



Justice Committee

Oral evidence: Courts and tribunals fees and charges, HC 396

Tuesday 27 October 2015

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Written evidence from witnesses:

- [Howard League for Penal Reform](#)
- [Centre for Justice Innovation](#)
- [Criminal Justice Allowance](#)
- [Transform Justice](#)
- [Magistrates' Association](#)

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Members present: Robert Neill (Chair), Richard Arkless, Alex Chalk, Alberto Costa, Philip Davies, Mr David Hanson, Dr Rupa Huq, Marie Rimmer

Questions 1 - 76

Witnesses: **Frances Crook**, Chief Executive, Howard League for Penal Reform, **Phil Bowen**, Director, Centre for Justice Innovation, **Ben Summerskill**, Director, Criminal Justice Alliance, and **Penelope Gibbs**, Transform Justice, gave evidence.

Q1 Chair: Good morning, everybody. Thanks very much for coming to join us for the evidence session. Can I do the formal piece of housekeeping we always have to do and ask my colleagues whether they have any declarations of interest beyond those that are in the register? No; we can take everybody's declarations as per the register. Some of you know that a number of us have connections with the legal profession in one way or the other, but I do not think that that goes beyond what is already declared.

Thank you for coming to talk to us about the impact of the criminal courts charge. We have had a good deal of written evidence on it, some of which you may well have seen. I will make sure that I give everybody a chance to come in. All of us know the organisations from which you come; I am grateful to have a range of people here. Can we have a look at the principle of the thing, as far as this is concerned? When you look at the Ministry of Justice's

evidence supporting the charge, they would say, “We believe it is right. Adult offenders are convicted of a crime and have committed an offence. That puts some cost upon the state. It is therefore legitimate that people who use the criminal courts—if you commit a crime, you end up in the criminal courts and are a user—should pay towards the cost of that.” What is wrong with that?

Frances Crook: There is a principle about justice, which is that justice is for all of us and affects all of us. That is different, perhaps, from health, which is individually administered. Justice benefits everybody. Bringing civil support for victims benefits everybody and dealing with defendants benefits everybody. It is the fundamental basis of what makes our society civilised. I do not think that you should tamper and fiddle around with that. We have to give it huge respect. That as a principle is something we should not play with.

Q2 Chair: It might be said that I choose to commit a crime, in many cases, but I do not choose to get ill, so how does your analogy with health work?

Frances Crook: A lot of people do not choose to commit crimes. A lot of people we are dealing with today have been begging because they are hungry. They have not necessarily made a life choice. The kind of people who will end up with this charge in the lower courts are not making a rational, actuarial decision. I think that the analogy works. Justice is indivisible; it is universal and it should be respected across society.

Penelope Gibbs: Could I quote one sentence from the Judicial Executive Board’s evidence to your Committee?

Chair: Indeed.

Penelope Gibbs: It said, “The notion that taxpayers are ‘subsidising’ the criminal justice system, however, appears to the judiciary to undermine the fundamental principle that the protection of victims and the prosecution and punishment of offenders is an integral part of a civilised society from which all members benefit.”

Q3 Chair: If you followed that to its absolute principle, you would never recover any money from those who do wrong, would you?

Ben Summerskill: We differ very slightly from some of the evidence that you have received—certainly from what a leading academic has just said, which is that somehow Parliament introduced this charge covertly or secretly. Lots of unfair things are said about MPs. One of them is that it was somehow covert to introduce a measure that occupied four and a half pages on the face of a public Bill. We do not really think it is covert.

Pragmatically, the more important point—Committee members may have reflected on this in the past 24 hours—is that sometimes a measure that is determined by understandable enthusiasm for fiscal restraint is consequently not subject to quite as much scrutiny as to its impact and outcomes as might otherwise be the case. The concern of a lot of our members is specifically about the impacts and apparent outcomes that seem to have been a consequence of this measure, rather than necessarily the jurisprudence of the principle.

Q4 Chair: Yes. I suppose there is an argument that there are other ways in which those who have committed crimes can be obliged to contribute to the costs of the system. Is this the most effective one? Phil, do you have any thoughts? We have heard from everybody else.

Phil Bowen: The only thing I would add to what Penelope just said is that it is certainly a new principle. We do not, for example, ask the accused to pay the costs of being arrested or for their prison place, so it is a new principle.

Chair: Fair enough.

Phil Bowen: This is probably a personal view, rather than the view of the Centre for Justice Innovation, but I believe that the criminal justice system should be in the main publicly funded. I think, therefore, that this principle starts to fetter that. I would not say anything further to that.

Penelope Gibbs: There is a really interesting example, which is Ferguson, Missouri, in the United States. A report by the US Government on the race riots there cited both problems in the police's attitudes and court fines and charges that were unfair. The problem was that law enforcement practices were shaped by the city's focus on revenue, rather than public safety needs. It is a slippery slope in terms of the credibility of the system if the courts are seen as a revenue stream.

Q5 Chair: Understood. Does that mean that they should be entirely devoid of any desire to impose a financial penalty, or should there be some discretion around those matters, and some use of other financial tools in conjunction?

Frances Crook: We have never opposed the idea of fines that are appropriate. If it is seen as a positive thing—as a penalty that is appropriate, proportionate and imposed when people can afford it—we have never opposed that; but we have a very complex system of financial penalties at the moment. You asked about principles. Understanding justice is really important. Justice should be as simple as possible. I know that that is asking a lot, but it should be seen to be fair. At the moment, the system that we have is not seen to be fair. It is not understood, and, as Penelope suggested, there is a sense of resentment that it is not fair.

Q6 Alex Chalk: At the moment in criminal courts, defendants will often be asked to make a contribution—of course, it is not the entirety—towards the costs of the prosecution. Do you draw a distinction between the requirement to contribute towards the costs of the prosecution and this Crown court charge—or, indeed, court charge? If so, what is that distinction? Or are you saying that they should not be required to make a contribution to prosecution costs either—that there should be no costs at all?

Ben Summerskill: The most important issue of principle here—this is to do with practicality—is that we appear to be in a situation where, most particularly, there has developed an incentive for defendants to plead guilty when they may not be. That goes to the heart of a fairly understood system of justice.

Q7 Alex Chalk: Can I press you on that specific point? Are you saying that there is a distinction between the requirement to pay prosecution costs and the court charge, or are you saying that people should not be required to pay anything in any circumstances ever?

Ben Summerskill: There is a distinction, because there is no discretion in the court charge. It is absolutely fixed. There is no anticipation that anyone will mitigate the charge because of their capacity to pay—

Q8 Alex Chalk: Could I have a direct answer?

Frances Crook: You are raising a really fundamental point. You are probably right. There should not be a charge towards the costs of either. That is a problem, because it is well established. It would bust a huge hole in the CPS budget, so there is a practical, budgetary issue. But you are right—they are similar. As a matter of principle, there is a real question over—

Q9 Alex Chalk: I do not want to monopolise the debate. I have great sympathy with this overall point, but I am very concerned if it comes from the standpoint of saying that no defendant, who by the way will have committed a crime, should make any contribution to prosecution costs. It seems to me that that is completely different, but I would be interested—

Phil Bowen: The distinction is that when you have two people bringing a case to court, essentially, and you are paying the costs because you lost that case; that is a different principle from the principle of saying, “The use of our courts carries a charge.” That is the principle at the heart of the objection.

Chair: That is welcome.

Q10 Richard Arkless: I sense that there is a battle between principle and impact here. Some people may think that the principle is sound, but you are potentially outlining, and it is clear to see, that there may be unwanted, unintended consequences of this criminal court charge. A survey done recently by the Magistrates Association found that 56% of 960 magistrates were in favour of the charge, at least in relation to the principle. What comment would you pass on that? Do you see that same pull between principle and impact in the magistracy?

Phil Bowen: I understand that it is a complex picture. Given the answer that I have just given, I would want to re-emphasise to the magistracy that I think there is a principled objection to it, which is whether defendants should pay for the right to be in court. That is different from whether they should pay the costs of the prosecution. As Frances said, it is a complex picture, as the charges that can be imposed on a defendant are various. Part of that has probably led to that result.

Penelope Gibbs: I think that it reflects the views of magistrates. If you asked other sectors within the criminal justice system, such as defence lawyers, they might come up with a different view.

Chair: That leads us to where we go with the impacts. We have talked about the practical incentives or otherwise.

Q11 Alex Chalk: Leaving aside the merits of it for a moment, if it were to be abolished, do you have any views as to how properly HMCTS or, indeed, the MOJ could go about finding some of this money in a way that is fair and does not adversely impact on the criminal justice system? Do you have any ideas?

Penelope Gibbs: I would go for system reform. That is the problem with the Ministry of Justice. It has done a lot of cuts that are very piecemeal—a little here and there—to try to square the circle, whereas we should look at the whole system. There is a very interesting project called Operation Turning Point in Birmingham, where offenders who have reached the threshold of prosecution are offered, with the agreement of victims, police and so on, an alternative to prosecution—a programme they have to go through. That means that they do not actually go to court and through the court process. If the system embraced those kinds of initiatives, you could save huge amounts in court costs.

Q12 Alex Chalk: You are saying that there should be diversion from prosecution, basically.

Penelope Gibbs: It has to be done properly, with safeguards. This particular pilot is being monitored, evaluated and so on. Yes, I am saying that we should look at the system as a whole and ask, “Do we need everything that gets into court really to be there to do justice and to make sure that offenders are punished and do not reoffend?” It does not always have to go to court.

Frances Crook: I absolutely agree. We have a medieval system underneath this, and we are piling stuff on top of it. I welcome the Secretary of State’s vision of doing something more radical. I know that he has spent a lot of time looking at courts. We need fundamental reform, particularly of the lower courts, because they are being asked to do all sorts of things that should not be in the court system at all. In this day and age, a 19-year-old having a court charge imposed on him for begging in the street when he did not know that begging was unlawful is medieval. It is not even Victorian—it goes back a bit further. A fundamental reform is absolutely essential. I want to put in a caveat. I do not want to see the court charge made discretionary; the Howard League does not support that idea. As the Minister pointed out in the House of Lords, very clearly this is not a punishment. It is a charge and a revenue stream, so it should not be discretionary. I do not want to see that.

Finally, supporting what Penelope said, the experiment that is going on in Birmingham is extraordinary, because it is one of the very few times that the criminal justice system has been tested with evidence. We have a criminal justice system that more often than not is based on, “I’ve got a good idea,” or, “I feel strongly about this.” That is not a good way to develop justice. We should look at a proper experiment, properly evaluated by a university, and look at the evidence to see what works better. The emerging evidence is that the out-of-court disposals have better outcomes than the court disposals. This is a blind trial. It is really interesting that there are some experiments going on. To use the health analogy, in health we do not just say, “We’ll give you this drug because we think it might be the right thing to do”—we test things. It is really important to test things, because that has not been the case. Reform of the lower courts is absolutely fundamental to this. If anything, the court charge has been welcome, because it has illustrated the problems that exist across the courts, and the kind of work they do and how that needs to change.

Ben Summerskill: Specifically in relation to that, may I raise something slightly more managerial? It is to do with the net fiscal benefit, which is presumed to be £95 million. That is the starting point. Our very serious concern, if you do not mind my giving you the granularity of it—

Chair: No, that is helpful.

Ben Summerskill: If you look at the economic impact assessment, it acknowledges that in-flow forecasts for the charge are based on current fine payment rates. That to us seems entirely implausible, because it means that payment assumptions are that recovery is predicted to be exactly the same for a charge where there is no assessment of a defendant's capacity to pay as for a charge where there is an assessment of the defendant's capacity to pay.

The second point we make is that the putative £95 million does not appear to net the £5 million cost of the 150 to 200 prison places that will be needed to house defaulters. The assessment acknowledged that. Also, if you look at the impact assessment—I am sorry to say that this is where you get to the place of feeling that we are not in the realm of evidence-led policy but in the realm, possibly, of policy-led evidence—it models on page 17 or 18 payment rates 20% lower than expected and offender volumes 20% lower than expected. Both of those are entirely plausible, particularly given long-term trends, but it does not model both of those things at the same time, which is also perfectly possible. If you model that, you get to £55 million recovery. If you model a 50% reduction in offender volume and 50% recovery, you get to almost £20 million.

Possibly the most important point in the economic impact assessment is that it points out that last year the Courts and Tribunals Service spent £50 million recovering £290 million—17% cost—yet acknowledges that there are no plans to fund any additional enforcement resource. On that basis, the “Can’t pay, we’ll take it away” people would not get up in the morning. We have a very serious concern that the starting point of this discussion is about recovering significant amounts of public money that will never be recovered in the first place. I am sorry to have detailed that at some length.

Q13 Alex Chalk: No, I understand. That is fine.

Penelope Gibbs: They also have not modelled the extent to which people might plead guilty rather than innocent, even if they are innocent. Every guilty plea is cheaper in court, but it is not cheaper for the system. For every guilty plea, you get a fine, a community sentence or a prison sentence, which has to be paid for by the state. There is no modelling in that impact assessment for what the rest of the system will have to pay extra if more people plead guilty.

Q14 Chair: Mr Summerskill made a point about some of the cost impacts. We have heard some evidence to suggest that this has an impact on sentencing behaviour, for example, and that, because the charge is mandatory, magistrates will not impose penalties in relation to fines, compensation or costs at the level they might otherwise have done, which might more directly benefit either the prosecuting authorities or the victims of crime. Do your researches give us any knowledge around that? Perhaps Mr Summerskill could start.

Ben Summerskill: You will hear from our colleagues in the Magistrates Association themselves. Last night, I spoke to a Crown court judge who sits in south London and was deeply distressed—I have absolutely no reason not to assume that he was being completely candid—because he had just awarded a £900 court charge and, consequently, felt entirely unable to award a compensation order to a victim of sexual assault. He simply felt that there was no realistic prospect of that amount being recovered. That is a crystallised example of an unintended consequence of what might have been a perfectly proper approach in the first place.

Penelope Gibbs: The CPS has given you evidence to say that they have some evidence of CPS costs not being awarded and that they are very worried about the impact on their own income.

Alex Chalk: It is robbing Peter to pay Paul.

Q15 Chair: That is the argument, isn't it? You are robbing Peter to pay Paul within the system. I will ask the magistrates again in a moment, but do those of you whose work is fairly systematically about the operation of the courts have any evidence on this? There is a £200 difference between having something dealt with in a magistrates court or going for jury. If you were being cynical, the temptation would be to take the chance for the extra £200. Is that impacting, as far as we know, on elections? Are people perversely going for jury trial, rather than having the matter dealt with by the magistrates court, and therefore incurring a lot more cost?

Phil Bowen: A number of case studies have been raised both in the press and elsewhere that suggest that defendants are making different decisions based on the certainty of facing the criminal courts charge. There are people who are clearly electing to plead guilty who would otherwise possibly have taken something to trial. As we pointed out in our evidence, we think that that has two potential impacts. One is that because people are worried about paying the charge they make a different decision and then do not feel that they have had a voice in the justice process. We know that will have an impact on their feelings of trust and on the extent to which they feel that they have been fairly treated, which has knock-on consequences for their subsequent sense of trust in the justice system.

The other thing that we point out in our evidence is that it feels to us like the beginnings of a plea-bargaining system. I worked in a plea-bargaining system 10 years ago in the States. I have seen some of the system advantages of a plea-bargaining system, as you get cases through more quickly, but I have also escorted people from court to do their community service who did not realise that they had pleaded out—who felt themselves to be innocent but just wanted the process to be over. We have some serious concerns as to whether the criminal court charge has led to that sort of situation. I am not saying that it is plea bargaining in its fullest aspects, but it has plea-bargaining-like impacts.

Ben Summerskill: In terms of the issue of people pleading guilty, Committee members will acknowledge that we are in relatively early territory, because the charge applies only to offences committed after the commencement on 13 April. We find very powerful the case of Mr Haywood in Mansfield, which was submitted in evidence. It was not anonymised; it was very public; and all the circumstances appeared on the face of it to suggest that he was not guilty, because he explained why, faced with a charge, he pleaded guilty.

There is something else, and I suggest that the Committee might benefit from asking the Ministry of Justice about it. Until the last quarter, the criminal court statistics quarterly—something I have no doubt you follow as closely as I do—routinely included a figure for the proportion of guilty pleas at first hearing at the magistrates court. For some reason, that has fallen out of the digest. I am not suggesting a conspiracy—you need enormous efficiency to run conspiracies of that sort—but it would provide a volume metric that might be very helpful to the Committee in coming months to establish whether there

genuinely are trend data, rather than just individual cases, that suggest that people are pleading guilty who would not otherwise do so.

Chair: That is very helpful. Ms Rimmer, do you want to come in, and then Mr Davies? I know that you have prepared some issues around the propensity to guilty pleas or otherwise.

Q16 Marie Rimmer: I read through these papers last night, and it is obvious that you would like to see the charges abolished, which I would not disagree with. If they are to remain, do you have any view on what would be an appropriate level, on the differences between cases heard in magistrates and Crown courts and on guilty and not guilty pleas?

Frances Crook: I do not think that you can keep it. We have gone past that. The problem will be what you do with people who have already had it imposed. I saw a report in the newspaper yesterday about the first case of someone who had breached a community order, had gone back to court and had had the criminal court charge imposed on them. You are now getting cases of people who have chaotic lives, who cannot comply, will never comply and will never pay. There is a big cohort of people who have had this imposed. They will end up going to prison, and they are going to come out of prison and they will still have the court charge hanging over their heads. The real question is, how do we undo the mess that has been created? That is why it needs suspending immediately. The Howard League is asking for it to be suspended immediately. We then need a review that will see how we can abolish it and how we can deal with past cases and undo the mess that has been created.

Penelope Gibbs: I would advocate getting rid of it and finding the resources elsewhere. Any fixed charge is a problem because of the huge difference in the social and economic circumstances of the people who come into court. Even if you said, “Let’s make it lower and make it the same for guilty and not guilty pleas,” it is too rigid for this system. If you are going to keep it, there needs to be some kind of discretion, although I would not keep it.

Ben Summerskill: Can I give the answer to the actual question that you asked: if it were to remain, what would you do? In direct answer to that question, if it were to remain, we would suggest that you applied the same discretion to it in relation to capacity to pay that is applied to other charges.

Frances Crook: We would really oppose that.

Q17 Alex Chalk: It could not be imposed in a large number of cases.

Frances Crook: No. And you got a fine. That is the fine system. Why impose another fine? We have fines, charges, victim charges and surcharges. People are fined. Let us keep it simple.

Q18 Marie Rimmer: A punishment is a fine, and this is about collecting the cost of the courts, which it does not appear to be doing.

Phil Bowen: I agree that it should be suspended, reviewed and, eventually, scrapped. There are other ways the court system can generate revenues—by collecting the money that is already owed to it. The performance on collection of outstanding financial things

imposed by the courts is around 50% of the total amount of money after 12 months. To me, that feels like a very low number. I know that HMCTS has tried to get better at enforcing fines, but to me that is where the energy should be, rather than coming up with an additional charge that will be equally complicated to collect. It seems like an odd way to generate a new revenue source.

Q19 Dr Huq: We are saying that the principle is okay but the consequences are not. We are talking largely about the steep rises. The other day, the Lord Chief Justice said that it is “imperilling a core principle of Magna Carta”, which we have been celebrating recently. Can this criminal courts charge be said to be undermining the right to a fair trial if it is not imposed until after conviction?

Phil Bowen: I would not agree with your assessment that it is okay in principle. I do not believe that you should be charged for using courts, whether you are guilty or not. I read the Lord Chief Justice’s address with a considerable amount of interest. A couple of weeks ago, we had Mike Hough, a very well-respected academic, speaking at the Centre for Justice Innovation. He equally raised the point of whether this abrogates someone’s right to a fair trial.

Q20 Dr Huq: Some charges are okay, but maybe not in this form.

Phil Bowen: I think his view was how can you have a right to a fair trial when a cost is imposed on the very fact of having a trial? Regardless of whether you have to pay for prosecution costs if you lose, there is a principle at stake. What the Lord Chief Justice said is right. It is very welcome that he said in the same speech that the judiciary, with the executive and legislative branches of the state, need to address this as a problem. He was saying that the court fees plus people’s access to justice and representation are coming together to imperil Magna Carta. I am certainly not going to disagree with the Lord Chief Justice.

Penelope Gibbs: In terms of rights to a fair trial, I am concerned that this is in a context where we have an increasing number of unrepresented defendants in both the magistrates court and the Crown court. The figures from the Magistrates Association suggest that 20% to 30% in the magistrates court are appearing without a lawyer. You are having to make a judgment even as to whether the charge you are faced with is exactly the right charge for what you are accused of doing, as well as the issue of what the implications are if you go to trial versus not, particularly jury trial versus not. To pile a financial complicating matter on to people who are already totally at sea, trying to represent themselves, threatens justice.

Q21 Philip Davies: I am trying to differentiate people’s personal and political opinions and evidence. Your own personal and political opinions are all very interesting, but I am more interested in the evidence.

Ben Summerskill: You have not heard a single personal or political point from me.

Q22 Philip Davies: Frances Crook, you said at the start of the evidence that a lot of what we are talking about here are beggars. Of the £5.7 million that appears to have been imposed in court charges between April and June, according to the first figures, how much was for

beggars? Obviously, you know more than me, because I did not know that we had it broken down that far.

Frances Crook: The Howard League has been trying to gather exactly that sort of evidence, which is very difficult to find contemporaneously. Obviously, statistics come out a year or two later. We have been looking at gathering the evidence for cases that are reported in local newspapers. You will see on our website that we have reported on cases that have come to public attention through local newspapers. Only some local newspapers report what is going on in their local courts, so it is a snapshot.

Q23 Philip Davies: What is your best estimate of the proportion of the £5.7 million—

Frances Crook: I cannot give you—

Q24 Philip Davies: So you have no idea. You just made that up really, to be emotional at the start of the session.

Frances Crook: No. A lot of cases are coming to public attention, through local newspaper reports, of people who are begging or who have complex and shambolic lives. They are the kind of people who fill the courts day by day. I have sat in magistrates courts day after day. Anyone who has done that will see the kind of people we are talking about. We are starting now to get the first cases coming through of people who are failing to comply with community orders. They are exactly the kind of people who lead shambolic lives. I will be able to give you that statistical analysis, but you may have to wait a year, Mr Davies. I will be very happy to provide it for you once we have gathered it, but it will take time.

Q25 Philip Davies: We heard concern about innocent people pleading guilty. Again, what evidence do we have of the scale of that?

Penelope Gibbs: We haven't. We would love it. We call on the MOJ to do some proper research in the courts and gather the statistics.

Q26 Philip Davies: So we have no evidence on that either.

Ben Summerskill: With respect, I will rehearse what I said, Mr Davies. I have not expressed a single political or personal view while I have been sitting here. I have relied on the evidence that we have had from our members. With respect, I suggested to the Committee that one very helpful way that it might get that evidence would be to ask the MOJ to update those statistics in the criminal court statistics bulletin.

Chair: Rest assured, I will be writing to the MOJ on the back of that discussion.

Q27 Philip Davies: Would you all say that this is simply a one-way street? Would you perhaps concede that, if it is encouraging innocent people to plead guilty, there is half a chance that it may be encouraging guilty people to plead guilty, or is it a one-way street? Does it apply only to innocent people pleading guilty, or would anyone concede that there is half a chance, at least, that it may encourage some guilty people to plead guilty, rather than try to work the system?

Phil Bowen: Yes. Any system that has plea-bargaining-like effects will have that effect. Guilty people will plead out earlier because they think that they will get a better deal. It

depends on the value that you place on innocent people pleading guilty to let the process stop. What is the cost of that to justice? That is certainly what I saw when I worked in a plea-bargaining system. Yes, there were people who said, “Hands up. I am totally guilty. I am pleading out on the first opportunity because I know this is the best deal I’m going to get.” But there were innocent people who had two or three convictions behind them who said, “On this, I am innocent, but what’s the point? The system is loaded against me.” Aspects of the criminal courts charge are like that.

It is not just me saying that. Lady Hale, the Deputy President of the Supreme Court, spoke about “the recently introduced criminal court charge, levied on those who are convicted after having pleaded not guilty. I make no comment on whether this is, or is not, improper or unfair. My point is only that such pressures to plead guilty have always been rightly treated with suspicion in our common law world.” That is an eloquent statement of what my principled concerns are. It is absolutely right that we have case studies—qualitative evidence—but we do not have aggregate system-level data, because the criminal court charge has only been in operation since April.

Frances Crook: Exactly.

Penelope Gibbs: The Judicial Executive Board, which represents the senior judges, is also worried about this. Presumably, they do not have the data, because we do not have the data. They say, “Another danger is that the charges and other financial penalties may influence a guilty plea where defendants are concerned about the high costs.”

Q28 Chair: The chairman of the Sentencing Council raised some specific concerns about anecdotal evidence on these matters. Mr Summerskill, you have been particularly careful in the evidence-based approach that you have taken. Is there anything that the Criminal Justice Alliance has that does or does not tend to support Lord Justice Treacy’s views?

Ben Summerskill: I do not think that there is anything that we can add to the case I cited—the judge I spoke of.

Q29 Chair: Exactly—the judge in south London.

Ben Summerskill: Thank you for acknowledging that I have not pretended to exaggerate or extrapolate in any way whatsoever from anecdotal evidence.

Frances Crook: I do not think that any of us has. It is wrong to imply that any of us has.

Chair: I understand.

Philip Davies: What offences are you claiming people are pleading guilty to that they are innocent of? Presumably, we are not talking murder or anything.

Chair: Are you addressing the panel generally, Mr Davies?

Q30 Philip Davies: Yes, absolutely. It seems to be a general claim. Are we talking about first-time offenders or serial offenders? Who are these people who are not guilty and are pleading not guilty?

Ben Summerskill: I said—the Committee has had the evidence—that we felt that we could rely on the case of Mr Haywood from Mansfield, who gave a credible explanation

of feeling coerced into pleading guilty to using threatening, abusive or insulting words under section 5 of the Public Order Act. He did not have a criminal record, and the magistrate acknowledged that in other circumstances he might well not have pleaded guilty. Although that is one case, it is a case that appears in fairness to be credible.

Q31 Philip Davies: That is one case.

Ben Summerskill: That is exactly what I said when I raised it, Mr Davies. I repeat now that it is one case, but it is a case that we regard as reliable. I will express my personal view. Given my personal view of the importance of confidence in British justice, one case of someone pleading guilty to something they did not do is, with respect, one case too many.

Philip Davies: On that principle, at the moment you already get a discount in the criminal justice system for pleading guilty, rather than pleading not guilty. There is already an incentive on defendants to plead guilty. If they feel that there is a risk of their being found guilty, there is already a bias in the system to persuade people to plead guilty. Are you saying—this is the logical extension to your argument—that there should be no penalty at all for pleading not guilty if you are subsequently found guilty? Any system that allows that difference to be made may encourage somebody who is not guilty to plead guilty.

Chair: In fairness, Mr Davies, there is never a penalty for pleading not guilty. What is a matter of proper sentencing practice and well established is that a prompt guilty plea is a mitigating factor. Any experienced lawyer will tell their client that as a matter of course at the outset of the trial. There is a discount, which you rightly refer to, in a sense, rather than a penalty.

Q32 Philip Davies: Indeed, but it is the same principle.

Phil Bowen: There are two points to make about that. First, with early guilty pleas and sentencing discounts, the sentence is then proportionate to the offence, whereas this is a non-discretionary charge. There is also something about the certainty of the charge. Defendants know that they will have a financial penalty imposed on them. The certainty of that and its financialisation make it distinct and different from a proportionate discount on your sentence if you plead guilty.

Chair: I understand where you are coming from. We will move on to Mr Costa, because he is going to ask about some of those aspects of payment, proportionality and so on.

Q33 Alberto Costa: We have covered some of the points, but I will ask these questions nevertheless, just to exhaust some of the issues that have been raised. Mrs Gibbs, I understand that the chairman of the Sentencing Council disagrees with your view that the charge structure will deter defendants from electing trial by jury. He says that the lack of a significant differential in the charge will have the opposite effect. What is your comment on that?

Penelope Gibbs: We don't know—any of us—because we do not have data on what is happening in terms of whether or not people are opting for jury trial. I am just surprised. To me a £200 difference is a £200 difference, so to me the financial incentive is there to stay in the magistrates court. A more worrying issue has come up in one of the pieces of evidence that you have been given, from a Mr Jason Dunn-Shaw. It is that you can be in

the magistrates court and not have a choice as to whether you go to the Crown court for an either way offence. You are sent up because the magistrate decides that you would be. Then you will get a £900 charge when you would have got a £150 charge, if you plead guilty. You can have a person whose case, through bad luck, as it were, the court will not keep down and who then needs to pay three times the amount. We are in a situation where we would not want people's views on whether or not to go to jury trial to be skewed by financial incentives. I agree with Lord Justice Treacy on that. We do not want to see what happens, because we do not want the perverse effect to happen, but we need the information.

Q34 Alberto Costa: This is to the wider panel. As payment of the charge—at least, as stated by the Government—can be made in affordable instalments and the charge can be written off by a court after two years if a person has not reoffended, aren't the Government right to claim that the regime will “incentivise rehabilitation” by rewarding those who do not reoffend, or are the Government simply wrong?

Ben Summerskill: It is a seductive argument, but—we alluded to this in our evidence, and I suspect that the magistrates will—it is too easy to forget that in some magistrates courts 80% of people are on benefits. They often have highly chaotic lives. Putting in place a payment schedule, which is what is needed, is putatively a way of resolving that, but you could be in a position where someone dutifully makes a payment for 16 or 18 months and then, because of some personal crisis, fails to make one month's payment and is consequently in breach. While it is a seductive argument that somehow this has been allowed for, in real, practical terms we suspect that when there is hard evidence for Mr Davies we will find that it is not a provision that is as protective as has been suggested.

Phil Bowen: There is a considerable amount of evidence that people who go on to reoffend often do so because they have complex lives. Some of that includes debt. Giving them more debt seems like a curious way of reducing their reoffending rate. We have not tried out financial incentives in that way before. It may be the key to unlocking reoffending, but there is substantial evidence to suggest that it is unlikely.

Q35 Chair: I am very grateful to everybody for their evidence. We will move on to the Magistrates Association shortly. If I am right, it seems to me that some of you have an in principle objection to the charge per se, but there are specific points where some of you would argue that, in fact, it is not achieving the objective, and a degree of evidence has been suggested that it can get in the way of rehabilitation. Does anybody disagree with those points, which we have had from some of you in written evidence?

Penelope Gibbs: We think that it is both in principle and in practice.

Q36 Chair: I accept that you can have both.

Ben Summerskill: May I add one very brief point, just as a coda? We would also draw the Committee's attention to the quite persuasive evidence—we felt—that was put to it by the Equality and Human Rights Commission, pointing out that apparently an equality impact assessment was not done on this legislation. I would be the first to say that sometimes equality impact assessments are otiose in relation to legislation; they are simply not appropriate. However, given the very significant number of people with learning difficulties and mental health problems who reside at some point in the criminal justice

pathway, there should possibly have been more attention to the pressure that might be put on them to plead guilty in circumstances in which they would not otherwise do so.

Q37 Chair: That is even more significant if they are unrepresented, as is sometimes the case.

Ben Summerskill: It is.

Chair: Thank you all very much for your time; it is much appreciated.

Examination of Witnesses

Witnesses: **Richard Monkhouse**, Chairman, Magistrates Association, and **Malcolm Richardson**, Deputy Chairman, Magistrates Association, gave evidence.

Q38 Chair: Mr Monkhouse and Mr Richardson, welcome. Thank you very much for coming to give evidence before us on behalf of the Magistrates Association. We have seen the written evidence that you have already submitted, which largely speaks for itself and is quite clear. My colleagues and I have also seen the survey that has been put forward. Mr Monkhouse, you criticised the charge as tokenistic, among other things, and talked about a certain number of magistrates resigning, but I gather that the association as a whole prefers not to take a position on the principle of the charge.

Richard Monkhouse: This is true.

Q39 Chair: Can you help us as to why?

Richard Monkhouse: It is not our job. It is the Government's and Parliament's job to decide how to fund the Courts Service. We leave it to them. Our complaints—our objections, if you like—are about the impact and the proportionality, not just in terms of ability to pay but in terms of levels of charge for particular types of offence, or particular types of case, which seems strange. As you know, in our sentencing process we follow guidelines, as we must. Everything in those looks to an ability to pay. This adds to that, without any discretion whatsoever to allow for the fact that many people cannot pay. To give you an anecdote to start with, when we were sitting in court about two months ago, the person in front of us was already paying off to the court at a rate of £5 a week. His current charge would take him 13 and a half years to pay. Adding on to that seemed to us nonsense, but it is what we had to do.

Q40 Chair: It has been said that this is not part of the sentencing process, because it is mandatory. Funnily enough, as the chairman of the Criminal Justice Board says, you can come back at some point—in about two and half years—to try to get things written off. Does it work in that way in practice, or is that a very artificial distinction?

Richard Monkhouse: It is about understanding reoffending. Reoffending is binary. It is not frequency-based. If you have somebody who is a regular shoplifter and is committing 20 or 30 offences a year, the expectation of that person suddenly stopping because a criminal court charge is placed on them is a bit of a nonsense. There may be a step change,

in that the person may offend once in the next 12 months. That is progress, but it is not recognised in the whole aspect of the criminal courts charge.

Q41 Chair: Mr Richardson, do you have any thoughts on that?

Malcolm Richardson: I come back to your comment about whether or not the courts charge is part of the sentence. Of course, it is required that the court should announce it, include it in the total financial imposition and then work out what the payment rate needs to be. In that sense, it is part of the sentence. You are quite right that they can come back to court if they have made regular payments. We have already heard about chaotic lives and so on, which are typical of many of the people who are seen before magistrates courts in particular. It looks very much like part of the sentence to me, but you are quite right to say that there is no discretion over it. That is at the heart of the objections from many magistrates, as you will have seen from our survey.

Chair: Indeed.

Q42 Alex Chalk: None the less, there remains discretion among magistrates to impose the period over which it should be paid. Does that afford you a level of discretion? Suppose, for the sake of argument, that you are able to say, “You have a fine of £5 a week. Your courts charge will be another £5 per week, and we will review the position in two years.” If I may play devil’s advocate for a second, does that give you an element of discretion?

Richard Monkhouse: That is not actually the way it works. The total financial imposition is made. The people in front of us do not split it up into what is compensation, what is CPS costs, what is the fine and what is the criminal courts charge—they simply say, “What’s the total amount?” If we are taking payment through benefits, we do not make that charge. That is sent over—

Q43 Alex Chalk: But you can impose affordable payment terms. You are entitled to do that within your discretion.

Richard Monkhouse: Yes, but it is the total amount.

Q44 Alex Chalk: You are aware that you have that power.

Richard Monkhouse: Yes. We are looking at the total amount. We do not split it up. That has never been the practice.

Q45 Alex Chalk: Sure, but it is a slightly different point. I am not suggesting that you split it up. If you have discretion about the terms upon which you can require it to be paid, do you recognise, first, that that affords you an element of discretion? The question then is, does it give you enough discretion?

Malcolm Richardson: I am not sure whether I would necessarily describe it as discretion. Yes of course, you have a total amount of financial imposition and you can order the rate at which it will be paid, taking into account the circumstances of the individual in front of you. In that sense, yes, there is some discretion. The question, under all the guidance we are given about that, is that the period over which we ought to expect to recover that amount becomes too long if you add an additional minimum of £150 and upwards, as you know at least as well as I do, in terms of the numbers. That period gets inappropriate.

Q46 Alex Chalk: You have biblical periods over which they are expected to pay £5 a week.

Malcolm Richardson: Yes. Again, we are not talking a lot about people who are familiar with the concept of a 25 or 30-year mortgage that they are paying off. We are talking about people who have chaotic lives and are lucky to get from one benefit payment to the next without having to go to a loan shark. That is an anecdotal comment. I am not attempting to suggest that it is evidentially based, but seeing the defendants we see in court week after week, there is plenty of evidence of that before us.

Q47 Alex Chalk: I have one follow-up point. As magistrates, when you sentence someone, say for shoplifting, there might be a fine, you might have to consider the victim surcharge and you might have to consider the prosecution costs as well. Would you welcome the discretion to decide whether to impose in addition a court charge if, for the sake of argument, you had an extremely affluent defendant, or would the magistrates say, “We do not want to impose this at all. If we want to load costs on to an individual, we can do that via the prosecution costs.”? Do you see the distinction? Do you want the discretion to impose it in appropriate circumstances or are you not interested in any circumstances?

Malcolm Richardson: The position we have taken is that we do not take a position on the principle of the criminal courts charge. We certainly would not stand in the way of anyone who wanted to abolish it. Given the position we are currently in, yes, we would say that we should have the same discretion about this charge as we have around prosecution costs.

The first and foremost consideration when there is a crime that has a victim, whether that is the shop from which something has been lifted or an individual against whom there has been an assault, is that that should come top of our list. Once we have ordered that, we have discretion about whether we order the Government surcharge—as you correctly say, it used to be called the victim surcharge; victim has somehow disappeared from the title and it has become the Government surcharge—if we have ordered compensation. We have discretion as to how much of a contribution towards CPS costs we order. There is no such discretion with the criminal courts charge.

Q48 Alberto Costa: I find it slightly strange that the Magistrates Association is not adopting a viewpoint in principle on this matter, given the strong feeling that your own members have expressed through the media. Have any magistrates resigned directly as a result of the introduction of this charge? If so, how many, in terms of the percentage of magistrates? How have the remaining magistrates expressed to the association their disquiet about these charges? I should add that, as a Conservative MP, I am familiar with a number of magistrates, one of whom is my political agent. Perhaps I should declare that as an interest. I am really interested in hearing what magistrates think about this, and you are their association. How many have resigned in protest about this?

Richard Monkhouse: We do not have exact numbers. We know that it is certainly in excess of 50. As chairman, I get a lot of e-mails and letters from magistrates who have specifically quoted this, maybe not as the only reason, but as the final straw in a number of reasons. There are some who said, “No, this is it. I cannot bring myself to do this.”

We are in a difficult position, because we are judicial office holders. If Malcolm or I appear in the press saying, “This is a stupid charge. It shouldn’t be awarded,” and the following day sit in court and have to deliver it; that is moving us away from what we are

there to do. We are there as magistrates and judicial office holders. We have to follow guidelines. The Government have said that we must follow guidelines. That is the difficult position. We may individually have personal views, but as an association we have to represent the majority of our members. The majority say that in principle they are okay with it. It is a 56% majority, so it is not huge, but it is still a majority. Even if it were the other way round, we would still say, "This is not really something we should be involved with, because we have to sit in a courtroom and deliver these charges."

A number of people have written to me personally and said, "I cannot do this." It is a bit like the poll tax and other charges in the past where they disagreed in principle and could not do it. That is their fundamental right. I wish that they did not, because it is much easier to argue the case and talk about it from within, rather than to walk away and have nothing else to do with it. That is all we have been doing ever since the Bill was talked about over 12 months ago.

Malcolm Richardson: Richard and I travel the country visiting our members in their branches, and it is the first topic of any conversation that you have. I shall be visiting your constituency next month—

Alberto Costa: I look forward to that.

Malcolm Richardson: I know that the first topic of conversation when I meet my members in Leicestershire will be the criminal courts charge and "What are we doing?" Hopefully, most of our members know what we are doing, and are aware that we are here and know about all the other work that we have done in order to bring their views to the attention of those who can make a difference.

Chair: I do not want it to be thought that Members of Parliament from other political parties do not have contacts with the magistracy, I hasten to add. On that note, Mr Hanson.

Q49 Mr Hanson: You are not collating figures, but you have anecdotal evidence. Are you aware that anybody is collating figures? Is the MOJ collating figures on magistrates who have gone because of the charge?

Richard Monkhouse: Figures for resignations are collated on a regular basis, but there is no exit survey to ask the reason. We would find out only from those who specifically said, "I am going because—". That is the only way we can gauge it. Certainly, we know that there are in excess of 50 already. In terms of the magistracy, which is approximately 19,000, that is a relatively small percentage, but it is a vocal percentage. A lot of them are experienced magistrates who have been serving the justice system for 10, 20 or 30 years.

Q50 Chair: I understand that. In the survey you referred to, a majority said that they did not have an issue with the principle. There was quite a strong majority, right across the board, for various elements of discretion, if the charge were to continue. Of course, there is a big "if" about that. Do you have any observations about that? I get the sense that we are talking about 80%, maybe 86%, which is a pretty massive amount, isn't it? If it were to continue, what do you think the most appropriate changes would be?

Malcolm Richardson: That it is put into the same category as fines and the contribution towards prosecution costs, and that the court has within its discretion either whether to

order it or not, which might be at one end, but certainly that it should be related to the means of the defendant who is before you.

Q51 Chair: Do you think that there should be a greater degree of clarity about the hierarchy of payment of various financial penalties? For example, if there is to be compensation, would one regard that as rightly being something that should explicitly come first? In practice, that is the way we often talk about it.

Richard Monkhouse: We already know that there is. We already know that compensation comes first. The fine comes second, the Government surcharge comes third and on down the list. You are right. The courts charge is last on that list, and it is the last to be paid. When somebody pays money in, it is allocated towards compensation first, which means that after two years the defendant may well never have paid any of whatever the amount is, but it can only be written off if the person has not offended—just once. That offending might be a breach. It might be all sorts of things.

Q52 Chair: That is your point about the practicality on reoffending. You are also going to have to take into account totality anyway, aren't you? Does the fact of the charge potentially act to reduce what you might be able to award by way of compensation or costs?

Malcolm Richardson: Parliament was very clear that we were not to take the criminal courts charge into consideration when considering—

Q53 Chair: Yes, but does that work in practice?

Malcolm Richardson: Anecdotally, no, but because we are human beings, we work out the sums.

Q54 Chair: Nature being what it is, the argument is that, for reasons that you advanced earlier, the distinction might be a rather artificial one in the reality of sentencing.

Malcolm Richardson: Yes.

Q55 Chair: I hope that I am not being unfair about that.

Richard Monkhouse: No. We know that that happens.

Q56 Dr Huq: You mentioned the very long periods that will happen if people are paying £5 a week, particularly people on benefits. Those periods will go way above the normal 12 to 18-month pay-off. Uncollected fines were a worry about this right from the start. Do you have any indication yet of the proportion of charges that are not being paid? Are there any figures on that?

Richard Monkhouse: No. You would have to ask HMCTS that. Once the imposition has been made, we do not get involved. We are not involved in collection. We do not even know how much is collected proportionately, according to each slot of money.

Q57 Dr Huq: Once you have done your sentencing, it goes somewhere else.

Richard Monkhouse: We do not see that money. It goes in somewhere else, and we just do not know. We could ask the question, but we only ask the question when we see an

offender in front of us and get his history of fine payment. You can see from there what the period and the regularity of payment is. It is noticeable that just after they have been in court payments suddenly start to come in, and then they drift off. It is a matter of keeping on top of it. Deduction from benefits or earnings is one way of doing that, but there is a limit to how much you can take. Deduction from benefits can only be £5 a week.

Chair: I get that.

Q58 Philip Davies: Some of the evidence that we have heard has been about people who are innocent of a crime pleading guilty as a result of this. What evidence do you have from your members about the propensity of that to happen?

Richard Monkhouse: We have anecdotal evidence that some magistrates have refused to accept an equivocal plea—in other words, a plea that “I am not guilty, but I am pleading guilty.” They have refused to accept that plea. That has happened in the past, and the frequency of it seems to be increasing. But it is far too soon in the journey. This came in only in April. The last lot of Government stats show to March ’15, so there will be no evidence in the official data of what has actually happened—how the proportionality of guilty pleas to not guilty pleas might have changed. That will be a very interesting piece of stats to look at.

Q59 Philip Davies: Do you have any anecdotal evidence about people who are guilty of crimes pleading guilty rather than not guilty as a consequence of these changes?

Richard Monkhouse: It is about 85%, and it has stayed at about 85% for the past few years. That is the general figure: 15% of people plead not guilty and 85% plead guilty. Again, we have not noticed a change, because the data for that are not available. I could give you examples from when I sit, but that is once in a blue moon. It will not give you very much evidence. We would like to get more official evidence, rather than relying on anecdote.

Malcolm Richardson: The consequences of a court-ordered not guilty plea are starker with the criminal courts charge than they are with other charges. It is entirely possible for a sentencing bench to be made aware of the fact that this individual was found guilty after a trial, and the trial was directed by the court because of equivocation over the plea or because of some question that the court was raising. The court can take that into account when sentencing and, indeed, when deciding what contribution there should be to prosecution costs. It has no such discretion around having to impose a significantly higher criminal courts charge as a consequence, because that is an absolute where we have no discretion. That comes back to my discretion point earlier.

Q60 Alex Chalk: Have you or your colleagues ever declined to award compensation to a deserving victim on account of the fact that you have to take heed of the mandatory criminal courts charge? In other words, when doing your best to dispense justice, you have ended up having to abandon the compensation payment to a victim. Have you ever done that?

Richard Monkhouse: No.

Malcolm Richardson: No. I was surprised and somewhat shocked to hear the evidence that Mr Summerskill gave earlier of a judge who stated that he had done that.

Q61 Chair: Perhaps you could help on a small technical point that came out of your answer. What is the position—I genuinely do not know—in circumstances where there is a guilty plea but the magistrates, perhaps on the submission of the prosecution or of their own volition, decide that they want a trial of the facts before deciding on an appropriate penalty? How does the operation of the charge work around that?

Richard Monkhouse: I have not experienced one since the introduction of the criminal courts charge. They are not that frequent.

Q62 Chair: I know that they are not that common. I literally wondered whether there was any experience around that yet.

Richard Monkhouse: One would suppose that it is a guilty plea and you are only arguing about the facts.

Q63 Chair: Yes, and you treat it as a guilty plea.

Richard Monkhouse: Therefore the charge would be as the guilty plea.

Q64 Chair: That would be the logic.

Richard Monkhouse: We would listen to our legal adviser, who would no doubt give us the—

Q65 Chair: Sure, but it would be a bit of a grey area if it arose.

Malcolm Richardson: We can probably say that it should be taken as a guilty plea in the magistrates court.

Chair: That makes sense to me.

Malcolm Richardson: If our advice changes, we will let you know.

Chair: That is helpful. Mr Davies, do you have anything else?

Q66 Philip Davies: There is just one other thing. It is about the whole issue of discretion. You seem to be obsessed with discretion in this area, not unreasonably, but surely there are many other areas where magistrates do not have any discretion over what they have to carry out, whether they like it or not. For example, if somebody pleads guilty at the first available opportunity, you have to knock a third off their sentence, presumably whether you like it or not. I do not quite understand why you are so obsessed with discretion here in a way that you are not so obsessed with it in many other areas where what you have to give as a sentence is set down for you.

Richard Monkhouse: We have discretion in our sentencing guidelines. Each offence has a start point. There is quite a wide range, plus and minus, to take into account aggravating and mitigating features, so there is a lot of freedom for movement. The discretion is there. Not long ago I did some work that suggested that we fine 75% of the people we see. Does that really help with rehabilitation? Section 151 of the Criminal Justice Act 2003 says that, if somebody has been through that process and paid a fine three times or more, we could introduce a community penalty. That has never been enacted, but it might have a much more positive effect. That is where our discretionary powers might help. If we can say,

“There is an offender here who is offending because of a, b or c,” and we can attack a, b or c, surely that will improve the process. Simply putting another fine or charge on somebody who is impecunious—shall we say?—will not help the matter. Yes, we would like to see some development in that discretion, but not through this.

Q67 Chair: Can you help me out with one other thing? We talked about the statistics. Earlier, Mr Summerskill referred to a lack of statistics in some areas, where some data do not appear to be published any more. I appreciate the anecdotal nature of this and that it is early days, but have you been able to pick up any change, for example, in the proportion of defendants selecting trial by jury? Is that discernible or not at the moment? It is on the back of Lord Justice Treacy’s comments, but I do not know what you have seen.

Richard Monkhouse: Not at the moment. When the next set of data comes out, it might be interesting, because it will take us from March to September, which will be almost the whole of this period. That will be an interesting set of data to look at.

Malcolm Richardson: In fairness, of course, the court is under a duty to point out to defendants the potential additional prosecution costs that they will incur if they go to the Crown court for trial. The extent to which there will be a difference caused by the difference in the criminal courts charge will be interesting to see.

Q68 Chair: At the moment, we cannot say. Similarly, I do not imagine that we are able to know whether or not the prospect of an enhanced charge by appealing a conviction in the magistrates court to the Crown court has had an effect. Do we have any evidence around that one way or t’other?

Richard Monkhouse: No, because it got to the Crown court only relatively recently. We know the delays in getting to Crown court.

Q69 Chair: Thank you very much. Do colleagues have any other questions?

Richard Monkhouse: Can I offer one more point?

Chair: By all means, Mr Monkhouse.

Richard Monkhouse: It is about disproportionality over the types of case. The same criminal charge would apply to a case dealt with by single justice powers that might take a minute as would apply to a case that might take a full day. There is no bearing in mind of how much that cost is. That is why I called it tokenistic. It is an absolute figure. If it is a summary case, that is the figure. There is no relative allowance for us to say, “Actually, this person delayed matters by taking it to Crown court and then, two years later, pleading guilty when he had pleaded not guilty.” That person has swung the system, or is attempting to swing the system, and that could be penalised even more. There is no balance. It is not just about fairness and proportionality for the offender. It is also about relevance to what the costs of the case actually are.

Q70 Chair: There will be some people who will work the system as best they can to their advantage. Let us not be starry-eyed about it.

Malcolm Richardson: A colleague told me of sitting in a single justice court dealing with fare evasion on London Transport. She was dealing with one case a minute. I worked out

the fairly simple maths that meant that she was imposing £9,000 an hour in criminal courts charges and another £7,500 in contributions towards Crown prosecution costs.

Richard Monkhouse: Those particular cases were about a £1.50 evasion. That is the sort of case where you think, “Why is that coming into the courtroom?”

Chair: Quite. Equally, when a person has spun it out and eventually been convicted after a trial, logic says that if there are means you go after them on the prosecution costs of dragging it out.

Q71 Alex Chalk: On that point, precisely to deal with somebody who is gaming the system—supposing you have someone of means—do you feel that you have enough discretion to impose a significant amount of prosecution costs? The prosecution costs might sometimes be only—I say only—£500 or so. But if you have somebody who has gamed the system—there have been five hearings; they have not turned up, and when they have, they have swung the lead and said, “We need to get a defence witness,” so the whole thing has taken for ever and ever—would you welcome more discretion in appropriate circumstances to seek redress via the prosecution costs channel?

Richard Monkhouse: I am not sure that it is via prosecution costs, because the prosecution will ask for a contribution to their costs and it will be an absolute sum. We decide whether to pay towards all of that—

Q72 Alex Chalk: It is a relatively modest cap.

Richard Monkhouse: You could do it on a fine. There might be some degree of aggravation, so we could push it up.

Q73 Alex Chalk: Yes, you could do it by a fine.

Richard Monkhouse: That is a possibility right now.

Q74 Chair: You can reflect that in the fine.

Richard Monkhouse: Yes.

Q75 Dr Huq: I have one last quickie. This was quite slow to get off the ground initially—it came in at the end of the previous Government—but now it feels like you cannot open a newspaper without a magistrate saying why they have resigned. I have read about a couple of cases where people said that they wanted to pay the fine themselves and were reprimanded for that. As you travel up and down the country, have you come across any incidences of that?

Richard Monkhouse: The one reported case is the only case I have heard of. Clearly, it is inappropriate for a judicial office holder to make that offer, kind and thoughtful though it might be. We might all have thought about it, but there are rules. It is like saying to somebody you have just awarded a six-month prison sentence, “If you can’t do it all, I will do the first month for you.” When you balance it out like that, it is an improper suggestion, kind though it is.

Q76 Mr Hanson: Irrespective of the rights and wrongs of the charge, one of the central things for me would be how much does it raise, how much does it cost to raise and how much

of it is actually paid by the people who are supposed to pay it? I do not know whether in the current position we have figures from yourselves potentially on what that might be, but that as well as everything else seems to me to be key to the issue.

Richard Monkhouse: You would have to ask HMCTS that. Again, we just do not know. We do not have any involvement in the collection. We do not do the accounting for them. They would know that, so an appropriate question in the right place to Natalie Ceeney might actually elicit the answer.

Chair: Gentlemen, thank you very much for your evidence. It is much appreciated.