



House of Commons  
Justice Committee

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# **Criminal courts charge**

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**Second Report of Session 2015–16**





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**Second Report of Session 2015–16**

*Report, together with formal minutes  
relating to the report*

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## The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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## Summary

In this report we consider the effects on the criminal justice system which have arisen following the introduction of the criminal courts charge in April 2015. Given concerns expressed specifically about the charge in written evidence to our wider inquiry into a range of courts and tribunals fees and charges, we decided to produce an early and separate report on the charge. We acknowledge that so soon after the introduction of the charge there is a dearth of robust statistical evidence about its impact, but we consider that there is sufficient anecdotal and other evidence to enable conclusions to be drawn.

We explain in this report the background to the introduction of the criminal courts charge and the issues of principle concerning the charge. We also examine the consequences arising from the mandatory nature of the charge: courts have no option but to impose it, and to impose it at a fixed amount depending on where the case is heard and whether the defendant has pleaded guilty or not guilty, on those convicted of a criminal offence.

Evidence we received expressed scepticism about the collectability of the charge and thus whether the charge would generate the revenues projected by the Government in its impact assessment, especially considering the likely costs of enforcement. We also received evidence that the charge was affecting the behaviour of defendants and sentencers in undesirable ways. A number of witnesses to our inquiry were concerned that defendants might feel under pressure to plead guilty even when they weren't in order to avoid the higher charge on conviction for those who pleaded not guilty. Others argued that sentencers were altering their orders for costs and compensation in order to offset the increase in the total financial burden imposed on a defendant, at the expense of victims and the Crown Prosecution Service.

We have been persuaded by the evidence we received that there are a number of issues of serious concern arising from the charge as currently framed, and we have grave misgivings about it. In particular we express concern about: the levels of the charge being grossly disproportionate to the means of many offenders and the gravity of the offences in relation to which it has been imposed; the lack of discretion enjoyed by sentencers on whether to impose the charge and if so at what level; the capacity of the charge to raise the revenue projected by the Government and the effect of levels of non-payment on respect for the legal process; the creation of perverse incentives affecting defendant and sentencer behaviour; and the detrimental impact on victims and the Crown Prosecution Service from sentencers reducing awards of compensation and prosecution costs.

Our principal recommendation, in light of the evidence we have received and the grave misgivings about the operation of the charge which that evidence has prompted, is that legislation to repeal the charge should be brought forward by the Government. Should the Government be unwilling to bring forward proposals to abolish or radically reduce the levels of the criminal courts charge, we recommend, as an irreducible minimum, that a double discretion should be accorded to sentencers, first, to decide whether to impose a criminal courts charge and then, secondly, to decide upon the amount of the charge in accordance with the circumstances of individual cases.



# 1 Introduction

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## The Committee's inquiry

1. On 21 July 2015, shortly after our establishment at the start of this Parliament, we announced an inquiry into the impact or likely impact of a range of changes to the regime of fees and charges introduced or proposed by the Government within the courts and tribunals system. Most of these changes relate to fees for users of civil courts or tribunals. The exception is the criminal courts charge, imposed on those convicted of a criminal offence in the magistrates' court or the Crown Court. In relation to that charge, the terms of reference of our inquiry asked

What have been the effects on defendants of the introduction of the criminal courts charge? Has the criminal courts charge been set at a reasonable and proportionate level? Is the imposition and collection of the charge practicable and, if not, how could that be rectified?

2. In their submissions to our inquiry, a number of organisations and individuals dealt solely with the discrete topic of the criminal courts charge. The genesis and implementation of the charge have proved controversial, and there have been media reports that the new Secretary of State for Justice, Rt Hon Michael Gove MP, has been considering options for reforming or abolishing the charge.<sup>1</sup> All the witnesses to our inquiry whose submissions dealt with the charge, with the exception of the Ministry of Justice itself, were critical of it. The charge has also been criticised in the House of Lords: a motion of regret was agreed there on 14 October 2015, expressing concerns that the charge undermined the principle of judicial discretion, created an artificial inducement for defendants to plead guilty, and was brought in through regulations laid at a time that severely limited Parliamentary oversight.<sup>2</sup> There is also an e-petition, with over 1,500 signatures, on the Parliament website calling for the charge to be reviewed immediately.<sup>3</sup>

3. For all these reasons we decided to expedite our consideration of the effects of the charge with the aim of reporting our conclusions and recommendations at an early stage. We therefore held our first oral evidence session in this inquiry specifically on the charge, hearing on 27 October from a panel of representatives of criminal justice NGOs<sup>4</sup> and then from the Magistrates' Association. Following that session we offered the Minister for the Courts and Legal Aid, Shailesh Vara MP, the opportunity to put the Government's side of the case at an oral evidence session the following week, but he declined the offer. We were disappointed that he did not take up our offer. Instead we put some questions arising from the 27 October oral evidence session to Mr Vara for a written response to supplement the

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1 See e.g. [Criminal courts charge: Ministers prepare to retreat from controversial 'tax on justice'](#): The Independent, 15 October 2015; accessed on 5 November 2015

2 The text of the motion agreed to was "That this House regrets that the Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 undermine the principle of judicial discretion, and add an artificial inducement to plead guilty; and further regrets that the Regulations were laid at a time that severely limited Parliamentary oversight, as well as making claims for savings that cannot be substantiated (SI 2015/796)". [HL Deb 14 October 2015 cols 295–311](#)

3 [Require the Lord Chancellor to review the courts charge now, not in 3 years](#); 1,517 signatures when accessed on 5 November 2015

4 Phil Bowen, Centre for Justice Innovation, Frances Crook, Howard League for Penal Reform, Penelope Gibbs, Transform Justice, and Ben Summerskill, Criminal Justice Alliance

Ministry's original memorandum of evidence to the inquiry. We are grateful to all those who submitted written and oral evidence to us on the criminal courts charge.

4. So soon after the introduction of the charge there is considerable anecdotal evidence about its impact but a dearth of robust statistical evidence. Anecdotal evidence, especially if it comes from many different sources and tends to demonstrate similar trends, can of course be of considerable value. We have done our best to sift and weigh information presented to us and to distinguish between identifiable impacts of the charge and unsupported assertions about that impact.

## 2 The criminal courts charge

### What is the criminal courts charge?

5. Section 54 of the Criminal Justice and Courts Act 2015, which inserts a Part 2A, comprising sections 21A to 21F, into the Prosecution of Offences Act 1985, places a duty on the Secretary of State to impose a mandatory charge on offenders convicted of a criminal offence, intended to help cover the “relevant court costs” of the proceedings. These costs include the costs of the judiciary and the rest of the system of courts, but do not cover defence or prosecution costs. Under new section 21C(2) of the 1985 Act, the Lord Chancellor, when setting the amount of the charge by regulations, must “seek to secure that an amount specified in respect of a class of case does not exceed the relevant court costs reasonably attributable to a case of that class”. The relevant statutory provisions also empower the Lord Chancellor to require interest to be paid on unpaid charges, and to authorise courts to remit part or all of charges provided certain conditions are met, and after expiry of a period specified in regulations.

6. The criminal courts charge is in addition to other financial sanctions which may be imposed on convicted persons, including a discretion to impose fines on, and compensation or costs against, a convicted individual alongside a mandatory victim surcharge, the amount of which depends on the sentence passed. The new charge is mandatory and fixed, regardless of the offence or financial circumstances of the defendant. The amount of the charge depends on the court in which the case is heard, and is higher for those convicted after entering a plea of not guilty than those who pleaded guilty.

7. The criminal courts charge was implemented by the Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015. The regulations were made on 19 March 2015, laid before Parliament on 23 March, shortly before dissolution, and came into force on 13 April 2015. The levels of the criminal courts charge applicable in different circumstances are as follows:

Conviction by a magistrates’ court in proceedings conducted in accordance with section 16A of the Magistrates’ Courts Act 1980 (trial by single justice on the papers)(a)	£150
Conviction by a magistrates’ court for a summary offence on a guilty plea	£150
Conviction by a magistrates’ court at a trial of a summary offence where (a) the defendant did not enter a plea, (b) the trial proceeded in the absence of the defendant, and (c) the court dealt with the case on the papers without reliance on any oral evidence	£150
Conviction by a magistrates’ court for an offence triable either-way on a guilty plea	£180
Conviction by a magistrates’ court at a trial of a summary offence	£520
Conviction by a magistrates’ court at a trial of an offence triable either way	£1000
Conviction by the Crown Court on a guilty plea	£900
Conviction by the Crown Court at a trial on indictment	£1200
Magistrates’ court when dealing with a person under section 21B(1)(b), (c) or (d) of the POA 1985	£100

Crown Court when dealing with a person under section 21 B(2)(b) or (c) of the POA 1985	£150
Crown Court dismissing an appeal by a person against conviction or sentence	£150
Court of Appeal dismissing an application for leave to bring an appeal under Part 1 of the CAA 1968 against a person's conviction or sentence	£150
Court of Appeal dismissing an appeal under Part 1 of the CAA 1968 against a person's conviction or sentence	£200

8. In addition to setting the amounts of the charge to be imposed in relation to different categories of case, the regulations also determine the specified period after which a charge or the remaining part of a charge for a case heard in a magistrates' court may be cancelled, provided certain conditions are met. That period is 2 years if cancellation is on the application of the offender and one year if it is on the application of the court or the fines officer.

### The objective of the charge

9. In its Impact Assessment, the Ministry of Justice gave as an objective for the charge:

To recover some of the cost of the criminal courts from offenders to fund courts within the reformed Criminal Justice System, making offenders face the cost they impose on the taxpayer in England and Wales.<sup>5</sup>

In its written evidence, the Ministry further argued that the charge would not adversely affect defendant behaviour because offenders have the opportunity to pay the charge in affordable instalments, under a payment plan linked to ability to pay.<sup>6</sup> In a Written Answer to Philip Davies MP, given on 30 July 2015, the Minister for Courts and Legal Aid stated

Offenders can also contact a fines officer at any point to request variations in payment terms if their circumstances change.<sup>7</sup>

This point was reiterated by Secretary of State for Justice, Rt Hon Michael Gove MP, during Justice Questions on 8 September 2015, when he stated

It is important that the legislation is understood as having made it clear that the charge should be linked to ability to pay—the payment of that charge in due course should be linked to the offender's means.<sup>8</sup>

The Ministry of Justice said that it was aware of the importance of setting charges at rates that can actually be paid. It stated that it had set the level of charges below cost, with the Crown Court charge being “well below cost”.<sup>9</sup>

<sup>5</sup> [Criminal Courts Charge Impact Assessment \(IA number; MOJ223\)](#)

<sup>6</sup> [FEE 0033](#)

<sup>7</sup> [Courts fees and charges: Written answer 6615, 30 July 2015](#)

<sup>8</sup> [HC Deb 8 September 2015, col 217](#)

<sup>9</sup> [FEE0033, para 48](#)

10. The Judicial Executive Board (JEB)<sup>10</sup> in its written evidence stated that

The rationale for this reform is that adult offenders who are found guilty should contribute to the costs of the court system that prosecutes and penalises them. The notion that taxpayers are “subsidising” the criminal justice system, however, appears to the judiciary to undermine the fundamental principle that the protection of victims and the prosecution and punishment of offenders is an integral part of a civilised society from which all members benefit.<sup>11</sup>

The Magistrates’ Association (MA) took no formal position for or against the principle of the charge. In a survey conducted by the MA to which 960 magistrates responded, 56% of respondents expressed agreement with the principle of the charge. The MA however stated in their written evidence that “the current levels [of the charge], the fact that no account is taken of ability to pay and the lack of judicial discretion mean that the charge as currently constituted is not in accordance with the principles of justice”.<sup>12</sup>

11. We discussed with witnesses at our oral evidence session the question of whether an issue of principle applied to the charge which distinguished it from other costs, such as prosecution costs, which could be levied by courts on persons convicted of offences. Phil Bowen of the Centre for Justice Innovation put it this way:

I think there is a principled objection to it, which is whether defendants should pay for the right to be in court. That is different from whether they should pay the costs of the prosecution.<sup>13</sup>

### The mandatory nature of the charge

12. We did not specifically ask in our terms of reference for views on the consequences of the mandatory nature of the criminal courts charge, and the Ministry of Justice did not comment on this in their written evidence. Others were not so reticent. The Judicial Executive Board expressed concern at the removal of discretion from the sentencing court and the weakening of the ability of courts to ensure the total financial liability placed on an offender was proportionate. The JEB also drew attention to the likelihood of defendants being incapable of paying the charge. Finally, the Board found it strange that although the fact of the charge being mandatory meant it was not part of the sentencing process, after two years an offender could apply to have any unpaid remainder written off, as if it had been a part of the sentence.<sup>14</sup>

13. The Chairman of the Sentencing Council for England and Wales, Lord Justice Treacy, also noted in his written evidence that the mandatory nature of the charge meant it was not a part of the sentence of the court. This meant the charge was beyond the remit of the Sentencing Council, but a number of approaches had nevertheless been made to the Council on the matter. Treacy LJ drew attention in particular to the fact there was substantial anecdotal evidence that courts were reducing levels of fines being imposed

<sup>10</sup> The JEB, comprising Heads of Division, other members of the senior judiciary and the chief executive of the Judicial Office, is chaired by the Lord Chief Justice and supports him in carrying out his responsibilities for governance of the judiciary.

<sup>11</sup> [FEE0090](#)

<sup>12</sup> [FEE0062](#)

<sup>13</sup> [Q 10](#)

<sup>14</sup> [FEE0090](#)

and a similar approach was being taken to prosecution costs, with either a lower figure or no figure being awarded. If these two things were happening, Treacy LJ argued, it was probable that orders of compensation for victims of crime were being similarly affected.<sup>15</sup>

14. In their written evidence the Magistrates' Association argued that the granting of discretion to courts over whether to impose the charge and the level at which to set it would address key problems over the ability of offenders to pay and the practicality of collecting payment.<sup>16</sup> In oral evidence the Vice Chairman of the MA, Malcolm Richardson, argued that magistrates should have the same discretion over the charge as they did over orders for payment of prosecution costs.<sup>17</sup>

15. The Government on the other hand has argued that introduction of discretion would subvert the intention of the legislative provisions establishing the charge. In the Written Answer of 30 July 2015 the Minister stated that

The provisions are purely about recovering court costs and are completely separate from the offender's sentence. It would therefore go against the principles of the legislation to allow judicial discretion regarding whether or not to impose the charge or the amount to impose.<sup>18</sup>

The Government has also argued that the ability of sentencers to set affordable payment plans, already referred to, introduced an element of sentencer discretion. When we put this contention to the Magistrates' Association, however, they were not persuaded that this was a meaningful element of discretion. Mr Richard Monkhouse, the Chairman of the MA, explained that in practice discretion to set payment terms only applied to the total financial imposition made upon an offender,<sup>19</sup> and the Association's Vice Chairman, Malcolm Richardson, added

I am not sure whether I would necessarily describe it as discretion. Yes of course, you have a total amount of financial imposition and you can order the rate at which it will be paid, taking into account the circumstances of the individual in front of you. In that sense, yes, there is some discretion. The question, under all the guidance we are given about that, is that the period over which we ought to expect to recover that amount becomes too long if you add an additional minimum of £150 and upwards, as you know at least as well as I do, in terms of the numbers. That period gets inappropriate.<sup>20</sup>

16. The Criminal Justice Alliance made reference to the cap system in place whereby magistrates could cancel all or part of the charge still owing on the application of the offender after two years if the offender had taken all reasonable steps to repay, or in cases where it was not practicable to collect or enforce it. The CJA welcomed the introduction of the specified period, but noted that two years was a long period for many individuals and that missing a single payment caused the period to reset. Further noting that the power was discretionary for magistrates, the CJA argued that it would be more effective if the discretion were extended to the power to set the charge in the first place.

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15 [FEE0094](#)

16 [FEE0062](#)

17 [Q 47](#)

18 [Courts fees and charges: Written answer 6615, 30 July 2015](#)

19 [Qq 42-44](#)

20 [Q 45](#)

## Financial aspects

17. The Ministry's original impact assessment (IA) produced alongside the Criminal Justice and Courts Bill when introduced to Parliament was updated with an addendum<sup>21</sup> once charge levels and the length of the cap period had been provisionally decided. The Ministry estimated that the costs of the charge regime would be £25million p.a. in "steady state" in 2023–24, comprising £20 million p.a. as the cost of enforcing the charge and £5 million p.a. as the cost of imprisonment for those who defaulted on payments. In the addendum to the IA the Government further estimated that the net cash impact of the charge would rise steadily from a net loss to the public purse in 2015–16 of between £10 million and £20 million to a net revenue in 2023–24 of between £80 million and £160 million. The setting of a two year cap period was estimated to reduce net cash inflows in 2023–24 by between £15 million and £20 million. The addendum to the IA also provided an estimate of the likely additional debt accrual to HM Courts and Tribunals Service arising from non-collection of the charge. Running at £200 million a year, the total estimated debt estimated to have been accrued in 2020–21 is £1.2 billion. This estimate took no account of the possibility of writing off or cancellation of charges.

18. Early indications are that only a very small proportion of fines imposed have been collected, although there is no information on the extent to which this is due to inability to pay, the institution of affordable payment terms extending into the future, or a combination of the two factors. The quarterly HM Courts and Tribunals Service criminal court statistics for the period April to June 2015 do not give separate figures for the imposition and collection of the charge: instead the charge is subsumed within the category of "other" type of financial imposition.<sup>22</sup> Charges imposed under this category typically ran at between £0.5 and £0.8 million a quarter in the four years preceding the introduction of the new charge, so as the total for that category in April to June 2015 was £6.4 million, it is a reasonable assumption that between £5.6 million and £5.9 million of that total is accounted for by the criminal courts charge. Likewise, given that in previous periods the amount of "other" charges paid within one month of imposition was zero, the £300,000 paid between April and June 2015 is likely to represent payments of the new charge. If that is indeed the case then the rate of payment of the charge within the first month of imposition, at just over 5%, is substantially below the rate of payment of other types of financial sanctions imposed by courts on offenders during that period, ranging from 8% for compensation to 12% for victims' surcharge.

19. We asked the Minister if he could provide any further information in writing on the levels of imposition and collection of the criminal courts charge since its introduction. He replied

We are undertaking further work and quality assurance on the data so we can begin publishing detailed statistics on the first six months of the criminal courts charge in the next quarterly bulletin, which will be published on 17 December 2015.<sup>23</sup>

20. All witnesses except the Government expressed scepticism that the criminal courts charge would be successful in generating revenue for the criminal justice system. In fact,

<sup>21</sup> [Addendum to the Criminal Courts Charge Impact Assessment \(IA number: MOJ 223\)](#)

<sup>22</sup> [Criminal court statistics: April to June 2015 \(main tables\): Table A2](#)

<sup>23</sup> [FEE0107](#)

some had concerns that the charge could significantly add to net expenditure. The Howard League and the Criminal Justice Alliance highlighted the Government's estimate that it would need to spend an annual sum of £5 million to meet the cost of imprisoning people for non-payment of the charge.<sup>24</sup> The Howard League noted that increasing the prison population was particularly concerning as "prisons are dangerously and chronically overcrowded".<sup>25</sup> The Criminal Justice Alliance noted that in some magistrates' courts, over 85% of people who appeared were on benefits and they said there was no evidence that recovery rates from such individuals would be material.<sup>26</sup>

21. Uncertainty about the collectability of the charge and the projected net revenue from it clearly affects the extent to which replacement revenue would need to be found were it to be abolished. We have noted press reports that a tax of some kind on law firms undertaking lucrative commercial business might be introduced to plug a gap in the Ministry's finances if the charge were to be discontinued. We have not however pursued in our inquiry the question of what alternative means might be found for equivalent funding for the administration of the courts.

22. We asked the Ministry how much had been spent since the introduction of the charge on enforcing it. We were told

The cost of enforcing the CCC cannot be separated from the total cost of enforcing all types of court ordered financial impositions. However it can be confirmed that no additional resources have been required specifically as a result of the CCC.<sup>27</sup>

We find it difficult to square this statement with the estimate of £20 million p.a. for enforcing the charge contained in the Government's impact assessment.

23. Transform Justice argued that the charge added to a "confusing number" of court charges: compensation orders, victim surcharges, fines, and orders to recover prosecution costs. They contended that the bureaucratic cost of administering the various different penalties must be substantial, and were not convinced that the charge would succeed in its aim of bringing in substantial revenue to put towards expenditure on the courts system. Transform Justice instead argued that if the justice system was to meet the cuts imposed on it, it should seek to do so by reducing the number of cases brought to court, for example, by dealing with more minor cases such as criminal damage or theft by using out of court disposals.

24. The Magistrates' Association argued that the structure of the charge inevitably created problems for individual magistrates in observing the principle of totality. They explained the issue thus:

When sentencing offenders, magistrates are required to follow the principle of totality, ensuring that the total penalty imposed upon offenders is just and proportionate in all the circumstances. While the criminal courts charge is

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24 [FEE 060](#) and [FEE 037](#)

25 [FEE 060](#)

26 [FEE 037](#)

27 [FEE 0107](#)

an administrative charge, its actual effect on the total amount to be paid by offenders means many magistrates feel the principle of totality is undermined.<sup>28</sup>

They added:

The MA questions what rationale there can be, in the interests of justice, for requiring all other financial impositions to bear some relationship to the fine incurred (and making provision for ability to pay) and then imposing a separate charge where the court is explicitly banned from doing the same.<sup>29</sup>

25. In addition to the considerable costs of collection and enforcement of the charge, we wished to explore whether there might be any financial penalties to the Government from early termination or change to any contracts held for that collection and enforcement. In its supplementary evidence the Ministry said

There are no specific contractual arrangements in place that relate solely to the collection and enforcement of the CCC. The charge is a court-ordered financial imposition and is collected and enforced using standard processes and arrangements. If the CCC was abolished, the Ministry would not face any financial penalties, contractual or otherwise.<sup>30</sup>

## Effects on justice

### *Defendant behaviour*

26. The criminal justice NGOs who gave written evidence to us expressed strong concern that the criminal courts charge would, at the very least, place strong pressure on defendants to alter their behaviour and plead guilty in order to reduce the level of the charge imposed on them. The Howard League claimed

The mandatory and escalating nature of the criminal courts charge undermines the right to a fair trial as it may put pressure on people to plead guilty, even if they have not committed an offence.<sup>31</sup>

The Centre for Justice Innovation said it may “discourage defendants from exercising their right to a fair hearing”.<sup>32</sup> As evidence for changes in defendant behaviour, the Howard League cited an example of a 44 year-old man from Mansfield Woodhouse, who was advised by his solicitor to plead not guilty, but changed his plea after hearing he faced having to pay more than £1,400 if he pleaded not guilty and was then found guilty.<sup>33</sup>

27. At our oral evidence session we pressed witnesses for further evidence of potentially perverse incentives created as a result of the charge encouraging innocent people to plead guilty.<sup>34</sup> The witnesses called for collection of data by the Ministry to demonstrate whether these effects were occurring, and pointed out that even if the data were as yet unavailable, senior members of the judiciary were among those expressing concern.

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28 [FEE0062](#)

29 [ibid](#)

30 [FEE0107](#)

31 [FEE 0060](#)

32 [FEE 0034](#)

33 [FEE 0060](#)

34 [Qq 25–32](#)

28. We also asked if the charge might have the effect of encouraging more people who had committed crimes to plead guilty rather than not guilty, and Mr Bowen agreed that any system with “plea-bargaining-like effects” would have that result.<sup>35</sup> The Centre for Justice Innovation raised concerns that the policy would essentially usher in plea-bargaining by the back door.<sup>36</sup> Transform Justice noted there was already an incentive to plead guilty early in the trial process and that the charge strongly added to that incentive, as the charge rose four to eight-fold if a defendant went to trial and was convicted.<sup>37</sup>

29. Transform Justice claimed that the structure of the criminal courts charge also provided a strong incentive for defendants not to opt for trial by jury in the Crown Court. The Chairman of the Sentencing Council, however, said the reverse, arguing that the lack of a significant differential between the charges for either-way offences tried in the magistrates’ and in the Crown Court would encourage defendants to elect for trial by jury.<sup>38</sup> Transform Justice were also of the view that the charge would discourage defendants from appealing against their sentences, given that there is a charge of £150 if an appeal from a magistrates’ court is dismissed.<sup>39</sup>

30. The Centre for Justice Innovation (CJI) argued that a key part of a justice system was “procedural fairness”, and that the criminal courts charge was eroding perceptions of fairness, especially the perceptions of defendants. They contended that the charge undermined perceptions of the neutrality of courts, as it gave them a financial interest in the verdict of the court. They also argued that it would make defendants feel they had not been treated with respect by the courts, because the charge imposed could not take into account a defendant’s individual circumstances.

### *Sentencer behaviour*

31. There is some evidence that sentencers may have altered their behaviour as a result of the criminal courts charge. Because the charge is both mandatory and fixed in amount, some claimed that the courts, although having no legislative authority to do so, were altering their orders for costs and compensation in order to offset the increase in the total financial burden imposed on a defendant. The Howard League suggested that victims of crime and the Crown Prosecution Service in particular would probably lose out from such a change in sentencer behaviour.

32. The Howard League told us that not only were some courts avoiding imposing various discretionary compensation orders, but, for example, the courts might opt to order an absolute discharge rather than a conditional discharge in order to avoid having to impose the criminal courts charge. They provided an example of a Berkshire magistrate who ordered an absolute discharge for a man found with £5 worth of cannabis in his home. The presiding magistrate remarked, “That’s only the second time in 10 years I’ve done that.”<sup>40</sup>

33. There have been reports of judges and magistrates strongly criticising the effect of the criminal courts charge in particular cases. A number of magistrates are reported to have resigned because of the introduction of the charge. The Chairman of the Magistrates’

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35 [Q 27](#)

36 [FEE 0034](#)

37 [FEE 0025](#)

38 [FEE0094](#)

39 [FEE 0025](#)

40 [FEE 0060](#)

Association told us that over 50 magistrates had resigned because of their objections to the charge.<sup>41</sup>

### Other effects of the charge

34. Some witnesses argued that the charge disproportionately affected the mentally ill, homeless and poor. The Criminal Justice Alliance contended that since the court charges were mandatory and fixed in level, they necessarily affected poorer individuals most in relation to their total income. The Howard League provided a lengthy annex of cases, mainly culled from stories carried in local newspapers and other media, designed to demonstrate this. One of their examples was the case of a 32-year old woman who admitted to stealing a four-pack of Mars Bars worth 75p. She said she stole the item because she “had not eaten in days” after her benefits were sanctioned. She was fined £73, ordered to pay a £150 criminal courts charge, £85 costs, a £20 victim surcharge and 75p compensation.<sup>42</sup> Numerous similar cases were drawn to our attention in evidence.

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41 [Q 48](#)

42 [FEE 0060](#)

### 3 Conclusions and recommendations

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35. In most ordinary circumstances when dealing with the implementation of a new legislative provision or Government policy, six months would be a relatively short time after which to undertake an evaluation of its effectiveness. Section 55 of the Criminal Justice and Courts Act 2015 requires the Lord Chancellor to carry out a review of the operation of the charge three years after it has come into operation, which would be in 2018. As we explain above, the first authoritative officially-collated evidence of the financial impact of the criminal courts charge will not be available until 17 December 2015. We are not convinced that this will add greatly to the information already available affecting arguments for and against the charge, nor do we think it will add much to the wealth of anecdotal and reported evidence which is available on the impacts of the charge in the first months of its operation. The evidence we received from very senior members of the judiciary, as well as magistrates who deal day-to-day with the vast bulk of criminal cases, strikes us as particularly compelling. We therefore consider that our decision to look at the impact of the charge so early in its life is fully justified.

**36. Leaving aside the questions of the levels of criminal courts charge imposed and the various other aspects of the charging regime, we have carefully considered the case in principle for imposing a charge on convicted offenders to recoup some of the costs of administration of the courts system. We explored these matters in some depth in evidence with witnesses. Having weighed the evidence on the principle of the criminal courts charge, we have grave misgivings about whether the charge as currently framed is compatible with the principles of justice.**

37. Our grave misgivings about the principle of the criminal courts charge are compounded by the evidence concerning the operation of the regime which has been constructed to govern the imposition of the charge. Our principal concerns are as follows:

- **the levels of the charge which have been fixed by statutory instrument are grossly disproportionate to the means of many of the offenders to which it is applicable, as well as to the gravity of many offences for which it has been imposed;**
- **the lack of discretion enjoyed by sentencers on whether to impose the charge in the first place and on whether to tailor it to the means of the offender and the gravity of the offence creates unacceptable consequences within the criminal justice system;**
- **we are highly sceptical about the capacity of the charge to raise the net amounts of revenue projected in the addendum to the Government's impact assessment, and we believe that the levels of non-payment undermine respect for the legal process;**
- **we are concerned that the charge is having effects which are inimical to the interests of justice, creating perverse incentives which are affecting defendant and sentencer behaviour;**
- **we have received evidence that the charge is also likely to have detrimental effects on victims of crime and on the finances of the Crown Prosecution Service by making it more likely that sentencers will reduce moneys ordered to be paid for the victims' surcharge, for compensation, and for prosecution costs.**

38. *It appears to us that the statutory provisions governing the charge, by requiring the Lord Chancellor to make provision for a charge rather than simply empowering him to do so, have sought to entrench the charge and to make it impossible to abolish it without primary legislation to repeal Part 2A of the Prosecution of Offences Act 1985. We would not mourn the early abolition of the criminal courts charge and we recommend that legislation to effect that repeal should be brought forward. Pending any such repeal a similar effect could be achieved by the Lord Chancellor replacing the Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 with new regulations setting out radically reduced levels of charge applicable to each type of case. If the Government decides to abolish the charge, we consider it should report to the House on the implications of abolition for the public finances.*

39. *Should the Government be unwilling to present the House with proposals to abolish or radically reduce the levels of the criminal courts charge, we recommend, as an irreducible minimum, that a double discretion should be accorded to sentencers, first, to decide whether to impose a criminal courts charge and then, secondly, to decide upon the amount of the charge in accordance with the circumstances of individual cases. Such a change would resolve all the problems which have arisen with the operation of the charge, with the exception of making a dent in the revenues expected to accrue from the charge, assuming of course that those expectations are met, which appears on the evidence we have received to be extremely unlikely. Given the statutory entrenchment of the charge already referred to, it seems to us that the introduction of double discretion for sentencers will also require primary legislation to amend the provisions governing the charge in Part 2A of the Prosecution of Offences Act 1985. In the event that the Government is unwilling to contemplate abolition of the charge, we recommend that legislation to enable sentencers to exercise a double discretion in relation to the charge be brought forward urgently.*

# Formal Minutes

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**Tuesday 17 November 2015**

Members present:

Robert Neill, in the Chair

Alberto Costa	Andy McDonald
Philip Davies	Victoria Prentis
Mr David Hanson	Marie Rimmer
John Howell	

Draft Report (*Criminal courts charge*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 39 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 24 November at 9.15 am

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's [inquiry web page](#).

### Tuesday 27 October 2015

*Question number*

**Frances Crook**, Chief Executive, Howard League for Penal Reform,  
**Phil Bowen**, Director, Centre for Justice Innovation, **Ben Summerskill**,  
Director, Criminal Justice Alliance, and **Penelope Gibbs**, Transform Justice

[Q1–37](#)

**Richard Monkhouse**, Chairman, and **Malcolm Richardson**, Deputy Chairman,  
Magistrates Association

[Q38–76](#)

## Published written evidence

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Written evidence referred to in this Report is listed below and can be viewed on the Committee's [inquiry web page](#). All other written evidence in the Committee's inquiry into courts and tribunals fees and charges is also available on that webpage.

- 1 Centre for Justice Innovation ([FEE0034](#))
- 2 Criminal Justice Alliance ([FEE0037](#))
- 3 Judicial Executive Board ([FEE0090](#))
- 4 Magistrates' Association ([FEE0062](#))
- 5 Ministry of Justice ([FEE0033](#))
- 6 Ministry of Justice ([FEE0107](#))
- 7 Sentencing Council ([FEE0094](#))
- 8 The Howard League for Penal Reform ([FEE0060](#))
- 9 Transform Justice ([FEE0025](#))

# List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the Committee's website at [www.parliament.uk/justicecttee](http://www.parliament.uk/justicecttee).

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2015–16

First Report	Draft Allocation Guideline	HC 404
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