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Position statement **Victim Surcharge Increase**

Summary

Magistrates will be required to impose an increased rate for the victim surcharge after 16 June 2022. The Magistrates' Association opposed the increase when consulted on the change by the Ministry of Justice. However, we acknowledge that the increase to the surcharge was a manifesto promise in the Conservative 2019 election manifesto and there is, therefore, a democratic mandate for the change.

We are actively discussing the implications of the change and continue to raise our concerns with senior judiciary. We will monitor the impact of the increase and its impact through research and the observations our members going forward.

Background

On 25 May 2022 the Ministry of Justice announced an increase in the amounts payable under the victim surcharge (known simply as “the surcharge” by the Sentencing Council). The Lord Chancellor announced that the victim surcharge would increase by 20 per cent on the amounts previously set under Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2020. New regulations were then introduced and new rates for the victim surcharge will come into force on 16 June 2022.¹

The victim surcharge was first introduced in 2007 and required that any person sentenced with a fine pay a flat rate additional charge which would be used to help fund services for victims.² Over the subsequent years the scope of the victim surcharge and the rates payable have steadily increased. The victim surcharge now applies to all sentences; when a court passes a sentence it must also order that the relevant surcharge is paid. Different rates apply to different categories of sentence with custodial sentences attracting the highest accompanying surcharge rates. The amount payable also varies depending on status of the defendant as an individual adult, individual under 18 at the time of the offence or an organisation.³

The increase was first proposed in an MOJ consultation, which also consulted on a wide variety of other measures that would be taken forward in primary legislation, through a now-published Victims Bill. The consultation ran from December 2021 to February 2022. The Magistrates' Association responded to the consultation.

¹ The Sentencing Act 2020 (Surcharge) (Amendment) Regulations 2022.

² HM Courts & Tribunals Service, Trust Statement 2020-2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019456/HMCTS_Trust_Statement_2020-21.pdf.

³ <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/other-orders-made-on-sentencing/what-is-the-victim-surcharge/>.

MA position

In our response to the Ministry of Justice consultation, the MA supported adequately funding victims' services but opposed the raising of the victim surcharge.

We believe that the victim surcharge is not the right vehicle to increase revenue for victims' services. Instead, we proposed that alternative funding provision should be made which ensures that the distribution and allocation of funding is sufficient to meet local need.

The MA considers that the victim surcharge is particularly misplaced when imposed on defendants in the youth court as it is parents and guardians who are required to pay the costs of the surcharge if the child is under 16. This creates a particular issue where the family of the child or young person is on a low income as the surcharge places additional strain on these families who are already facing financial hardship. Where defendants are between 16 and 17 years old, our members experience is that they rarely, if ever, have the means to pay financial orders making the surcharge increase ineffective and misplaced in youth court.

Our members also considered that the *previous* rates of the victim surcharge were appropriate given the current levels of Universal Credit and other benefits magistrates commonly encounter when conducting means assessments as part of sentencing. Universal credit and other benefits payments have not risen in line with current inflation rates, though there has been a 3.1 per cent increase since April 2022.⁴ The increase in the surcharge after 16 June therefore create a significantly increased burden, particularly for those on low incomes.

Being on a low income is not a protected characteristic and there is no recent data available specifically on offenders on low income. However, the Equality Impact Assessment accompanying the proposed increase indicates that people with disabilities, families where one or more persons has a disability, persons who are Black or of mixed ethnicity are likely to face more financial hardship than offenders of other ethnicities or those without disabilities.⁵ The financial burden the increase in the victim surcharge is likely to create, therefore, also disproportionately impacts these groups.

The experience of our members is that, in many cases, imposition of the surcharge in combination with other costs measures is excessive. In accordance with the relevant sentencing guidelines and section 125(2) of the Sentencing Act 2020, where financial orders become excessive magistrates waive or reduce fines so as not force the offender below a reasonable 'subsistence' level.⁶ The result of increasing the surcharge may therefore be ineffective in those cases where the defendant does not have the means to pay.

For these reasons, we opposed any increase in the victim surcharge rates.

The future of the surcharge

The Sentencing Act 2020 (Surcharge) (Amendment) Regulations 2022 came into force on 16 June. Magistrates will therefore apply the new increased surcharge rates and follow the new regulations and sentencing requirements.

The Magistrates' Association, via our magistrate Policy Committees, is continuing to research and monitor the impact of the victim surcharge, focusing on its operation and efficacy including levels of

⁴ E O'Byrne Mulligan, Universal credit increase 2022: How much benefit rates are going up in April and how it compares to inflation, 22nd March 2022 <<https://bit.ly/3n360s0>> (last accessed 16 June 2022).

⁵ Victim Surcharge - Equality Statement, June 2022 <<https://bit.ly/30hUj9k>> (last accessed 16 June 2022).

⁶ See also Sentencing Council, *General guideline: overarching principles*, 2019, Step 2.

unpaid fines, compensation orders and surcharges. We have raised our concerns with the Senior Presiding Justice and are discussing how best to monitor the increase post-implementation with HMCTS.

Our members are also concerned about other aspects of funding for victims and the surcharge including the way compensation is paid which can be retraumatising for some victims. We will continue to explore these issues in our policy work.

We welcome members views on the victim surcharge and emails should be directed to samira.ali@magistrates-association.org.uk or helen.richardson@magistrates-association.org.uk.