The Innocent Cannot Afford To Plead Not Guilty

The impact of the criminal court charge,

Ed Johnston writes

In April 2015, the then Justice Secretary, Chris Grayling, introduced new court charges for defendants convicted at either the magistrates’ or Crown Courts. With the implementation of The Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015, Mr Grayling wanted to introduce a “tough new package of sentencing measures to ensure offenders are punished properly and consistently, so that the law-abiding majority know that we’re making the changes needed to keep them and their families safe”.

Courts have been mandated to impose Criminal Court Charge in addition to any fine, victim surcharge, compensation order and prosecution costs already levied against the defendant; irrespective of their personal circumstances. In the magistrates’ court the level of charge starts at £150 for a guilty plea and in contested cases the charge can rise up to £520 should the defendant be convicted after trial. In the Crown Court, a charge for a guilty plea starts at £900 and rises to £1,200 if convicted after trial. The charges were designed to reduce the burden of running the courts on the taxpayer. However, the legal profession have raised concerns that an innocent defendant may enter a plea of guilty to avoid the risk of a more severe penalty should they decide to stand by their right to have the prosecution prove their case beyond reasonable doubt.

Unfair, Unrealistic and Unjust

The Howard League for Penal Reform points out that the charge is unfair, unrealistic and unjust. The escalating charges are unfair as they are putting immense pressure on defendants to enter a plea of guilty at the earliest possible stage. Irrespective of whether the prosecution can prove the offence. The charge is also unrealistic. Bob Hutchinson, a magistrate from Blackpool, who recently resigned amid the removal of the magistrates’ discretion to administer financial penalties, told Sky News that “85 per cent of offenders are on benefits and have limited means” and it appears unrealistic to expect those offenders to pay such severe penalties. Furthermore, the homeless are having the fines imposed on them. The Howard League reports that a homeless man stole an energy drink worth 99p from a supermarket. He was given a conditional discharge and ordered to pay £150 criminal court charge in addition to a £15 victim surcharge. A homeless woman was convicted of begging in a car park. She also received a £150 criminal court charge, a £30 and £20 victim surcharge. A homeless man stole drinks and chocolate to the value of £4.80 from a shop. Owing to his previous convictions he was jailed for four weeks, given a £150 criminal court charge and a £80 victim surcharge. Finally, The Howard League argue the charge is unjust and would like the Government to review the charge in the autumn, rather than in 2018 as planned by the Ministry of Justice.

Exacerbating the Prison Crisis

It is unlikely the aforementioned homeless offenders will have the means to pay their fine and as such, the Ministry of Justice will have to pursue the debts. A Ministry of Justice Fact sheet that accompanied the charge states that imprisonment can be the last resort, if the offender is “guilty of willful refusal or culpable neglect”. Schedule 4 Magistrates’ Court Act 1980 outlines the penalties for failing to pay the charge:

<table>
<thead>
<tr>
<th>Defaulted Fine Amount</th>
<th>Days Imprisoned</th>
</tr>
</thead>
<tbody>
<tr>
<td>An amount not exceeding £200</td>
<td>7 days</td>
</tr>
<tr>
<td>An amount exceeding £200 but not exceeding £500</td>
<td>14 days</td>
</tr>
<tr>
<td>An amount exceeding £500 but not exceeding £1,000</td>
<td>28 days</td>
</tr>
<tr>
<td>An amount exceeding £1,000 but not exceeding £2,500</td>
<td>45 days</td>
</tr>
</tbody>
</table>
The prison system in England and Wales is already over capacity. For example, in the week ending August 14, 2015 The Howard League reported that there were 8,548 male prisoners held above the level of normal certified accommodation – which is the measurement used by the prison service to identify how many prisoners can be held in decent and safe accommodation. Arguably, by sending the defaulters to prison will only exacerbate the current overcrowding crisis within the prison system.

The Overriding Objective and Due Process Rights
The Overriding Objective of the Criminal Procedure Rules (2014) is to deal with criminal cases justly. Accordingly, r.1.1(1)(a) states that dealing with a case justly includes “acquitting the innocent and convicting the guilty”. However, by enticing an innocent defendant to enter a guilty plea, because they fear a more Draconian financial penalty should they contest their case and be convicted is simply abhorrent. Furthermore, scaring the defendant to enter a guilty plea also dilutes the due process protections afforded to defendants by the trial process. The trial represents the forum in which the case is vigorously tested and the guilt or innocence of the defendant is established. Ultimately, the criminal court charge is another piecemeal component of a crime control agenda that is permeating through the criminal justice process and diluting the due process rights of defendants.

Reformation: Removal of the Charge
In early August, 30 magistrates resigned in protest over the criminal charge. Prior to the implementation of the charge, magistrates had an element of discretion when setting a fine. This would be in accordance with the circumstances of the offender and would lead to what Bob Hutchinson claimed was the “right and realistic amount”. Mr Hutchinson was considered a “hardliner” when sitting on the bench. When speaking to The Sunday Express he stated that he had “no patience with an alcoholic who shoplifted booze or a drug addict who stole to feed their habit”. However, Mr Hutchinson resigned when he had to impose the charge on a man who entered a guilty plea to stealing meat, to feed his family; the man who was in receipt of benefits. The chairman of the Magistrates’ Association, Richard Monkshouse, believes more magistrates will resign in the wake of the Criminal Charge. Mr Hutchinson claimed that criminal charge “is not justice” and he would sooner have the offender do community work opposed to the charge, as this is something the offender could actually carry out. It is unlikely the defendant could pay the fine so the charge will either go, uncollected or the defendant will be sent to prison. Uncollected financial penalties present a ubiquitous problem to the treasury. In 2012/13 the Ministry of Justice had to write off £75m of unpaid court fines; this represented a 20% increase on the previous year. The Howard League are calling for a review of the charge as it does little to tackle crime.

Conclusion
The call from the Howard League for the Government to review the charge in the autumn and not in 2018 should be supported. Charges being mandatory levied against those who cannot afford to pay the charge is simply wrong, especially if those offenders are later imprisoned. Furthermore, the worry that innocent defendants will enter a plea of guilty to receive a lesser charge ultimately undermines the justice system. The overriding objective of dealing with cases justly cannot be satisfied if innocent defendants are entering guilty pleas because they cannot afford the cost of conviction after a contested trial. The charge was ushered in via a secondary piece of legislation and therefore not opened to Parliamentary debate or voting and it is clear the former Justice Secretary was influenced by the phrasing of s.142(1)(a) Criminal Justice Act 2003 which states that a purpose of sentencing is to punish the offender. However, Mr Grayling’s successor, Michael Gove should focus his attention on r.1.1(a) Criminal Procedure Rules 2014 and ensure that the overriding objective is satisfied by courts acquitting the innocent and convicting the guilty.

About the author
Lecturer in Law, Bristol Law School
Edward2.johnston@uwe.ac.uk