



Date **16 June 2015**

Position statement **Criminal courts charge**

Background

The Criminal Justice and Courts Act requires a criminal courts charge to be imposed on convicted offenders over the age of 18 by the courts. Courts are required to make an order imposing the criminal courts charge: the intention is not to offer discretion to waive or to vary it. The levels of the charge have been specified in regulations, and are as follows in magistrates' courts:

- single justice procedure: £150
- guilty plea, summary offence: £150
- conviction after trial where the defendant did not enter a plea, the trial proceeded *in absentia*, and the court dealt with the case on the papers: £150
- guilty plea, triable either way: £180
- conviction after trial, summary offence: £520
- conviction after trial, triable either way: £1,000.

The courts are banned from taking the criminal courts charge into account in setting the overall penalty for the offence or offences committed. After a specified period has elapsed (two years on the application of the defendant and one year in other cases), a court can remit the balance of the criminal courts charge if it is satisfied that the person has taken all reasonable steps to pay it, having regard to the person's personal circumstances, or that collection and enforcement of the charge is impracticable.

The Lord Chancellor has specified in regulations which classes of case would be subject to the charge and what the charge would be for different categories. The charge cannot be imposed in cases of:

- absolute discharges (it must still be imposed for conditional discharges)
- hospital and guardianship orders under the Mental Health Act (this is only relevant to the Crown Court)
- where the Crown Court or Court of Appeal dismisses an appeal following a reference by the Criminal Cases Review Commission.

The regulations also forbid 'double charging' cases where a person is being dealt with for both an offence and for a failure to comply with the requirements of:

- a community order
- a suspended sentence order
- a post-sentence supervision requirement (for sentences under two years).

The regulations forbid 'double charging' in cases where a person is being dealt with for breaching requirements of two or more of a community order, SSO and post-sentence supervision requirement. The court can only charge for one of these (in that order of preference).

The MA's position

The MA has concerns about the new imposition of the new court charge and how this will be efficiently implemented in practice.

The MA advised the Government in the interest of justice to amend the proposals to allow the court discretion in imposing these fees. Magistrates and judges should have the discretion to decide whether, in the interests of justice, these charges should be imposed. The court is in the best position to identify in which cases the ordering of payment of court costs would be inappropriate or unreasonable. Magistrates and judges have extensive experience of making fair and reasonable decisions about costs.

The MA is also concerned by the length of time for remitting the criminal courts charge. Two years are a very long period of time, and it is unclear when anyone but the defendant would apply to have the charge remitted – so in practice, the one year limit will rarely apply.

Where a court charge payment is ordered, the systems in place need to be sufficient to deal with this additional layer of complexity in imposing fines without damaging the efficiency of case management or compromising the judicial duty to ensure sentences are proportionate in the totality. The MA is particularly concerned that an additional layer of complexity is being added to a system at a time when the Government is planning to contract out the Compliance and Enforcement Service. It is important that the necessary provisions are in place to ensure the system can ensure effective collection of fines and orders.

The Criminal Justice and Courts Act, in legislating for the charge, required the Government to review its operation after three years. The MA is calling for the review to be held after six months – which is effectively as soon as is practicable – and will continue to press on this issue in the meantime.