcomes experienced by those who cannot pay fines and face enforcement action as a result. Identification of this strand of the data was labour intensive but comparatively straightforward, as it aligned with an initially more obvious set of information around processes and practices of fines enforcement, influenced primarily by existing research and descriptions of practice in Scotland (see Bradshaw et al. 2011; Munro

and McNeill 2010). Key findings, reported in the following chapter, echo earlier research on fines enforcement and the challenges of fines and financial penalties within the Scottish criminal legal system, focusing on the prevalence of multiple/historical fines and issues with the efficiency and speed of the current system of fines enforcement system.

However, the input of practitioners around their own work and attempts to intervene or assist in helping those they worked with to navigate unpaid financial penalties and fines enforcement emerged as broadly unrecognised in existing descriptions of practice in Scotland. Engagement with the data demonstrated that this support was primarily around access to the system and to information and to availability of information. Practitioners also provided perspectives on what resources were on offer to those with unpaid fines, often identifying the work they did as a primary resource, as well as emphasising the role they played in directing those they worked with to other sources of support and guidance. They highlighted the ways in which intersections with other systems played a pivotal role in the support they could offer those they worked with. The two main systems that practitioners identified as intersecting with processes of fines enforcement and what was taking place after the imposition of a fine or financial penalty were the SCTS and the Department of Work and Pensions (DWP). The nature of these intersections and the challenges they presented to practitioners is outlined in detail in findings in the following chapter. Data that was tied to the processes and practices of fines enforcement and the ways in which the practitioners described their work intersecting with this were captured under the node heading – Fines enforcement process (see Codebook in Appendix iv.).

Having identified that there were differential processes and outcomes affecting those who could not pay fines or financial penalties and were exposed to fines enforcement action as a result, practitioners offered reasons for why those under fines enforcement often struggled to pay fines. They contextualised the imposition of a financial penalty in both economic and broader life conditions that were described as underlying the imposition of a fine and, in many cases, creating challenges in the period where financial penalties were unpaid, including when people were under fines enforcement action and/or paying off outstanding financial penalties. This produced a separate set of codes that focused on identifying common aspects of both the economic and life context of those who were described by the practitioners as experiencing process, practice, and outcomes of fines enforcement action differently. Whilst a range of contextual factors were described by practitioners as influential, these were often summarised and captured by the shorthand of

‘chaos’ or ‘chaotic lives’, so much so that a separate coding category was created to capture the prevalence of these descriptions.

However, practitioner data also highlighted a final context that was highly relevant to the fines enforcement process which was termed the criminal legal context. This code was employed to capture what practitioners felt what was happening in other parts of the criminal legal system that had an influence on who was experiencing financial punishment and why. This data was primarily related to sentencing and ways in which economic and life context did not always appear to be fully integrated into decisions taking place in the criminal legal system. These various strands of coded data that encompassed a range of factors that were seen to both influence contact with fines enforcement processes and create challenges in navigating these processes were captured under the node – Fines enforcement contextualised (see Codebook in Appendix iv.).

Open coding also produced a third category of data – that concerning the effects of unpaid fines and financial penalties and fines enforcement action described by practitioners interviewed for this study. The interview data contained reflections on more direct outcomes of fines and financial penalties on those the practitioners worked with, focusing primarily on cases where financial penalties were not paid. There was also discussion of the ways in which fines and financial penalties impacted on desistance processes, progression, and movement away from involvement with the criminal legal system. These were all captured under the code – Barriers to progress (see Codebook in Appendix. ii).. The disaggregation of this code into various categories purposefully emphasised the range of challenges that practitioners identified as affecting those they worked with and highlighted ways in which there was, on occasions, direct identification of a lack of rehabilitative potential within these processes.

However, practitioners also described the disruptive potential of fines and financial penalties to intervene in the lives of those sentenced, whether they were still in regular contact with the criminal legal system or whether they were engaged in forms of desistance and/or movement away from the criminal legal system. Practitioners also made connections between what they believed fines and financial penalties meant as a punishment to those they worked with, the outcomes it produced in their lives, and various forms of progression. The meaning of a fine or financial penalty emerged as a prominent theme in the way practitioners evaluated the appropriateness and effectiveness of fines and

financial penalties. This data was eventually brought together under the thematic node – Impact and outcomes (see Codebook in Appendix ii.).

Thematic analysis

Whilst coding was not the strictly linear process described above, with findings about the process and context of financial punishment contributing to the identification of specific outcomes and impacts, the identification of three distinct spheres of data helped to generate an account of fines enforcement in contemporary Scotland through the unique perspective of those working in community justice. What was offered in the practitioner data was a broader view of the ways in which the imposition of a fine or financial penalty sets off a separate and distinct process for those who cannot afford to pay. It allows for recognition of the ways in which fines and financial penalties intersect with the pre-existing conditions of the lives of those who are sentenced and, over time, produce distinct outcomes and impacts that were intertwined with and exacerbated by the continuing contact with criminal legal power that fines enforcement often produced.

The definition that comes closest to explaining the analysis undertaken in this project is that of reflexive thematic analysis (Braun and Clarke 2006; 2019; 2021; 2021a; 2021b; 2023). It is an approach to thematic analysis that acknowledges the practice of thematic analysis as 'inherently subjective, emphasize[s] researcher reflexivity, and reject[s] the notion that coding can ever be accurate – as it is an inherently interpretative practice, and meaning is not fixed within data' (Braun and Clarke 2023, 2). This approach also promotes the 'development of deep understanding and the telling of interpretative stories about meanings (sometimes obvious, sometimes subtle) that cut across a dataset and capture an important aspect of whatever you are trying to understand' (ibid., 3). This method of analysis, with its emphasis on interpretation, flexibility, and storytelling, is a way of methodologically confronting a narrow field of existing research which has been dominated by a set of constraining and repeated representations of fines, financial penalties, and processes of financial punishment. Throughout the coding process, analysis also treated on the three thematic nodes described in the previous section as a broad dataset and sought to engage with themes that cut across the different nodes.

The overall perspective offered by practitioners was one that emphasised the lengthy, involved, and, often repeated, process of financial punishment that was affecting those who could not pay fines and were exposed to fines enforcement action. This was recognised as

fundamentally different to the experiences of those who could pay a fine or financial penalty and for whom, often, a fine or financial penalty was considered an appropriate, effective, and minimally invasive form of punishment. This 'bifurcation of the impact and experience of punishment'(Munro and McNeill 2010, 221) has been observed in other jurisdictions (see Harris 2016) and has also been hinted at in accounts of Scottish criminal justice that theorise 'an emerging parallel system of low-end justice for people in poverty' (Munro and McNeill 2010, 221). In analysing the findings of this project, it became clear that data about the experience and outcomes of fines enforcement action provided evidence of key features of one aspect of this parallel system. Throughout the coding process, distillation and summarisation of findings produced two key features of fines enforcement – extension of process and entanglement with criminal legal contact.

The practitioners interviewed in this project were able to add depth and detail to descriptions of the outcomes and effects of fines and financial punishments partly because they were often involved with people for a long time and so could see how particular punishments and their effects played out across changes in lives, progress, and proximity to the criminal legal system. The broader analysis of themes led to an understanding of how networks of punishment and harm wrought by involvement with the criminal legal system intersect and overlap. This contributed to a more developed account of punishment that included the role that fines and financial punishments might play in monitoring those who have offended, and curtailing or constraining individual autonomy and movement away from contact with the criminal legal system. These observations added an additional dimension the ways in which aspects of financial punishment were extended and kept those sentenced in entanglements with the criminal legal system for longer periods. These features are discussed in detail in the following two chapters.

Taking a broad view of the data also allowed for observation of more subtle themes concerning practitioners' reflections on their own work, what they revealed about the logic and purpose of financial punishment, and, in turn, what this revealed about the role of fines and financial penalties within the Scottish criminal legal system. Much of what was described in the practitioner data was about a disconnect between the expectations of the criminal legal system and the conditions of the lives of those living with unpaid fines, whether under fines enforcement action or not. Trying to establish what fines meant or what they were for appeared to be a significant point of tension for practitioners, and their observations about what they believed those they worked felt about fines or understood them to mean offered one way into analysing the disconnect between system and context.

This also allowed for greater explanation of some of the effects and impacts of fines and financial penalties on those who could not pay.

The specific position of the interviewees in this project as working within the broader subfield of community justice allowed for recognition that the justifications offered for the widespread use of financial penalties sit very uneasily with policy and practice rhetoric that is increasingly influential within the Scottish criminal legal context. Increasingly, through analysis of the data, it became possible to see how incompatible aspects of financial punishment are with what is currently being promoted as the more progressive and holistic approach of community justice in Scotland (see Buchan 2020; Buchan and McNeill 2023), especially aspects of the nature and practices of enforcement action. These tensions hinted at large, contrasting conceptual and practical gaps between how forms of punishment in Scotland are described in policy and how they present in practice. These gaps and tensions needed to be placed in discussion with existing research about the meaning and purpose of punishment within contemporary practice. They also provided evidence upon which to analyse how, and upon what basis, practitioners might evaluate the fairness and effectiveness of existing policy and practice, what they saw as being the meaning and purpose of punishment, and whether or not fines and financial penalties fell within the parameters that they used for defining these concepts.

Conclusion

Qualitative data generated from this study is from a small population and from a specific set of viewpoints but, as Braun and Clarke (2019, 591) explain,

> ‘qualitative research is about meaning and meaning-making, and viewing these as always context-bound, positioned and situated, and qualitative data analysis is about telling ‘stories’, about interpreting, and creating, not discovering and finding the ‘truth’ that is either ‘out there’ and findable from, or buried deep within, the data’.

Though the dataset that interviews generated did not represent a breadth of responses, there was a depth to the responses that required time and effort to engage with. What is offered in the findings detailed in the following chapters is one view of the processes, practices, and impacts of fines and financial penalties. It is presented, firmly, as *a* story of the data gathered, not the *only* story that might be produced. In adopting a thematic analytical approach, it is important to cultivate a ‘knowing practice’ and try, as much as possible to be a ‘knowing researcher…one who strives to “own” their perspectives...both personal and

theoretical, is deliberative in their decision-making, and reflexive in their practice' of thematic analysis (Braun and Clarke 2023, 1). The flexibility and interpretative quality of reflexive thematic analysis allowed for engagement with the data on a level that went beyond simply providing evidence of the processes and impacts of financial punishment in Scotland and into broader discussions of the purpose of financial punishment.

However, what is offered in the findings of this project is a representation of the data that is presented without the benefit of member-checking, which would have undoubtedly enhanced the credibility and dependability of the findings of this study. Whilst constraints on time meant that it was not possible to discuss the findings with participants during the research period, some participants expressed interest in having access to a summary of findings as a way of evaluating current practice and finding out how other practitioners were responding to the specific challenges presented by fines and financial penalties. Consequently, taking the findings of this project back to those working in community justice in the future emerges as, potentially, both a way of checking the credibility of the analysis undertaken in this project, and a tangible way of making criminological research more relevant and useful to those working directly with people experiencing financial punishment.

Engagement with community justice practitioners in this project demonstrated that they offer a unique and valuable perspective of the operations, outcomes, and meaning of financial punishment. Data generated in qualitative interviews for this project reveals the effects of fines and financial penalties on those who cannot afford to pay them, and, especially, provides an account of fines enforcement that includes considerations of the lives and contexts of those sentenced. The perspectives of community justice practitioners also highlight ways in which unpaid fines, fines enforcement action, and contact with the criminal legal system via fines and financial penalties present significant barriers to progress and, sometimes, undermine the support they are offering those they work with.

The following chapters will present key findings, providing analysis and discussion of data with excerpts and examples drawn directly from interviews. The first of these chapters presents findings about specific features of fines enforcement processes that were identified by practitioners interviewed for this study. The second findings chapter builds on the first to demonstrate how and why these features appear to be produced, identifying key disconnects between the lives of those with multiple unpaid fines and/or under fines enforcement action; the effect that fines enforcement processes had on interactions with the

criminal legal system; and how all these factors combined to problematise understandings of the meaning and purpose of fines and financial penalties as a form of punishment affecting those who could not afford to pay.

Chapter Four – Key features of fines enforcement: Extension, entanglement, and life disruption

In the first of two chapters that outline findings from qualitative interviews with community justice practitioners undertaken in this project, the following chapter focuses on key features of fines enforcement that were identified by practitioners as affecting those with unpaid fines. Through practitioners reflections, fines enforcement emerged as a distinct phase of a process of financial punishment. This phase could include both formal action undertaken by the criminal legal system to recover funds, as well as periods where people might be living with unpaid fines and not necessarily under formal fines enforcement action. As will become clear, throughout this chapter, the interplay between formal 'measures, procedures and sanctions'(Quilter and Hogg 2018, 12) of fines enforcement and collection of funds, and the broader experience of living with unpaid fines was not always clearly delineated. Living with unpaid fines could, and typically did, lead to some form of formal 'action', but it was not always the case that this was strictly linear process.

This chapter places fines enforcement within this broader landscape that was described by practitioners, highlighting specific criminal legal measures and procedures that form fines enforcement action in Scotland alongside aspects of living with unpaid fines that practitioners identified as producing significant impacts on those they worked with. This offered a broader view of this phase of the financial punishment process. It highlighted the dynamic, shifting, and confusing nature of the primarily administrative and bureaucratic workings of fines enforcement and the ways in which practitioners and those they worked with attempted to navigate through these processes. According to practitioner evidence, those who were commonly and repeatedly in contact with this form of criminal legal practice navigated these processes alongside competing demands, stressors, and challenges within their broader social, economic, and life contexts and, in some cases, alongside regular or repeated interactions with the criminal legal system and other forms of punishment. These contextual factors were described as both influencing *and* influenced by interactions with the criminal legal system, especially in the case of the imposition of fines or financial penalties for specific kinds of offences.

This chapter begins by outlining what practitioners reported about the context of those living with unpaid fines and/or under fines enforcement action, and how practitioners saw these contexts as motivators for behaviour and offences that were frequently responded to

with the imposition of a fine or financial penalty. Inability to pay was a common theme reported by practitioners and, as a result, people were drawn into complicated interactions with the criminal legal system where collection of funds appeared the ultimate goal. Specific elements of procedure and practice were described by practitioners as adding to both the complexities of fines enforcement action, and the experience of living with unpaid fines. These included multiple/'historical' fines, and the overlap and interplay between bureaucratic systems involved in extraction of funds – both of these elements are discussed in detail in this chapter.

These elements of procedure and practice extended the duration of fines enforcement and brought people into specific forms of contact with the criminal legal system, often for long periods. Living with unpaid fines could be an equally extended process but, across time, escalations in punishment linked to collection of funds could produce disruptions and disorder for the person sentenced. The following chapter outlines how these disruptions were described by practitioners as affecting both individuals and, in some cases, potentially widening out to include their families and close communities. Overall, the evidence offered an overview of extended and complicated processes and suggested potential under-recognised consequences that might affect those in regular or repeated contact with the criminal legal system.

The final section of this chapter examines findings from this project alongside existing empirical evidence from Scotland, demonstrating that many of these issues have been highlighted previously. Extension and entanglement are identified as both features of the system of contemporary fines enforcement in Scotland and useful concepts through which to articulate the punitive power of financial punishment in its current form. Whilst there remains a continued emphasis on deprivation of money in descriptions of how fines achieve their effects, evidence from both this project and earlier theoretical work from Scotland suggest that reconsidering deprivations of both time and forms of autonomy might provide ways in which to explain the outcomes and impacts of fines and financial penalties on those who cannot pay. This, this chapter asserts, might add further detail to descriptions of the experience of living with unpaid fines and/or under fines enforcement action.

Bifurcation into fines enforcement

The practitioners' responses made it clear that the imposition of a fine or financial penalty produced two distinct scenarios that they observed. In the first scenario, a fine was characterised as the quickest and most efficient option for a person sentenced. Rachel, a manager of a CJSW team, outlined the kind of scenario where she believed fines are an appropriate criminal legal intervention:

> 'We would generally only recommend fines if somebody was in employment, you know, if we felt that somebody had the capacity to be able to pay a fine, also if it had maybe been an isolated incident.
>
> So just say someone didn't have any other identifying needs, they were in employment, they didn't have any substance issues, they had stable accommodation, if their index offence had been a, kind of, it looked like a one-off isolated incident…that didn't justify the level of being on paid work and recommending unpaid work, then we would possibly recommend a fine…
>
> And you know generally those fines are probably gonna get paid because those people generally aren't entrenched offenders, and that maybe, you know, they've not got massive SCRO's and that they're, you know, quite prosocial in other areas of their life, so you generally feel confident that if you're recommending a fine they're at least people who are not familiar with the court system and they're gonna pay it'.

Rachel's response paints a picture of the type of scenario where she (and members of her team) would feel comfortable recommending a fine in a sentencing report – picking up on the level of employment, access to secure housing, and lack of other identified needs, as well as minimal or isolated incidents of offending as the key factors that indicate when a fine might be appropriate.

Similarly, Fraser, who supported people with convictions into employment, suggested that one of the positives of fining is that it can be an easier sentence to handle for those in employment. He explained that,

> 'being in employment…if you know, the court might see that as, you know, paying a fine will be more manageable for you… I think someone in employment…they'll find, you know, a fine a lot more manageable than someone who isn't. Um, so that's a positive there'.

Fraser's perspective, like Rachel's, highlights the relationship between employment, the ability to pay the fine, and how manageable the sentence is likely to be. Fraser even

suggested that employment might be a factor in court-level decision-making around fines and financial punishments.

Overall, there was broad agreement across the practitioners interviewed that a fine might be a quick and efficient response to the scenario of employed, secure, 'quite prosocial' person, who was not an 'entrenched offender'. However, this was not always the scenario that was playing out with the people they worked with. The assumption, in use in the ideal scenarios described by Rachel and Fraser above, is that someone will have the resources to withstand the hardship imposed by financial punishment and so will feel an effect, albeit a manageable one. The ability to pay appears taken as an automatic condition that must be met before the 'punishment effect' (Young 1999, 186) of fines and financial penalties can take place, and knowing that the fines can potentially be paid becomes an evaluation of the appropriateness of a financial punishment.

According to the practitioners interviewed for this study, the likelihood of this condition being met was low. Poverty and financial difficulties were identified as issues that typically affected those who were involved with the criminal legal system and came into contact with the types of social work, post-conviction and post-custodial support, and housing/tenancy sustainment work that characterised the professional practice of those who were interviewed for this project. Ann-Marie, a social worker working within CJSW, explained that it is a 'really sad fact that the vast majority of the clients that we have contact with in my agency are also in poverty or struggling with financial difficulties'. Fraser suggested that 'the offences that women commit, um, are primarily economical, you know, so it's theft or, you know, it's …it's …they're committing offences to cope with like poverty, um, or drug and alcohol use.' The practitioner evidence demonstrated that there was a second scenario taking place wherein those receiving them could not afford to pay and it was this scenario that was pervasive – taking up time, space, and energy in their professional practice.

The main issue identified by practitioners in this project was not simply that many of those sentenced could not afford to pay a financial penalty in the first place. More often, the issue was that financial penalties became part of a broader landscape of social, structural, and economic challenge in the lives of those experiencing them, and the deprivation of financial resources added to these broader conditions of strain and stress. Isabelle, who supported women post-release from custody, explained that fines are typically 'only a small part of a bigger picture' when working with people who have regular or repeated

interactions with the criminal legal system. She went on to outline some of the broader life contexts of the women she worked with,

> 'on the whole, the females [she worked with] all have addiction issues. Um, none have their children still with them. Um, some may have contact still with children but that's very rare, um, and as I say it's, it's been, like, mainly drugs in [the area she worked in] but there is alcohol as well'.

Rachel was more specific about the issues she sees affecting women with unpaid fines, explaining that,

> 'a lot of our women that come with outstanding fines, have got substance misuse issues, erm, probably got really lots of debt problems, probably got issues with their benefits, erm, maybe not had great engagement with services in the past, you know, so maybe services have tried to intervene to offer and they've not had great engagement for whatever reason, erm, wouldn't be in employment [sighs] erm, probably often got mental health issues I would say as well, erm, and then usually kind of complex significant trauma in their background as well, so th-that would be the sort of types of women, there is a sort of probably general profile of women that I would say that have got historical offences'.

Both Rachel and Isabelle identify addiction issues as a common feature of the lives of women with unpaid fines that they work with. Rachel went further by explaining that many of the women she works with also often have mental health needs and/or complex significant trauma at some point throughout their lives. Both practitioners paint a picture of the kinds of common issues that affect women who they work with who are likely to receive fines. Rachel, however, was more cautious about promoting a profile, explaining that 'we [her team] have such a broad spectrum of women that we work with, I just, I genuinely don't think there is, erm, a kind of more typical profile of women that we support'.

Further, Rachel's assertion that women with unpaid fines are unlikely to be in employment, and are instead likely to receiving welfare benefits, indicates the existence of significant financial barriers. Most of the practitioners explained that for many of those with unpaid fines and/or those undergoing fines enforcement action, their main source of income is likely to be welfare benefits. Aside from low employment rates and a high incidence of low income/no income besides welfare benefits, the practitioners in this project described many of those with whom they worked with as having 'traumatic backgrounds…[and] really difficult circumstances going on' (Ann-Marie).

Across the interviews, descriptions of economic marginalisation, unemployment, addiction or substance misuse, mental health problems, and trauma were commonly identified by practitioners as features of the socio-economic and life contexts of those they worked with who were living with unpaid fines or subject to in fines enforcement processes. There was also widespread recognition of the links between these socio-economic contextual factors and the types of offences that were likely to result in the imposition of a fine of financial penalty. Fraser termed them 'economical offences' that were mainly 'focused around theft and things like that or possession'. He described these kind of offences as a way of 'trying to cope with poverty or drug and alcohol use'. Other offence types that were mentioned most often by practitioners in relation to fines and financial penalties were shoplifting, soliciting, and Public Order offences (especially those related to drinking alcohol in the street). Frequent convictions for these types of offences were generally understood, by practitioners, to be symptomatic of 'underlying financial and other issues going on' , where it would not 'make any ethical or sense otherwise to impose a fine' (Rachel).

Practitioners were able to identify that, very often, these offences were directly related to socio-economic contextual factors and that imposing a fine could motivate further offending. They also underscored the importance, in their work, of considering the broader socio-economic context when attempting to address offending. Their descriptions of emphasised the extent to which fines and financial penalties were an accepted (though not approved of) aspect of working with those who had regular or repeated interactions with the criminal legal system. As a result, practitioners were able to identify and articulate key features of criminal legal processes and outcomes that disproportionately affected people living with unpaid fines or under fines enforcement action. Practitioner data also demonstrated the ways in which these features of the process extended the duration of periods that people were subject to criminal legal contact and explained how unpaid fines could contribute to disruptions in the lives of those sentenced – whether through further criminalisation or further punishment.

Features of fines enforcement processes

'Historical'/multiple fines

Rather than the quick and efficient process available to those with a regular income, employment, or financial means to manage a fine, many practitioners emphasised how drawn-out and complicated the process of financial punishment could be for those unable

to pay a fine. These problems were compounded when individuals either had or were repaying multiple fines or financial penalties at one time. Several practitioners highlighted the prevalence of 'historical fines' – a shorthand for the accrual of multiple fines/financial penalties for different offences building up and waiting to be paid, or being paid minimally over an extended period. It was a common and regular occurrence that cut across a number of professional boundaries, with practitioners working in different areas reporting similar experiences. Stephen, who worked as a post-custodial mentor, explained a typical scenario involving the accrual of multiple financial penalties:

> 'It's something I've seen in the past where someone's had a numerous number of fines, they've been small, but, you know, £50 to someone with no money is a lot of money, so, um, and they've added up and again, it's usually on top of their rent arrears and other things as well. So, everything's just piling up. Some people will come in and just laugh and say 'Oh, I've got thousands of pounds worth of debt and there's nothing they can do about it''.

As Stephen pointed out, the actual amounts of individual fines might appear relatively small, but they rarely exist in isolation – whether as a result of the imposition of further fines and/or existing debt in other areas of someone's life, such as rent arrears.

Ailsa, who supported women post-release from custody, provided a specific example of how historical/multiple fines can interplay with existing debt, recounting a story she regarded as 'unbelievable…[and] the worst example' she had ever seen. She described the circumstances of a someone she worked with who was paying back outstanding fines from previous benefit arrangements, which then got crossed over onto new Universal Credit arrangements. Whilst in prison, this individual accrued overpayments within the benefits system and, now released, was currently facing a number of benefit deductions, as well as deductions for unpaid fines. In the excerpt below, Ailsa laid out precise numbers in both time and monetary terms (interviewer responses are italicised):

> 'When you started to take off all of your advanced Universal Credit, your fine payments, your overpayments, blah, blah, blah, blah, the lot. She came out with less than £250 for four weeks.
>
> *So that's like, 75…no, it's not £75 a week?*
>
> It's not even, no. It would be like 65?
>
> *£65?*
>
> Yeah, four weeks. About sixty quid a week.

> *And, just to be clear, that's not for a short period of time? We're looking at a long duration based on how long those payments take to make back? Do you know what I mean?*
>
> Yes.
>
> *It's not gonna be, like, it's not going to be like £250 for three months. It's gonna be, like, £250 for…*
>
> Until, it's gonna be like that for almost…eternity. Until, erm, she's actually in a place where she can get the extra premium but that's not the point, the point is she'll clear her advance in a year but she's the type of girl…you can't avoid it because she's got so little money to live on, on a daily basis…She's going to be in this situation for years'.

Ailsa also explained that many of the unpaid fines included in these deductions were:

> 'outstanding fines from ten years ago […] because, prior to her moving down to the [area], she lived in [city] and she was, uh, a sex worker. So, she routinely would pick up financial penalties because that was a different area and that was…you know, that was how that was dealt with'.

In the case of this woman who Ailsa worked with, a decade has passed since she received the initial fines, but she faced an indeterminate period of repayment. Ailsa considered this example an extreme one, but Helen, who works with people who sell sex on street, provided a relatively similar example, explaining that one of the women she worked with had '£700 worth of fines. So, she's now paying that from way back, six years ago'. Both examples highlight the elongation of the deprivation inflicted by a fine or financial punishment and the extent to which unpaid fines and financial penalties might keep people within the proximity of the criminal legal system – often for indeterminate periods, and long after fines were imposed.

Versions of this scenario, where someone had been unable to pay a fine immediately and had then been at risk of, or had, accrued further fines, came up again and again throughout interviewing. It was one of the issues that most practitioners were able to identify as a challenge in their work. From Rachel's perspective, 'once a fine's imposed a fine's imposed'. She did not,

> 'really feel as though there are any alternatives once it's imposed' and, instead, they [fines] hang around forever and hang, you know, like a noose around a lot of women's necks or whatever'.

Rachel felt strongly enough about the extension of process represented by fine enforcement action and long repayment periods that she stated that it affected her professional practice and that of the CJSW team she was a part of. She explained that,

> 'it's our responsibility at report writing stage to say no, stop, you know, that's not ethical, we cannot recommend fines for women who are not able to meet their existing fines and that they've got lots of historical fines, so I don't think as a team we recommend fines hugely often'.

For Rachel, the imposition of a fine on someone who either could not pay existing fines or had several historical fines was something that she considered an unethical practice and one that she attempted to mitigate.

According to the practitioners, for those who could not pay a fine, the experience of the financial punishment process was substantively different, as were the impacts. Ailsa summarised the sharp divide between the two processes of financial punishment saying,

> 'It's almost like someone, erm, you know, just walking away and someone else being punished as much as they possibly can be, to the point where it is completely disproportionate'.

The 'de facto presupposition' that those in receipt of a fine could and would comply with the conditions of repayment (Young 1999, 187) was not fully reflected in the practitioners' professional experience. They could, and did, identify situations where a fine or financial penalty represented a quick, efficient, minimally disruptive and/or 'dissocialising' (see Faraldo-Cabana 2019) intrusion into someone's life. However, the practitioners interviewed for this project emphasised that the imposition of a fine or financial penalty on someone who could not afford to pay it often produced into a longer and more complicated periods of contact with the criminal legal system – both through an accrual of 'historical'/ multiple fines and/or the resulting fines enforcement action.

Bureaucratic demands and intersecting bureaucratic systems

Historical/multiple fines were one way in which processes of fines enforcement were elongated and extended. Practitioner data also demonstrated that the imposition of a fine could draw people into entanglements with the bureaucracy of the criminal legal system and, in some cases, these entanglements were further complicated by intersections between the criminal legal system and other large bureaucracies. Navigating the complex and highly bureaucratic nature of the financial punishment process required efficient co-operation

with a number of competing systems, including, in some cases, the various agencies and organisations that the practitioners themselves represented. Successful navigation was often difficult to achieve because availability of and access to information about unpaid financial penalties was not clear or consistent. In cases where there were multiple unpaid fines, it could be difficult to establish what was owed, for what, and what payment terms were.

This was identified as especially difficult when people are regularly coming into contact with the criminal legal system. Fraser describes some of the people he works with as 'just constantly offending' and, for those in this situation,

> 'there were fines that come along with it so there were just constant fines and most of them were warrants for unpaid fines and, you know, breaches of bail conditions and one of those bail conditions where you get that fine paid off'.

Even when there was a pause or slight breathing space to review someone's fines, this was described as a complicated and time-consuming process. Ann-Marie offered an illustrative example of this process, drawn from her professional practice:

> 'I'm thinking of a person…that I worked with…I think it translates for lots of people's experiences. I remember he came into a supervision session with me one day and he had about 12 bits of paper all scrumpled up and they were various court fines from over the years… And I found it a bit difficult to sit down and say to him, "Right, this fine's for this, and this is for this, let's phone the court and you..." and it really took quite a lot of effort to do that'.

Ann-Marie's experience provides insight into her opinion of the supposed efficiency of sentencing processes that impose a fine without checking previous fines and repayment progress. It also poignantly demonstrates the administrative burden that is transferred onto someone who has multiple unpaid fines. The image of '12 bits of paper all scrumpled up' represents a long and complicated history of financial punishment, each scrap of paper symbolising an unresolved interaction with the criminal legal system.

As Ann-Marie pointed out, the process of resolution is expected to be led by the person fined who must first figure out what all the paperwork relates to, and then contact the court services to begin negotiations. Ann-Marie, a trained criminal justice social worker, is open about finding the process difficult and requiring 'quite a lot of effort'. In this case, even beginning to get to grips with what is owed, as well as how repayment might be managed, requires external support. Without this support, managing the administrative demands that

come alongside fines enforcement action and the process of paying financial penalties places additional administrative demands on those sentenced, especially when they are already in regular contact with the criminal legal system.

Entanglement within the process can be further complicated by the link between financial penalties and the welfare benefit system, administered by the DWP. The practitioners' evidence suggested that many of the people they are working with were primarily repaying fines and financial penalties via deduction from benefits. This means that repayments are agreed upon within the criminal legal system, either at court or through negotiations with FEOs based in the SCTS. This payment schedule is then passed on to the benefits system for regular deductions to pay fines and financial penalties (see Bradshaw et. al 2011, 15). During her interview, Ailsa spoke in detail about how intersections between the two bureaucracies could cause complications for the person fined, and, more specifically, about the implications of the move within the welfare benefits system over the past decade that has seen payments of multiple benefits replaced by one single payment of Universal Credit. Ailsa explained that '[i]t becomes really, really, really difficult' to negotiate fine repayments,

> 'once it's [the decision on repayment amounts/frequency] been handed down, obviously, by the Sheriff and it's gone off to the…Fines Office to then be collected from the benefits office then…there's really no-one to talk to about it because the Sheriff's finished, they've done their part, criminal justice have done their part…[and] the other department have organised the payment of the fines so they've done, in their eyes, they've done their part'.

According to Ailsa, once the decision to impose a fine has been decided in court proceedings, passed to fines enforcement within the SCTS, and then passed onto the DWP, and the process of deduction has begun, re-negotiation of payment amounts or frequency is complicated by neither system appearing to take responsibility for managing the penalty. Ailsa suggested that,

> 'it's only when, I guess, benefits stopped at any point…then they [the person claiming benefits] had to stop that claim and move onto another claim and there would be a period where the benefit would stop. It would be only at that point where there would be a tiny window of opportunity to say, "well, can I speak to somebody?"'.

Ailsa's experience was that, in the old system of multiple benefits, a small chance to re-negotiate payment terms of the deductions imposed by the criminal legal system might

emerge through interactions with the welfare system, but this could only really take place when there was a pause in benefit payments.

With the gradual move to Universal Credit between 2013 and 2018, there have been significant changes to the way the benefits system is administered that have made this type of re-negotiation more complicated. Ailsa identified the changes as primarily related to access to information and support within the DWP:

> 'Prior to Universal Credit they [the DWP] had, erm, a separate division that you could speak to about asking for hardship reduction…Right?...You could appeal to the hardship to reduce the…overpayment so, there was a way there of…trying. But, it's sooo difficult…because it's all call centres'.

Ailsa's experience of trying to negotiate with both the criminal legal system and the benefits system was one where locating who had responsibility for evaluating and negotiating fine repayments was incredibly difficult. She describes a scenario wherein each system appeared to decide when its role in the process was complete, placing a series of distancing obstacles between the person paying a fine and access to information and support that might make repayment more manageable.

Ailsa reported undergoing the process of trying to consolidate and re-negotiate outstanding fines and repayments via the welfare system on behalf of people that she has worked with. She described a process which sounded incredibly complicated – even in interview, it was hard to follow and understand the intricacies of what was being described. Ann-Marie reported undertaking similar tasks for those she worked with but, in her case, contact was made with the criminal legal system. She explained that she had 'personally…at times, phoned the court and asked for an update of what fines there are and what they're for in order to help somebody address paying their fine'. Like Ailsa, Ann-Marie highlighted the complexities of navigating systems in place designed to administer and manage re-payment of fines, whether these were through negotiations with the criminal legal system or with the welfare benefits system. She felt that, for people she worked with who 'are in frequent contact with the criminal legal system, if there's lots of different fines, it becomes very overwhelming to establish how, how to pay for these things'.

The 'overwhelming' aspects of how to manage re-paying multiple fines seemed closely linked to the (in)efficiency of the process, especially when re-payment was via benefit deductions. The impression that emerged out of the descriptions offered by practitioners

was that, whilst multiple bureaucratic networks were implicated in the process of re-payment, it was difficult to pin down who had overall responsibility, as well as how to access information or speak with useful contacts. Once a financial penalty was imposed, there was not necessarily a clear, straightforward, or user-friendly process communicated to those who had been sentenced, and this presented significant challenges to even those with professional expertise. Furthermore, the practitioners' evidence suggested that information, support, and resources tailored specifically to assisting with unpaid fines and financial penalties appeared to be relatively ad-hoc and often lumped in with other services that individuals might be referred on to. A lack of accessible information and a default to a reactive (rather than proactive) approach from support services emerged as common themes when practitioners reflected on how fines and financial penalties were administered.

Ailsa stated that,

> 'nobody tells you [about fines]. There's no information. No. You need a worker who knows the system to be able to point that out to you to say, 'Now, listen, this is, okay, an alternative to 50 hours community pay back order', you know, and you might say, 'Yeah, yeah, yeah, I'll pay it, I'll pay it''.

Isabelle also believed that aspects of the fining process are not 'explained well if you're not involved in the criminal justice system'. Fraser suggested that even if you are involved with the criminal legal system 'there's not information [about fines] out there'. Drawing on his own experiences of contact with the criminal legal system, he explained that he had 'a history of offending behaviour from when I was, you know, a teenager' and, at that time, he 'had no knowledge of what [his] convictions meant and then half the time it wasn't clear'. Knowledge about the processes that followed the imposition of a financial penalty, as well as potential unexpected outcomes of being exposed to fines enforcement action was something that seemed primarily to arise out of experience – whether personal or professional.

Conversely, Stephen claimed that 'quite simply there's plenty of information there, you can access it, anybody can'. He then further qualified this claim by explaining that if,

> 'someone doesn't have the communication…or the ability to comprehend that information, that's the biggest issue. So that, that's where I come in…and also the other support services…they need someone to do for them'.

Stephen emphasised the importance of having support following the imposition of a financial penalty and through fines enforcement and repayment processes. The importance of support through these processes was echoed by Ann-Marie, who believed that, alongside enhanced comprehension and communication, practitioners could also add credibility and advocate for those sentenced during interactions with criminal legal bureaucracies. Ann-Marie suggested that there is,

> 'something [within the courts and the criminal legal system] that's very dismissive of people and their own difficulties and is more likely to listen to somebody who's also middle class or who also speaks the same sort of language, and that's another barrier for a lot of the people that we're trying to support'.

Ann-Marie believed that having a practitioner act as a voice through which to advocate on the behalf of those who interact with the criminal legal system could 'make a huge difference'. However, she felt that space to advocate for the person sentenced 'doesn't exist with things like fiscal fines…it doesn't exist, really with court fines [either]'. Without access to the kinds of support described in their accounts, practitioners suggested that both understanding expectations, and navigating through processes of fines enforcement, could be undermined by a lack of accessible information and a general lack of clarity concerning the process of financial punishment.

Equally, the kind of practitioner support described in interview was typically presented as additional work undertaken by the practitioners voluntarily, rather than an explicitly defined aspect of their professional practice. This discretionary support was not available to everyone with unpaid fines, and there was always a limit to the support that could be provided. Reflecting on her work, Rachel pointed out that there were women,

> 'out there that aren't open to our team, that are falling through the cracks, that are, you know, that have got historical fines, so they're not open to our teams so they're not getting support from us, so they are actually probably not getting support from anyone for their outstanding fines'.

Though the practitioners interviewed spent time and resources assisting those with unpaid fines where they could, often all they could do was try to make repayments manageable. As Isabelle asked, 'short of paying the fines for them what else could you do?'. For those in CJSW who were involved with making sentencing recommendations, like Rachel and Ann-Marie, mitigation could happen by avoiding recommendations of financial penalties for those who demonstrably could not afford it; both stated that they attempted to do so in

their practice. However, once a fine or financial penalty was imposed, there appeared to be little else that could be done besides making repayment amounts and frequency as manageable as possible. This, in turn, might only extend the period where people remained in contact with the criminal legal system and, ultimately, keep people in a position where low incomes were made even lower via deductions for unpaid fines. Only one practitioner, Stephen, was able to recall 'a couple of times' where, with the support and input of CJSW, 'they've maybe decided to change the sentence and remove the fine coz they simply say, well, look, we understand you can't pay this. Um, that doesn't happen very often, but it can'.

Unpaid fines were often a background or low-priority concern for both practitioners and those they worked with, but when they did become urgent or prioritised, they were a drain on time and resources for practitioners. The examples of being on the phone to Universal Credit, or to the court, or to COPFS where, as Ann-Marie explains, you might get 'transferred about six times to try and speak to somebody', are suggestive of the type of administrative tasks that often eat up time and result in very little progress. Again, the process itself appeared not to be set up in a way that allowed even the practitioners to navigate it in a reasoned and thoughtful manner, and the support they could offer those struggling with multiple unpaid fines was generally ad-hoc, reactive, and treated as an afterthought. For the practitioners interviewed for this project, when it came to supporting people with unpaid fines, all they could really offer was limited damage control.

Escalating punishment and life disruptions

The extension of contact with the criminal legal system produced by outstanding financial penalties and involvement with fines enforcement action was described as often unexpected and at odds with the way fines were typically perceived by those sentenced. Rachel explained that the 'common knowledge' that the fine is 'always the lowest tariff' encouraged some people to believe that, with a fine, 'the matter [is] over and done with'. She suggested that, with court fines, at the point of imposition or sentencing, people can,

> 'just feel like a fine is the kind of less disposal and that means that it's getting dealt with sort of at a lower level…people are gonna think a fine's easier than being on a twelve month community payback order or whatever, you know, and having to be on months [of] supervision'.

However, Ann-Marie was both aware, and concerned, about the elongation and extension of the process, explaining that,

> ‘if you’ve got fines and then fines on top of fines, and they’re going on for a long, long time, people are really having a long contact with the criminal justice system where they might not otherwise have done so’.

Here assumptions about the ‘leniency’ of fines and financial penalties were observed being transposed onto the ways in which people expected their sentences to proceed. The primary expectation being that, once a financial penalty is imposed the matter is ‘over and done with’, when, in some cases, the imposition marked the beginning of ‘long contact’ with the criminal legal system through processes of fines enforcement and the extraction of repayment. Practitioner data highlighted that any anticipated duration cannot be quantified at the moment fine or financial penalty is imposed, there is no specified start or end time. The only way to end extended contact with the criminal legal system was via repayment, which, as per the evidence from practitioners, could take a long time. The extension of these processes exposed those with unpaid fines to the risk of accruing additional financial penalties, potentially extending the duration of the processes even further. Practitioners also identified ways in which unpaid fines could lead people, either directly or indirectly, back into contact with the criminal legal system, whether through the necessity of having to find the means to pay a fine, or through the escalation of criminal legal responses to unpaid fines.

Helen provided a concrete example of how payment of a fine might produce further criminalised behaviour, drawing from her experience with women with asylum seeker status who are involved in selling sex. She explains that women in this scenario,

> ‘don’t get cash. They get a card and I think it’s, like £39 on it, and they have to buy stuff with it. They don’t get cash. They don’t get any cash returns. So, if a women who’s involved in prostitution is an asylum seeker she’s no way of paying a fine. So, it means that either back involved in prostitution or prison. That’s her option’.

Helen’s example here is a stark reminder that the entire system of financial punishment is predicated on the assumption that the person sentenced will have access to some funds (whether through welfare benefits or other financial resources) to begin the process of enforced financial deprivation that underlies fines and related financial penalties.

In the case of those with asylum seeker status, severe restrictions to entitlement to state benefits and the fact that those with asylum seeker status are rarely allowed to enter employment in the UK mean that financial resources are often limited to a small set allowance (usually £49.18 per week) on a pre-paid debit card provided by the Home Office

(Home Office, no date; Home Office 2023). These are not funds that can be used towards fines and related financial penalties accrued in the UK so, if payment is enforced, there are few options available that will produce the cash funds that are necessary to even begin to pay off outstanding fines. In these cases, Helen suggests the only options are to return to the criminalised behaviour that might have produced the fine in the first place, or risk imprisonment.

Though this example is specific to the conditions that face women with asylum status, strong links between socio-economic drivers underlying offences and the likely incidence of multiple or repeated financial penalties as a response was a theme that underlaid much of what practitioners reported about the processes and outcomes affecting those living with unpaid fines and/or subject to fines enforcement action. The extent to which the imposition of fines could produce offending or criminalised behaviour was not necessarily a strict cause and effect relationship. Instead, unpaid fines and/or fines enforcement action emerged as a contributing to a range of challenges in the broader lives of those sentenced to a fine or financial penalty, especially where fines enforcement escalated into other forms of punishment.

Isabelle offered an example of this type of escalation using the example of 'gate arrest' for non-payment of fines. Though relatively rare, Isabelle described instances whereby she had observed women being arrested on a warrant for outstanding fines, outside the prison gates immediately following liberation from custody on different charges. In Isabelle's words, 'quite often I've had girls who have been liberated, obviously gate arrested, then spent the weekend in the cells until they go to court on the Monday'. On these occasions, Isabelle claimed that even if part payment is offered via discharge grant, 'it's still not enough. Nine out of ten times they don't accept even that…They'll say, 'No, we need payment in full', or whatever'. A discharge grant is a small amount provided by the prison service to cover any immediate needs on release, the standard amount is £77 (The Hardman Directory 2021, 129). In Scotland, if someone is being released after being held on remand, they do not currently receive a discharge grant (Scottish Government 2022b, 5). The other option in these situations, according to Isabelle, is 'to follow the police van as they go to a relative's house to try and get money' but, Isabelle explained, the choice to allow this often came down to the discretion of individual police officers, and also relied on the proximity of family members who were willing to provide funds.

Isabelle spoke about gate arrests with frustration and anger. She stated that 'they [the police] are there for the sole purpose of getting it and I think it's shocking'. She goes on to ask,

> 'why the hell can that not be sorted and some agreement or a court date for the fines court be given to them…do they need to gate arrested knowing that at that point they're not gonna be on benefits, their benefit claim will have been closed down? If they do get money off them it's gonna be the only money that they have, which then in turn is gonna either lead to them spending a weekend in the cells'.

Isabelle struggles to understand the logic of the process, as the 'revolving door' image of the criminal legal system appears to be coming alive right in front of her. Isabelle's description of gate arrest represents a huge practical and emotional disruption for anyone who has prepared to re-start life on the outside, only to be told that they must pay up to avoid a return to custody.

Additionally, a large part of what Isabelle does is support women on the day they are released from custody, encouraging them, as she put it, to 'take care of their business on the first day out'. Isabelle described escorting women to a range of appointments to access essential services such as housing, benefits, and healthcare. Access to these essential services post-release can have serious implications for survival and security, and the diversion of time and energy generated through gate arrests can risk access to these services. Isabelle's experiences demonstrate that demands for payment might take place at unexpected and inopportune moments, severely disrupting important transitions in the lives of people leaving prison. The example of gate arrest acts as a reminder that both unpaid fines, and the processes undertaken to recover funds, might run parallel to someone's journey into, through, and out of prison. If these two processes then converge, this convergence can produce additional burdens that may disrupt the transition from prison back into the community and, at worst, might play a role in returning someone to custody.

The disruptive potential of unpaid fines was not only observed in situations where people were leaving prison on separate charges. Throughout the period of time when people were living with unpaid fines and/or under enforcement action, there were other ways in which unpaid fines could produce disruption and disorder in the lives of those sentenced, including playing a role in driving imprisonment. Helen explained that those she worked with were at great risk of having a fine imposed because of the laws around public solicitation in Scotland. Whilst selling sex is legal under Scottish law, public or on-street

solicitation is not (Malloch, Robertson, and Forbes 2017, 11). The legislation that covers public solicitation states that anyone convicted could be liable to fine of up to £1000 (Prostitution (Public Places) (Scotland) Act 2007, Section 1 (5)).

Multiple convictions could produce multiple unpaid fines, increasing the likelihood a warrant would be issued for arrest which could result in a short custodial stay. Repetition of this scenario could prove highly disruptive to the day-to-day lives of the women she works with, as Helen explained:

> 'A lot of the women have drug issues. The majority of the women on street have drug issues. So, the last thing in their mind is actually paying a fine…Once they get a warrant issued, they're then frightened to use the services in case the police are waiting on them. So, they might not go and collect their methadone or whatever treatment they're in, because they think the police might be waiting at the chemist. They might not engage with their drug worker because they think if they know, "I've got an appointment they might be waiting on me". So, it starts to take them out their treatment which puts them into great risk of overdose.
>
> If she's imprisoned, you know, if she's in because she broke bail conditions or whatever and she's imprisoned for non-payment of fine, she loses part of her community, she might have become part of. You know, if she's settled in a hostel or settled in, you know, supported accommodation; once she's put into prison they'll take that from her. So, she loses that.
>
> I don't know if it's still the case, but I knew women who went to Cornton Vale if they had opiates in their system. They were taken off their opiate replacement therapy, methadone…So, you're prison for a very short period and you lose your opiate replacement therapy which is difficult to get back into'.

Helen laid out, point by point, the process by which the imposition of a fine might spark a chain reaction of events that produce significant disruptions to housing, health, and social/community bonds for women who sell sex on street. In Helen's professional experience, though, fines were a professional hazard for the women she worked with – the way they made money necessary to survive put them at direct risk of having multiple fines imposed and, with that, at greater risk of multiple forms of disruption via contact with the criminal legal system.

Helen described a constant state of awareness that came with living with unpaid fines, one that could cause women to feel frightened to engage with essential services, or just simply to go about their lives. Helen suggested that living with the threats associated with unpaid fines was a frightening experience and one that might force the women she worked with to

make choices that could impact their health, safety, and well-being. Financial hardship wrought by the imposition of a fine was compounded by the threat of disruption to the lives of the women she worked with – whether the action resulting from unpaid fines escalated a custodial sanction or not. Nonetheless, unpaid fines brought with them the very real threat of sudden and abrupt short periods in custody or, in some cases, short prison sentences.

Helen's evidence demonstrated that, for some, there are serious disruptions that can take place in real time following the imposition of a fine that cannot be paid, and that these disruptions can have significant impacts on those sentenced. This can, in some cases, take place alongside the elongation of fines enforcement processes, and/or entanglement with the criminal legal apparatus that can be a result of unpaid fines. After all, unpaid fines do not simply go away, and the disruption wrought by the slow and, often, inefficient process of fine repayment appeared to continue unabated in the background – even as other sentences played out, including imprisonment. Unpaid fines and their disruptive potential did not just exist in the backgrounds of people's experiences of the criminal legal system, though, they existed in people's lives in the community and could produce consequences that were not just disruptive to an individual sentenced but also to their familial and social relationships.

Rachel described how, at the pre-sentencing/report writing stage of CJSW, people she's working with will 'offer to pay a fine and then when the staff have maybe said, 'But we've gone through and you've got lots of debts', they'll say, 'Yeah, but my granny's gonna pay it for me, or my mum's gonna pay it for me, my dad's gonna pay it for me''. Here family members are included (knowingly or unknowingly) in negotiations with the criminal legal system, and an individual's ability to comply with the conditions of a financial penalty becomes contingent on their family's support. Family and personal relationships become collateral in this kind of situation, as it is impossible to know whether family members are able and/or willing to pay people's financial penalties and, if they cannot or do not, the strain that this will put on relationships.

Similarly, returning to the example of gate arrest described by Isabelle earlier in this chapter, the arrival of a recently released family member, with a police escort, to ask for money to pay off unpaid fines is likely to be a highly disruptive experience for those living with unpaid fines and their families. The pressure and urgency that might be placed upon family members in this situation could cause strain in relationships – relationships that may

have already suffered due to separation while someone is imprisoned. If this is the first interaction an individual has with their family since leaving prison, the fact that they arrive with a police escort in tow could cause stress, distress, and fear/anxiety. Thus, gate arrest, as described by Isabelle, is also an illustrative example of the types of symbiotic harms that have been shown to affect families of those living with fines and financial penalties (Boches et al. 2022).

Potential disruption to family bonds may also manifest because of the stigma that is attached to being involved in criminalised activities, and, especially, certain types of criminalised activities. Helen outlines this situation in relation to selling sex:

> 'If your family or your partner doesn't know you're involved in prostitution and you have to be paying a fine and they're wondering where is this money going. Especially if you're on a joint claim, if you're on benefits. So, you need to explain how this money; you have to pay this money. What do you say the fine is for, you know?'

In this example, having to explain where money might be going when it is being claimed as re-payment of a fine becomes a potential conduit for forced disclosure of someone's involvement in selling sex. The stigma around being involved in selling sex is well documented (Benoit et al. 2018; Benoit and Unsworth 2022; Grittner and Walsh 2020; Nussbaum 1999), and being forced to disclose can cause 'public embarrassment [and] estrangement from family, friends, and community' (Grittner and Walsh 2020, 1674). This can have a range of disruptive practical and emotional consequences that affect an individual's health and well-being, such as losing housing and access to childcare, as well as potentially affecting mental health and self-image, and/or exacerbating substance use (Benoit et al. 2018; Benoit and Unsworth 2022; Grittner and Walsh 2020; Nussbaum 1999). Whilst the hardship imposed by a fine is primarily quantified via economic metrics, it is impossible to measure the disruption caused by estrangement from family, friends, and community as a result of forced disclosure of involvement in criminalised activities, or as a result of asking family members to clear unpaid fines as the only means of avoiding imprisonment.

The evidence from practitioners suggests that unpaid fines can create the conditions for further criminalised behaviour and increase the risk of additional/further criminal legal intervention, as well as potentially damaging familial and social bonds. One of the fundamental ways that the punitive power of financial punishment has long been imagined to be 'softened' is through claims that fines and financial penalties produce minimal

disruption in the lives of those sentenced. However, the evidence gathered during this project suggests that such a notion remains remote from the both the economic *and* emotional context of the lives of those receiving them. Instead, the imposition of a fine or related financial punishment appears to add fuel to an already turbulent fire, with timely repayment seeming, at a basic level, highly unlikely. Further, any attack on financial resources becomes an exacerbating factor on both a practical and emotional level, and the effects can spill out beyond the individual and into their lives, communities, and relationships.

Discussion

The practitioner data provided new perspectives on the processes and outcomes that arose from the imposition of a fine or financial penalty that could not be paid. Their views encompassed formal aspects of fines enforcement action in Scotland, highlighting specific aspects of concrete operations of the criminal legal system. Qualitative data generated with community justice practitioners also adds depth and context to descriptions of what might be happening following the imposition of a fine that cannot be paid, as it transitions into collection/payment phases. This provides an enhanced overview of fines enforcement that is not focused solely on the operations of the criminal legal system and formal definitions of fines enforcement action, but includes considerations of the outcomes and impacts of unpaid fines and financial penalties on the lives of those sentenced. By highlighting that there is a bifurcation of outcomes and experience that follows the imposition of a fine, practitioner data reorients focus onto a set of unfolding processes that are produced by fines and financial penalties and, primarily, affect those who cannot afford to pay them.

What is immediately striking about what is reported by community justice practitioners is the extent to which their observations echo early findings from government evaluation research undertaken in 2011, following the implementation of the SJR and resultant changes to collection and enforcement action (see Bradshaw et al. 2011). These findings provide important contextualisation of the data generated in this project, demonstrating how issues within the current system were observable at the point of implementation. Re-identification of similar issues in the qualitative data from practitioners raises questions about the basis upon which evaluations of the effectiveness, efficiency and speed of the reformed system of fine enforcement have been offered. Contemporary practitioner data that highlights the extension of time within fines enforcement and entanglement within

various aspects of the process challenges descriptions of the new rationalised system that was the stated goal of the SJR in the mid-2000s.

Equally, though, generated in this project also resonate with earlier observations about the process of financial punishment in Scotland and offer some evidence of how developments in fines enforcement have changed the ways in which deprivations of both time and money are enacted on those living with unpaid fines (Young 1987, 1999). The extension of processes and the demands on energy and engagement with processes of fines enforcement by those sentenced and living with unpaid fines represents a new way to envision the trades of liberty and money that have been the focus of theories of the punishment effects of fines and financial penalties in Scotland (Young 1987, 1999).

By bringing this evidence together with qualitative evidence generated in this project, it becomes possible to observe extension or elongation of processes and entanglement within processes as key features that are shaped by practices of the current system. It also becomes possible to observe how these features intersect and intrude into the socio-economic and broader life contexts of people sentenced. These intrusions can produce significant disruptions in the lives of those living under fines enforcement and/or with unpaid fines, including effects on the close communities they live in. These disruptions are under-recognised in existing descriptions that are often used by criminal legal systems to justify widespread reliance on fines and financial penalties (see Feraldo-Cabana 2019; Quilter and Hogg 2018), but work to further expand conceptions of the punishment effects of fines and financial penalties.

The following section examines three themes identified in the practitioner data alongside existing empirical data from Scotland concerning fines enforcement action and criminal legal responses to unpaid fines.

Extension of process

Accrual of multiple fines was one of the primary issues with current practice identified by practitioners interviewed for this study as contributing to an extension of the punishment process that affected those with unpaid fines. Practitioners often used the term ‘historical’ fines to summarise the accrual of fines over a long period of time. Multiple/historical fines were typically left unpaid or minimally paid over extended periods. In 2011, Bradshaw et al. devoted significant attention to the issue of multiple unpaid fines and financial

penalties, suggesting that those who are in this situation ‘present a particular difficulty for FE [Fines Enforcement] teams’ (Bradshaw et al. 2011, 49). The report highlighted that there was limited data concerning the number of individuals subjected to multiple fines (a statistical gap that remains today), opting instead to use statistical reconviction data published by the Scottish Government (see ibid.).

Their analysis provided tentative evidence of the scale of the issue using data about non-court disposals which included a large range of financial penalties. Replicating this statistical examination, latest figures from the Scottish Government bulletin, *Reconviction Rates in Scotland: 2019-20 Offender Cohort* provide ‘repeat numbers of non-court disposals for individuals within a year after they were given an initial non-court disposal’ (Scottish Government 2023, 32). In 2011, Bradshaw et al. found that ‘28% of all individuals issued with a police ASB-FPN [Anti-Social Behaviour Fixed Penalty Notice] and 26% of those issued with a FF [fiscal fine] in 2008/09 were given another non-court disposal within one year’ (Bradshaw et al. 2011, 49).

Reconviction rates reported for the 2019-20 cohort *are* significantly lower than those reported in 2011, with 19% of those who received an ASB-FPN and 18% of individuals who received a Fiscal Fine subject to another non-court disposal within the year (see Scottish Government 2023, 33-34). However, figures published in 2024 show that ‘repeat non-court disposal rate for ASB-FPNs increased from 18.6% in 2019-20 to 27.7% in 2020-21’ (Scottish Government 2024, 33), the rate also increased for fiscal fines rising to just over 21% (ibid., 34). It is unclear, from the statistics published, what exactly is underlying these jumps in numbers, but it seems likely that delays in court and COPFS proceedings due to backlogs during the pandemic might play a contributing role (see Audit Scotland 2023; Crown Office & Procurator Fiscal Service 2023). Arguably, though, even taking the lower end figures as a baseline, these *are still* high figures.

These figures suggest that nearly 20% of those receiving a fine or financial penalty in 2019-20 had already had one imposed in the last year. Comparing reconviction rates across a 10-year period between 2010-11 and 2019-20, there have been significant decreases in the numbers of individuals being given certain types of non-court disposals. This is following a set of spikes in numbers of individuals receiving non-court disposals in the first five years following the implementation of the SJR in 2011, potentially because reforms included recommendations for increased used of non-court disposal, especially COPFS administered direct measures (such as fiscal fines) (see **Figure 2**. below). Using

this limited data, it is possible to observe a levelling out in the percentages of those receiving another non-court disposal within a year[7]. Whilst numbers of individuals receiving COPFS disposals have reduced by over 50% in a decade, the average number of repeat non-court disposals remains relatively consistent between 2015-2021. Combined with the qualitative data generated in this project, it is possible to propose that there is a small, but consistent, 'core' proportion of those subject to non-court disposals who might regularly be receiving multiple fines and/or financial penalties.

COPFS disposal	Number of individuals	Repeat non-court disposal rate	Average number of repeat non-court disposals per individual
Fiscal Fine			
2008-09	30031	25.7%	0.4
2009-10	28057	23.4%	0.35
2010-11	28150	22.9%	0.34
2011-12	32927	25.6%	0.37
2012-13	37248	25.7%	0.37
2013-14	36588	21.8%	0.33
2014-15	28767	22.3%	0.33
2015-16	28764	19.4%	0.26
2016-17	18567	18.5%	0.24
2017-18	19400	18.5%	0.24
2018-19	15904	18.7%	0.24
2019-20	15701	17.6%	0.23
2020-21	10465	21.2%	0.29

Figure 2. 'Table 16: Individuals given COPFS disposals and subsequent non-court disposals, by disposal type: 2008-09 to 2020-21 cohorts', excerpt reproduced from *Reconviction Rates in Scotland: 2020-21 Offender Cohort* (Scottish Government, 2024b)

Additionally, qualitative evidence from this project adds weight to Bradshaw et al.'s suggestion that figures drawn from reconviction data might underestimate the scale of the issue of multiple fines altogether (see Bradshaw et al., 2011, 49). Firstly, because they are offered separately from court data and, therefore, do not reflect the fact that an individual might also have received or be currently paying a court fine. Secondly, because the figures only count the number of fines imposed on an individual in a single year, not the number of fines an individual may have accrued or be currently paying as an overall total (see

[7] Figures from 2020-21 may have impacted by the effects of Covid-19, especially upon on summary level cases within the criminal legal system. There are still significant backlogs in criminal courts and within COPFS casework (Audit Scotland, 2023, Crown Office and Procurator Fiscal Service, 2023). These may have reduced numbers of cases processed and, during lockdown, non-court disposals may have been used more.

Bradshaw et al. 2011, 49). Bradshaw et al. assert that, on the basis of their own review of collection and payment data and of SCTS data,

> 'many fines take as long as three years to collect in full. Therefore, any proper consideration of the extent to which individuals are subject to multiple financial penalties would necessarily be considered over a similar three-year period'(Bradshaw et al. 2011, 49).

The SCTS elects to use 'a rolling three year collection rate' to present their quarterly data, stating that '[f]ines and financial penalties, by their nature, require time to pay and the latest full three year period contains older and newer fines thereby giving a more balanced view of collection rates' (Scottish Courts & Tribunals Service 2024, 1). The data generated in this project suggests that caution should be exercised about adopting the 3 year collection figure as a definitive measure of the *maximum* time that an individual can be subject to the process of enforcement and collection.

Though Bradshaw et al. highlighted issues in reporting of data, current public SCTS data makes no provisions for including multiple fines accrued by individuals, so it is unclear where exactly the widespread assertion that many fines take *as much as* three years to be paid in full has come from. It is also unclear if that refers to the collection rate for an individual fine, a figure that could be multiplied exponentially by the accrual of further financial penalties. The data from the practitioners gathered in this project suggests there are scenarios where fine repayment takes much longer, especially in cases where multiple fines have accrued. Though there are observable reductions in the incidence of multiple fines within a year when compared with data reported in 2011, there is still evidence that this is an ongoing issue that is unlikely to be addressed by a continued focus on collection and enforcement action *only*.

Clearer and more accessible data that cuts across the varieties of financial penalties that are imposed across the Scottish criminal legal system might provide a more concrete overview of the extent and prevalence of multiple fines within individual lives. In Scotland, responsibility for collection of all fines or financial penalties – whether imposed by the courts, by COPFS, and by Police Scotland – is the responsibility of SCTS. Consequently, it is possible that such data could be generated, potentially through access to the SCTS and Fines Enforcement Teams. Having access to the centralised agency responsible for collection of all financial penalties in Scotland, as well as more detailed data concerning collection, could help to build a more informed descriptions of financial punishment that

include enforcement and collection in a more substantial and integrated way than has been previously observed. This, again, might help re-orient existing discussions in Scotland about the process and impacts of financial penalties in ways that recognise, fundamentally, the bifurcation of experience that separates those who *cannot* pay and are exposed to fines enforcement from those who can to better establish whether extensions and elongations of the process and of contact with the criminal legal system are consistently a feature of current practice.

Entanglement within processes

Whilst accrual of multiple fines is identifiably one concrete way in which processes were extended and elongated, entanglements within the system were also identified by practitioners as following the imposition of a fine or financial penalty that was either left unpaid or paid minimally over a long period. This could arise from either being exposed to enforcement and collection action and/or navigating management of the payment process, as well as accessing information, support, and resources. The concept of entanglement emerged as an appropriate way of describing what was distinct about what happened following the imposition of a fine, as well as the types of interactions between those sentenced and the criminal legal system that the practitioners described. Practitioner descriptions emphasised confusing and intersecting tangles of information, institutions, and interventions that often appeared to be taking place simultaneously in these interactions.

Entanglement also aptly reflects how elongation of the process at some points caused further confusion and, at other points, was a result of confusion. The practitioners interviewed in this project were in a unique position to observe and, in some cases, intervene and mitigate the confusion that sometimes accompanied the imposition of a fine or financial penalty. Nonetheless, they often struggled to unsnarl various tangles on behalf of those they worked with. These tangles often appeared further compounded in cases where multiple fines and related financial penalties existed. In such cases, it was difficult to consolidate information and establish what various fines were for, which payments were being collected or were outstanding, or how much was actually owed – individually or in total. This was particularly difficult where long periods of time had elapsed since fines were originally imposed and/or repayment plans/schedules had been finalised.

Entanglement in the process was also exacerbated by lack of information provided about who was ultimately responsible for collection of the fine once it was imposed by the courts

or relevant criminal legal agency. Though responsibility for collection of financial penalties in Scotland is centralised within the SCTS and managed by Fines Enforcement Teams, practitioners described varying levels of accessibility and usefulness in their interactions with fines enforcement contacts through the SCTS and interactions with the Fines Enforcement Team. Rachel provided one example of a close collaboration between an area FEO and a CJSW team, which she described as having positive outcomes for those struggling with payment and collection. However, Ann-Marie, who worked for CJSW in a different area made it clear that she was not aware of the local FEO, and, during interview, stated that she was going to look into fostering closer collaboration. Descriptions of inconsistencies across practice were common in the research population, but, given the small number of interviews, should only be taken as indicative – rather than conclusive – evidence of inconsistencies in practice. It is possible, however, that greater collaboration between Fines Enforcement Teams and the kinds of organisations and agencies included in this project could be beneficial because, for some practitioners, lack of information about the details of enforcement action in individual cases produced obstructions in the assistance they felt they could offer those they were working with.

Having access to support was something that the practitioners believed was one of the main ways in which problems with collection and enforcement could be addressed. From their perspective, the conditions and contexts of the lives of many that they worked with meant that trying to access and navigate support with fines from an agency such as the Fines Enforcement Team independently might be challenging. Certainly, there is information available through the SCTS website, which provides a contact email address, a telephone number and details of typical office opening hours if someone wishes to contact the Fines Enforcement Team (see Scottish Courts & Tribunals Website, no date b). There is also a link provided to a Declaration of Income form for those in financial difficulties who wish to be considered for a payment plan to complete. This downloadable A4 page form asks for personal details, income details (including benefit details and total outgoings), bank details, and space to request further time to pay and to include preferred fine instalments and payment timings. The form can then be returned via email for consideration by the Fines Enforcement Team.

What is clear about the form is that it requires an individual to be aware of how much they owe and make a set of calculations about what is realistic and manageable for them financially. It is striking that this one A4 page worth of information is considered all that is necessary to assess the manageability of payments and, potentially, produce a payment

plan that is more suitable and responsive to individual needs. Arguably, this information could be included at any stage prior to the imposition of a fine or related financial penalty to reduce the likelihood of payment delays, as well as setting manageable expectations. However, this is demonstrably not always the case – either in policy or practice. Instead, there is an expectation in that calculations of this type are to be made by an individual, at the point that the fine is causing them financial difficulty and/or may already be in arrears or in non-payment status. This expectation overlooks the fact that someone who is in financial difficulty and struggling to pay their fine might also be facing existing barriers to actively planning and managing finances in advance, as well as barriers to being able to anticipate and agree upon what is financially reasonable and manageable for them.

It is, arguably, possible to assert that mitigation is possible and accessible in theory. In reality, an individual has to be in financial difficulties and struggling to pay a fine before they can access mitigation when, as the practitioner evidence and additional empirical evidence shows, it is very likely that there is already existing financial difficulty at the point the fine is imposed. It is as if individuals are expected to self-administrate the punishment on behalf of the criminal legal system, to attempt to make their punishment proportionate. They are subject to a set of extraction techniques that continually emphasise the necessity of payment, highlighting how much emphasis there is on 'enforcing' and extracting payment. Rachel provided telling reflections on the language of 'enforcement' in interview,

> 'I do think, I mean I think the fines enforcement officer I think it's a really good idea, but see when you think of the term fine enforcement officer that's really quite scary … d'you know…I mean we wouldn't probably use the term fines enforcement officer, but it's, you know, that is her term and it's like that's really off-putting and really scary…I mean I certainly wouldn't want to get in touch with a fines enforcement officer, erm, so I dunno'

Whilst there does appear to be less of a presumption, observable in policy and in practice, that fines left unpaid will result in imprisonment, this does not mean that those living with unpaid fines do not have to manage the threat of further or more extensive criminal legal intervention in their lives. The payment of a fine will be 'enforced' and, whilst this might involve payment plans and negotiations with court services, there are other ways that 'enforcement' can manifest. Evidence outlined in the previous chapter suggests that this can be an urgent and serious concern for those who have received fines as a result of selling sex on-street, leading to concerns about warrants being issued and, as a result, disengaging with a range of services, including those which reduce and manage harm. It is

possible to hypothesise other scenarios in which individuals might not want to engage with the SCTS, the Fines Enforcement Team, or to provide details via the Declaration of Income form as a way of addressing financial difficulties arising out of the imposition of a fine or related financial penalty – such as concerns about the impact of providing this type of personal/financial information on immigration status or on benefit entitlement.

Whilst it is possible to argue that financial difficulties and disproportionate/unmanageable fines can be addressed, the mitigation strategies provided are presented in the distinct language of 'enforcement' and appear to require direct approaches to the criminal legal system by those who may have various reasons to not wish to do so. This is a factor that potentially contributes to the elongation of the process described earlier in this chapter, but is, arguably, also a clear example of one of the tangles of information, institutions, and interventions that complicate the process of minimising and addressing financial difficulty and extricating oneself from the effects of unpaid fines. As reflected in the practitioner evidence, a degree of support from practitioners sometimes allows workers to do this type of administration on behalf of those they work with, though not all of the practitioners in this project reported undertaking that work. However, for those who are not receiving this type of support, the focus on self-administration, whether as a way to avoid enforcement action or to mitigate the effects of unmanageable fine repayment amounts, emerges as a potentially disadvantaging outcome for those who are already facing numerous demands on their time, energy, and autonomy.

The practitioners interviewed in this project were sceptical about whether the individuals they worked with would engage with demands for self-administration, which emerged as the expected ways of managing and mitigating the enforcement and extraction of fine payment. This was a particularly prevalent problem for those who were having fine payments enforced via Deduction of Benefit Orders (DBOs). The prevalence of this method of enforcement action, identified in the evaluation of SJR changes to enforcement and collection action (Bradshaw et al. 2011, 26), has already been highlighted earlier on in this thesis as evidence of the extent to which those targeted by fines enforcement action could reasonably described as living on low incomes. The evidence offered in 2011, from those who had experienced enforcement action as a result of non-payment of a fine, suggested that 'defaulters interviewed were largely positive about the advantages of DBOs in managing fines. However, there was a suggestion that the option of repaying in this way from the outset rather than on default would be of benefit' (ibid., 59). The practitioner evidence gathered in this study provided some further detail concerning how DBOs can

represent both a significant financial challenge *and* a barrier to mitigation of financial difficulty and a re-negotiation of payment terms.

Some of the practitioners provided examples of how fine enforcement deductions can combine with other benefit deductions to significantly reduce and constrain the amount of net income or 'cash in hand' that an individual receives from their benefits. This was considered unmanageable in some cases. However, there was less evidence as to whether those on DBOs had positive or negative feelings towards them. More evident was the energy expended by practitioners on behalf of those they worked with navigating across agencies and trying to get clear information about deductions. This often emerged as complicated, poorly explained, and difficult to access – even for practitioners who were experienced in engaging with both criminal legal agencies and with the DWP. Bradshaw et al. (2011, 26-27) used evidence from Fines Enforcement Officers to identify key issues with DBOs, including delays in and problems with applying for DBOs, as well as in liaising with the DWP over disruptions to fine enforcement action and information sharing. These were acknowledged as key barriers to how effective DBOs might be as an enforcement method from the perspective of those working in enforcement and extraction. These identified issues with the bureaucratic and administrative elements of DBOs appear to be echoed in aspects of experiences offered from the alternate perspective of the practitioners.

Bradshaw et al. noted that, '[p]ayments towards fines have lower priority than several other benefit deductions. This can mean that for those whose financial lives are precarious, fines are unlikely ever to be collected' (ibid., 27). The practitioner evidence gathered in this project suggests that enforcement and extraction action can and does continue for extended periods – however long it might take to clear outstanding amounts owed to the criminal legal system. The new system of fines enforcement in Scotland was described in 2011 as having 'some 'churn' at points, which prolongs the process as a whole' (ibid., 69). The practitioner evidence suggested that the 'churn' was still observable, 13 years later, and that, in many cases it represented a kind of persistent entanglement that emerged as a distinct and, arguably, under-articulated effect of fines and related financial penalties.

The interplay between the extension of and entanglement within the bureaucracy of fines enforcement offers ways to conceptualise of the punitive effects of fines and financial penalties that do not solely focus on the deprivation of money and financial resources. Within the practitioners evidence, where there was an absence of money, deprivation of

time and energy from those sentenced could take its place. Perhaps the most compelling metaphor that was offered as representative of this burden was that offered by Rachel, of unpaid fines existing like a noose around the neck of those living with them. Whilst it was suggested that this burden might weigh differently at different periods throughout the process, the elongation of time during which the burden was present was common across the practitioner accounts. Without access to longitudinal data on collection time and its intersection with multiple financial penalties within the Scottish criminal legal system, any current claims about the speed and efficiency of financial punishment should be approached with caution.

The 'churn' of fines enforcement could be confusing, complicated, frustrating, and, in some cases, repetitive and cyclical. Whether living with unpaid fines or paying them minimally, interactions with the criminal legal system, and in some cases other large-scale bureaucracies, required a level of engagement and knowledge that even the practitioners struggled with on occasions. A set of administrative burdens were transposed onto those sentenced, reinvigorating the Young's proposition that fines are a form of punishment wherein 'the person punished self administers the punishment' (Young 1999, 196). In contemporary Scotland, however, this self-administration is no longer strictly based on a trading dynamic of fines versus imprisonment. In the 'churn' of fines enforcement, self-administration first costs time, to then, potentially, produce the slow and extended deprivation of money. Whilst the imposition of a fine initially appears to demand only money from those sentenced, the extended processes of collection and enforcement can, and does, create deprivations of time. Specifically, they deprive people of time that could otherwise be free from risk or threat of criminal legal intervention, compounding the burdens on those unable to pay.

Disruption

Where in 1999, Young suggested that those that could not pay fines in Scotland could trade the outstanding amounts against their liberty, evidence in this project suggests that, now, those who cannot pay fines must both negotiate and accept limitations on their autonomy *and* also pay the amounts they are considered to owe to the criminal legal system. The qualitative data generated in this project suggests that there is a small, but significant, group for whom the imposition of a fine or financial penalty represents an exponentially elongated exposure to criminal legal intervention, as well as a degree of monitoring and supervision via the mechanisms of collection and enforcement action. Equally, the

existence of unpaid fines in the lives of those in regular or repeated contact with the criminal legal system could, in some cases, make them more vulnerable to escalated or additional punishment. Whilst imprisonment for non-payment was unlikely, there were examples offered by practitioners where non-payment of fines could, indirectly, contribute to short periods in custody.

These short periods in custody could produce significant disruption, posing risks to housing, access to healthcare and drug treatment programmes. The negative consequences of short prison sentences, and their prevalence in Scottish criminal legal practice, have long been recognised by both criminologists and policy-makers in Scotland (Armstrong and Weaver 2013; Tata 2015). Attempts to address the use of short-term imprisonment have resulted in legislative presumptions against short sentences in Scotland – in 2011 courts were restricted from imposing prison sentences of 3 months or less, 'unless the court considers that no other method of dealing with the person is appropriate' (Criminal Procedure (Scotland) Act 1995, Section 204 (3A)). The Presumption Against Short Sentences was further extended in 2019, increasing restrictions on prison sentences of 12 months or less. Awareness and further analysis of ways in which non-payment of fines and financial penalties can contribute to even very brief stays in custody could further enhance efforts to reduce custodial responses to non-payment of fines, even if, as evidence in this project suggests, they are rare occurrences or in response to specific forms of criminalised behaviour.

Whilst short-term imprisonment might be a consequence of unpaid fines, living with the threat of this type of disruption was highlighted by practitioners as an extra or additional challenge or stressor in the lives of those with unpaid fines. Equally, this evidence also revealed how fines and financial penalties could coalesce with other forms of punishment that might affect those in regular or repeated contact with the criminal legal system. This threat could exist alongside, the elongation and extension of the fines enforcement process described by practitioners in this project. This, in turn, could increase the risk of disruptions to payment arrangements that might come via the criminal legal system itself – primarily through periods of imprisonment, or through undertaking some form of community alternative. These disruptions could be, occasionally, related to the non-payment of a fine itself and, if not, were sometimes a result of underlying and motivating contextual challenges that may have already influenced the imposition of a financial penalty at an earlier point. These disruptions could put off payment extraction for short periods, but the fines themselves rarely went away and were mainly described as followed

through to full repayment, however long it took – captured succinctly in the phrase ‘once a fine’s imposed, a fine’s imposed’.

Whilst the fine is widely acknowledged as primarily a punitive measure, with little potential for rehabilitation (Feraldo-Cabana 2019; Quilter and Hogg 2018; Young 1989), the wholly punitive nature of the fine is supposedly offset by the lack of disruption and ‘dissocialising’ effects of punishment via financial deprivation. As practitioner evidence has demonstrated, this is not a clearcut conclusion that can be drawn about fines enforcement processes in Scotland. There was disruption wrought through the imposition of a fine and, especially, a fine that went unpaid, it was just not necessarily disruption via a linear process of non-payment producing imprisonment. Equally, fines and financial penalties could also potentially be disrupted by other forms of punishment. Additionally, there was evidence to suggest that fines and financial penalties could cause stress and disruption to people within their own social and familial communities – findings that are in line with up-to-date contemporary international empirical research (see Boches et al. 2022). Much more research would be needed to establish the experiences of the close communities that surround those living with unpaid fines in Scotland, but practitioner evidence presented in this thesis gives indications of the types of situations that might produce stress and distress.

Overall, recognition that those living with unpaid fines rarely live with them alone unsettles claims about the disruptive nature of fines and financial penalties and re-affirms that fines enforcement is a process of punishment that takes place within the community. As such, considerations of the impacts of financial punishment in Scotland could potentially be expanded through recognition that experiences and consequences of punishment are not necessarily always sited within an individual and can seep out into the lives of those closest to an individual sentenced (c.f. Boches et al. 2022; Jardine 2020; Long et al. 2022; Weaver and Armstrong 2013). The ‘symbiotic harms’ (Boches et al. 2022, 98) of fines and financial penalties have already been identified in relation to systems of financial punishment in the US. Additionally, research in Scotland has shown that both imprisonment, and release, can have substantial negative impacts on the family finances of those who are in or have been in prison (Dickie 2013; Families Outside 2023). In some cases, the symbiotic harms of financial deprivation imposed through financial penalties and fines enforcement might also compound the financial hardships experienced by families of those who have been subjected to other forms of punishment, especially imprisonment. Expanding estimations of the disruptions that arise through fines

enforcement, and the experience of living with unpaid fines, might also provide new metrics upon which to judge the fairness and effectiveness of current policy and practice relation to fines and financial penalties in Scotland.

Conclusion

Findings presented in this chapter have demonstrated how fines enforcement might encapsulate a range of processes, outcomes, and impacts that affect those who cannot pay fines. A clear bifurcation was identified by practitioners in what might happen following the imposition of a fine of financial penalty, with a distinct set of processes affecting those who are already facing forms of socio-economic marginalisation. This type of bifurcation has been suggested as both a potential feature of the Scottish criminal legal system (Munro and McNeil 2010), and has also been proposed as a feature of contemporary forms of financial punishment and, especially, fines enforcement (see Harris 2016, 2022). In many cases, practitioners felt that the imposition of a fine of financial penalty was a result of offences that were driven or motivated by various forms of socio-economic marginalisation, and often took place in the context of regular and/or repeated contact with the criminal legal system.

The interplay between socio-economic contexts that included regular or repeated contact with the criminal legal system and specific features of current practice could contribute to an extension or elongation of periods that someone might be experiencing financial punishment. These features included the effects of accruing multiple fines/financial penalties and the ways in which those sentenced can become entangled within bureaucratic 'churn' of criminal legal practice. Through engagement with existing empirical literature in Scotland, this chapter has argued that extended entanglement with criminal legal power can work to deprive people of time and energy, as well as money. A focus on enforcement in Scotland has produced a set of mechanisms that pursue the goal of collection and payment relentlessly, but practitioner evidence suggest that there are barriers to mitigation and support inherent within the current design of fines enforcement. Practitioners interviewed in this project described their own attempts to support and mitigate the effects of these barriers, primarily on an ad-hoc and reactive basis. Their interventions could produce amelioration in situations where payments were unmanageable or accrual needed to be addressed. However, for those in the most precarious and constrained economic circumstances, there was evidence that the punishment effect of deprivation of money might never succeed and, instead, they may be exposed to a distinct type of long-term

contact with the criminal legal system that represented a constraint or limitation on full autonomy.

The consequences for those who remained entangled in this process were complex, whether formally under fines enforcement action or not. As has been identified in previous empirical research and described in **Chapter Two**, fines enforcement appeared to convert the outcomes of financial punishment into a set of chronic burdens (see Harris 2016; Todd-Kvam 2019). Living with unpaid fines could, in some cases, contribute to or underly an escalation of criminal legal intervention and, in specific cases, could result in short stays in custody. The threat of this type of disruption was something that typically existed in the background, but could suddenly and unexpectedly appear. Equally, practitioners highlighted impacts that unpaid fines and financial penalties could have on familial and social bonds, challenging existing assumptions about the disruptive and dissocialising consequences of fines and financial penalties and drawing attention to how financial punishment took place in the broader context of the lives of those sentenced.

Findings in this chapter have focussed primarily on interactions with the criminal legal system and the ways in which people with unpaid fines and/or subject to fines enforcement navigate these interactions as observed by practitioners. They point to problems within existing practice that appear to have existed since systems were re-designed in 2011. These issues have received little notice in the intervening period and remain poorly understood – partly, this chapter argues, due to the lack of publicly available and clearly accessible data. Whilst practitioners provided evidence of extension and entanglement within fines enforcement processes that has been outlined in this chapter, they were also able to offer perspectives on how these features could be particularly damaging for those moving towards desistance or more 'pro-social' behaviour or life goals. These perspectives highlighted a further expansion of the processes of financial punishment, especially through certain effects and outcomes of fines enforcement that widened out into the context of the lives of those sentenced – these are the focus of the following chapter.

Chapter Five – Punishing non-payment: Chaos, caring, and the purpose of fines

Building on evidence presented in the previous chapter that outlined key features of the fines enforcement process that were observed by practitioners, as well as the effects and outcomes this had on those exposed to this extended process, this chapter moves on to present findings from practitioners concerning how those living with unpaid fines responded to these features. First, evidence from practitioner that places fines and financial penalties within descriptions of 'chaos' and/or 'chaotic lives' is presented. These descriptions serve to highlight disconnections and discrepancies between the life contexts of those living with unpaid fines, expectations around self-management and self-administration that were features of the fines enforcement process, and changes and transformations that were considered necessary to escape extended contact with the criminal legal system. This disconnect contributed to how practitioners perceived how those living with unpaid fines or under fines enforcement felt about this form of punishment, primarily in terms of a lack of care about fines and financial penalty. Evidence that problematises care and a lack of care is discussed, highlighting ways in which lack of care was understood as evidence of competing priorities or as an expression of hopelessness.

The interplay between 'chaos' and lack of care was one way in which practitioners suggest that fines and financial penalties were robbed of meaning and purpose, with extended entanglement with the criminal legal system producing barriers to progress, change, and a movement away from 'chaos'. In these situations, practitioners struggled to understand what the purpose of fines and financial penalties were and, as a result, some offered perspectives on what might be more appropriate alternatives. The alternatives suggested by a small number of practitioners highlight their belief that alternatives that prioritised intervention and support to those sentenced were the most valuable and beneficial in producing positive outcomes for those they worked with. Practitioners emphasised the importance of addressing contextual factors underlying offending and criminalised behaviour, but, when it came to financial penalties, practitioners felt that the workings of the criminal legal system, and especially sentencing practices, were not as responsive to context as they should be. As a result, practitioners were left frustrated and confused about what they saw as a cyclical and repetitive process that lacked meaning and purpose for those they worked with, and within the parameters of their own professional practice.

The final section of this chapter evaluates these findings, offering a critique that reframes processes of fines enforcement as a form of bureaucratic chaos that, inadvertently, works to punish non-payment. By crafting a system set up to deal with the 'problem' of non-payment only, the approach to fines and financial penalties in Scotland often disregards the contexts of those facing structural inequalities and, as such, is increasingly divorced from broader policy and rhetoric about the purpose and nature of criminal legal practice as a whole. Various features of the system, such as payments in instalments and time to pay, do little to address the fact that fines and financial penalties are often demonstrably unmanageable for those surviving on low incomes. Additionally, the diversity of financial penalties available may contribute to the accrual of unmanageable amounts across small increments.

Further, evidence from this project highlights how extended contact with the criminal legal system through fines enforcement can undermine and damage progress and change. Barriers to progress presented by unpaid fines and fines enforcement produce significant consequences for those engaged in processes of desistance, with findings from this project echoing key concerns about the challenges of 'punishment debt' and the crafting of new identities in desistance processes (see Gålnander 2023; Halsey et al. 2017; Nugent and Schinkel 2016). Ultimately, this chapter argues, principles of rationalisation sit paradoxically alongside principles of rehabilitation in the broader penal field of non-custodial alternatives to imprisonment in Scotland. Whilst there appear to be calls for progressive and person-centred approaches to criminal legal practice, there is little to no consideration given to how and what financial penalties contribute to these aims. Instead, financial penalties and fines enforcement remain separated from these broader discourses, and claims to fairness and effectiveness are based on a rationalised model of debt collection, one that punishes non-payment and those who cannot pay.

'Chaos' and 'chaotic' lives

Whilst practitioners identified and critiqued aspects of fines enforcement and the processes could place upon those who could not pay a fine, they felt that this was primarily a consequence of contexts of those who could not pay. 'Chaos' became a shorthand that encompassed several factors that were identified by practitioners as underlying the bifurcation of process that led people into contact with fines enforcement, as well as common in the lives of those living with unpaid fines (see **Chapter Four**, 108-111). Chief amongst those identified by practitioners in this project were: poverty, drug and alcohol

misuse/addiction, and mental health needs. These contextual factors were primarily framed as the 'chaos' or 'chaotic' nature of the lives of those who were living with unpaid fines. The suggestion that 'when people are chaotic…that's probably when they're most likely to get fines is when they're living chaotically' (Angela) demonstrated that chaos was often understood by practitioners as both an underlying motivation for offences *and* a description of the contexts which were likely to increase the likelihood that fines may accrue.

'Chaos' or 'chaotic' was a descriptor that was used by 7 of the 9 practitioners interviewed when describing the lives and broader contexts of those they worked with who were most likely to be adversely affected by multiple unpaid fines. During interviews, practitioners suggested that 'chaos' was a defining feature of the lives of people who were regularly coming into contact with the criminal legal system and, by extension, those most likely to be accruing multiple unpaid fines. It was not simply the case that they might face 'the chaos in the community' (Isabelle) as a set of live, present, and acute adverse conditions. It was also that 'life has been chaos, probably from early, very early years' (Ailsa), so the experience of living in 'chaos' was sometimes extended into a wider narrative that dominated and defined how practitioners had come to understand the challenges facing those they worked with.

Additionally, though, practitioner data also emphasised that the 'chaos' they described could be an exacerbating factor in the experience of living with unpaid fines and/or subject to fines enforcement. In cases where unpaid fines and financial penalties accrued, those who were described as 'more chaotic…[were] not as in a place where they can manage things like fines or backdated arrears, or anything like that, as easily as, as some other people' (Ann-Marie). There was the chance that the imposition of a fine or related financial penalty 'just adds to the pile of chaos' (Stephen). Whilst practitioners were able to recognise the relationship between 'chaos' and the increased likelihood of accruing unpaid fines, as well as the potential for unpaid fines to simply add to existing challenges in the lives of those sentenced, the emphasis in these descriptions was often placed on someone's ability to manage a fine or financial penalty. Put simply, in order for multiple unpaid fines not to become part of the pile of 'chaos', someone ostensibly needed to not be 'chaotic' to begin with. When this was not a pre-existing condition, fines and financial penalties were, fundamentally, unmanageable. But the practitioners' evidence implied that, within the current system of fines enforcement, the onus fell upon those living with unpaid fines to find a way to manage them, and, especially, to manage payment and the conditions of whatever action that might be in place.

For the practitioners in this project, the concept of 'chaos' also provided one way to explain how individuals moved through the various processes of financial punishment, becoming a way of representing different periods of people's lives and, by extension, different periods of fines enforcement. Within this framing, a movement away from the 'chaos' was typically classed as a representation of overall progression or improvement within life contexts. For some, the 'chaos' could pass and this was a point when unpaid fines and financial penalties could re-emerge as a potential barrier to progress. This was also a point where some practitioners felt they can make meaningful interventions to address multiple unpaid fines and make payment manageable. When people,

> 'get more settled and there's less chaos in their lives, this is when we look at stuff, like this and try and say, right, okay, do you think you might have any fines? So, we'll look, you know, and just to protect them from being arrested at some point' (Helen).

Practitioner data suggested that addressing fines and financial penalties became one way of reducing the risk of further or future criminal legal involvement and, potentially, a return to the 'chaos' that came before.

However, fines and financial penalties were described as maintaining an distinct type of contact with the criminal legal system via fines enforcement processes. This kept threats of a return to 'chaos' closer, primarily through the financial burden of payment,

> 'I think it's [paying a fine] just not a priority for them at that time and they don't have the money. And then at a later date when it's actually real life and it's coming off their benefits and they're in a more stable place and they actually need that money, I think that's when they start thinking about it' (Angela)

In Angela's description, fines payments materially threaten the return to 'real life' through the deprivation of financial resources desperately needed as a practical safeguard of stability. The material challenges posed by payment can be accompanied by an emotional burden, becoming a reminder of the past that might derail the present:

> 'when they were really chaotic, but now they're not chaotic, they're still getting dragged back to that time of chaos where they don't want to be. They don't want their head in that space, and that's when people start thinking, what's the point? What is the point?' (Angela)

The ways in which the practitioners adopted the notion of 'chaos' to describe various stages of financial punishment processes expands the way in which the outcomes and

impacts of fines and financial penalties might be understood as dissocialising and disruptive.

Within the existing justifications for the widespread reliance on fines and financial penalties that have been identified in criminological scholarship (see Faraldo-Cabana 2019; O'Malley 2009; Quilter and Hogg 2018), the act of rendering someone or something unsocial has primarily been understood in relation to the experience of removing them or separating them from the social world in some way. This definition that relies on parameters drawn from a conceptual hierarchy that compares imprisonment to alternatives to imprisonment (see **Chapter One**, 32-34). However, practitioner data generated in this project and, especially, their reflections on 'chaos' offers other ways to analyse the disruptive and dissocialising potential of fine and financial penalties – as both existing within and throughout people's lives and, in some cases, throughout changing and shifting contact with criminal legal power.

The reflections shared by practitioners in this project offered a configuration of 'chaotic' lives as separate from settled, 'real' lives. In most cases, moving towards a 'real' life was characterised as a primary goal shaping their approach to the people they worked with. The adoption of a 'real' life was a type of pro-social progression that defined much of the type of professional practice that was taking place within this group of community justice practitioners. Nevertheless, practitioners often struggled to reconcile the purpose of fines within progression narratives. Inside the framing of these narratives, fines and financial penalties might render individuals unsocial *within* the social world, contributing to a 'chaotic' life and obstructing movement towards a settled 'real' life.

Within the binary narrative of chaotic lives/settled lives that the practitioners described, payment of outstanding financial penalties often represented a final tie to the criminal legal system that had to be resolved before settled lives could fully commence. As part of the move out of the 'chaos', people paid off outstanding fines (often for years), and slowly transformed into someone who ideally would not receive a fine, but, more importantly, might manage to pay it in a timely, efficient, and manageable way. Robert, drawing on his own past, expressed a version of this transformation in the interview when talking about a recent parking fine he had received:

> 'I just wanted to crunch that in a ball and throw that, throw it away. But obviously, that didn't last long, that thinking, because I'd changed. You know, I was like, 'You're responsible now, Robert, and all this, let's deal with this'.

> And I went home that night, and it was a £60 fine. £30, I paid it online, you know. It's £60 if you don't pay it within 29 days or whatever it is, you know. And I felt good with myself about paying it, you know, because I knew I had done wrong, yeah. Because my…because my head is in a good place.'

Within the progression narratives described within the practitioner data, the conclusion of an overall process of financial punishment was marked by payment in full. This produces a dynamic that equates rehabilitation with certain kinds of economic behaviours, *as well as* desistance from offending, and disregards the structural factors that underlie and often motivate offending in the first place. More often than not, this appeared to require a wholescale personal and life context transformation on the part of those sentenced. Fines and related financial penalties were not seen to contribute positively to this transformation. Instead, they were either subsumed into the chaos or played an exacerbating role, adding additional burdens or challenges.

In order to conclude their entanglement with criminal legal power, people with unpaid financial penalties seemed to have to first transform into someone who could withstand the imposition of a financial penalty in the first place. As the previous chapter outlined, any transformation of this type would often have to take place whilst people were at risk of further criminalisation, escalated punishment, and potentially without the support of friends and family as a result of living with unpaid fines and/or involvement with fines enforcement processes (see **Chapter Four**, 120-127). Finally, this transformation is expected to take place within the context of complicated and challenging life contexts – contexts that were acknowledged as potential motivators and drivers for offences that then increased the likelihood that another fine of financial penalty might be imposed.

Arguably, though, the framing of competing and urgent life priorities as 'chaos' played a role in devolving responsibility onto those coming into contact with the criminal legal system for managing themselves and their own transformation. This emphasis on self-management and self-administration was mirrored within the set of demands imposed by the criminal legal system through certain features of fines enforcement (see **Chapter Four**, 114-120), and hampered by slow processes and long contact. Through engaging with practitioners descriptions of 'chaos' and 'chaotic lives', it is possible to discern the whole process of fines enforcement as one in which the onus on those sentenced is both to manage and administer their own punishment, as well as to demonstrate their transformation via repayment in full.

Lack of care

The evidence surrounding the practitioners' interpretations of care and apathy in those experiencing the processes of financial punishment described in this chapter are complicated and, sometimes, contradictory. What they do reveal is that the demands for responsibility and self-management that were inherent within processes of fines enforcement were very often at odds with what the imposition of a fine or financial penalty might mean to those sentenced. Equally, though, the experience of living in 'chaos' contributed to the lack of care or concern that was assumed to be how people with multiple unpaid fines responded to their imposition. These individuals were 'generally living such a chaotic life that I find it's like, whatever, I don't care, you know?' (Stephen). The sense that unpaid fines and financial penalties might add to the 'chaos' in indistinguishable, but exacerbating, ways meant that fines and financial penalties might have appeared to do nothing, whilst actually contributing to the continuation of 'chaos'. In Robert's words: 'If you've got fines and all that kind of chaos that comes with it, you're not going to get anywhere, you know. It's just going to…it's just going to spiral out of control'. In such cases, fines are robbed of any meaning or immediate effect; they are subsumed into the 'chaos'.

This lack of meaning or immediate effect appeared to contribute to the frequent assertion from practitioners that many of those they worked with did not care about receiving a fine, instead they saw it as a let-off or a minor annoyance. Isabelle and Stephen both described a fine as 'an inconvenience', and Isabelle explained that the women she works with 'reflect less on it as a punishment' and more in terms of inconvenience. She claims that 'for the girls that I work with who get on the spot fines, whether it's for drinking on the street or whatever, tend to just rip them up. They don't care, do you know what I mean?'. Fraser asserted that 'a lot of people just see it as a slap on the wrist', describing the imposition of fines and financial penalties as 'a very unserious punishment…[and] not a very big deterrent'.

Ailsa reported a similar response explaining that, for the women she works with,

> 'if it's not gonna hit their pocket that badly, they don't care. Erm, they'll see it as a let off, they'll see it as, 'Och, I only got a fine', you know, 'I coulda got a much more severe penalty' if you like...So, some of them will very much brush it off as a let off'.

Robert suggested that 'the majority of people' he knew would be 'out in the streets going, 'Oh, I got a fine today', and they don't care… you hear people say, 'Oh, it's just another fine''. In the practitioner's descriptions, fines and financial penalties emerge as an annoyance in the moment – a piece of paper to be ripped up, a let off at court, or an inconvenience that is brushed off as you continue your day. The way in which these practitioners described how those they worked with often treated fines and financial penalties was as an accepted hazard – something that might be a familiar and regular occurrence, but unlikely to inspire concern at the moment.

As Isabelle pointed out, fines 'drop down the list of priorities' because 'the girls [who she works with] they've got so much other stuff going on, they might be on CPOs, they might be just have finished periods in remands'. For Isabelle, helping those she works with to pay fines or address multiple fines was not a priority when there were different and competing forms of punishment taking place. Finding ways to cope with these competing demands was, understandably, a more urgent use of time, resources, and energy. However, whilst understandable, this kind of prioritisation does little to address the lingering nature of fines enforcement that many practitioners interviewed spoke about (see **Chapter Four**, 127-140). Equally, though, reflections on the lack of prioritisation of fines and financial penalties raises larger questions about the extent to which a fine can be considered responsive to criminalised behaviour when other competing forms of punishment are taking place in the life of an individual. Payment is likely to be slow, and even interrupted, if an individual is spending any substantial time in custody. Even in cases where there is some form of support, such as that the practitioners described offering, addressing unpaid fines and financial penalties might fall to the bottom of the list, resulting in long periods of minimal payment ongoing up until the time when practitioners can engage in negotiation of repayment.

Some practitioners interviewed in this project were more circumspect in the way that they understood the lack of care and concern that those they worked with seemed to approach fines and financial penalties. For these practitioners, their close work with criminalised people living in the community had shown them that it was less that people subjected to fines *did not* care about them, it was more that they *could not* care about them as a priority. This was partly because many of those with multiple unpaid fines simply had very few financial resources to address them in the first place. However, more importantly, the context of the lives of those subjected to fines did not make fines seem important, urgent,

or concerning. Helen, reflecting on the lives of the women she works with who sell sex on-street, explains that, women are often,

> 'hyper-alert all the time. There's so much going on for her. That a fine is, like, is way back, you know. She's always looking out for her safety. There's always something that she feels, like, she's being attacked. There's always something. So, she's going with punters who she doesn't know. She's going in a car; she's going down the lane and having that there all the time thinking, anything could happen to you. Fines is the least of your worries.'

Helen's assertion that 'there's always something' is a succinct way of re-framing the assumption that people subjected to fines and financial penalties simply do not care about them. Though she is speaking explicitly about the risks to safety, security, and well-being that affect women who sell sex on the street, her description of these risks highlights basic struggles of survival that might affect those who are coming into contact with the criminal legal system on a repeated basis. In these cases, whilst a fine or financial penalty might be treated as the least of someone's worries or as not presenting an immediate punitive effect, it can impose a burden that will, eventually, need to be addressed.

Robert, sharing his lived experience, reflected on his last offence from a decade ago, which resulted in a court fine of £1,800. At the time, Robert was not working and was attempting to address long-term drug and alcohol addiction issues. He described the experience of receiving the fine as 'traumatic' because it presented an additional and seemingly insurmountable obstacle to what felt already felt like a hopeless situation. Robert explains,

> 'that's the last thing on your mind is fines. The last thing, the last thing on your mind is going to prison. And obviously, you're…you've no hope in the world at all. I had none. I had nothing. You know, I had no faith in anybody. Everybody I thought who was respectable would…would just turn a blind eye to me, when I was going to them for support. You know, doctors, nurses in hospitals, you know, you'd get in but you were treated like shit, you know, and it's…and you see, when you're in that kind of mindset and the fines come, it's just like, phew, what's the point? What's the point? You know, I'm not going to get anywhere.'

The sense of hopelessness that Robert describes here seems to arise out of the sense that he had nothing – materially, emotionally, or socially. Yet, through the imposition of the fine, there was still more being taken from him. For Robert, this significantly affected what the fine meant. His response was to convert these very painful feelings into a type of apathy. He explained that, for those in regular and repeated contact with the criminal legal system, 'punishment is something a lot of these people are used to. I know I was. You know, I was

used to it, it was just like, all right, is that all you've got?'. Robert's reflections hint at the under-recognised harms of financial punishment, imbuing the material harms of punishment via financial deprivation with emotional consequences that affect those living in strained economic circumstance. Fine and financial penalties can produce a type of numbing or apathy that presents as lack of care but might, instead, be a result of a lack of hope and/or extreme overwhelm.

Reflecting on the way fines can increase feelings of hopelessness and produce apathy, Robert suggested that 'the fines come in a wee bit like a self-harm…or self-traumatising'. The sense 'nothing's going to change, nothing's going to get better' means that all you 'can think about is the worst…and that's…that becomes comfortable'. In a reality where the worst someone can imagine is a comfortable place to be, Robert suggested that people 'get a point where they get a buzz out of getting a fine'. Whilst someone might know they are doing something potentially harmful to themselves, it provides them with some kind of release. The resultant fine or financial penalty is worth the risk, because the numbing and apathy that has been produced from previous experiences robs it of any true pain in the moment. Robert's experiences suggest that there could potentially be something highly emotionally damaging about being exposed to financial punishment over and over again.

The emotional response that Robert describes is one in which hopelessness and lack of faith is reinforced by financial punishment, to the point that the reaction to this form of punishment becomes apathy. In some cases, criminalised behaviour becomes a conduit for a type of release or a buzz and the fine becomes a symbol of this experience – a form of punishment that is so regular for some that it may become necessary to reclaim it as something with some kind of positive connotation for the self. In neither scenario do fines and financial penalties emerge as methods that are likely to produce any kind of potential for change or transformation and, more concerningly, they instead appear to present significant challenges in cultivating feelings like hope, motivation, and care for the self.

Additionally, though, as fine and financial penalties do not have a specified start and end time, and their anticipated duration is not quantified at the moment the punishment is imposed, further extensions of the process – whether through multiple fines, entanglements in the system, or long minimum payments – may mean that unpaid fines outlast the 'chaos'. In these cases, though, payment increasingly loses any relation to changes or progress taking place in people's lives. When this is the case, as Ann-Marie pointed out, it

is not just the elongation of the process that is a concern but the lack of endpoint, the extended or 'long contact'. She suggested that,

> 'sometimes fines can end up being the longest type of punishment we have, because if somebody comes to me for a supervision requirement it's maybe 12 months of work, we have a real plan for work and support, we get through that, then towards the end, their contact drops down as their risk level and things drop down as they're making progress, and there's a finality to it'.

Ann-Marie's concerns around length and finality suggest that the process of fines enforcement can have an indeterminate nature that undermines progress. Fines enforcement continues on regardless of any other changes made that are seen as evidence of progress – heading towards the end of a supervision requirement, reduction in contact with CJSW, changes in 'risk level'. These are understood as markers of a trajectory away from contact with the criminal legal system. The indeterminacy of the process of financial punishment can become a contributing factor in making people care about paying their fines, but this was not envisioned as a part of any progress or personal transformation.

Overall, as the practitioners described it, the expectation that someone sentenced to a fine should care about it was understood as at odds with the imposition of a fine or related financial punishment on those who demonstrably could not afford it. When the process of payment extended contact and involvement with the criminal legal system, caring about *payment* appeared equally meaningless within the context of change, progress, or transformation and, in many ways, generated barriers (both materially and emotionally) in this process. As a result, the practitioners struggled to understand what financial punishment was for or what it was meant to achieve in the lives of those with unpaid fines. This confusion around, firstly, the meaning to those sentenced and, as a result, overall purpose was apparent across and throughout periods where people might be continuing to offend, attempting to change/progress, and/or demonstrably making moves away from criminal legal contact.

Meaning and purpose of financial punishment

Aside from in specific circumstances (see **Chapter Four**, 108-111), practitioners struggled to understand the meaning and purpose of fines and financial penalties. Throughout interviews, their responses demonstrated that they were, overall, not in favour of financial penalties as a response to the myriad types of criminalised behaviour that Stephen referred to as 'low level', especially when financial penalties were levelled at those who could not

afford to pay and were understood as primarily offending as a result of lack of financial resources. This lack of purpose was expressed in relation to a variety of potential purposes of punishment. Isabelle stated that she did not think that financial punishment 'features in any desistence or recidivism', and Ann-Marie pointed out that it was well-known that 'fines don't address any contributing behaviours towards offending'.

Many of the practitioners reflected on whether the fine served its intended purpose or, in some cases, any purpose at all. From Fraser's perspective, one of the benefits of fines and financial penalties was that they do not 'carry a very big rehabilitation period so it's not on your record for a long time…[or] it doesn't go down on your record at all'. Equally, though, he felt that the fact that the lack of a long rehabilitation period meant that fines were also not a deterrent and people subjected to them might commit the same or similar offences in the future. For many practitioners, though, there was an awareness that whilst the formal rehabilitation period might be short, it was actually the growing distance from the offence across long fine repayment periods that minimised the seriousness of the fine as a punishment. Isabelle suggested that a fine is 'a pain in the arse' for the women she works with, but that 'they don't actually put it together as a punishment for whatever reason they were fined in the first place'. In these cases, it was not just that time and distance reduced the seriousness of the punishment, but that financial punishment was robbed of any meaning, it was not linked to a specific event or behaviour(s).

Rachel suggested that she's 'not seen many of our women that have been stressed out about the historical fines… and that's been genuine, you know, and I think it's because they are so historical a lot of them'. Rachel went even further in her assertion explaining that, in her opinion, fines do not 'have that much meaning' because the women she works with,

> 'have not been able to pay them off at the time…it woulda had some kind of punitive effect [but] they've hung around forever or they've got their, you know, granny or whatever to pay them…we would probably worry about, more about the historical fines than they would'.

Here Rachel suggested that long elapse in time between offence and payment/non-payment rob historical fines of meaning, as well as any punitive effect. There is no worry or urgency applied to payment, rather, as Stephen suggests, 'it's just one of those things…a fine seems to sit at the back…'. Rachel and Stephen's perspectives highlight the fact that, within fines enforcement procedures, the only true requirement is that the fine is paid – there is less

onus on when and how it is paid. This emerges as a factor that also seems to rob the fine of any immediate punitive bite. Concern about paying fines or the consequences of unpaid fines might not only be delayed, ignored, or repressed, they can be devolved onto others – whether it is the granny who covers the cost for a family member, or the social worker who worries about the effect repayment will have on client progression.

Robert is very clear that he believes fines offer 'no real intervention' and instead, he sees them as part of 'a vicious circle [because]…giving somebody a fine who is on benefits, who has addiction issues, who is caught in the criminal justice system, is absolutely crazy. It's insane. It's making matters worse'. He is clear that fines can add significant practical barriers that only make matters worse for those already experiencing contact with the criminal legal system. Many of the practitioners expressed similarly strong views about fines and financial penalties having no rehabilitative potential at all, seeing them often as an obstacle in the process of reducing or moving away from involvement in the criminal legal system or, in worst-case scenarios, becoming a cause or motivation for further criminalised behaviour.

The practitioners expressed frustration, dismay, and confusion about the logic of the current model of financial punishment and the way it affected those with multiple unpaid fines in a range of ways. Stephen suggested that,

> 'to fine someone who is, frankly, at their lowest is pointless. I don't- I don't understand what they're trying to achieve. It's almost like saying, we know you're poor, we know you've no money and guess what, we're gonna take some more off you. What does that achieve for anyone? It doesn't….yet it's used as a low level sentence quite often…'

The idea that fines were pointless and, ultimately, harmful in their very pointlessness was something that many of the practitioners interviewed struggled to reconcile. Helen expressed that she felt that 'fines for women involved in prostitution…has a massive impact on the criminal justice system'. She felt that the process was 'a revolving door', whereby people were just coming through the system again and again, and money and time were being wasted on administering these punishments. Speaking specifically about the costs of the process, Helen reflected on,

> 'the amount of money it must cost to take them to court...If a woman doesn't pay a fine, to issue a warrant for police to go and arrest her, for her to be taken back to court again and to spend maybe eight days in a prison. How much money does that cost for maybe a £50 fine, you know?'

Helen's perspective was that money was being wasted on arresting and prosecuting women who had been accused of solicitation when the actual amount that was due for re-payment was usually very small. Robert was also very cynical and untrusting of both the purpose and efficacy of financial punishment. His perspective was that fines and related financial punishments were 'a money-making scheme…a lot of the times these things are just…help to…to fund the country'. For Robert, fines were 'pointless, absolutely pointless', and the 'only sense' he could make out of their widespread use was as a source of income for the criminal legal system and, more generally, the government and public services.

Practitioner evidence highlighted a disconnect between the process and potential exacerbating outcomes following the imposition of a fine and the context of those living with multiple unpaid fines. However, whilst 'chaos' outside the process was readily acknowledged, any chaotic elements of the process itself were never explicitly recognised. However, underneath the descriptions of the pointlessness, the lack of logic, and the repetitive nature of the process, it was possible to discern a type of disorder and confusion that fundamentally did not match the fair, effective, efficient, quick, and simple model of fines enforcement that has been described in Scottish policy. Instead, the churn of these various processes, the onus on the individual to navigate them, and the outcomes that often accompanied the imposition of a fine were set alongside the lack of meaning and purpose that many of the practitioners felt it represented for those who could not comply or co-operate with the conditions of payment. These, ultimately, combined to generate a punishment method that appeared to mean very little to the individual, whilst costing a lot more in time, energy, effort, and contact with the criminal legal system.

Alternatives to fines and financial penalties

Across the interview data, as practitioners struggled to understand the meaning and purpose of fines and financial penalties, some suggested what they felt were more appropriate and effective alternatives. Though only a few practitioners shared their perspectives about alternatives to fining, their perspectives offered another way of understanding more about the ways in which fines were understood to serve a purpose or not. Isabelle was clear that she was not 'all about punitive elements', but she also felt that the 'reason that the girls are fined is for, for something that they've done' so there needed to be some kind of response. She suggested a short programme 'akin to unpaid work' that would be 'more relative to…what they've been fined for'. Her perspective emphasised the notion that fines and financial penalties often appeared wholly unrelated to the lives and

contexts of those sentenced on a number of levels – both in the lack of meaning derived from the imposition of a fine or financial penalty, as well as the disproportionate impacts fines could have on the individual sentenced.

Robert was less supportive of this plan and felt that the answer was not 'community service, not your usual community service, where you're picking rubbish'. He suggested that 'instead of giving people fines, they should be encouraged on…with court orders of some sort'. Rachel took this idea further and stated explicitly that she felt 'quite passionately about structured deferred sentences as an alternative' to fines and financial penalties, especially for women. The structured deferred sentence (SDS) is an interim disposal available in Scotland that allows individuals to access social work and/or other agency support in the period between conviction and sentencing, this may allow agencies to address needs that are considered to be underlying offending (Scottish Government 2021). Rachel felt that, though SDS's were 'time intensive [and] resource intensive', they gave concrete opportunities to address 'causes [of offending] and [carry out] early intervention work'. Ailsa said she 'would be a huge advocate' of SDS's (which she referred to as 'Good Behaviour Orders'). Her perspective was that, if people are,

> 'out there and…being anti-social and they're being loud and shouty and aggressive and, generally, causing fear and harm to the public then, yeah, by all means, please don't give them anything but a Good Behaviour Order, for six months, at least. Because, that way, I've got a chance to work with them.'

For both Ailsa and Rachel, the benefits of SDS's relied on the space that the period of deferment created for intervention, as well as their ability to potentially address individual needs.

For Robert, the space created by a court order was similarly a space to begin intervention work, though he focused much more on the concept of 'citizenship' drawn from the work of US medical sociologist Michael Rowe and the ongoing research into the application of this work in Scotland (MacIntyre et al. 2019, 2019a, 2022; Rowe 2015). Robert directly referenced Rowe's work during interview and advocated Rowe's model of social inclusion as a way of changing the approach of the whole criminal legal system. Rowe's model focuses on 'an individual's' connection to the '5r's' of rights, responsibilities, roles, resources and relationships that link them to society', and analyses how 'people with lived experience of life disruptions face obstacles to making these connections and gaining access to opportunities available to the population in general' (MacIntyre et al. 2022,

e697). In Robert's experience, fines and financial penalties did not offer any opportunities for the engagement that was necessary to help people. He felt that 'instead of punishing people, we need to sit down and look to them face-to-face and say, look what is it that's going on with you? You know…like a person-to-person'. It was the building and growth of relationships that Robert felt made the most difference, but that was a process that took time and resources that were not always readily available.

The alternatives to fines and financial penalties that practitioners suggested were typically focused on making meaningful interventions in the lives of those sentenced, with an emphasis on responses that were both proportionate, relative, and responsive to both offence type and individual life circumstance. The practitioners sought opportunities to address needs that they saw as contributing to offending, the perpetuation of fines and financial penalties, and the resultant extended entanglement with the criminal legal system. They did not see the imposition of a fine (and certainly not the imposition of multiple fines) as generally offering any of these opportunities and, yet, they reported seeing them regularly and repeatedly being used throughout their professional practice. Practitioner data suggested that these outcomes were often a result of decisions, processes, and practices taking place elsewhere in the criminal legal system, especially those taking place around sentencing and court procedures.

Sentencing

Most of the practitioners implicitly or explicitly expressed concerns about the appropriateness, effectiveness, or responsiveness of financial penalties as a sentence for many of the people they worked with, and the ways in which fines enforcement created exacerbating outcomes within the socio-economic and life contexts of those who could not pay financial penalties. Many were clear that these context not always taken into account at sentencing, especially in the case of court fines. Ann-Marie, reflecting on CJSW pre-sentencing reports, was circumspect about the extent to which CJSW recommendations around fines are considered when cases make it to court. She explained,

> 'I think this is a really sad fact, and I don't think it's a good reflection on our justice system, but it depends what sheriff you get. And I know that sounds terrible, but we know which sheriffs really pay attention to our reports sometimes, because we have relationships with them as the Criminal justice Social Work department.

> There are some sheriffs who really appreciate our reports and will oftentimes follow our recommendations, unless they've got another reason for doing so, um, and there's some that you think, 'I can't... I just wish I hadn't spent several hours writing that report because he's not even read it.'
>
> I think it just varies so much, and it's such a shame and it's not fair on the people that are coming through the, the court system, and it's certainly very frustrating as a professional, as well.'

She also stated that she did not believe that 'the court takes into any consideration what fines still exist, or how much they've paid off or what's still to be paid…when imposing another fine'. Ann-Marie identified lack of consistency in sentencing as a potential threat to mitigating any risk to those struggling with existing or historical fines, even when equipped with relevant recommendations in the shape of sentencing reports and CJSW expertise.

Additionally, she suggested that 'the court can be out of touch with what's affordable to our most deprived clients… and then if the court says £10 a week or, or £10 a fortnight, or whatever it may be, to the court that's a very small sum: that's not if you're really struggling'. Where Rachel had been quite firm in her belief that her team would not recommend a fine where it was unethical to do so (see **Chapter Four**, 113-114), Ann-Marie suggested there are times when recommendations do not matter and the decision is entirely at the discretion of the court, where 'out of touch' notions about the broader economic context of the people sentenced might exist. In these scenarios, the criminal legal system acts unilaterally to impose punishment via financial deprivation, disregarding evidence that fines are an inappropriate response to individual cases and, instead, enforcing payments that appear arbitrary and disproportionate, rather than reasoned and responsive.

Aside from an apparent lack of reason and responsiveness that could arise in sentencing procedures, the whole court experience, as articulated by the practitioners, appeared haphazard and chaotic. In Ailsa's experience, people are:

> 'being asked to make an on the spot decision because they don't know whether they're going to be fined, imprisoned or, uh, a community disposal until they're standing in front of the Sheriff…I've seen it far too many times where the lawyer actually comes into the public gallery to collect the next person to discuss their case, whilst somebody else's lawyer is going, you know, whilst someone else is in front of the judge. You get taken out, they'll say, "Right, who you here for? Oh yeah, yeah. Right, alright. Well, I think, erm, oh, right we'll see what the Sheriff says and if he offers you, you know, a financial penalty then…basically, take it"'.

In cases where decisions were being made in court, practitioners suggested that any explanation of the outcomes of the fining process and the potential impact of repayments was highly unlikely. Interactions with lawyers were brief and conducted under pressurised conditions – Angela explained that,

> '[her] experience of clients seeing their lawyers in court, is [that]…the lawyer will turn up and pull somebody out. Speak to them for two seconds and then take them back in; pull them out at the end and speak to them for two seconds and they're away'.

In these descriptions, there appears little space or opportunity to discuss whether a fine or related financial penalty is an appropriate option for the person being sentenced, nor any consideration of how they might manage payments (or issues with payments) once the sentence has been passed. As Fraser states, 'once you've been sentenced, you know, that's when your involvement with that solicitor ends, you walk out of the court without a clue'.

What this evidence about the sentencing and court reveals, in combination with all the other evidence offered in this chapter, is that, throughout the process of financial punishment, those who have had a fine or financial penalty imposed are not necessarily considered holistically within the process. The contexts within which punishments exist are often overlooked and ignored, as are the potential effects of financial punishment and fines enforcement. Once the sentence is passed, the criminal legal system appears to relinquish what little responsibility it has for those sentenced, and, instead, expects people to enter into a process where they must be responsible, accountable, and co-operative with their own punishment. The evidence provided by the practitioners suggested a lack of logic in the process, evident at every stage, that sat uneasily alongside the expectation that those sentenced act logically, rationally, and responsibly in the face of a variety of challenges produced through the experience of living with unpaid fines and/or being subject to fines enforcement procedure and action.

Bureaucratic chaos: evaluating fines enforcement in Scotland

Across the data reported by community justice practitioners interviewed for this project, practitioners questioned the logic of this process and, especially, the repetitive and cyclical nature of situations where fines were being used as a way to respond to offending in cases where it had previously been demonstrated that someone could not pay. Their evidence suggested that fines and financial penalties could be essentially meaningless and illogical

for those who were already living with multiple unpaid fines. Consequently, whilst there was an acknowledgement of the 'chaos' that characterises the lives of those who offend, receive fines, cannot pay, and receive more fines, there appears much less capacity to critique the logic and underpinnings of the process itself, which emerged as based on ideals of order and rationalisation that were almost non-existent in practice. Rather, the process appeared to churn on regardless of the outcome – whether this be payment of a fine or any kind of observable improvement or progress in the lives of those living with unpaid fines – leaving practitioners to question what the purpose of financial punishment was in the cases that made up the bulk of their work. The perspectives of community justice practitioners strongly challenged claims made about the fairness and effectiveness of current policy and practice, primarily by emphasising key features of the process of financial punishment in Scotland that revealed the system's pronounced emphasis on punishing non-payment.

Bureaucratic prerogatives from within the criminal legal system that focused on extracting payment at all costs appeared to be the dominant and governing logic implicitly underlying the practitioner's evidence about the ways in which processes, and outcomes, worked for those who could not pay. Thus, even when the ideal of an effective processes was not readily achieved at the point when a fine or financial penalty was imposed, a set of steps emerged that, if followed, were presented as fair and effective in these cases. These steps are offered as rational, organised, and ordered – the amount owed will be broken down, spread across time, and any ability to choose to pay or not will be curtailed by direct deductions of income (whether through earning arrestment or benefit deduction). It is a process that, arguably, presents itself as the epitome of order, focused dispassionately on the efficient deprivation of financial resources as a way of tying up a transaction, repaying a debt, and instituting order. After the imposition of a fine or financial penalty and any subsequent delays, arrears, or non-payment, the processes and practices of financial punishment at the enforcement stage appeared set up to deal with the abstracted idea of non-payment *only*, rather than the reality of the potential interplay between human and system in cases where financial resources were severely limited or, essentially, non-existent.

Time to pay, payment in instalments, and diversity of financial penalties

While allowing time to pay and payment in instalments are offered as rational and mitigating strategies that avoid the enforced extraction of an unmanageable sum all at

once, the evidence provided by the practitioners in this project suggested different and more complicated consequences of these measures. Centrally, poverty and economic marginalisation were all identified as key drivers for the types of offending that typically resulted in the imposition of a fine. There was an awareness that what might be considered as proportionate and reasonable amounts to expect, even in instalments, was often at odds with the financial circumstances of many of those who found themselves unable to pay a fine. Additionally, the evidence from the practitioners suggests that, in most cases, fines and financial penalties themselves do little to assist or support the range of structural and individual factors that bring individuals into contact with the criminal legal system in the first place. In the Scottish criminal legal system, where fines are set on a fixed and offence-related scale, the concept of fairness in fine setting was not readily transposed onto equity of experience and outcomes affecting those who could not pay. The basis upon which features such as time to pay or payment in instalments may be presented as fair and effective sat firmly at odds with what the practitioners stated about the socio-economic context of those living with unpaid fines. Longer to pay meant very little when, fundamentally, fines and financial penalties were unaffordable and unmanageable in the first place.

As there is no published guidance for fine setting, it is not possible to provide precise information on fine amounts. Nonetheless, there is some evidence of the range and cost of fine amounts in Scotland, with the most recent reported median fine amount imposed at court being £280 (Scottish Government 2023, 37). For Fiscal Direct Penalties – including fines, fixed penalties, compensation orders, and combined fines/compensation orders – the amounts to be repaid can be between £50-£500, staggered across a nine-point scale. Recent legislative changes have permanently increased the top limit on fiscal fines to £500, following an increase as a result of the emergency provisions of the Coronavirus (Scotland) Act 2020 – prior to 2020, top limits were set at £300 (Scottish Government 2023c, 15). Though there is not a robust body of published evidence concerning fine amounts imposed by COPFS, the latest average figures that specifically refer to the value of compensation orders suggest a median value of £300 in 2021-22 (Scottish Government 2023, 37). Brief information provided by the SCTS as part of the government consultation process for raising limits on fiscal fines suggests that an average of only 3% of individuals have received fines valued between £300-£500 since the implementation of the new scale in April 2020 (Scottish Government 2023c, 16).

Information about fine amounts is not currently publicly available in data published by the SCTS. Equally, even if higher limits are so far rarely used, recent increases on limits on out of court disposals has broadly taken place without adequate demonstration that these increases are fair, manageable, and equitable overall (see Scottish Government 2023c, 2024c). For those living on low incomes and, especially those relying on benefits as their sole source of income, amounts such as the £280 average reported for a court fine could represent a substantial financial challenge – strikingly almost exactly equivalent to the £283.71 maximum weekly amount that benefits are capped at for single adult households without children according to proposed rates for 2024/2025 (Department for Work and Pensions 2023, 1). This figure, it should be noted, is a *maximum* allocation, and could be affected by any range of deductions from within the welfare system, such as the ones described in the previous chapter (see **Chapter Four**, 112-114).

The £280 average is also just an example that includes a single static amount, a single average court fine. Where multiple amounts accrue, such as in examples provided by practitioners, the total owed could present significant financial challenges, whether it is spread across an extended period and/or paid in instalments. Even where fines at a lower cost might be imposed, such as fiscal fines at the bottom of the new scale, it does not follow that these are *necessarily* manageable or reasonable amounts. SCTS data shows that, across 5 years, the type of financial penalty most consistently receiving no payment at all are Fiscal Direct Penalties. There are also comparatively high numbers of these types of penalties where payments are recorded as in arrears (Scottish Courts & Tribunals Service 2019, 9; 2020, 9; 2021, 10; 2022, 10; 2023, 10). These may remain unpaid as part of the process of prioritisation that was described by some of the practitioners interviewed. It is certainly the case that the type of fines that were most often referred to in the data generated for this project were court fines and very few practitioners mentioned Fiscal Direct Penalties, even when asked.

Fixed Penalty Notices (FPNs) (imposed by the police) were also referred to by practitioners, primarily as a type of financial penalty that was often received and often ignored. Practitioner data suggested that the response to FPNs is one in which these penalties are often disregarded at the point of imposition, ripped up or thrown away by those who receive them. There are also high numbers of non-payment or payment in arrears for (imposed by the police) reported in the same SCTS data as above (see ibid.). Again, these findings echo those from evaluation data in 2011, gathered directly after the implementation of the SJR, which found that, overall, JP (Justice of the Peace) and Sheriff

Court fines were ‘most likely to be paid and least likely to be in arrears following enforcement’ (Bradshaw et al. 2011, 4), with registered ASB-FPNs being identified as the least likely to be paid. This was attributed, in 2011, to the fact that ASB-FPNs involve the ‘least amount of contact with the criminal justice system and thus the smallest number of opportunities to gather additional information beyond that which is initially supplied’ (ibid., 4), so the ability to target those with outstanding ASB-FPNs is minimal.

Arguably, the process for those targeted for non-payment becomes exponentially extended, and potential effects compounded, by the range and diversity of financial penalties available for use across the Scottish criminal legal system. In practice, these different methods, and the institutions and agencies responsible for their imposition, appeared to sometimes be operating completely separately. There also appeared to be little regard given to the fact that existing non-payment or arrears might suggest that, overall, fine amounts can be unmanageable for some. Instead, the range of penalties on offer can force people living with unpaid fines to make decisions about what must be paid now and what can afford to be left until a later point. Decisions about prioritisation are sometimes made with the support of practitioners such as the ones described in this study, in which case, court fines may well be prioritised because their imposition is considered more serious and non-payment may result in a sanction that is perceived as more severe – less likely to be imprisonment but, potentially, some kind of community sanction.

If the amounts for court fines are unmanageable in the first place, then payment in instalments and time to pay does little but extend the period of repayment longer. Where multiple other types of fines are accruing, these are left to the very end. The elongation of contact with the criminal legal system that is brought about in processes of financial punishment might also be affected by the diverse forms and multiple avenues through which fines and financial penalties can be delivered across the whole system. Within a variety of methods through which someone can come into contact with processes of enforcement and collection action, a degree of prioritisation might be necessary even just within the myriad types of financial penalty that might be happening all at once. Again, mitigation strategies such as time to pay, payment in instalments, and practitioner support only serve to spread each amount out over longer and longer periods. Without adequate contextualisation of individual circumstance at the point of sentencing, fines enforcement could be reasonably understood as regularly and repeatedly targeting a non-existent resource for extraction. The enforcement action undertaken in these cases appeared to erode meaning and purpose for the individuals sentenced, for the practitioners working

with them, and, even within the logic of the process itself – collecting what did not exist to be collected.

Re-framing chaos and care

The ways in which practitioners attempted to make sense of and reconcile the system of fines enforcement is complex. Their perspectives demonstrated a great deal of frustration with the workings of the system but, also, revealed ways in which bureaucratic framings of subjectivity can play a role in upholding dysfunctional and illogical practice. The label of 'chaotic' was frequently inscribed onto those who are subject to enforcement action by those working with them, using this phrasing to highlight clear distinctions between ways in which the system expected people to engage with it and to offer reasons for why this type of engagement was often impossible. 'Chaos' was a common descriptor for trying to capture the multi-dimensional and intersecting challenges and contexts in the lives of those with unpaid fines and financial penalties.

There is no attempt, in this thesis, to suggest that those living with multiple unpaid fines, subject to enforcement action, and targeted for extraction are not also facing complex, interlinked, long-standing, and structurally-based challenges that produced complicated life experiences – the evidence offered by practitioners (as well as additional empirical evidence) suggests that this is a fair representation. However, when professionals and practitioners employ 'commonly used phrases such as 'chaotic lifestyle'', this can 'inadvertently reinforce messages' (Batchelor and Gormley 2023, 109) about complicity, choice, and responsibilisation for structural, social, and economic inequality. This thesis does not accept the label as necessarily reflective of how those under fines enforcement action or living with unpaid fines might *themselves* describe *their* lives and, instead, argues that the concept of 'chaos' might be used to critique the processes of fines enforcement.

Within the bureaucratic model of justice that surround fines and financial penalties in Scotland there appears to have been wholescale replacement of broader and more philosophical questions surrounding fairness, value, and legitimacy of financial punishment, in favour of a bureaucratic model of order and efficiency focused on payment. Thus, a binary is offered – one that positions the processes and practices of the financial punishment within the criminal legal system as order, and those who cannot comply and withstand its workings as 'chaotic' or living in 'chaos'. The problems are not inherently within the system, instead there is something within the way that 'chaotic' people are and

how they live their lives that is substantively different than those who were not affected by the processes and practices of financial punishment in the ways that have been described in this study.

Questioning the common and recurrent employment of the word 'chaos' when describing who is subject to fines and, by extension, how this chaos is imagined to undermine both the smooth operation of the financial punishment process, provides a way of de-constructing some of the fundamental bureaucratic assumptions that underpin the processes and practices of financial punishment in Scotland. Within the processes of financial punishment, the swift, easy, and simple payment of the fine imposed emerges as an ideal of ordered justice – the fine is imposed, the payment made, and the interaction is complete. Equally, within the bureaucratic framing of this method of punishment in Scotland as fair and effective, the ultimate goal, as stated within policy, of either keeping a case out of court or minimising court intervention is achieved.

The 'chaos' of individual lives was positioned as both a factor that contributed to the imposition of fines and financial penalties, and then *also* implicated in the extension and entanglement of the process of enforcement. 'Chaotic' people were rendered unable to comply with a set of expectations concerning how they engaged and interacted with the net of systems, services, agencies, and institutions that might play a role in mitigating enforcement action and/or supporting moves away from entanglement. To add a further layer, the imposition of multiple fines, and the often repetitive and cyclical nature of the processes, appeared to add to the 'chaos' – a factor that made compliance with the demands for repayment, and, by extension, a move towards reduced intervention and greater autonomy, less likely. Throughout, 'chaos' was found and sited primarily within people living with unpaid fines, the conditions of their lives, and the choices that they made.

The assertion that individuals did, very often, not care about fines, suggested that there appeared to be no affective or emotional response produced in those living with multiple unpaid fines. The perceived lack of punitive bite – either in the deprivation of financial resources or through being exposed to extended entanglement with the criminal legal system – seemed to paradoxically minimise the potential pain of much of what the practitioners described in their observations of the impacts and outcomes of living with unpaid fines and financial penalties, and being exposed to fines enforcement action. Whilst there has been some discussion within this thesis of the claims made about lack of care or

lack of feeling about fines, this is extremely tentative. Even within the evidence offered, it is still possible to acknowledge that a lack of care could exist alongside more complicated feelings about receiving a fine. There was very little evidence offered to suggest that individuals considered themselves devastated or traumatised by the imposition of the fine at the time it was imposed. Instead, negative feelings were identified in retrospect and after a period of reflection, such as in Robert's experiences.

Arguably, the lack of care that was described by the practitioners in this study could be understood, in many ways, as a reasoned and reasonable response to a criminal legal intervention that emerged as both targeting a very limited (and, in some cases, non-existent) resource, whilst also offering little in the way of access to services, opportunities, and support that might be considered beneficial by those who are affected by structural disadvantage and economic marginalisation. It was not the case that the practitioners suggested that everyone did not care about the imposition of the fine, but more that level of care seemed inversely tied to the ability to pay. Thus, individuals who had previously not cared when they had less income, less security, and less stability, were described as being more affected by worry, stress, and anxiety about unpaid fines as they felt the effects on their available financial resources at the point where they became less 'chaotic'.

Barriers to progress

Within this dynamic, it appeared that in order for a fine to have a punitive meaning an individual had to have sufficient income to interact with the processes in the first place, at which point, the punitive effect of deprivation of money then came into effect. Within fines enforcement, it seemed as though 'the process is the punishment' (Feeley, 1979) for those who are unable to pay a fine or related financial penalty. Eventually, when they *were* able to pay, evidence from practitioners suggested that this could then increase the risk of a return to contact with the criminal legal system, and/or threaten progress. The practitioners interviewed all identified the challenges of poverty and economic marginalisation as common factors affecting those living with unpaid fines. However, many observed that, often, the stresses of re-paying fines appeared to surge and become more urgent at the point where an individual had moved into a period where their income (whether from employment or welfare benefits) had become more stable, at which point the punitive effects of deprivation of financial resources appeared, at last, to take place.

Viewed across the entire process of financial punishment, it is possible to argue that several negative outcomes and experiences as a result of the imposition of a fine or related financial penalty have already taken place by the time that someone reaches the degree of financial stability that was necessary for deprivation of money to have a noticeable and/or punitive effect. Thus, delays in the extraction of money move to a period when an individual may be attempting to make positive changes for themselves, undermining any security and stability via a renewed attack on previously unavailable resources. This evidence further displaces and unsettles conceptions of fines and financial penalties as static and singular transactions between individuals and the criminal legal system. Instead, the process produced following the imposition of a fine might ripple out across time and into various stages or periods of the lives of those with unpaid fines. The practitioner evidence offered ways to understand extended processes of fines enforcement whereby the exponential extension of payment generated ties to the criminal legal system that could intrude into processes of desistance and rehabilitation.

Issues of desistance and rehabilitation should be treated with caution in relation to the evidence developed in this study. Perspectives offered by the practitioners on pro-social or 'settled' lives were necessarily governed, in many cases, by their professional practices, as well as the particular focus of the work cultures that they were operating in (see **Chapter Three**, 83-88). Both desistance and rehabilitation can be nebulous terms. Without the benefit of input from those living with unpaid fines and financial penalties about what desistance and rehabilitation might mean to them and for them, adopting definitions used by a small group of practitioners (many of whom worked within the criminal legal system or were closely aligned to it) risks promoting normative narratives around what a 'settled' or pro-social life should look like. Nonetheless, by bringing together the evidence offered by practitioners in this project with existing research about change, progress, and desistance processes in the lives of those in contact with the criminal legal system, there are opportunities to carefully contextualise the claims reported by practitioners in this project.

Whilst fines and related financial penalties are broadly acknowledged as having little rehabilitative potential (Faraldo-Cabana 2019), a growing literature on 'punishment debt' has acknowledged the 'practical and motivational' barriers (Gålnander 2023, 1) that living with long-term debt as a result of fines and related financial penalties present to desistance from offending (Harper et al. 2021; Harris 2016; Todd-Kvam 2019), as well as to making life changes that are important to those who have had sustained involvement with criminal

legal systems. There is an increasing awareness that '[p]unishment debt is likely to enter enforcement, and remain there for a long time' (Gålnander 2023, 2), often becoming part of a broader context of financial debt that has been shown to characterise the lives of those with criminal convictions and, especially, those who have experienced imprisonment (Aaltonen et al. 2016; Harper et al. 2021; Gålnander 2023). Much of the research into debt and those who have convictions or have experienced sustained criminal legal engagement has found that living with debt can be 'a constant stressor…imposing structural barriers to opportunities for upward mobility…such as housing, credit, transportation and employment'(Gålnander 2023, 4).Whilst in no way conclusive, the evidence produced during this study chimes with many of the broader findings about punishment debt and its practical effects.

Within the findings of this project, the financial debts from non-payment of fines emerged as a significant barrier to change and progress but, equally, the extended entanglement described by the practitioners in this project kept those under enforcement action in 'a state of liminality' (Gålnander 2023, 5). Within theories of desistance, one of the core spheres that is recognised as essential within processes of desistance concerns identity-desistance whereby 'a non-offending identity' is internalised (Nugent and Schinkel 2016, 570) and individuals can see themselves as something other than an 'offender'. Those experiencing enforcement action may no longer breaking the law, and, in fact, be temporally very removed from offences that led to the imposition of a fine. They may also no longer be serving any other kind of sentence. Nonetheless, they remain tethered to the criminal legal system by way of a fine or financial penalty.

Practitioners frequently found themselves relegating the task of addressing fines and financial penalties to the bottom of their list of priorities. Additionally, they described the payment of fines as sometimes serving as the last link between an individual and the criminal legal system. In these cases, the noose around the neck appeared to loosen somewhat, but still kept individuals attached to criminal legal intervention and, potentially, kept them in a liminal state between an 'offending/non-offending' identity. Though the dataset generated in this project is limited in the insights it can offer about what this liminality might feel like for those attempting to desist whilst repaying fines, the practitioner evidence suggests that there are aspects of exposure to long-term fines enforcement action that could inhibit change, progress, and movement – however it may be defined.

Further, the evidence from one practitioner, Robert, who drew directly on his own experience of living with multiple unpaid fines, suggested that there are emotional and affective consequences to being subjected to financial punishment that intersect and intermingle with feelings of hopelessness and lack of care for the self. Robert's last offence resulted in a large fine of £1,800, imposed at a time when, arguably, he was in the desistance process. He was attempting to address long-term drug and alcohol addiction and, as he describes it, he was at a point where he was hoping 'learn about things and re-address my skills and get treated like a human being rather than be treated like a piece of poo on somebody's shoe'. For him, fines had been part of a broader experience of involvement with the criminal legal system and, when he began the desistance process, fines appeared to mark what have been described as 'fuck it episodes' (Halsey et al. 2017, 1042) in existing desistance literature. These types of 'fuck it episodes' have been found to be characteristic of the experiences of those in desistance processes and help to articulate why 'people temporarily and sometimes spectacularly give up the quest to desist from crime'(ibid.). Drawing on large samples of those engaged in desistance processes, research has demonstrated that there are 'situations where people subjected to criminal justice supervision reach a critical limit and simply decide, 'fuck it''(ibid.). Robert described versions of these episodes during interview, where he would relapse into drinking, offend, and, as a consequence, receive a fine.

These episodes were often the 'outcome of cumulative setbacks' (ibid.), but, according to Robert, were typically responded to with the imposition of smaller fines that he already could not afford to pay and, finally, in the imposition of a fine that felt insurmountable. Halsey et al. (2017, 1055) argue that 'potential fuck it scenarios need not play out in predictable and destructive fashion…[e]ncountering understanding and responsive support can restore a sense of humanism in the face of deep shame'. For Robert, feeling like he was not being treated like a human being by others appeared compounded by the repeated imposition of fines in place of the support and engagement he felt would be beneficial for himself. For those in similar situations, being then further entangled in extended enforcement and, potentially, continuing to live in a liminal state whilst repayment takes place might add stress, inhibit change, and contribute to feelings of hopelessness and fatalism (see Halsey et al. 2017).

Whilst Robert's evidence represents only one perspective within the data, its inclusion in this project serves as a reminder that the experience of extended entanglement that can emerge out of the financial punishment process is one in which repetitive and cyclical

patterns are evident. This was also a finding that emerged out of the broader practitioner evidence, particularly that concerning multiple/'historical' fines outlined in the previous chapter (see **Chapter Four**, 111-114). This data suggests that the repetitive nature of fines and financial penalties, was, for some of those already caught within enforcement action, both a cause and symptom of their extended entanglement. Even when attempting to desist, minor and early 'infractions' (Halsey et al. 2017, 1048) just added to outstanding punishment debt and increased the amount of time under supervision. Those living with multiple fines might do so in a liminal state, not receiving interventions, support, or engagement that feels meaningful or useful to them. Robert's evidence of the emotions and feelings this produced for him suggests that there is, potentially, a gap in evidence that shows what role financial punishment might play in desistance processes for people living with multiple unpaid fines and/or exposed to enforcement action in Scotland.

Writing about the experiences of those subjected to multiple short prison sentences in Scotland, Armstrong and Weaver (2013, 302) advocate for 'adjusting the focus and methods of sentencing and punishment research by attending to the interactions of serial punishments'. In the case of fines and financial penalties, there is evidence generated in this study that suggests an approach of this kind might be similarly appropriate for both fines sentencing and experiences of enforcement and collection action. Whilst there is a small evidence base concerning how those subjected to a fine understand, experience, and perceive of this method of punishment (see Bögelein 2018), there is, so far, less of a focus in this work on how the repetitive and cyclical nature of the processes described in this project affects those subjected to it.

Equally, whilst there have been expanded considerations of the extension and entanglement of financial punishment processes that was identified by practitioners in this project (see Harris 2016), these have yet to be explicitly integrated into discussions of the meaning of financial punishment for those who experience multiple fines and extended entanglement in enforcement action. Nor have these considerations been explicitly examined within theories of desistance processes or, more broadly, within critiques of the wholly accepted (and, arguably, tacitly acceptable) non-rehabilitative potential of fines and financial punishment. A greater evidence base of this type might reveal 'more about how people live with punishment, and how punishment lives with them' (Armstrong and Weaver 2013, 302), with specific reference to processes and practices of financial punishment. There is clear evidence offered in this study that the punishment effects of fines and financial penalties were 'an ongoing part of people's lives' (ibid.) that

encompassed a lot more than simple deprivation of resources, affecting different people in different ways at different points in their life, as well as within the entire process of sentencing, fine imposition, and enforcement.

Penal purpose and penal problems

The evidence generated in this project suggests that – whether punitive, deterrent, rehabilitative, or desistance-focused – a clear penal purpose was not readily observable in the design of the process itself. There are punitive *outcomes* but, arguably, these are not in-built into the purpose of the process – rather, they arise out of the complicated and convoluted process itself, playing out amongst the extended entanglement wrought by the practices that characterised fines enforcement. These outcomes are, ultimately, underpinned by a refusal from within criminal legal policy to attend to or acknowledge the issue of economic disadvantage as a central feature in the lives of those coming into contact with these processes. This, arguably, exemplifies a type of chaos all of its own, one that was much more difficult to identify and articulate – both for the practitioners themselves and within the broader confines of this thesis. The type of chaos that existed throughout interactions with fines and financial penalties in Scotland, seemed to 'result from processes wholly arising internally from a single set of goals' producing a set of 'undesired and unintended outcomes' (Hodson et al. 2013, 264) within forms of bureaucratic rationalisation applied to methods of punishment.

The single set of goals in this case appears to be the 'problem' of non-payment, a problem that has been treated with a range of enforcement measures that do little to nothing to address the underlying paradox that many of those being repeatedly exposed to the process simply did not have the funds to pay a fine in the first place – whether across time, by instalments, via benefit deduction, or otherwise. Arguably, though, the 'problem' of non-payment was crafted *by* the Scottish criminal legal system over the course of 40 years, employing a range of policy developments essentially sidestepped issues of inequality in sentencing and fine setting. Instead, questions of fairness, equity, and responsiveness of financial penalties have been transformed into a set of bureaucratic principles concerning the efficiency and effectiveness of the system and its ability to attend to the 'problem' of non-payment.

Consequently, the reformed mechanisms of financial punishment in Scotland that focus on making people pay when they patently *cannot pay* demonstrate a deeply senseless and,

broadly, unjustifiable logic that was hard for practitioners to reconcile and, arguably, to care about and make a priority themselves in their own professional practice. Instead, they focused on attempting to address everything else, with the awareness that, in order to re-pay a fine, an individual had to ostensibly transform into someone who could survive the imposition of a fine in the first place. Any transformation was nearly impossible whilst offending was ongoing and fines were accruing; the most they could do in terms of specifically addressing fines was attempt to mitigate or reduce financial pressures and try and detangle some of the worst snares around access to information and navigating payment extraction. Where multiple or additional forms of punishment took place or were ongoing, fines and financial penalties were subordinated into the background. Arguably, though, unpaid fines and financial penalties always lingered, representing a chronic, quieter bureaucratic chaos that played like a continual backing track to the louder, more acute events and episodes that the practitioners felt required urgent and immediate assistance.

The chaos referred to here as chronic (see Harris 2016) and quiet was broadly normalised within the processes of financial punishment. It appeared to have become so normal to the practitioners interviewed in this project that they were able to describe its workings and outcomes across various types of settings, and at various stages of the lives of the people they worked with. This is unsurprising as, according to its own definitions, the system is working exactly as it was designed to: efficiently keeping the burden of volume offending out of the courts by attending to the problem of non-payment. This is a key point because it illustrates that,

> ‘a highly successful bureaucratic structure of domination is not a claim about its actual efficiency in accomplishing any penal purpose, but is a statement about its success maintaining itself as an organization that is able to generate support for its growth, by claiming efficiency as a goal’ (Armstrong 2003, 288).

But the resulting process was, as per the descriptions of the practitioners in this project, often wholly disorganised, disjointed, and distended, requiring extended investments of time, energy, and mental resources from those ensnared to even manoeuvre to a point where they could engage with systems and procedures the way they were ‘supposed’ to.

Responsibility for making the process of financial punishment ‘work’ efficiently and effectively appeared increasingly devolved onto those subjected to a fine or financial penalty. Lives that were ‘chaotic’ were increasingly made into a cipher for a lack of logic

underpinning the regular and repeated use of fines and financial penalties as a response to those who offend as a result of a range of intersecting inequalities, and then cannot participate with enforcement action in the rational way the system deems necessary. There is little recognition that this represents a chronically chaotic approach – one that simply turns away from the causes and motivations underlying criminalised behaviour and focuses instead on managing, monitoring, and subjecting those who have a fine or financial penalty imposed to extended curtailment of their time, energy, and autonomy. Inability to comply with this apparently ordered, rational, simple process becomes evidence of a type of 'chaos' that needs to be converted. Those who cannot pay fines need to be made non-chaotic, or brought into order, and fines enforcement becomes a technique through which to achieve this.

Rehabilitation and rationalisation: paradoxes in contemporary policy and practice

The fact that the process and outcomes described in this project do not affect all those who receive a fine and, indeed, appear only to fall upon those who are experiencing a broad variety of existing structural disadvantage is, in itself, a fundamental challenge to any claims about the legitimacy and value of the widespread use of fines and financial penalties in Scotland. Arguably, policy, practice, and public opinion appears to remain fixed on the assumption that since financial penalties work 'well enough' for the majority, any disproportionate and damaging effects on the minority are an acceptable risk. However, even when 'chaos' was minimally observable in the lives of those paying fines, the process itself could work to undermine and damage changes and progress that were understood as evidence of a more ordered and 'settled' life. In certain situations, unpaid fines contributed to a repeated and cyclical process of trap and release, a noose around the neck held from a distance, suddenly and abruptly tightened and yanked at precisely the moment where an intake of breath was possible.

For those described by the practitioners in this study, this thesis asserts that it remains unclear what purpose fines and financial penalties, as well as fines enforcement, are supposed to serve. Arguably, this is a key question for contemporary Scottish penal policy because, as outlined in the first chapter of this thesis, the evolution of fines enforcement in Scotland has been seemingly underpinned by a focus on penal reductionism. Yet, as Buchan (2020, 83) identifies, 'progress towards decarceration has been slow in Scotland, even though a consensus towards it exists'. This consensus has seen the ''orientation' of

Scotland's penal field [shift] towards decarceration through diversion of cases away from prison (especially short periods of imprisonment) and into community penalties' (ibid., 82), especially in the last 20 years. Underpinning these shifts is policy rhetoric focused on 'person-centred' and holistic approaches to justice, most recently expressed in *The Vision for Justice in Scotland*, a 'transformative' (Scottish Government 2022, 7) set of policy aims published by the Scottish Government that repeatedly emphasise a focus on ensuring that 'people going through the criminal justice system have access to the support and rehabilitation they need…[to] reduce crime and further offending, and make our communities safe' (ibid., 6). The move towards decarceration and, especially, a greater emphasis on community justice alternatives and 'person-centred' justice have all been offered as evidence of 'Scotland's ostensibly progressive penality' (Buchan and McNeill 2023, 4). However, the findings of this thesis suggest that the role of financial punishment within these broader aims for the whole of the Scottish criminal legal system seem unclear and, in many ways, contradictory.

Whilst fines and financial penalties might be regarded as primarily a punitive measure, with little potential for rehabilitation (Feraldo-Cabana 2019; Quilter and Hogg, 2018; Young 1987, 1999), the wholly punitive nature of the fine is supposedly offset by the lack of disruption and dissocialising effects of punishment via financial deprivation. The findings of this project suggest that, in the case of practice in contemporary Scotland, this is a dubious claim. Not only are there significant disruptive and dissocialising outcomes, but unpaid fines can interrupt or inhibit the types of rehabilitative practice that supposedly define community justice practice in Scotland. Access to support and resources that might assist those with unpaid fines appears inconsistent and often delivered through community justice mechanisms, even as the entire apparatus of fines enforcement appears to exist completely independently from the broader field of community justice. Community justice practitioners interviewed for this project were undertaking a range of work around unpaid fines and mitigating fines enforcement, but they were necessarily limited in what they could do.

Overall, though, the practitioners perspectives revealed stark conceptual contradictions that exist within the field of non-custodial alternatives in Scotland. The bureaucratic principles of rationalisation that govern financial penalties and fines enforcement work to separate people from their life, acting instead to reduce those with unpaid fines and/or under fines enforcement into sums for collection. This, this thesis argues, could not be more at odds with what is claimed to be the guiding principles of community justice in Scotland, with its

emphasis on rehabilitation, reintegration, and the promotion of 'social inclusion, citizenship and desistance' (Scottish Government 2014, 1, see also McNeill 2015). The extent to which it was possible for the practitioners to evaluate the fairness and effectiveness of financial penalties was complicated by the fact that, fundamentally, the two forms of non-custodial alternatives were operationalising very different measures of fairness and effectiveness.

These measures appeared to often be in conflict with each other with community justice practitioners struggling to establish the point and purpose of financial penalties for many of those they worked with. By extension, without a clear purpose, it became increasingly hard to claim that fines or financial penalties were effective, especially for those living with multiple unpaid fines or being exposed to extended, disruptive, and demanding contact with the criminal legal system. Evidence from a small population of those working in the broad collection of community justice in Scotland suggested that fines and financial penalties continue to occupy their own space in the Scottish penal field – controlled and administered by the courts, with little thought given to how they might integrate within the broader aims of holistic and 'person-centred' penal practice.

What is offered through using the perspectives of those working in community justice is a view across the whole range of criminal sanctions that are offered as more appropriate alternatives to imprisonment, as well as insights into how, in practice, these different exercises of penal power intersect, compound, and grind against each other. Seen in this way, a greater understanding of the operations and outcomes of financial punishment also offers a new perspective on the 'patchwork pragmatism' (Munro and McNeill 2010, 221) that is characteristic of the Scottish criminal legal approach to what is considered 'low-end' or 'less serious' harm. With greater evidence about who is implicated in this patchwork of community sentences, supervision, *and financial penalties*, as well as how all these methods work, *independently* and *interdependently*, to produce punitive outcomes, it becomes increasingly possible to evaluate the extent to which what might be being presented as progressive, welfarist, and holistic can accurately be termed so. Rather than defaulting to hierarchies of 'hard' and 'soft' justice, a holistic and inclusive approach to the range of methods at work in the Scottish criminal legal system offers opportunities to confront and critique hidden ways in which all forms of punishment might reproduce and exacerbate existing structural inequalities. Ultimately, a view of the ways in which the whole criminal legal system works might produce more radical approaches that 'pose

difficult questions over why and how we punish'(Buchan and McNeill 2023, 2), questions that unsettle existing claims about fair, effective, and efficient justice.

Conclusion

This chapter has presented a set of findings that contextualise fines and financial penalties within the broader context of the lives of those who cannot pay them. It has highlighted distinct incompatibilities between structural and economic challenges facing those living with unpaid fines and the approach of the criminal legal system to fines enforcement. This produces a set of conditions where fines and financial penalties produce punitive outcomes that extend criminal legal contact into periods of change and progress. Extension of process and entanglement with criminal legal contact expands exponentially and can create significant challenges as people attempt to move further away from the criminal legal system. A lack of engagement with the context of the lives of those living with unpaid fines produces a set of practices that punish non-payment and can draw people into long, repeated, and cyclical interactions with a system that is often targeting a non-existent resource. In these cases, fines and financial penalties, arguably, serve no purpose but to punish non-payment.

For the practitioners in this project, the meaning and purpose of financial penalties for people in these situations became increasingly unclear. Whilst they attempted to support those in contact with the criminal legal system, their work was hampered by sentencing decisions, chaotic processes, and a clear distinction between the principles they saw as fundamental to their practice and the principles the underpinned the bureaucracy of fines enforcement. Whether these methods were fair and effective increasingly depended on the socio-economic and life context of those coming in contact with them, producing a bifurcation of experience and outcome that could be highly damaging for some, as well as frustrating for practitioners who saw their work as designed to address and engage with precisely the contexts that were ignored within financial punishment processes. This paradox works to destabilise the basis upon which claims of fairness and effectiveness are presented to legitimate the current system and reveals potential fractures within the entirety of the criminal legal system that undermine rhetorical transformative visions of progressive penal practice in Scotland.

That much more research is necessary should be obvious, and the following chapter will provide suggestions for future developments that might expand some of the issues

highlighted in this thesis. Overall, though, the inclusion of considerations of fines and financial penalties and, especially, fines enforcement, and the under-explored outcomes and impacts of unpaid fines within critical criminological approaches to punishment in Scotland adds weight to current debates around the ways in which diversionary methods and alternatives to imprisonment can end up serving as 'supplements rather than alternatives to prison' (Buchan 2020, 83). So far, this assertion has only been applied to community justice alternatives in Scotland, but there is evidence from those working in community justice that financial penalties can serve as supplements to *both* imprisonment and community sentences. Equally, greater awareness of the outcomes and impacts of the most common form of criminal legal practice in Scotland is useful in developing a 'much more radical vision of penal reform (and even abolition)' (Buchan and McNeill 2023, 13). The problems of fines and inequality should provoke and inspire questions about whether, how, and why financial penalties might fit into more radical conceptions of social justice, social harm, and the purpose of punishment.

Conclusion

This thesis set out to provide an account of the processes and practices of fines enforcement in contemporary Scotland. Through focusing on the specific area of fines enforcement, the purpose of this project was to re-orient perspectives on fines and financial penalties on the potential outcomes and effects of these forms of punishment on those who are unable to pay them. This re-orientation was proposed as one way of critically engaging with the problem of fines and inequalities, providing new opportunities to analyse and explain what happens when fines are imposed upon those who cannot afford to pay them. With an expanded body of evidence concerning the process of fines enforcement, as well as how fines and financial penalties are administered to and experienced by those who cannot afford to pay them, this thesis sought to analyse and evaluate the role of fines and financial penalties within the contemporary Scottish criminal legal system.

Key findings

Using qualitative evidence generated through interviews with community justice practitioners in Scotland, a new and updated account of fines enforcement has been presented in this thesis. Though the bureaucratic and rationalised nature of the system of fines enforcement has been presented as a fair and effective model for responding to non-payment of fines, evidence from community justice practitioners suggests that, in practice, the process can represent an extended, convoluted, and chaotic interaction with criminal legal systems. The extension of processes and their convoluted nature emerge as a result of both design and issues with implementation – both of which, evidence from practitioners suggests, are closely linked to a lack of engagement with the contexts, conditions, and lives of those who cannot afford to pay financial penalties.

Firstly, aspects such as time to pay and payment in instalments already spread out the period of fines enforcement but, when fines and financial penalties are set at an unmanageable limit, these aspects extend minimal payment over long periods of time. The extension of this process can become further elongated when those sentenced have multiple or ‘historical’ fines, with payment spreading over years or accruing exponentially as more fines accrue. The extension is also compounded by the ‘churn’ (Bradshaw et al. 2011, 69) of the fines enforcement process itself, where delays in the bureaucratic workings of the system and, especially, in the ways in which the criminal legal system overlaps with other key bureaucratic systems (such as the DWP in charge of welfare

benefit administration), can make access to information, as well as support with addressing unpaid fines difficult. This, in some cases, worked to entangle those living with unpaid fines within the bureaucracy of fines enforcement – sometimes minimally paying many fines through benefit deductions with little knowledge or understanding of how much was owed or what for.

The extension of this process increased likelihood of disruptions to payments, especially when, as the practitioners often described, those with unpaid fines were in regular and repeated contact with the criminal legal system and facing multiple competing forms of punishment in their lives. However, unpaid fines and financial penalties could produce disruptions of their own by, in some cases, contributing to threats of escalated punishment and making people nervous to live their lives, access essential services, and, generally, exists autonomously in their communities. Equally, evidence offered by the practitioners implied that consequences of unpaid fines and financial penalties might sometimes disrupt social and familial bonds, especially in cases where family members were abruptly called upon to settle outstanding fine amounts. The practitioner evidence made it possible to observe how living with unpaid fines existed dynamically within lives and communities, producing negative outcomes and impacts that have been similarly highlighted in empirical international research concerning the often under-recognised harms of financial punishment (see Boches et al. 2022; Harris 2016; Harris et al. 2010, 2022; Pattillo et al. 2022; Todd-Kvam 2019).

Overall, practitioner evidence emphasised that fines and financial penalties did very little to address or engage with structural and socio-economic factors that were often bringing people into contact with the criminal legal system. The practitioners described how those they worked with were often had competing and urgent needs that had to be addressed as a priority to support the goals of their work within community justice. These could include substance misuse or addiction, mental health needs, and experiences of abuse and trauma. These needs were both produced by *and* exacerbated by forms of economic marginalisation, including experiences of poverty, debt, and low incomes. In some situations, the imposition of a fine or financial penalty could exacerbate economic marginalisation and directly contribute to further offending or criminalised activities. Fines and financial penalties were also considered to do little to nothing to address or engage with competing and overlapping needs and demands in the lives of those they worked with, especially when these experiences also intermingled with repeated and regular contact with the criminal legal system. Practitioners characterised these conditions as ‘chaos’ and/or

‘chaotic’, a description which was put in direct contrast with demands for self-administration and orderly self-management that were inbuilt within the highly rationalised bureaucratic model of fines enforcement.

This disconnect between life context and operations of the system was understood by practitioners as contributing to a lack of care or concern about fines and financial penalties. They dropped to the bottom of a list of priorities, often emerging as a final connection to the criminal legal system which needed to be addressed to conclude interactions between individuals and the criminal legal system. Equally, though, lack of care was not always characterised as a choice and, instead, there was evidence that prioritisation was a matter of necessity and that fines and financial penalties could contribute to feelings of hopelessness and apathy – especially when people were attempting to desist, make positive changes in their life, and/or move away from contact with the criminal legal system (Halsey et al. 2017). Fines enforcement processes could, and did, extend across long periods of time, including into periods where people with unpaid fines and/or subject to fines enforcement action were no longer offending and had completed other sentences. Practitioners described how this long-standing entanglement with criminal legal power could present barriers to progress, their evidence echoing international findings about the ways in which ‘punishment debt’ can inhibit desistance and rehabilitation (Gålnander 2023).

Practitioners struggled to make sense of the purpose of fines and financial penalties. They believed that there were more appropriate alternatives available that would allow for targeted intervention in the lives of those they worked with, but sentencing decisions that did not fully take into account people’s contexts, including how they might pay a fine or financial penalty, could contribute to repeated and cyclical experiences of financial penalties and fines enforcement. Throughout the extended period where people were entangled in fines enforcement processes and/or living with unpaid fines, community justice practitioners were providing support and intervention where they could – but this support was typically ad-hoc, reactive, and mitigating only. It could not change or alter the conditions that brought people into contact with fines and financial penalties. Nor could it change or improve practice and decision-making taking place within the criminal legal system that exposed those who could not pay financial penalties to extended, indeterminate, and often damaging entanglements with penal power via fines enforcement, long-standing debt, and sustained deprivation of financial resources.

‘Progressive’ practice and fines enforcement

Clearly, changes in practice over 40 years *have* altered the punitive effects of financial punishment in Scotland. These changes have not only been focused on financial penalties but, more broadly, have focused on penal reductionism and decarceration. As a result, deprivation of money is no longer, nominally at least, likely to produce deprivation of liberty through imprisonment. However, evidence from this project suggests that significant curtailments to autonomy, progress, and distance from penal power might be produced through fines enforcement. Where previous empirical evidence from Scotland suggested trades of liberty for money owed were once possible (Young 1999), the updated model of fines enforcement instead demands both money and time from those who cannot pay. The space created between individual and the criminal legal system following the imposition of a fine is one in which a range of disruptive and dissocialising impacts are possible, including those that may contribute to a return to offending or derail positive change.

Writing about fine enforcement in Australia, Quilter and Hogg (2018, 17) argue that, ‘[a]bolishing imprisonment for default has removed the most visible marker of unfairness and inequity, but perhaps only to displace the problems into the more hidden, arcane domains of administrative practice under novel enforcement systems that produce their own punitive effects’. This thesis has characterised the system of fines enforcement in Scotland as one which only punishes non-payment and serves an unclear penal purpose. The current system acts as form of bureaucratic chaos, buttressed by inconsistent sentencing practices that do not always or adequately take into account contextual features including ability to pay, previous or existing financial penalties, and ‘actual differences in means’ (Munro and McNeill 2010, 219). These are long-standing challenges in Scottish criminal legal practice (see Munro and McNeill 2010; Nicholson 1994; Young 1989) that were highlighted as a potential challenge to the fair and effective implementation of the current model of fines enforcement over a decade ago (Bradshaw et al. 2011).

Thus, whilst the punishment effects of fines and financial penalties appear to have shifted into more administrative and bureaucratic spheres, it is not the case that reforms to financial punishment in Scotland demonstrate a move towards progressive practice. If anything, the increasingly administrative and bureaucratic nature of the current system seems to have further stymied scrutiny and critique of where financial punishment supposedly fits into visions of ‘progressive penality’(Buchan and McNeill 2023). Fines

setting and sentencing practice in Scotland diverges strongly from other European and Nordic jurisdictions, which are increasingly seen as 'more tolerant in their responses to criminality and restrained in their uses of punishment' (Brangan 2019, 781). The introduction and widespread use of day/unit fines in places such as Finland, Germany, and Sweden have not produced a panacea of progressive practice (see Faraldo-Cabana 2019, 166-217) but have, at least, demonstrated some willingness to engage with the fundamental issue of inequality that underpins any use of financial punishment. Whilst penal rhetoric in Scotland might profess 'apparent Nordic social democratic aspirations' (Buchan and McNeill 2023, 337), the approach to fines and financial penalties adopted in the 2000s represents a concrete and definitive divergence from these international examples. One which this thesis argues has produced a form of punitive practice that is included within discourses about diversionary alternatives to imprisonment in Scotland and imbued with assumptions about leniency and 'soft' justice, without adequate justification on the basis upon which these assumptions are made.

If one of the defining features of Scottish progressive penality is an emphasis on welfarist approaches, with an increasing rhetorical and practical focus on the use of community sentences and the role of community justice in delivering 'effective, modern person-centred and trauma-informed approaches…[to] those accused of crimes'(Scottish Government 2022b, 18), the operations of both sentencing and fines enforcement described in this project appear separated from these prerogatives. The findings of this project suggest that attempting to establish where the fine fits within the 'shape of the sanctioning structure' (Young 1999, 182) of contemporary Scotland reveals an increasingly fractured structure, with aspects of the broader penal field operating on the basis of different principles that grind against each other. The highly rationalised policies of the 2000s that expanded and promoted fines and financial penalties in Scotland also centralised them within a bureaucratic system wholly devoted to managing non-payment, not to managing and attending to the factors that underlie non-payment. Arguably, it was designed to be, and remains, a system for managing those who cannot pay. The perspectives of community justice practitioners force a re-examination of the purposes and legitimacy of this form of 'management', especially within a penal field where rehabilitation and reintegration are often championed as the gold standard of progressive practice (see McNeill 2016, 2019).

The purpose of firmly situating the work of this thesis in the recent penal history of fines and financial penalties in Scotland has been an attempt to reintegrate this 'third space'(see **Chapter Three**, 71-77) of penal practice more substantively within the broader penal

landscape and to demonstrate the ways in which penal practice surrounding financial punishment is not separate, distant, or somehow 'less than' what has taken place elsewhere in the Scottish criminal legal system. Instead, the recent history of fines and financial penalties is revealed to be strongly intertwined with long and ongoing debates in Scotland about the nature and purpose of responses to social harm, as well as those concerning what the purpose of criminal legal practice is *and* what it should be. By highlighting these relationships, it becomes more possible to see how fines and financial penalties might both support and inhibit the broader rhetorical goals of criminal legal practice *and* offer new ways of evaluating and critiquing the nature and purpose of punishment in contemporary Scotland.

Further research in Scotland

Throughout this thesis, the lack of critical criminological engagement has been repeatedly highlighted. It is even clearer that critical criminological research could play a decisive role in advancing and critiquing the findings and analysis put forward in this thesis, especially in regards to the tentative theorising outlined above. This findings of this thesis have been generated from a small dataset and, whilst they offer a range of opportunities for necessary and valuable future considerations, they are necessarily limited by their scope and scale. Fundamentally, this thesis echoes calls that have reverberated throughout the history of fines scholarship – more research is urgently required. However, future research should be more attuned to and focused upon fines enforcement and the ways in which processes and practices, such as the ones described in this thesis, affect those experiencing financial punishment and, in many cases, a range of other criminal legal interventions.

Through the lens of this study, it becomes increasingly apparent that the punitive effects of fines extend beyond financial deprivation, illuminating broader implications for individuals ensnared in enforcement practices. By articulating these dimensions, this research contributes to a deeper understanding of the costs incurred by those subjected to punitive fine regimes. Including the voices of those experiencing financial punishment and, especially enforcement action, could make a decisive contribution to future conceptions of the effects and impacts of financial punishment in Scotland, as well as offering 'an important opportunity to explore how penal legitimacy works, and under what conditions it is achieved or damaged' (Armstrong and Weaver 2013, 302). An appreciation of context, including socio-economic context, but also emotional and affective experiences of financial punishment is, this thesis has argued, left out of current practice in Scotland. The

widespread use of a penal sanction that is primarily promoted on the basis of how automated and efficient it is at dealing with and managing people as cases and units, rather than responding to people as humans with individual contexts and needs, could be challenged by research with those who have had these experiences.

Contributions from those who have experienced financial punishment and fines enforcement action might unsettle the present bureaucratic focus on efficiency and effectiveness that appears to govern how the system measures its own successes, as well as offering new ways of understanding and explaining the outcomes of financial punishment and fines enforcement. These contributions may also offer insights into under-recognised dimensions of the 'effects of persistent punishment' (Armstrong and Weaver 2013, 302), especially in regards to multiple fines and the repeated and cyclical nature of the processes described in this project. By 'considering the punished as a key audience for normative theory' (ibid.), current definitions of financial punishment as legitimate, rationalised, fair, and effective within Scottish criminal legal system could be analysed, expanded, and more carefully evaluated.

Additionally, findings from this project have drawn on evidence from practitioners working with women in the Scottish criminal legal system. This project has been limited by its focus on understanding the processes and practices of fines enforcement, and developing a greater base of evidence about their outcomes on those with unpaid fines and financial penalties and subject to fines enforcement. There is a clear need for further work that examines fines and financial penalties as a specific and distinct aspect of women's experiences of criminal justice. The findings outlined in this project provide some indication of where inclusion of considerations of financial punishment and the under-recognised outcomes of fines enforcement might be most necessary and beneficial.

Firstly, descriptions generated in this project demonstrate how prevalent a role fines and financial penalties might still be playing the criminal legal responses to the sale of sex. Phoenix (2016/2008, 37) argues that,

> 'for the better part of the twentieth century, policing prostitution translated into arresting, prosecuting and punishing (by fining) street-based sex workers for soliciting or loitering in a public place for the purposes of prostitution. There is an obvious impact that such a practice has of creating a revolving door – women go back to prostitution to earn the money to pay their fines'

This characterisation appears to be reflected in aspects of the data reported in this project and a re-focus on fines and financial penalties might raise new and insightful questions about the ways in which policing the sale of sex works to criminalise women, especially those who work on-street and in public. By re-orienting focus on the ways in which the criminal legal system responds to the sale of sex through punishment via financial deprivation further evidence might be developed concerning the additional outcomes and impacts of fines enforcement processes. This, in turn, might produce new ways to critique the criminalisation of the sale of sex, recognising it as a 'gendered survival strategy often used by poor women' (Phoenix 2016/2008, 38), and evaluating the legitimacy and appropriateness of fining where it is used as the primary criminal legal response to the sale of sex.

In Scotland, there has also been an increasing focus on providing ''holistic' services to criminalised women by attempting to create links between the criminal justice system and 'community''(Malloch et al. 2014, 398). Whilst the provision of holistic and community based alternatives for women in Scotland remains a contested space (see Armstong and Malloch 2024; Malloch 2016; Malloch et al. 2014; Malloch and McIvor 2011, 2013), there is, currently, little consideration of the role that fines and financial penalties play in the punishment of women in within the 'community' – whether in the space of community sentences or, more broadly, within the context of women's lives and experiences of non-custodial punishment. Interpretations of the provision of 'holistic' justice must take into account ways in which fines and financial penalties feature in the punishment of women, as well as the ways in which they intersect with gendered structural factors that underly economic marginalisation and the causes and drivers that bring women into contact with the criminal legal system. A deeper understanding of women's experiences of fines and financial penalties, as well as whether and how financial punishment might produce specific outcomes for women could assist in delivering more responsive evidence-based and gender-sensitive responses to criminalised women. International empirical accounts have started to highlight the specific harms of financial punishment for women (see Harris 2016; Harris et al. 2022), this research that could be highly relevant to evaluating the appropriateness, effectiveness, and fairness of current practices in Scotland.

Finally, future research could, and should, take seriously the requests for more information about practice that came directly from the community practitioners interviewed in this project. For many, this was the first time they had spoken about these observations and experiences outside of the confines of their own practice. As this thesis has argued, the

minimal inclusion of a broad range of community justice practitioners in the development, design, and evaluation of current policy has, potentially, produced hard to reconcile challenges in both underlying principles and substantive practices of overlapping forms of criminal legal practice. Checking and developing the findings of this project with greater input from community justice practitioners might help in identifying and ameliorating some of the more challenging aspects of the grind that appears to be taking place when rehabilitation-focused practice meets rationalisation principles adopted in other parts of the Scottish criminal legal system. Including community justice practitioners in future research concerning fines and financial punishments in Scotland is also one way to recognise the work they are clearly doing, often informally, within the 'third space' of punishment in Scotland. As such, future research might work to further break down ideological and conceptual barriers that buttress hierarchies of punishment, visions of 'hard' and 'soft' justice, and assumptions that evaluate non-custodial forms of punishment primarily on the basis of comparisons with imprisonment.

As a whole, as long as the use of financial punishment in Scotland remains justified only on principles of rationalisation, pragmatism, efficiency, and effectiveness, the extraction of revenue from those who cannot pay should remain questioned and contested. In Scotland, revenue from fines and related financial punishments is primarily transferred to the Scottish Consolidated Fund, the main fund operated by the Scottish Government 'out of which the spending of the Scottish Administration and other statutorily defined bodies comes' (Scottish Parliament website, no date) – a sort of current account for the administration of Scotland. Figures from last year show that £25.4 million was generated in funding from fines, forfeitures, and fixed penalties (Scottish Government 2023d, 12). Fines and financial penalties are, as Robert suspected (see **Chapter Five**, 155), being used to fund the country. That some of this funding may, in fact, be produced from the extended entanglement of marginalised people in punitive interactions with the criminal legal system suggests that rationalised models of fines enforcement require further investigation to establish whether, and how, these models represent more progressive or fairer penal practice.

Punishing the poor – economic discipline, poverty governance, and fines enforcement

Equally, though, the work of this project might contribute to broader theorising about the role of fines and financial penalties as a form of 'soft' governance (see O'Malley 2009)

Establishing the existence of bifurcated criminal legal systems might demonstrate how widening gaps in inequality ensure that rights to safety, liberty, and autonomy increasingly only become available to those with adequate economic resourcing – those who can buy their way out of punishment. If '[j]ustice is the concept of fairness'(Scottish Government 2022, 4), then justice appears impossible for some under the current system of financial punishment in Scotland. In place of justice, current processes and practices may be exposing economically marginalised people to increased forms of supervision and control through manifestations of criminal legal power via economic control, increased surveillance, and curtailment of autonomy. The ways in which these forms of control intersect with other forms of 'poverty governance' (Soss et al. 2011, 1), especially those at work in welfare systems (see Soss et al. 2011; Reiman 1998; Wacquant 2009), in ways that can reproduce and exacerbate existing inequalities requires further analysis. This type of governance does not aim to 'end poverty..[but] to secure, in politically viable ways, the cooperation and contributions of weakly integrated populations' (Soss et al. 2011, 1). It works to mark those experiencing economic marginalisation as 'Other' and attempts to reform this 'Otherness' at *only* the level of the individual, whilst maintaining the structural status quo that underlies economic marginalisation and produces contact with the criminal legal system. Recognising fines and financial penalties as a potential part of broader networks of control and governance, such as has been proposed in this thesis, should provoke renewed questioning about the nature and purpose of economic deprivation as a technique that both disproportionately targets *and* impacts already marginalised people.

Detailed descriptions of local practices such as the one offered in this project also provide opportunities to observe, identify, and critique key features of power at work in financial punishment, expanding the potential of criminological theorising about how and why fines and financial penalties produce disproportionate effects on those who cannot pay. There still remain considerable gaps in theorisation, especially concerning how penal power is enacted upon those experiencing financial punishment. The broad consensus appears to remain as it did in the 1980s – that fines and financial penalties should be conceived of as either 'more of a classical punishment (calculable, public, non-arbitrary)' (Young 1999, 194; see also Bottoms 1983) or, increasingly, as a type of regulatory measure focused on managing 'distributions and flows of behaviours and the harms and costs linked with these' (O'Malley 2009, i). In the case of fines enforcement action or in the process of financial punishment described by practitioners in this project, neither appear to fully capture parts of what was happening in the interaction between the criminal legal system and the

individuals who were subjected to multiple fines and/or subject to extended entanglement in enforcement action.

Drawing on Foucauldian ideas of discipline specifically, Bottoms (1983, 177) argues that 'in the ideal project of punishment…there is an explicit apparatus of punishment established whereby the offender is intendedly *trained*'. For Bottoms, this training is interpreted as 'specific exercises [that] are performed with and upon the offender' (ibid.). Alongside the prison, the examples of school and clinical treatment are frequently offered as models of this type of traditional Foucauldian training. These models employ technologies that are imagined to work upon the body as a way of training the 'soul (self)' and creating 'conformity and obedience' (Young 1999, 193). This training, per Foucault, leads to a transformation within the individual who has offended into 'the obedient subject, the individual subjected to habits, rules, orders, an authority that is exercised continually around him and upon him, and which he must allow to function automatically in him' (Foucault 1975/2020, 56). Certainly, if a fine is imagined as a solitary single transaction of money paid for harm done then, yes, it is difficult to argue that there is any disciplinary training evident within that dynamic. However, when this process is repeated again and again and/or when it involves the type of extended entanglement with criminal legal authority that was both described by practitioners and of which, in some cases, the practitioners were involved in, the contention that *fines enforcement* might involve a kind of training of the self appears more robust.

Firstly, if the concepts of surveillance and monitoring are considered, features that are central to descriptions of the disciplinary nature of punishment, there is some evidence of this taking place via the practices of fines enforcement that were described by practitioners in this project. There was a 'process of continuing surveillance' (Young 1999, 193) that was taking place via income review, requests for information, various complicated interactions with a variety of state authorities (criminal legal or otherwise), and a sustained monitoring of those who could not pay. Unpaid fines, despite their decentralized and often poorly implemented nature, serve as a covert mechanism for surveillance, extending far beyond the confines of traditional carceral institutions. This under-recognised aspect of the administration of financial penalties highlights their role in maintaining surveillance over individuals, even after they have left formal institutional settings.

The figure of the FEO could also be understood a physical manifestation of this type of continuing surveillance, emerging as an often remote figure in interactions with those who

have unpaid financial penalties. Ultimately, though, FEOs occupy a central role in monitoring non-payment, checking on progress, and arranging methods of extraction. Whilst there is some evidence of the role of the Fines Enforcement Team and its officers as positioned as nominally supportive and helpful in arranging and mitigating the excesses of financial hardship, their support remains couched in the punitive and threatening confines of the criminal legal system and relies on someone being willing to submit to an economic examination and, again, a degree of monitoring via this examination.

The contention here is that this form of arm's length threat and monitoring is, in itself, a form of training of the self. It serves two functions within the process of financial punishment described in this thesis – on one level, it exposes those who regularly break the law to what is understood to be the 'least harmful' and 'least severe' manner of control, constraint, intrusion, and imposition. This is not an overtly aggressive or violent method of control, but more of a coercive war of attrition that can act across long periods to reinforce the idea that even minor transgressions will not be tolerated. Small and one-off transgressions that result in the imposition of a fine are to be treated efficiently and quickly – with the resultant 'penalty feared, to a just sufficient extent (but no more) to preserve the overall social order' (Bottoms 1983, 176). In those cases where non-payment emerges as the 'problem' to be treated, the fines enforcement process becomes a training space for responsible economic behaviour, where estimations about unruly and chaotic behaviour have economic *and* social dimensions.

The contention that fines do not work on the body or the 'soul' appears debatable in these scenarios as the demand for bureaucratic engagement and compliance via paperwork, negotiations, and supervision becomes one way in which attempts to change behaviour are devolved onto individuals within the process. Further, the fines enforcement process acts to institute a rationalised model of debt repayment onto those who come into contact with it. In some cases, this continues to repeat a dynamic of resource extraction that typically achieves very little in terms of claiming back actual financial costs. In these cases, the management of financial risk through fines enforcement becomes a technique by which certain behavioural expectations linked to economic responsibility and accountability are trained through extended and repeated entanglement with criminal legal systems on the basis of debt and economic control. This re-casts the criminal legal system as a type of carceral creditor, who prepares those under fines enforcement action to become 'responsible consumers'(O'Malley 2009, 158).

This training of the self becomes even more apparent when there are broader changes in behaviour that are accepted as 'pro-social', typically those around reduced offending and more obvious markers of stability. Typically taking place separately from (and unrelated to) the imposition of the fine, these precede the steady and continued repayment of outstanding punishment debt, transforming into a final conditioning technique in a process of normalisation. A process based on expectations of responsible and obedient social behaviour that have an economic dimension, *as well as* a social one. Rehabilitation via repayment becomes both a concrete goal of processes of financial punishment. It not only aims to facilitate financial restitution, but also operates insidiously as a representative symbol of what a responsible social and moral life might be.

Drawing on Foucault's notion of 'docile subjects' (Foucault 1975/2020), this transformation does not necessarily entail a fundamental change in behaviour; rather, it reinforces compliance with societal norms by ensuring the ability to meet financial obligations and avoid exposure to punitive processes. The 'chaos' that is inscribed onto the lives and bodies of those living with multiple unpaid fines appears as the diametric opposite of the docile obedience that is imagined to be the ultimate goal of disciplinary power (see Foucault 1975/2020). Consequently, understandings of financial punishment that see deprivation of money and the processes through which this is achieved as having no broader symbolic or representational power – beyond regulation or classical punitive power – lose some relevance in describing or explaining the 'very real but often hidden hardships inflicted on the most vulnerable by fines' (Quilter and Hogg 2018, 27).

The potential for fines enforcement regimes to normalise what is considered responsible economic behaviour and link it to moral transformations, as well as to present these operations as rationalised bureaucratic practice, obscures its role in forms of poverty governance. Certain processes both manage those who cannot pay, and attempt to shape them into those who can. Where transformation is not achieved, Quilter and Hogg (2018, 27) remind us that 'the historical links between debt and servitude are forgotten. In the past, debt was commonly used as an instrument for driving people into literal servility—debt peonage'. Whilst this is a historical parallel that *must* be treated with caution, there should be little doubt that those subject to long-term fines enforcement are not simply paying their 'debt to society' in pennies and pounds. The deprivations of time, mental energy, and personal autonomy that are suggested in this project are very much sited in the lives and humanity of those having these experiences, not simply their pockets.

When examining the meaning, legitimacy, and justification of financial penalties enforcement and collection processes emerge as pivotal arenas of penal power that remain under-theorised, especially within disciplinary frameworks. The findings of this project suggest that types of fines enforcement regimes that employ the same bureaucratic principles might not only be unjust in practice, they might also be unjust by design. The evidence from this project suggests that the various problems of fines and inequality are intertwined with the operations of the criminal legal system as a whole, and that changes within the system might be possible to ensure that significant harms caused through process and practice are minimised. Academic collaboration and more inclusive research agendas are one way in which this could be achieved, and this thesis provides suggestions for ways in which this can be achieved. By tracing the trajectory of fines policy and practice, providing up-to-date qualitative evidence of how fines enforcement operates, and then critically examining the effects of this operation, this thesis propels existing literature forward, offering a case study of fines enforcement, and suggesting ways in which qualitative evidence of local practice can make significant contributions to theoretical criminological literature of punishment. These have implications that reach beyond the confines of practice in Scotland – by raising conceptual questions about what the imagined purpose of financial punishment is and, more importantly, what it should be.

Acknowledging these punitive aspects of fines regimes only adds more weight to calls for truly radical and transformative approaches to social harm and social justice, there is no obvious reason for why these calls often stop short from addressing whether and how fines and financial penalties might be included in these radical re-imaginings. This thesis has demonstrated ways in which financial punishment is both implicated in *and* constituted by a set of logics that run throughout the criminal legal system. These legitimate domination as a form of social structuring and social control in a myriad of ways. This thesis takes seriously a call to ‘unimagine the permanence of prison so we can stop trying to justify it and fix it in trivial ways’ (Armstrong 2003, 306) , approaching this issue from the perspective of challenging an specific ideological structuring of the harms of punishment. A structuring that risks re-confirming the argument that, as long as there are ‘reasonable’ alternatives, then imprisonment remains justified as a last resort. Articulating, exploring, and problematising existing alternatives to imprisonment contributes to the project of developing ‘an alternative vision for justice’ (Lamusse 2021, 314); asking whether there is a ‘role for financial penalties and compensations in a post-prison society’ (ibid., 321) and, if so, what could this role be? Critical criminology might provide valuable answers to these

questions, contributing to a future-focused agenda that can envision radical changes in social justice, rather than practical adjustments to existing models (Young, 1999).

The findings in this thesis feed into conceptions of penal practice and rhetoric taking place at a local level in Scotland, but they also contribute to an international research agenda that is asking essential questions about inequality, economic marginalisation, and the role of the criminal legal system in reaffirming and reproducing structural disadvantage and undermining social justice. Within an increasingly volatile and uncertain economic landscape that sees the richest 10% of the global population owning 76% of all wealth (Chancel et al. 2022, 3), there is an urgent need to better understand how social control manifests through enforced economic deprivation and what the effects of this are – on both an individual and structural level. This expands the value of the criminological academic project by recognising that coercion and control may well hide in the overlooked and neglected experiences, spaces, and sites of punishment.

Exposing the workings of fines enforcement and financial punishment reconfirms the commitment of critical criminology to tackling the variety of harms wrought by the criminal justice system through various processes of punishment, and to recognising the experiences of those who are most vulnerable to, and most damaged by, manifestations of penal power in a range of ways. This might require an end to hierarchical models of criminal legal practice that risk suggesting some forms of harm are more acceptable, more worthy of notice, and more deserving of redress than others. More inclusive and integrated considerations of punishment via financial deprivation expand criminological critiques of the operations, purpose, and legitimacy of punishment to include methods and experiences that might be affecting a majority of those coming into contact with the criminal legal system. A contemporary critical criminological approach that advocates for social justice cannot continue to neglect the problem of fines and inequality. It should instead work to integrate considerations of this form of punishment into broader discourses concerning who is disproportionately targeted and affected by criminal legal power and why.

Recognition of the close links between economic marginalisation and exposure to specific criminal legal practices add weight to calls for radical re-imaginings of social harm and social justice that go beyond simply justifying existing structures and trying to make them better. This thesis argues for a re-positioning of fines and financial penalties as potentially instrumental in the reproduction of social inequalities through criminal legal practice, calling for a renewed and invigorated critical agenda that takes seriously the ‘hidden

punitiveness' (Quilter and Hogg 2018) of financial punishment. Financial punishment should no longer be treated as separate and alienated from the myriad ways in which the criminal legal system reproduces and concretises existing power relations. Challenging and addressing the neglect of fines becomes a powerful way of questioning the legitimacy of punishment – in all forms and whatever the nature of the enforced deprivations taking place.

Appendix i.

Interview Theme Guide

1. **Organisation information:**
   Type of support services offered and how it is offered (in person, phone services, etc.)
   Client base – age, location
   Staff numbers
   Details of job role – day to day tasks, extent and nature of client contact

2. **Fines and financial penalties – service provider perspectives:**
   How often do you encounter people who have been fined as part of your role?
   Have you encountered women who have been fined as part of your role?
   How often do you encounter women who have been fined as part of your role?
   Can you reflect on whether there are any common themes or issues that arise out of your work with people who have been fined?
   Can you reflect on whether there are any common themes or issues that arise out of your work with women who have been fined?

3. **Services and resources:**
   Do you provide any specialised support regarding fines? If so, what form does this take (legal advice, financial support/advice)?
   Do you feel as though your service has adequate knowledge/resources to help people who been fined?
   Do you think there is enough information available about the process of fining? If so, is this information easily accessible and/or easy to understand?
   Do you or does anyone in your organisation have specific knowledge of how fines are administered; the process of paying a fine; what happens if a fine cannot be paid?
   Do you feel as though there are gaps in the support you can offer to people who have been fined?

4. **Reflecting on the fine as a service provider:**
   Do you think fines/financial punishment present any specific challenges to the people you work with?
   Do you think fines/financial punishment present any specific challenges to the women that you work with?
   Do you think fines are an appropriate criminal legal response? Why/why not?
   Do you think fines are an appropriate criminal legal response affecting the women you work with?
   In your opinion, how do fines impact the people you support? How do they impact the women you work with?

Appendix ii.

University of Glasgow

College of Social Sciences

College of Social Sciences Research Ethics Committee

03 June 2021

Dear Amy Cullen

Project Title: Exploring Fines as a Punishment for Women in Scotland.

Application No: 400200192

The College Research Ethics Committee has reviewed your application and has agreed that there is no objection on ethical grounds to the proposed study. It is happy therefore to approve the project, subject to the following conditions:

- Start date of ethical approval: 04/06/2021
- Project end date: 31/05/2023
- Any outstanding permissions needed from third parties in order to recruit research participants or to access facilities or venues for research purposes must be obtained in writing and submitted to the CoSS Research Ethics Administrator before research commences. Permissions you must provide are shown in the *College Ethics Review Feedback* document that has been sent to you as the Collated Comments Document in the online system.
- The data should be held securely for a period of ten years after the completion of the research project, or for longer if specified by the research funder or sponsor, in accordance with the University's Code of Good Practice in Research: (https://www.gla.ac.uk/media/media_490311_en.pdf)
- The research should be carried out only on the sites, and/or with the groups and using the methods defined in the application.
- Approval is granted for virtual methods outlined in the application however restrictions noted below should be followed for any face to face data collection methods.

    - **Approval has been granted in principal**: no data collection must be undertaken with the exception of methods highlighted above until the current research restrictions as a result of social distancing and self-isolation are lifted. You will be notified once this restriction is no longer in force.

Any proposed changes in the protocol should be submitted for reassessment as an amendment to the original application. The **Request for Amendments to an Approved Application** form should be used:

0044+141-330-4699 Muir.Houston@glasgow.ac.uk

https://www.gla.ac.uk/colleges/socialsciences/students/ethics/forms/staffandpostgraduateresearchstudents/

Yours sincerely,

Dr Muir Houston College Ethics Officer

0044+141-330-4699 Muir.Houston@glasgow.ac.uk

Appendix iii.

University of Glasgow

College of Social Sciences

College Research Ethics Committee

Request for Amendments - Reviewer Feedback

Ethics Committee for Non-Clinical Research Involving Human Subjects

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Application Details

Postgraduate Student Research Ethics Application

Student id. Number if applicable: xxxxxxx

Supervisor/s if Student Application: Dr Susan Batchelor

Application Number: 400200192

Applicant's Name: Amy Cullen

Project Title: Exploring Fines as a Punishment for Women in Scotland

Original **Start** Date of Ethics Application Approval: 26/04/2022

Original **End** Date of Ethics Application Approval: 31/05/2023

Date of Review: 25/04/2022

Application Status: Amendments Approved

REVIEWER MAJOR RECOMMENDATIONS	APPLICANT RESPONSE

REVIEWER MINOR RECOMMENDATIONS	APPLICANT RESPONSE

ADDITIONAL REVIEWER COMMENTS APPLICANT RESPONSE

Please retain this notification for future reference. If you have any enquiries, please email socsci-ethics@glasgow.ac.uk.

University of Glasgow
College of Social Sciences
Florentine House, 53 Hillhead Street. Glasgow G12 8QF
The University of Glasgow, charity number SC004401

E-mail: socsci-ethics@glasgow.ac.uk

Appendix iv.

Name	Description	Files	References
Fines enforcement contextualised	Data relating to the broader context surrounding fines enforcement, including economic, life, and legal context.	9	231
Economic context	Data relating to the economic context surrounding people with fines, includes references to debt, housing, income, and employment status. Relevant data not covered by these categories to be included here.	8	43
Debt	Data relating to debt (outside of funds owed via unpaid fines).	2	2
Employment	Data relating to descriptions of employment status and type of employment of people with fines.	2	3
Housing	Data relating to housing (including unhoused and precarious housing).	1	2
Income	Data relating to income and types of income.	2	2
Legal context	Descriptions of contact with criminal legal system, including that outside of fines enforcement.	9	82
Offending	Data related to descriptions of 'offending', including motivation and types of offending. Relevant data not covered by those categories to be included here.	5	22
Motivation for offending	Data related to motivations/drivers for offences described in relation to fines and financial penalties.	2	3
Types of offending	Data related to types of offending described by practitioners in relation to fines and financial penalties.	5	11
Sentencing	Data related to sentencing, including practitioner perspectives on sentencing and decision-making in other parts of the criminal legal system.	7	27

Name	Description	Files	References
Life context	Descriptions of life context of people living with fines, including contact with criminal legal system.	9	92
Abuse	Data referring directly to abuse, including domestic abuse and childhood experiences of abuse.	1	3
Addiction or substance misuse	Data referring directly to addiction or substance misuse, including drugs and alcohol.	6	15
Chaos	Data referring directly to 'chaos' or 'chaotic' lives.	7	24
Mental health	Data referring directly to mental health, including diagnosed mental illnesses and mental health issues.	5	6
Previous criminal legal contact	Data referring to previous contact with the criminal legal system, including regular or repeated contact with police, courts, COPFS.	4	11
Trauma	Data referring directly to trauma.	3	5
Fines enforcement process	Data related to fines enforcement processes - including measure and procedures related to fines enforcement, description of features of the process, and practitioners role in intervention/support during processes.	9	354
Efficiency and speed	Data relating to the efficiency and speed of fines enforcement processes.	9	51
Efficient	Data referring directly to efficiency of fines enforcement processes.	1	2
Speed	Data relating specifically to speed of fines enforcement processes	2	5
Intersection with other systems	Data relating to the intersections of criminal legal system and other systems (esp. DWP) in fines enforcement processes, including DBOs and deduction from source	7	14
Multiple or historical fines	Data referring to multiple or 'historical' fines and financial penalties.	8	20

Name	Description	Files	References
Practitioner intervention or support re. financial penalties	Data relating to descriptions of practitioner support/intervention in fines processes, on the behalf of those they work with.	9	140
Access, information, resources	Data relating to access, information, and resources during fines enforcement processes.	9	124
Access	Data referring directly to accessibility within fines enforcement processes, including accessibility of information/to support/to systems, agencies, organisations.	4	14
Information	Data referring directly to availability of information, missing information, or information necessary to fines enforcement processes.	9	40
Resources	Data referring directly to resources necessary in fines enforcement processes, availability of resources, and lack of resources.	7	25
Paying fines and financial penalties	Data related to payment methods and paying fines or financial penalties.	7	12
Types of fines	data referring to different types of fines, including court fines, non-court-disposals, police FPN.	2	2
Impacts and outcomes	Data relating to impacts and outcomes of fines enforcement and living with unpaid fines.	9	214
Alternatives to the fine	Data relating to practitioner perspectives on appropriate or effective alternatives to fines and financial penalties.	6	33
5Rs	Data referring directly to Michael Rowe's work on the 5Rs.	1	1
SDS	Data referring directly to Structured Deferred Sentencing.	2	4
Unpaid work	Data referring to forms of unpaid work.	2	3

Name	Description	Files	References
Barriers to progress	Data relating to barriers to progress produced by fines enforcement and living with unpaid fines, including desistance and rehabilitation, life disruptions, and effects on further offending.	9	86
Desistance and rehabilitation	Data referring directly to desistance and/or rehabilitation.	5	14
Disruptions	Data referring to disruptions, including disruptions to lives, families, and movement away from criminal legal system.	7	18
Harms	Data related to the harmful impacts of financial penalties, including direct and indirect impacts, repeated/cyclical experiences of financial punishment, and descriptions of how fining makes people feel.	8	28
Motivating offending	Data relating to fines and financial penalties motivating or driving offending.	4	12
Meaning as a punishment	Descriptions of what practitioners understand a fine or financial penalty to mean to those sentenced and to those they work with.	9	50
Lack of care or lack of concern	Data related to meaning and purpose of financial penalties expressed as lack of care of care or concern	6	9
Service information	Information about services practitioners work for, background, reference, and context for professional practice.	5	12

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