Written evidence from Transform Justice

Transform Justice

Transform Justice ([www.transformjustice.org.uk](http://www.transformjustice.org.uk)) is a national charity which works towards a more effective, humane, open and fair justice system. It has published reports on diversity in the magistracy, on the training of magistrates, on justice reinvestment and on the centralisation of the magistrates’ courts.

In this submission, Transform Justice is focussing solely on the criminal courts charge.

Background to the introduction of the charge

The Criminal Courts Charge was introduced to parliament without any public, judicial or wider stakeholder consultation. It was introduced as part of a bill containing a wide variety of disparate measures, including the introduction of a secure college and reform of judicial review. Attention focussed on these matters, and the charge may have got overlooked by campaigners, including ourselves. The charities Justice and the Magistrates’ Association did voice concerns about the charge in their briefings, but unfortunately these concerns did not receive wider attention. For more on this: [http://www.transformjustice.org.uk/how-did-the-criminal-court-charge-get-through-parliament](http://www.transformjustice.org.uk/how-did-the-criminal-court-charge-get-through-parliament).

The criminal courts charge, as the government’s briefing made clear, was introduced to help the MoJ meet the cost of courts administration. It is levied on everyone convicted in the Crown and magistrates’ court, regardless of their means, and is not varied according to means.

The Criminal Courts Charge in practice

Since it was introduced, the criminal courts charge has encountered a barrage of criticism. I have encountered no-one in the justice system (including professional judges) who thinks it is a good, or workable, policy. However, there is no research on how it is being implemented, nor its impact on individuals or MoJ finances, so much of this submission is based on private interviews and “anecdotal” evidence in the public domain. Transform Justice’s concerns about the Criminal Courts Charge are:

1) It adds to a confusing number of court charges. Courts already have to impose compensation orders, victims surcharge and sometimes fines, and CPS costs on those who are convicted. There is differing guidance relating to each amount and together they can amount to a considerable amount for someone on low income. The bureaucratic cost of dealing with four different costs must be considerable.

2) It provides a very strong incentive for defendants to plead guilty, even if they are innocent. The government has tried hard to incentivise those who are guilty to plead guilty at the earliest opportunity, thus saving court time. Already most sentences are reduced if the defendant pleads guilty at an early stage. This new measure presents a powerful new incentive to plead guilty, since the charge increases four to eight fold if a defendant goes to trial and is convicted. In some cases, it is hard to prove innocence. Currently, the danger is that an innocent defendant will choose to plead guilty because they cannot afford to take the financial risk of being convicted.

3) It imposes a charge on people which is disproportionate to the crimes committed and which they are very unlikely to be able to pay. The Howard League has regularly tweeted and

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1 Often c £85 for guilty pleas and £670-800 for those who are convicted post trial
published cases which seem unfair – a homeless man ordered to pay £455 including £180 courts charge for possessing a small amount of cannabis, a man who stole an ice-cream given a conditional discharge but obliged to pay £150 criminal courts charge. There is no discretion on the amount of charge that can be imposed. This runs counter to the guidance on fines, which says fines should be affordable, should be set at a level whereby they can be paid off within 12 months, and should be written off if it transpires there is little prospect of collection.

4) The charge framework provides a strong incentive to defendants not to opt for jury trial in the Crown Court, nor to appeal a sentence from the magistrates’ court. For either way offences, the charge is £200 higher if you opt to go to the Crown Court. The charge for having an appeal from the magistrates’ court dismissed is £150. There are already many barriers to defendants appealing their sentence (http://transformjustice.org.uk/main/wp-content/uploads/2013/12/Transform-Justice_Appeals-report.pdf ). This adds another barrier, and thus threatens the accountability of the justice system.

5) There is anecdotal evidence that judges are finding it hard to implement the charge. The wider judiciary, including magistrates, were not consulted on these proposals and there are many indications that they feel they are unfair. Over thirty (it is not clear how many) magistrates have resigned, and most magistrates are deeply unhappy about the charge. There is some evidence that judges are using creative means to mitigate the effects of the charge. I have heard that some Crown Court judges are ignoring the charge altogether, some magistrates are refusing to impose prosecution costs and, in other cases, they are giving absolute or conditional discharges. A magistrate in the North of England told me of a case where someone had pleaded guilty to criminal damage to a car. He was on benefits and had no recent criminal history. The court wanted to impose a compensation order, so at least the owner of the car got some compensation. But you cannot impose a compensation order without also imposing the criminal courts charge. So they imposed a conditional discharge for 18 months, but no compensation order or court charge.

6) There is a risk that the charge will not achieve its aim – bringing in £90-160 million per annum to subsidise the cost of courts administration. If judges use whatever means possible to avoid imposing the charge, and those convicted fail to pay the sums involved, the income generated will be considerably reduced. There is also a risk that the charge will have a knock on effect on the finances of the Crown Prosecution Service and on victims. Courts have some discretion over the amount of compensation awarded and on whether CPS costs are imposed on those convicted. Given the criminal courts charge is a fixed amount, there is a danger courts will reduce the amount of compensation, or reimbursement of CPS costs or both.

The Way Forward

The Ministry of Justice is an unprotected department subject to severe cuts. The criminal courts charge was introduced to increase the income of the courts service, whose budget derives from MoJ. The criminal courts charge may bring in some income, but it should be abolished because it distorts justice – imposing inflexible and disproportionate charges on poor people and incentivising those who are innocent to plead guilty.

If the justice system is to meet the cuts imposed on it, it needs to take a whole system approach. Significant sums could be saved through reducing the number of cases brought to court. More
minor cases such as criminal damage or theft could be dealt with using out of court disposals and/or with restorative justice. Money could also be saved through reducing the prison population.

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