

**Justice Select Committee: ‘Courts and tribunals fees and charges inquiry’**

**September 2015**

1. The Criminal Justice Alliance (CJA) is a coalition of 90 organisations - including charities, voluntary sector service providers, research institutions and staff associations – working across the criminal justice pathway. Our members employ more than 10,000 people between them. The Alliance works to establish a fairer and more effective criminal justice system.
2. The CJA welcomes the opportunity to respond to this inquiry. We believe that the introduction of the criminal courts charge needs to be carefully monitored and, where appropriate, altered when there is evidence of disproportionate or inefficient impact. This response focuses on questions most pertinent to the CJA’s work.

**What have been the effects on defendants of the introduction of the criminal courts charge?**

1. As the charge only came into operation in April it is too early definitively to measure its impact on defendants. However, there is now substantial anecdotal evidence of increased hardship for vulnerable defendants, frustrated magistrates, an increase in the use of absolute discharges and a number of innocent individuals pressured into pleading guilty to avoid the risk of incurring the charge.
2. Recent policy changes, such as legal aid arrangements better compensating defence counsel who convince clients to plead guilty, have created anxiety that some innocent defendants may be pleading guilty in response. We are concerned that the criminal courts charge may exacerbate this trend by placing substantial economic pressure on innocent individuals to plead guilty.
3. Recent research from the United States suggests that innocent individuals may plead guilty if the difference in outcome for not doing so is great, and the judicial system is viewed as unfair. Many individuals accused of committing crime within our own jurisdiction come from communities and backgrounds or have past experiences that leave them predisposed to question the fairness of the justice system**.** The difference in the Court Charge between a guilty and not guilty plea is now £370 for a minor offence, £520 rather than £150, or 346 per cent. (In comparison, the difference between a guilty and not guilty plea at Crown Court is an increase of only 133 per cent.) The evident pressure felt to plead guilty is high, regardless of whether or not an offence has been committed. Members of the Magistrates Association are reporting innocent individuals choosing to plead guilty for this reason.
4. Ministers have suggested that payment schedules for the charge that are contingent on a defendant’s income offer protection against pressure for innocent people to plead guilty. There is little evidence that defendants know and understand that these payment schedules are available.
5. While an increase in the number of guilty pleas by those who are guilty might properly reduce court costs, that public policy benefit needs to be weighed against the substantial disbenefit of a possible public perception that innocent individuals are feeling (economically) coerced into pleading guilty at the same time that better off defendants can still access justice.
6. Before paying the charge individuals often face several other court levies first such as fines, compensation orders, victim surcharges and costs. Large numbers of people already struggle and can’t afford these, as evidenced by the Courts and Tribunals Service’s accrual debt. There is a risk that the new charge will exacerbate their situation, simply leading individuals to re-offend.
7. The charge applies to every appearance at criminal court including breach proceedings. Individuals serving sentences of less than 12 months custody are for the first time receiving licence conditions followed by a supervision period. The government’s own analysis estimated that 13,000 individuals will go on to breach as these offenders are the most likely to have chaotic lives with complex needs. Facing a second charge for this breach, on top of the one for the original offence, risks making it more difficult for these individuals to satisfy their conditions and successfully rehabilitate themselves.

**Has the criminal courts charge been set at a reasonable and proportionate level?**

1. With other court fines, magistrates and judges are permitted to use discretion to take defendants’ level of income, background characteristics and circumstances into consideration. The courts charge doesn’t allow for that. If less well-off individuals are worse affected than others in relation to their total income, the level of charge cannot be said to be reasonable or proportionate, even with the introduction of payment plans.
2. Previously, if a defendant only pleaded guilty at a first appearance in Crown Court, having been sent up from Magistrates’ Court for a triable each way case, they still received the full *sentence* discount for a guilty plea. This is not the case with the court charge. This is, understandably, regarded as unreasonable.
3. Non-payment of the charge can result in an individual receiving a period in custody. If the original offence did not warrant imprisonment this is a disproportionate outcome. The government has predicted that an average £5m annually will be needed to fund imprisonment for non-payment of the charge. This also appears to be a completely disproportionate cost for an exercise whose stated policy intention is to *reduce* public expenditure.

**Is the imposition and collection of the charge practicable and, if not, how could that be rectified?**

1. The Impact Assessment accompanying the Criminal Justice and Courts Act 2015 estimated the increase in debt accrual to HMCTS as a result of the policy would be approximately £1.2bn by 2020. This does suggest that collection of the charge in many cases will not be practicable.
2. The seductive argument that the charge was not introduced as a form of punishment but to make offenders contribute fairly to court costs ignores the practical reality that in some magistrates’ courts over 85 per cent of those appearing are on benefits. There is an almost complete absence of evidence that recovery rates of the charge from these defendants will be material.
3. Magistrates can cancel either all or part of the charge still owing if they believe the offender has taken ‘all reasonable steps to repay, taking into account their personal financial circumstances, or where it believes that it is not practicable to collect or enforce it’ so long as a certain period has passed, to be set out in secondary legislation at two years. This ‘cap’ period after which the charge can be cancelled is welcome. However, if an individual fails with a single repayment the period starts again. Two years is a long period for many individuals, often with chaotic lives, engaged with the justice system. An individual who has assiduously made payments for 18 months, for example, and then misses one, due to an unforeseen hardship, will have the cap period reset. Greater flexibility should be allowed, so judges can reward and recognise the efforts of individuals trying their best to meet payments.
4. Having payment plans that can be capped after two years does introduce an element of discretion for sentencers. This might well be deployed more effectively if it were extended to their power to set the charge in the first place.

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This consultation response does not reflect the individual policy position of any member organisation of the CJA