Written evidence from Kingsley Napley Llp

Kingsley Napley is one of the leading criminal defence firms in the country. We think that there is value in providing our own submission since the committee does not appear to have heard from many solicitors firms. Yet, firms specialising in criminal defence work have the greatest understanding of the impact of measures such as the courts charge on defendants in criminal proceedings.

All defendants in criminal proceedings, whatever their personal circumstances, want advice on the likely outcome of a trial and the consequences of a conviction. In giving that advice we have a duty to act in the best interests of a client. Where an individual maintains their innocence, and has a credible defence, it is of course our responsibility to advise the client to plead not guilty. While that seems like an uncontroversial and indeed unarguable statement, it nevertheless remains the fact that in making their decisions about how to proceed, individuals are heavily influenced by the consequences of a conviction. In that context, the distinction that the government makes between a penalty (that is, the sentence) and a charge (that is, the courts charge) is meaningless to most defendants. Both are consequences of a conviction.

Kingsley Napley does not routinely make submissions about government policy. Most of our clients, being sufficiently well-off to be able to pay privately, are unaffected by the court charge. But as members of the legal profession heavily engaged in the criminal justice system, we feel that we have a responsibility to voice our deep concerns about the courts charge. The policy seems to us to be both unfair and unjust. The widespread condemnation from senior judiciary and other professionals demonstrates that this is not a “political” issue. Stephen Parkinson of this firm started a petition on 15 October 2015 calling for an immediate review of the courts charge. In the short space of time since that date, 1,466 people have signed the petition, largely consisting of legal professionals. That is quite a remarkable level of support given that the courts charge only truly impacts on the poorest of society.

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

There is nothing objectionable in a policy that provides incentives for people to plead guilty early, thereby saving court time. The existing sentencing regime encourages early pleas, with credit of up to a third reduction in sentence given for ‘timely’ guilty pleas. This system is fair because it creates an appropriate incentive for a guilty person to plead guilty. The size of the reduction is not so great as to distort the likely outcome, that is, to cause individuals to give undue weight to the likely sentence in deciding whether to not to contest the case.

The courts charge regime is, however, different. A defendant who is charged with an either-way offence in the magistrates’ court faces a charge of £180 if he pleads guilty, but £1000 if he is found guilty after being convicted in a trial. This is more than a five-fold increase. It is certain that, given the differences in consequences between contesting a trial and pleading guilty, this will have a huge impact on decisions by individuals who have very limited means. A lawyer faced with a client who maintains his innocence and who has a credible defence but is determined nonetheless to plead guilty will have a very difficult task in persuading him otherwise. We know that the committee is concerned that it has not been presented with actual examples of this happening. But lawyers cannot provide actual examples without breaching client privilege, and clients themselves are unlikely to come forward, since to do so would cause unwanted publicity and open up the whole matter again.
These points assume that a lawyer is able to give advice. Worryingly, where an individual finds himself ineligible for legal aid and has to represent himself, he will have no legal advice available to him to assist in weighing up the options.

2. Has the criminal courts charge been set at a reasonable and proportionate level?

We submit that this is the wrong question – the problem is far wider than this.

First, the law as it stands provides no discretion for the judiciary. Not only must they impose the charge, they cannot take into account an offender’s means when doing so. This is wholly unfair and undoubtedly disproportionately affects the poorest in our society. It also makes nonsense of the sentencing process which requires courts to assess the means of the defendant. A wealthy defendant will be untroubled by the courts charge; an impecunious defendant can be crushed by it.

Secondly, the legislation fails to justify the contention that the charge itself is a financial consequence of committing a crime but not a sentence. The only alternatives to paying the charge are to undertake unpaid work, or to submit to a curfew or attendance centre requirement pursuant to s.300 of the Criminal Justice Act 2003. These are the alternative “sentencing” powers available to a court for non-payment of fines. The reality is that a criminal courts charge is a fine for all practical purposes.

3. Is the imposition and collection of the charge practicable and, if not, how could that be rectified

The charge was introduced on the basis that “convicted adult offenders who use our criminal courts should pay towards the cost of running them” with the aim being “reducing the burden on taxpayers”.¹

In practice, however, this policy will often lead to extra and unnecessary court appearances. A significant number of individuals will find themselves unable to pay the courts charge from their incomes. Since the legislation fails to permit the court in most cases to remit the charge for 2 years, these individuals will have to be treated as “fine defaulters” and brought back before the court. Pursuing charges that cannot be paid wastes court time – a wholly perverse consequence of a policy designed to recoup court costs.

29 October 2015

¹ Criminal Courts Fact Sheet, paragraph 1: