Written evidence from the Prison Reform Trust

Who we are

1. The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for prisoners and their families.

2. The Prison Reform Trust's main objectives are:
   - reducing unnecessary imprisonment and promoting community solutions to crime
   - improving treatment and conditions for prisoners and their families.

www.prisonreformtrust.org.uk

3. The Prison Reform Trust welcomes the opportunity to respond to this inquiry. Our submission is focussed on the question posed by the committee on the criminal courts charge:

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?

4. The Prison Reform Trust is concerned about the impact the criminal courts charge is having on defendants and due process. Many offenders face significant social and economic disadvantage and are not in a position to afford court costs in addition to paying the costs of compensation, victim surcharge, prosecution costs and fines. Evidence suggests that the provisions are leading to injustice as defendants are entering a guilty plea rather than face the possible financial penalties of proceeding to trial.

5. The charge is a mandatory order which the court must make in addition to the Victim Surcharge. It is separate from other financial orders that the court may make such as compensation, a fine or prosecution costs. The charge rises from £150 for a guilty plea for a summary offence in a magistrates’ court to £520 for a conviction after a not guilty plea. The charge at crown court is £900 for a guilty plea and £1,200 for a conviction after a not guilty plea. The charge is collected after other financial impositions are paid off and offenders are able to apply to pay by instalments and to vary the rate of payment. The legislation also makes provision for the government to charge interest on outstanding payments.

6. Sentencers’ powers to remit the charge are restricted under the legislation. Section 21E of the Prosecution of Offences Act 1985 gives a magistrates'
court power to remit the charge in certain circumstances. However, the magistrates’ court may not do so until “a specified period” has elapsed from certain events, such as the day on which a person was last convicted of an offence. The charge may not be remitted at a time when the person is detained in prison. The charge may only be remitted if the court is satisfied that the person has taken all reasonable steps to pay it, having regard to the person’s personal circumstances, or it is satisfied that collection and enforcement of the charge is impracticable.

7. The mandatory nature of the charge means that sentencers are being forced to impose it in circumstances where there is little chance of compliance. The Chair of the Magistrate’s Association, Richard Monkhouse, has said that “we do not believe the vast majority of charges will ever be recovered because your average defendant can never pay”. The government’s own impact assessment of the charge acknowledges that “additional debt is expected to be owed to HMCTS after the introduction of the charge.” The total value of financial impositions outstanding in England and Wales currently stands at £572 million.

8. The impact assessment acknowledges the significant costs to the exchequer involved in the establishment of the charge. It estimates that “the total cost of transitioning to and maintaining a service that includes enforcing the criminal courts charge is £20m per year (in addition to costs of enforcement of current financial impositions).” It also estimates that “the potential increase in prison occupancy resulting from this sanction could lead to a cost of around £5m per annum in steady state (although the actual costs are dependent on capacity)."

9. The impact of the charge is likely to push many offenders into greater poverty and debt and could drive them to commit further offences. This is counter to the stated aim of government policy to reduce reoffending and promote effective rehabilitation. It also contradicts the established research evidence on the link between debt, finance and rehabilitation. For instance, the Social Exclusion Unit’s 2002 report, Reducing Re-offending by Ex-Prisoners, recognised the importance of finance, debt and benefits as one of the nine social factors involved in promoting successful resettlement.

10. Research shows that many offenders are on low incomes, have high levels of debt and rely on benefits for support. The Legal Services Research Centre (LSRC) has highlighted some of the correlations between people who offend and wider social factors. They found that people who had been recently arrested were significantly more likely to report civil law problems concerning,

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4 Ibid.
5 Ibid.
for example, employment (10% v 5%), rented housing (11% v 3%), homelessness (13% v 1%), and money/debt (21% v 6%). They were also more likely to have themselves been victims of crime (38% v 20%).

11. Research has shown that 68% of prisoners were unemployed in the four weeks prior to custody while just 7.7% of the economically active population are unemployed. 13% of prisoners have never had a job compared to 3.9% of the general population. 15% of prisoners were homeless before custody while just 4% of the general population have been homeless or in temporary accommodation. Research by the Prison Reform Trust and UNLOCK found that people in prison were ten times more likely to have borrowed from a loan shark than the average UK household. A third of people in prison did not have a bank account and that more than half had been rejected for a bank loan.

12. There is a risk that women will be disproportionately and unfairly burdened by the criminal courts charge. Financial concerns are a significant driver to women’s offending. A Cabinet Office study found that 28% of women offenders’ crimes were financially motivated, compared to 20% of men’s. Earlier research on mothers in custody found that 38% attributed their offending to ‘a need to support their children’, single mothers being more likely to cite a lack of money as the cause of their offending than those who were married. Anecdotally at least, there is evidence to suggest that women offenders are more likely to plead guilty at the earliest opportunity in order to get out of court as quickly as possible, often to meet their primary caring responsibilities.

13. A disproportionate number of people in contact with the criminal justice system have particular needs such as mental health problems, learning disabilities or autism. 20-30% of people in prison are estimated to have a learning disability or difficulty that interferes with their ability to cope with the criminal justice system. 26% of women and 16% of men said they had received treatment for a mental health problem in the year before custody. People with particular vulnerabilities often require additional support to help them understand the criminal justice process. Reasonable adjustments need to be made to enable them to comply with court orders. Otherwise, vulnerable

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9 Ibid.
10 Ibid.
15 Ibid.
defendants risk being set up to fail and their right to a fair trial may be put into jeopardy.\(^{16}\)

14. Significant concerns have been raised regarding the impact of the charge on the right to a fair trial. In its legislative scrutiny of the proposals, the Joint Committee on Human Rights recommended that “the Government monitor carefully the impact of the criminal courts charge on the right of defendants to a fair trial of the criminal charge against them, and make available to Parliament the results of that monitoring.”\(^{17}\)

15. Since the enactment of the charge, a number of senior legal and judicial figures and academics have spoken out on the disproportionality of the charge and its negative impact on due process. According to Richard Monkhouse, Chair of the Magistrates’ Association, magistrates have reported “a clear influence on pleas with the very strong temptation for defendants to plead guilty to avoid a higher charge.”\(^{18}\) The Independent newspaper has reported that the number of magistrates who have resigned over the policy is now estimated to have exceeded 50.\(^{19}\)

16. The Howard League for Penal Reform has documented a number of troubling cases, including one of a person who wrote to their local newspaper, the Shields Gazette, for advice about the charge. In a letter published on the newspaper’s website in July, the person wrote: “I am due to appear at Newcastle Crown Court in two weeks for an offence that I did not commit. I had planned on pleading not guilty, however I have been told that if I am found guilty I will have over £1,000 in costs to pay. Is this true?”\(^{20}\)

17. Professor Mike Hough, who established the Home Office’s British Crime Survey and has conducted independent research for the Ministry of Justice, has said: “I do think it’s a very unfair and very unpleasant bit of legislation that imposes very large costs on people without giving judges and magistrates any discretion to waive the charge where defendants clearly can’t afford them. It strikes me that these mandatory charges are in conflict with the European Convention on Human Rights. How can you have the right to a fair trial if you can only have one if you can pay for it? Article six gives people the right to a fair trial. I can’t see that you can have the right to a fair trial if you have to pay £1,200 to the court for it if you lose. It provides an added incentive to plead


\(^{17}\) Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill - Human Rights Joint Committee


\(^{19}\) Ibid.

guilty even when you are innocent."21

18. Mark Fenhalls QC, chairman of the Criminal Bar Association, has said: “The criminal courts charge is deeply unjust. Magistrates and judges should be allowed to set any court charge according to the individual’s means. Judges can and should be trusted to make the right decision. Disproportionate court charges may prevent rehabilitation and trigger yet more crime. Those who can’t pay the charges may end up in jail for defaulting while others may be driven to commit further offences. There are fairer ways of making the courts pay for themselves than by squeezing money out of the poorest in society – many of whom may be suffering mental health problems.”22

19. Judge Christopher Harvey Clark, QC, was forced to impose a £900 charge on a defendant who pleaded guilty to an offence after his case was sent to the Crown Court. Speaking in Truro Crown Court, Judge Clark said: “The charge has no bearing on your ability to pay. It is totally inappropriate for people of no means to have to pay this charge. It happens to be Government policy but as an independent judge I regard it as extremely unfair and, although I have to impose it, I do so with immense reluctance.”23

20. Richard Monkhouse, chairman of the Magistrates’ Association, has said: “It is deeply worrying that we’re losing such numbers of experienced magistrates. The issue has caused a level of concern among our members that I have not seen before and they tell us that it is about fairness. They’re reporting a clear influence on pleas with the very strong temptation for defendants to plead guilty to avoid a higher charge. When coupled with the fact we do not believe the vast majority of charges will ever be recovered because your average defendant can never pay, we’re reiterating our call for the Lord Chancellor to grant an urgent review and to give magistrates discretion on its case-by-case application, including means testing.”24

21. The Prison Reform Trust shares these concerns and endorses the recommendation of the Magistrates’ Association on the need for an urgent review of the policy. Giving sentencers greater discretion over the imposition of the charge and the introduction of means testing would be a welcome interim step. Arguably, the entire basis of the policy is flawed and counter to the evidence on what works to reduce reoffending. It also puts in jeopardy the fundamental right to a fair trial. Given these significant concerns, a complete reversal of the policy should not be out of scope of any government review.

22 Ibid.
23 Ibid.
24 Ibid.
22. As part of the review, the government should consider ways other than financial reparation in which offenders can make amends for harm caused. Restorative justice has been shown to deliver high rates of victim satisfaction, reductions in reoffending and potential savings to the taxpayer. In 2001, the government funded a £7 million, seven year research programme into restorative justice. The independent evaluation, published by the Ministry of Justice, found that in a randomised control trial of the use of restorative justice with adult offenders:

- The majority of victims chose to participate in face to face meetings with the offender, when offered by a trained facilitator.
- 85% of victims who took part were satisfied with the process.
- Restorative justice reduced the frequency of reoffending, leading to £8 in savings to the criminal justice system for every £1 spent on restorative justice.
- The government’s analysis of this research has concluded that restorative justice reduces the frequency of reoffending by 14%.

23. The Youth Conference Service, established in Northern Ireland in 2003, places restorative justice at the heart of the youth justice system. Making Amends, a report commissioned by the Prison Reform Trust, explores its impact and looks at the potential benefits of introducing a similar model in England and Wales. It found that victims were present in two-thirds of all conferences held – 89% expressed satisfaction with the conference outcome, and 90% said they would recommend it to a friend. In 2006, the combined reoffending rate for youth conferencing was 37.7% - this compared to 52.1% for community sentences and 70.7% for custodial sentences.

24. The Prison Reform Trust welcomed provision made in the Crime and Courts Act 2013 to introduce a legislative framework for pre-sentence restorative justice. These are provisions which could be built upon to ensure an entitlement for all victims to be considered for restorative justice. The results of an ICM telephone poll of 1,000 members of the public across Great Britain, conducted one month after the 2011 disturbances in English cities, showed overwhelming popular support for constructive ways in which offenders can make amends to victims for the harm they have caused. A criminal justice system based on reparation would reduce reoffending and command the confidence of victims and the wider public.

30 September 2015

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