Written evidence from the Sentencing Council

1. The Justice Committee invited views in relation to four areas of courts and tribunals fees and charges. In my capacity as Chairman of the Sentencing Council for England and Wales, this response is limited to consideration of the impact of the criminal courts charge and specifically addresses the first of the three questions on which the Committee invited views. It is based on observations and representations made by others to the Council, rather than first-hand experience.

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

2. It is important to underline that the charge is an automatic imposition. It is not part of the sentence of the court. The amounts to be charged are unrelated to the means of the offender.

3. Since it is not a sentence of the court, the Sentencing Council has not monitored the effects of the charge and has no remit to do so. In any event, it is too soon after the introduction of the charge for data to have been collected and analysed.

4. However, the Sentencing Council’s members and staff have received a number of approaches on this issue, which provide a strong indication that the charge is impacting on court processes in ways unlikely to have been intended:

   a) There is substantial anecdotal evidence that courts (magistrates’ courts in particular) are reducing levels of fines to take account of the mandatory charge in circumstances where the courts charge impacts on a defendant’s ability to pay a financial penalty.

   b) A similar approach is being taken to orders for prosecution costs, which are being reduced or not made at all.

   c) If a) and b) are occurring, it is reasonable to infer that orders of compensation to victims of crime may be similarly affected.

   d) In some of the responses to the Sentencing Council’s recent consultation on its Allocation Guideline, concerns were raised about two potential adverse effects of the charge:

      i. it creates an incentive to plead guilty purely to avoid high trial charges in some cases;
      ii. the lack of significant differential between magistrates’ court and Crown Court trial charges will encourage a greater number of elections for trial at a time when the criminal justice system is trying to keep more cases in the magistrates’ court, partly in order to reduce costs.
5. The ordinary sentencing principle regarding the awarding of prosecution costs is set out in guidance given by the Court of Appeal in *R v Northallerton Magistrates’ Court, ex parte Dove* [2000] 1 Cr App R (S) 136 (CA), which is included in the Magistrates’ Court Sentencing Guidelines:

i. an order for costs should never exceed the sum which, having regard to the offender’s means and any other financial order imposed, he or she is able to pay and which it is reasonable to order him or her to pay;

ii. an order for costs should never exceed the sum which the prosecutor actually and reasonably incurred;

iii. the purpose of the order is to compensate the prosecutor. Where the conduct of the defence has put the prosecutor to avoidable expense, the offender may be ordered to pay some or all of that sum to the prosecutor but the offender must not be punished for exercising the right to defend himself or herself;

iv. the costs ordered to be paid should not be grossly disproportionate to any fine imposed for the offence;

v. **if the combined total of the proposed fine and the costs sought by the prosecutor exceeds the sum which the offender could reasonably be ordered to pay, the costs order should be reduced rather than the fine** (emphasis added);

vi. it is for the offender to provide details of his or her financial position so as to enable the court to assess what he or she can reasonably afford to pay. If the offender fails to do so, the court is entitled to draw reasonable inferences as to means from all the circumstances of the case;

vii. if the court proposes to make any financial order against the offender, it must give him or her fair opportunity to adduce any relevant financial information and to make appropriate submissions.

6. If the offender has insufficient resources to pay the total amount, the order of priority is: compensation; victim surcharge; fine; costs. The charge, which is not part of the sentence, runs counter to that well-established guidance. In all of its guidelines, the Sentencing Council’s approach is to highlight that any financial penalty must reflect the seriousness of the offence and be proportionate to the means of the offender, a principle which is enshrined in section 164 of the Criminal Justice Act 2003. The vast majority of sentences in magistrates’ courts are fines and the Magistrates’ Courts Sentencing Guidelines provide extensive guidance to magistrates on how to achieve this proportionality.

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