Written evidence from the Crown Prosecution Service

1. On 21 July the Justice Committee announced that it would hold an inquiry into the effects of the introduction and levels of fees and charges imposed by Her Majesty’s Courts and Tribunals Service (HMCTS) and asked for views on any aspect of this subject.

2. The Crown Prosecution Service (CPS) welcomes the opportunity to comment and this response focuses on two areas where the CPS has an interest, namely the mandatory criminal courts charge imposed by courts on convicted defendants and the approach to charging fees to other government departments when applying for civil orders in criminal proceedings.

3. The CPS is the principal prosecuting authority in England and Wales prosecuting around 800,000 defendants per annum. As such the CPS prosecutes the majority of cases where the criminal courts charge applies and is therefore uniquely placed to comment from the perspective of being an interested party concerned in the sentencing exercise.

4. CPS does not propose to respond in relation to non-crime aspects of the inquiry, or address issues relating to access to justice which are better left to discussion and negotiation between defence practitioners, their representative bodies and HMCTS.

Criminal Courts Charge

5. The criminal court charge imposes a non-discretionary charge on all adult offenders convicted for offences committed on or after 13 April 2015, except where the offender is sentenced to an absolute discharge or a hospital or guardianship order, and this is imposed separately from other financial considerations and orders the court may make.

6. The CPS acknowledges the difficult financial position currently faced by HMCTS and other government departments including, of course, the CPS itself and understands the need to recover costs. The CPS accepts that it is right for HMCTS to attempt to recover a contribution to the cost of administering criminal courts from offenders and thus reducing the burden on the tax payer. However, the CPS is concerned about the potential impact on other financial considerations which form part of the sentencing exercise.
7. It is the policy of the CPS to apply for costs against all convicted defendants, and unsuccessful appellants, unless the particular circumstances of a case mean that such an application would lack merit or an order of costs would be impractical. This application should be made in relation to costs directly incurred by CPS in bringing the prosecution, for example, costs incurred through the preparation of the case – staff costs, counsel’s fees, witness expenses and expert fees.

8. Through the payment of prosecution cost awards the CPS recovers approximately £35 - £40 million per annum, a significant contribution to the income of the Service.

9. The award of prosecution costs is a matter for the court and is discretionary. The court may make such order payable to the prosecutor as it considers just and reasonable and an order should only be made where the court is satisfied that the defendant or appellant has the means and the ability to pay. Whereas the criminal court charge is not linked to the offender’s sentence or means to pay, but is imposed at a pre-determined level set according to the costs reasonably attributable to a typical case of that type. The guidance accompanying the courts charge sets out clear principles that the court will not take the courts charge into account when deciding on the appropriate sentence. Therefore the effect of the court charge should be ignored when the court considers the prosecution costs award or any other financial penalty.

10. The criminal court charge was introduced in April 2015 and consequently it is premature to fully appreciate the implications of the charge on the criminal justice system. However, early experience of prosecutors suggests that some tribunals are offsetting the discretionary financial element of the sentence e.g. fines, compensation and prosecution costs awards as a result of having to impose the non-discretionary courts charge, in contradiction of the guidance. The CPS is concerned that the courts charge (payable to HMCTS) will displace the prosecution costs award (payable to CPS), which the CPS uses to recover part of the costs of bringing a prosecution case. If this pattern continues over time it will have an adverse effect on the CPS budget impinging on the organisations ability to effectively prosecute cases.

Civil charges

11. In an effort to reduce the cost burden of running HMCTS on the taxpayer, HMCTS has put forward measures to increase fees charged to parties when making applications in civil proceedings. The CPS is affected by these measures as a small number of civil orders relate exclusively to criminal offences.
12. The CPS has a continuing duty of review criminal cases and part of that duty is to consider making applications for ancillary civil orders on conviction for a criminal offence where it is appropriate to do so. The imposition of fees on the application for civil orders in relation to criminal offences, such as Criminal Behaviour Orders (CBO) and applications to vary restraining orders, is wholly inconsistent with the CPS carrying out the public function which it is required to perform by law. The result of HMCTS charging CPS to make such applications has no benefit to the public purse overall; indeed the administration cost of levying charges between government departments ultimately creates costs, not savings, for the tax payer.

13. The CPS is also concerned that any charge levied against it when applying for civil orders could have the perverse consequence of reducing applications being made for potentially beneficial ancillary orders, such as Criminal Behaviour Orders.

**Conclusion**

14. The CPS acknowledges the need to manage the cost of HMCTS in ways which are prudent, fair and proportionate and remove the burden on the tax payer. However any costs imposed have to create benefit to the tax payer overall and be sympathetic to the impact on other government departments.

30 September 2015

---