Thank you for providing me with the opportunity to provide evidence to your current inquiry examining the current situation with regards to court and tribunal fees and charges.

It is a shame that Criminal Court Charge (CCC) was introduced just days before the dissolution of the last Parliament and without consultation to any statutory, community and voluntary groups or any relevant private sector organisations and a credit to the Government that it is responding to concerns about their effect so soon.

To inform your inquiry please find below responses to the questions asked in your request for evidence:

How have the increased court fees and introduction of employment tribunal fees affected access to justice? How have they affected the volume and quantity of cases brought?

What have been the effects on defendants of the introduction of the criminal court charge? Has the criminal court 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?

1. The charges are significant sums and the absence of a means test is clearly putting a higher burden on poorer people. There does not seem to be a justification for this in the principle set out, namely: ‘that convicted adult offenders who use our criminal courts should pay towards the cost of running them’ (MoJ spokesperson 28.9.15). That could still be achieved with a compulsory scheme but allowing magistrates to assess means.

2. Those ultimately convicted people who ‘use’ the criminal courts suggests that use is a consequence of their behaviour for which they should pay. However, some people are dealt with by Out of Court Disposals which don’t carry a CCC for offences for which others are taken to court. That breaks the chain of defendant responsibility and can brings in an unfair arbitrary element

3. In cases triable either way the Magistrates decide which court will try the case, albeit the defendant has a voice that too removes the chain of defendant responsibility and can fix someone who would have been tried in the magistrate’s court with a larger CCC

4. Clearly there is a significant CCC penalty for pleading not guilty and being convicted which is likely to influence a decision which it would be preferable to have unaffected by cost consequences. It cannot be ensured that people will only decide to plead guilty if they are guilty in this situation. For instance, a person, who is currently managing their finances just within their means is likely to put the cost question first. Of course trials do cost more than
guilty pleas but a judge can assess costs, means and culpability at the end of a trial, when s/he knows all the facts and the defendant’s situation.

5. It is said in the press, that magistrates are sentencing people to absolute discharges to avoid the CCC, which is an inappropriate distortion of fair sentencing. It should not be done but has to be acknowledged as an impact. It shows people appointed to the bench for fair-mindedness doing their best to avoid what they see as the injustice of the CCC regime. In Northumbria, anecdotally, magistrates are allowing applications to join separate offences in a single hearing. This is where a defendant has two or three charges. They will be adjourned until the last one is ready for court so that only one CCC need be imposed, at the final hearing. This too should not be done but is, reportedly, an impact. This is capable of undermining the principles of Transforming Summary Justice

6. There must be a risk that people will ultimately be sent to prison for not paying the CCC. It would be retrograde to re-introduce prison for debt and inevitably would impact on the needy with consequences for dependents, work, housing and all the well-known consequences of short-term imprisonment. It would also bring such people into CRC supervision which would not always be a sensible use of resources. There are already many examples of disproportionate effects which individuals are unlikely to be able to resolve. For instance:
   a) it was reported in the media of a women who was caught stealing Mars Bars because she hadn’t eaten for days after her benefits were sanctioned. The offence actually cost her, in fines and charges, the woman was penalised £328.75 for stealing food worth 75p - over 438 times the value of the theft.
   b) The Howard League inform that a woman in Newcastle recently wrote to her local newspaper “I am due to appear in Newcastle Crown Court in two weeks for an offence 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 £1000 in costs to pay. Is this true?”

7. It is not a good thing that Magistrates are resigning out of principle. They will make public statements when doing so, about not being prepared to take the blame for the CCC. It will impede confidence in part of the Criminal Justice System. Many will probably also see themselves as undervalued in having costs discretion removed. Public will see that the CCC is unfair. It is not impossible that decisions on charging and prosecution could be affected by this, if members of other criminal justice agencies act to mitigate its impact, by analogy with the advent of absolute discharges.

8. The general rule in Magistrates court is that people are expected to pay off their fines over a 12 to 18 months period, 85% of people who appear before the Magistrates Courts are on benefits and can only afford £5 a week. The Criminal Court Charge- on top of the victim surcharges, fines and compensation orders will make that impossible in many cases

9. There is arguably a breach of article 6 of the ECHR and the Human Rights Act although that has yet to be tested.
10. The introduction of employment tribunal fees in July 2013 has, like the Criminal Court Cost, created a segregation in those wishing to pursue justice. The fees are charged at two levels depending on the nature of the claim and are payable at two stages. On logging the claim and before the hearing itself. Tribunal type A, which includes unpaid wages will cost £390 and type B, including unfair dismissal and discrimination will cost £1,200. In many cases the prospect of paying such a charge will deter people from pursing their rights.

11. Bristol University conducted research into the real impact tribunal fees are having upon workers. They reported that “One year on from the introduction of fees data from the Ministry of Justice reveals that there was a 81% decline in the number of cases lodged in the Employment Tribunal for the period January to March 2014 compared with that same quarter in 2013. Bristol University also provided case studies of how the fees have impacted on employees, they describe how a man was dismissed from his minimum wage paid employment for misconduct, however, he suspected that his employer was looking to cut costs and used this as an excuse. He was advised by his solicitor that he was able to claim unfair dismissal but that Employment Tribunal fees would be payable unless he was eligible for remission. The man was unable to gather the necessary documentation and was subsequently advised to pay the initial £250. However, the man was unable to gather the funds

12. The Scottish CAB conducted a survey and like Bristol University found “The fees regime acts as a financial deterrent to making a claim and also creates new obstacles for bureau clients wishing to take a claim to the Employment Tribunal. It heightens the present inadequacies in the system and it negatively alters the power balance between workers and employers when it comes to resolving employment disputes.

How has the court fees regime affected the competitiveness of the legal services market in England and Wales, particularly in an international context?

1. In April 2013, the secretary of state for justice, Chris Grayling MP, was proud to boast: "In Britain we have a justice system of which we can be proud, and which justly deserves its worldwide recognition for impartiality and fairness." The CCC and the changes to legal aid contradict this statement as the financial burden of defense, for many, is simply too costly to contemplate exercising their right to a fair trial. The fees are unrealistic and the mandatory nature of the charge means that sentences must impose it even when it is clear the person has no means to pay.

2. In respect of employment tribunals it is reported that 'Court fees have been highly contentious since their introduction in 2013. The purpose of the fees was to reduce the amount of claims made without just cause. It has been reported that 'since the introduction of the fees there has been a significant drop in the number of claims, which were down 55% after 6 months of the fee’s been introduced and 75-80% after a year.
3. Whilst employers are happy that there has been a reduction in claims it appears that many claims are not been made. Employees who don’t get paid the minimum wage, and are unfairly dismissed without notice or have unlawful deductions made from their wages often don’t have the necessary resources £1,150 to bring a claim. For that reason it would seem the fees have created a barrier to justice.

30 September 2015