Lords debate: Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015

Wednesday 14th October

Motion to Regret

7.19 pm

Moved by *Lord Beecham*

That this House regrets that the Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 undermine the principle of judicial discretion, and add an artificial inducement to plead guilty; and further regrets that the Regulations were laid at a time that severely limited Parliamentary oversight, as well as making claims for savings that cannot be substantiated (SI 2015/796).

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Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee

Lord Beecham (Lab): My Lords, I refer to my interests as an unpaid consultant with the firm with which I was formerly a senior partner.

A few months ago a 32 year-old woman, Louise Sewell, stole a pack of four Mars bars worth 75 pence from a shop in Kidderminster. She was undergoing a benefits sanction and had not eaten for two days. She pleaded guilty and was ordered to pay a criminal courts charge of £150. A man in Newbury who lives in a tent and stole a £2.99 bottle of wine from a supermarket was subjected to the same charge, but was not required to pay the criminal courts charge in the light of his limited means. I am grateful to the Law Society and the Howard League respectively for supplying details of these and other cases—of which there are many—to my old firm and to a magistrate friend who has served for a long time on the Bench and has much experience chairing the Bench in his area.

A client of my old firm who was addicted to legal highs and is on probation received a summons for littering and was convicted in his absence. The court wished to impose a small penalty or conditional discharge. Either of those would have required the imposition of the £150 court charge. The court decided to order an absolute discharge and thereby avoid the financial penalty. Faced with a similar situation, my magistrate friend presided over a case of minor criminal damage where the fine would have been around £75, costs £85, and victim compensation £20, to which would have been added a criminal charge order of £150. The defendant's income consists of £115 in benefits per fortnight. The court decided to give him a discharge, which meant not only that the courts charge was not payable but that no victim compensation could be ordered.

These cases and many like them proceed from the criminal courts charge regulations, which are the subject of this Motion, which among the many dubious legacies bequeathed to Michael Gove by his predecessor as Lord Chancellor, Chris Grayling, ranks as one of the most misconceived. Those convicted of criminal offences face, rightly, the prospect of fines, contributions to prosecution costs, and payment of compensation to victims. Some contribution to court costs might well be reasonable, but this order, tabled just before the dissolution of Parliament, never having been the subject of consultation, imposes a rigid structure of charges with no judicial discretion as to their amount or any regard as to the defendant's means. They apply to all cases since 13 April.

A defendant pleading guilty in the magistrates' court will be charged £150, which will in many cases exceed the fine, prosecution costs and even some compensation orders combined. If defendants are convicted after a not guilty plea, the charge will be £520 or £1,000 in what is called an either-way case—one that could be heard in either the magistrates' court or the Crown Court. Guilty pleas in the Crown Court will attract a charge of £900, while £1,200 will be levied where there is a conviction following a not guilty plea.

The uniform imposition of these fixed charges is contrary to the courts' current approach, which is one of totality—taking into consideration the nature of the offence and the effect, including the financial effect of fines and costs already levied. Judicial discretion under these regulations is being displaced by what one might call Ryanair justice, with significant add-ons, often disproportionate to the basic financial penalty.

Magistrates and others, including the senior judiciary, are concerned not only about the potential impact on those convicted but also about the likelihood that some defendants will plead guilty rather than risk doubling or quadrupling the financial penalty they face. There is of course already something of an inducement to plead guilty in the one-third discount for a guilty plea. But my old firm has experienced a number of cases where charges that could properly have been contested have ended up as guilty pleas, especially—but by no means exclusively—in relation to road traffic matters. Given the number of court closures and the cost of travel and time off work which will increase as a consequence, and is itself a matter of concern, the inducement to plead guilty to less serious offences becomes even greater. The Howard League cites a case in Mansfield, where a defendant changed his plea at the Crown Court upon being advised that if convicted he would face the higher charge described under the order.

There are other potential difficulties. Where there are a number of charges, to some of which the defendant pleads guilty but not to others, the current practice is to deal with those to which the guilty plea is tendered and set the remainder down for trial. That could mean, in the event of conviction, two criminal court charges; the risk arises that for example the imposition of a probation order, possibly subject to medical treatment, would be delayed. As I have exemplified, some courts have resorted in cases where defendants have limited means to order an absolute discharge which avoids the imposition of the criminal law charge but also nullifies the possibility of a victim compensation order. Such is the concern that at least 50 magistrates are known to have retired from the Bench in protest. Nor can it be assumed that the Ministry of Justice's estimate of the yield from this process—between £65 and £85 million a year—would be easily achieved. After all, earlier this year it was reported that there is £549 million in uncollected fines and that 61% of this amount will be written off. Can the Minister tell us how much of the £700 million contract for court enforcements for which his colleague Mr Vara announced in July that Synnex Concentrix are preferred bidders, related to the collection of this charge?

The financial implications for both defendants and the Government may be somewhat qualified by the curious wording of a four-page guide to the new charge published by HM Courts and Tribunal Service which concludes with the following section under the rubric "What else do I need to know?". It states:

"If after two years you have made best efforts to keep up with the payment terms of any other financial impositions and the criminal courts charge and you have not been convicted of any other criminal offences during that period you may apply to the magistrates' court for consideration to write off the criminal courts charge".

I am tempted to nominate this remarkable statement, about which nothing is said in the impact assessment, for the Nobel prize for legislative opacity. Perhaps the Minister could enlighten us as to its potential consequences. The House of Lords Secondary Legislation Scrutiny Committee criticised the timing of the implementation of the order, before Parliament had any chance of considering it—because of the pending dissolution—and, tellingly, added that,

> "the lack of an updated estimate of the sum likely to be raised"

made it,

> "impossible to take a clear view of how the regulations will serve their intended purpose".

We are, moreover, very much in the early days. Most cases where the charge has been levied will have been where guilty pleas have been tendered. We are now at the point where trials will be proceeding and the larger charges will be imposed in both magistrates' and crown courts.

It is not surprising that 93% of magistrates surveyed by the Magistrates' Association thought the charge was set at an unreasonable level, and that 83% thought it should be means-tested.

"The fact that no account is taken of ability to pay and the lack of discretion mean that the charge as currently constituted is not in accordance with the principles of justice."

Those are not my words, but those of the Magistrates' Association in its response to the Justice Select Committee. The Lord Chief Justice was reported last week to have voiced his criticism of this ill-thought-out measure, among others, and a Crown Court judge in Leicester observed that the charge did not have any merit.

It is to be hoped that Mr Gove, who has abandoned one ill-conceived project of Mr Grayling's—the secure college for young offenders—will review and urgently revise these deeply flawed regulations taking into account the concerns of the judiciary at all levels and consulting properly on a revised scheme. The key elements must reflect the concept of totality, have proper regard to the means of the defendant and the nature of the offence and restore judicial discretion. I beg to move.

7.30 pm

Lord Marks of Henley-on-Thames (LD): My Lords, in Committee on the Criminal Justice and Courts Bill, in moving amendments to the Government's proposals, which are now Part II(a) of the Prosecution of Offences Act 1985, I made it clear that our principal purpose in seeking to amend these provisions was to ensure that the criminal courts charge would be charged on a discretionary, and not a mandatory, basis. Our reasons were that a mandatory charge would be unfair, would frequently have to be imposed when there was clearly no chance that it would ever be paid, and that it would damage offenders' chances of rehabilitation because offenders with no money would have an unaffordable financial liability hanging over them, which would in turn hinder their chances of obtaining employment, and all for no sensible or realistic purpose.

We never said that such a charge should not be a tool available for the courts to use in appropriate cases, but we wanted the courts to have the power to use it in appropriate cases only, and to decline to do so where it was simply an empty gesture, but one with

potentially damaging consequences. We also expressed the view that the retrospective power to remit an unpaid charge would prove to be a useless and cumbersome way of dealing with the many cases in which a charge should never have been imposed in the first place.

On Report, in the hope that the then Secretary of State might have softened his view, we moved similar amendments. Unfortunately, it was quite clear that we had failed to move the then Secretary of State, and the legislation was passed in its present form. The criminal courts charge in practice has been even worse than we feared. The charges introduced by these regulations are very high, so that the overall impact of the penalty may be out of all proportion to the offence, particularly where there is a trial. The examples cited by the noble Lord, Lord Beecham, made that very clear.

The Bar Council, which provided a very helpful briefing for this debate, has pointed out how concerned it is about the impact of these very high charges on the rehabilitation of offenders. It stresses that convicted offenders come

largely from among the most vulnerable in society, with the greatest difficulties in finding employment. The council and its member barristers see a risk of offenders committing further offences in order to obtain the funds to pay the charge.

The number of magistrates who have resigned over this single issue passed 50 some time ago, and my understanding is that it may now be even twice that. This country and this House deeply value our tradition of lay magistrates being appointed as volunteers to administer criminal justice in our communities in less serious cases. The Conservative Party has long expressed admiration for our magistracy and many prominent Conservatives have in the past been magistrates. However, we cannot expect members of the community to play their part in a justice system that denies them the power to do justice and forces them to take action which they regard as thoroughly unfair, harmful and unjust.

On issues that concern the magistracy, this House has often been greatly assisted by the experience of the noble Lord, Lord Ponsonby of Shulbrede. I see that he is in his place today and I hope that we may hear from him again. But this is what Richard Monkhouse, chairman of the Magistrates' Association, has said:

"Our members have expressed concerns about the charge from the outset and it shows the strength of feeling when experienced magistrates resign from the bench because of it. … A six-month review is needed with a view to granting judges and magistrates discretion in applying the charge because we know the majority of offenders will never be able to pay, and worse, that it may influence their pleas".

This last point is particularly important. The regulations stipulate the amounts of the charge, which diverge wildly according to whether a defendant pleads guilty or not guilty. The noble Lord, Lord Beecham, has given the details of the charges. The most serious divergence is in the case of the magistrates' court, where a plea of guilty is met with a charge of £150 or £180, depending on whether the offence is summary only or triable either way. That becomes a very substantial £520 or £1,000 on a plea of not guilty. In the Crown Court the differential is less marked; the charge is £900 for a plea of guilty and £1,200 for a plea of not

guilty. However, these differences, particularly in the magistrates' courts, create a serious risk of injustice. It could not be clearer, I suggest, that defendants who are innocent will be driven to plead guilty because of the impact of this non-discretionary charge for pleading not guilty, imposed whether the trial takes an hour or more than a day.

I had an email from a businessman in Shropshire recently. He had served as a magistrate there for 21 years before resigning over this issue. He wrote that with the charge imposed,

> "for simply deciding to go to court to argue your innocence on a trivial offence, the British justice system is in a dire state".

It is not the proper function of the Secretary of State for Justice to bring our system of justice into disrepute, yet that is precisely what this criminal courts charge has done. Imposing unaffordable penalties on offenders who cannot pay commands no respect, just as it brings no real money into the Treasury. Judges feel that this charge is an abuse of their judicial oath, as their promise to do justice clashes with their obligation to enforce the law. This was well expressed by Judge Christopher Harvey Clark, sitting in Truro, when he told a defendant, as he imposed a £900 charge on a guilty plea in the Crown Court:

"The charge has no bearing on your ability to pay. It is totally inappropriate for people of no means to have to pay this charge. It happens to be current government policy but as an independent judge I regard it as extremely unfair".

The Howard League has pointed out that the non-discretionary nature of the charge has led to courts feeling compelled to manipulate the outcomes of cases to avoid the effect of the charge which is imposed by statute. So fines have been reduced in order to enable the charge to be imposed. Offenders have been given absolute

discharges in cases that could not possibly merit them because magistrates are not prepared to impose the charge on the offender concerned. And perhaps worst of all, victims have been denied compensation, which is discretionary, to enable courts to impose the charge, which is compulsory. In west Yorkshire there was the case of a 21 year-old girl, Chloe Knapton, who was left severely scarred as a result of being injured with broken glass in the street. When sentencing the perpetrator, the Recorder did not order him to pay her compensation simply because he had to impose the compulsory £900 charge. That is no justice for her or for society.

I hope we will secure a review at an early stage, far earlier than the three-year review we were promised, and which is enshrined in statute. The evidence is there now on how much damage this charge is doing, and for how little reward. I invite the Minister to say whether an earlier review may be in prospect and whether he is in a position to give the House clear figures on the extent of the criminal courts charges imposed since they came into force, and how much has been collected. That will enable us to see the extent to which the revenue prediction of £80 million a year looks like being met. I suspect that the real collection figure will turn out to be far lower. But even if it is not, I still oppose these charges. For all the reasons that the noble Lord, Lord Beecham, has given, and those I have canvassed, if the noble Lord seeks the opinion of the House this evening, I will support him.

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Lord Rooker (Lab): My Lords, I had not intended to speak in this debate, but I have just received an email from a friend who is a magistrate. I shall not say where because these days one cannot do that. It is worth putting on the record. He writes:

"Courts are closing in great numbers with another 90 about to be closed and there will be more after this. Defendants and witnesses now have to travel great distances. Some cannot afford it so plead guilty when they may not be. Also, it has removed the fundamental right of citizens to be tried by their peers as the cost of the criminal court charge is so high and beyond most defendants' means, so they are pleading guilty. It has removed the need of the CPS to prove a case beyond reasonable doubt. Not many well-off people appear in court so it is the poorest who are being hit with a double whammy".

That is the view of a serving magistrate sitting on the Bench today.

Lord Pannick (CB): My Lords, on this subject, I am on the side of the two Jeremys: the noble Lord, Lord Beecham, and Jeremy Bentham. In 1795, Jeremy Bentham wrote:

"The statesman who contributes to put justice out of reach … is an accessary after the fact to every crime".

For Bentham, such a law tax was a denial of justice. These regulations are a denial of justice, and they are a denial of justice for the two reasons given by the noble Lords, Lord Beecham and Lord Marks. First, because the sums involved—£150 up to £1,200—may well encourage innocent people to plead guilty, and, secondly, because the magistrate or judge has no discretion to vary the charge by reference to the circumstances of the offence or the offender—in particular, the offender's means.

I will add a further point. There is a much fairer and more lucrative way forward for a Lord Chancellor who wants to help balance the books by imposing a court charge. Let the Lord Chancellor give the judges and magistrates a discretion to charge much higher court fees to defendants who are convicted of serious crimes and who can afford to pay. The drug dealers, the bank robbers and the fraudsters can be charged the true cost of their occupying the courts for weeks in trials that end in convictions if the judge or magistrate in their discretion thinks that it is appropriate to do so. The regulations could then give the courts a proper discretion not to impose on the small fry charges that may well induce guilty pleas from innocent people and may well result in the imposition of orders for payment from people who cannot afford them. If the noble Lord, Lord Beecham, wishes to test the opinion of the House on these regulations, he will certainly have my support in the Division Lobby.

Lord Brown of Eaton-under-Heywood (CB): My Lords, the points to be made against these regulations are so obvious and so strong that really they do not need to be made yet again in tonight's debate. The problems—

the total lack of judicial discretion, the obvious impossibility of recovery in so many cases and the risk of excessive pressure on defendants to plead guilty to avoid the charge escalating from £150 to £520, or, in an each-way case, from £180 to £1,000—were all foreseen by the noble Lords, Lord Beecham and Lord Marks, in Committee in July of last year. They have all since been the subject of widespread

criticism by a series of distinguished legal commentators in a succession of legal periodicals such as the

Criminal Law Review

,

Criminal Law and Justice Weekly

and so forth. Professor Nicola Padfield, a most distinguished legal academic and criminologist and now master of Fitzwilliam College, Cambridge, described them as "astonishing" and quoted another commentator as saying that they were the most unworthy provisions on the statute book. The president of the Law Society called them "outrageous".

7.45 pm

What perhaps were not foreseen in Committee were the consequences that have recently been highlighted in the press, notably in the *Times* on Monday of this week and in the *Independent* today: first, the reductions in the awards both of compensation for victims and of prosecution costs in order to be able to accommodate these mandatory costs, both of those being, unlike court charges, within the court's discretion; secondly, the reduction of fines or other penalties, again as compensation for these charges; and, thirdly, the very powerful objections of the magistracy to the point where already, as we have heard, more than 50 magistrates have resigned in protest. These regulations, the very last of the previous Lord Chancellor's series of cost- saving or money-making regulations, are the most objectionable of all and must be not merely regretted but withdrawn.

I will add a point on which I touched in earlier debates that concerned the cutting of legal aid or increases in court fees. If the Lord Chancellor truly needs to achieve significant savings, he should revisit the whole question of jury trials. In particular, does a need remain for juries in all cases where presently there is a right to them—even, for example, in serious and complex fraud cases, and even in comparatively trivial cases where the jurors themselves feel that their time is wasted? In January of this year, Sir Brian Leveson—he of the inquiry into the press, now President of the Queen's Bench Division—produced a comprehensive review of efficiency in criminal proceedings. I commend it to the Lord Chancellor. Pages 87 to 92 discuss these questions. That of course is for the future. For the present, these regulations must indeed be regretted.

Lord Ponsonby of Shulbrede (Lab): My Lords, my contribution concerns both practicalities and the principle of the courts charge. I remind the House that I sit as a lay magistrate in central London. I agree with everything that has been said by the previous speakers. I shall avoid going over examples already given but shall walk through two simple sentencing exercises that illustrate the points with which we are dealing.

If an offender pleads guilty to a summary offence in a magistrates' court, a band A fine is given. If he is on average income, that fine will be £150. That is at the discretion of magistrates. In addition, there are CPS costs of £85, the imposition of which is, again, discretionary. After that, there is the government surcharge or the victim surcharge of £20, which is mandatory. Then there is the new courts charge of £150, which is mandatory. The total is £405. In this example, 37% is the fine and 37% is the courts charge.

In the same circumstances, if the offender is on benefits the balance changes. The fine is £40, the CPS cost is £85, the government surcharge is £20 and the courts charge is again £150. The total is £295. In this example the fine for an offender on benefits is 14% of the total figure but the courts charge is half. This is a common type of fine given in the magistrates' courts. The courts charge is clearly unjust on this consideration alone.

We have heard how unhappy magistrates are and we have heard about the resignations and retirements—and I personally know a couple of magistrates who have retired. However, it is not unusual for magistrates, and I am sure judges as well, to combine competing principles when they make decisions on sentences. We have the principle of totality when we are making a sentence—that is, what is the bottom line? Of course, we have to come up with a total sentence that is fair in all circumstances. But the competing principle is the advice that we get from our justices' clerks, who are in turn advised by the Justices' Clerks' Society, whose advice to us is that we should sentence and then, after the sentence, add in an administrative charge, which is the courts charge. Clearly those two pieces of advice are in contradiction but, in the privacy of the retiring room, magistrates may look at the matters over which they have discretion. I was disturbed to hear about the case in the *Independent* this morning, where magistrates said that they actually reduced compensation. I believe that that is absolutely wrong, but it is within the power of the magistrates to reduce compensation to reflect the totality of the sentence that they are giving. When the Minister comes to wind up, I am sure that he will remind the House that it is open to magistrates to give an absolute discharge or "one day deemed served". I and all magistrates in exceptional circumstances use those types of sentences, but it is absolutely wrong to use them as a way in which to circumnavigate the courts charge.

Noble Lords have spoken about the possibility of people changing their plea to guilty to avoid the courts charge. I understand that it is early to get a statistical basis for that, even though a number of anecdotes say that that is what defendants are doing. But it is worth reminding the House of the totality of the situation. We have already heard that the sentence itself can be reduced by up to 30% if somebody pleads guilty at the first opportunity. In addition, the costs asked for by the CPS will be much lower if somebody pleads guilty at the first opportunity, rather than going through trial. Admittedly, this is a discretionary amount, but the amount asked for will be much lower on behalf of the CPS. On top of that, you have the mandatory courts charge, which we have heard so much about, of up to £1,000 for a conviction on an either-way matter in a magistrates' court. Putting those elements together could encourage people to plead guilty when they believe that they are not guilty.

On the principle of the courts charge it is worth reflecting that, when we debated this matter on the then Criminal Justice and Courts Bill last year, we did not know the level of the courts charge, and the briefings that we received—from the Magistrates' Association, for example—set the courts charge at the

same level as that of the victim surcharge, because they did not know any better at the time. So the debate at that time was on the principle of the courts charge, not the proportionality, because the figure is so much higher than we expected when considering the matter last year.

The Government have always justified this matter by saying that criminals should pay their way, and the previous speakers have accepted that principle, but I am not sure that I do accept it. The court system, right up until last year, was an independent administrator of the law, in which judges, magistrates and jurors had no interest in the outcome of a case, their only duty being to administer the law and come to a just outcome. Surely it is wrong that the court system has a financial interest in the outcome of a trial. I am not for a moment saying that any judge or magistrate would be swayed by that consideration, but from the defendant's point of view and the public perception there is an institutional, built-in benefit to the court system on the result of a trial. On that alone, I oppose the principle of the courts charge.

There is a bit more to it than that—and I refer to some research sent to me about how people perceive how they are treated in court. It is not merely a question of the legal and constitutional rights that they receive but about what they believe to be the fairness of the whole system. There is growing evidence in America and the UK that if people are convicted and believe that they have been fairly treated, they are more likely to comply with the sentence and the sentence itself is likely to have a better outcome. This is a profound observation, which puts an

onus on the court system to treat all parties fairly and an onus on treating convicted offenders in such a way that they think they have had a fair crack of the whip, so that they are more likely to comply with the sentence when it is given.

I urge the Government to bring forward a reconsideration of this matter. It is something which, in my 10 years as a magistrate sitting on the Bench, I have found people feel most strongly about.

Lord Woolf (CB): My Lords, what we are discussing concerns what happens in magistrates' courts up and down the country and, from time to time, in the Crown Court, where for reasons that can be good or bad, cases go to be heard. I fear that these regulations indicate that the Government have paid less attention to what they are doing because it concerns magistrates and the cases that come before them, and other cases that are not the most serious. I see no other reason why the Government could come to the conclusion that it is right and proper to do what these regulations seek to do. I suggest that this House should regard justice in the magistrates' courts as every bit as important as every other court in the land. It is a total disgrace that we should put on to the statute book provisions that have the consequence that magistrates are so appalled about what they are required to do that they feel it necessary to resign. I regard that as shocking, and the only explanation that I can suggest is the one I have given: that insufficient consideration was given to what has been done.

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Now that the matter has been brought to the attention of a new Minister of Justice and Lord Chancellor, he should look at it very carefully, as quickly as possible and, as he has been shown to have the courage to do, take his own decision and come to the right conclusion. I wish to put it on the record that I have been very pleased by the general approach of our new Minister of Justice and Lord Chancellor. It seems to me that he considers the facts; he may not always come to the decision I would want him to come to, but he comes to a fresh decision, as required by the circumstances as he sees them. I make no objection to the fact that he may take a different view from that which judges and retired judges would have come to. What is wrong here, though—this is the explanation—is that there was no proper consultation. I believe that if there had been proper consultation that had been objectively considered, these regulations would not have seen the light of day.

8 pm

I gratefully adopt what has been said already by previous speakers and I do not wish to repeat what they have said. However, I want to leave a very important message. It is all too easy to chip away at the proud record we have in this country of doing justice regardless of the individual involved. By a little nibble here, and a little nibble there, and sometimes a bite—and this is not a nibble; it is a big bite—real damage is done to the reputation of justice in this country. I urge the Minister to look at this urgently, because it will do real harm, and I hope it will be realised that in haste something was done that should not have been.

Lord Phillips of Worth Matravers (CB): My Lords, in the days when one was allowed to use Latin in court, counsel and judges sometimes delighted in the phrase res ipsa loquitur: the facts speak for themselves, or, the answer is obvious. For the reasons given by every single person who has spoken thus far in this debate, that phrase applies to the motion. I shall not repeat the reasons, but I shall support the motion if I have the opportunity.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, I thank all noble, and noble and learned, Lords who have spoken in this debate, in which, although it was short, strong feelings have been expressed and cogent arguments advanced about the criminal courts charge. The Secretary of State for Justice has developed a reputation—referred to by the noble and learned Lord, Lord Woolf—for listening to the arguments and approaching with boldness and imagination the often difficult challenges that justice and paying for the cost of justice present. Although I cannot promise the House an immediate review of this matter, I can promise that all the speeches made today will be carefully heeded by the Secretary of State for Justice. He will be considering them extremely carefully.

Let me deal with some of the points that have been made, succinctly but powerfully. First, on judicial discretion, this was one of the arguments that came before both Houses when the Bill was going through

Parliament. Indeed, I was the Minister who took the relevant clauses through. The argument—except from the noble Lord, Lord Ponsonby—was not that there are no circumstances in which it is appropriate for a defendant to pay the costs of their appearance in court, but that there should be some discretion. The Government believe that convicted adult offenders should take responsibility and contribute towards the costs they impose. If they do not, of course, the cost is paid by the taxpayer. The criminal courts charge is intended to ensure that offenders take a greater share of the burden, currently borne by taxpayers, of funding the criminal courts.

Imposition of the charge is purely about recovering costs. It is not a punishment and therefore should not be treated as part of the offender's punishment in any way. Therefore, it would not be appropriate for a discretion to be exercised. The noble Lord, Lord Ponsonby—parting company from a number of other noble Lords—said that he did not accept that any cost should be imposed on a defendant for appearing in court. One of the reasons he gave was that in some way, it would be rather invidious, because a judge or magistrate might be perceived as having some form of financial interest in the outcome of a case. Although I think the noble Lord accepted that that would not be much of a factor in reality, he was in a sense making an important point: that judges and magistrates should not be able to choose whether to charge for the use of a court, as it were, and that it would therefore not be appropriate for there to be a discretion.

I understand entirely that it is most important that the courts charge framework means that offenders are given a fair and realistic opportunity to pay the charge. Although a court does not have discretion in terms of the charge itself, it does have discretion to consider an offender's means and set payment terms at affordable rates. Offenders will be able to contact a fines officer at any point to request variations in payment rates if their circumstances change. At such points the courts and fines officer will have an opportunity to take existing debts into account, making sure that repayment is reasonable and affordable, given the offender's individual circumstances.

The criminal courts charge legislation also gives the offender the opportunity to have the charge remitted after two years where the offender takes all reasonable steps to pay it and does not reoffend. It will be for the courts to decide whether all reasonable steps have been taken, having regard to the offender's personal circumstances. Here matters such as unemployment, interruptions to benefits payments or poor health can be taken into account.

Noble Lords were concerned about the possibility of there being an inducement to plead guilty. Of course, that is a highly relevant consideration. Defendants facing trial are not required to pay the criminal courts charge; they will be subject to the charge only if they are convicted following a hearing, or of course if they plead guilty. It is always a delicate matter whether defendants plead guilty to an offence of whatever seriousness. The noble Lord, Lord Beecham, and others have acknowledged the fact that it is well known that a discount—often of a third—will be given to a defendant

who pleads guilty, and it will depend on the precise juncture at which that defendant pleads guilty. Pleading guilty at the first possible opportunity will obtain the maximum discount. An experienced legal adviser, such as the noble Lord, Lord Beecham, will approach the question of an appropriate plea with delicacy and will not of course encourage a defendant to plead guilty if there is a defence. Indeed, they will go further than that and tell the defendant that they should not plead guilty to an offence they have not committed. We believe that the delicate matter should not and will not be distorted by the question of a criminal courts charge.

Let me deal with the point that perhaps can be summed up by the principle of totality, which those of us, like me, who have had to sentence defendants have borne very much in mind. It is true that, very often, where there are a

number of different sentencing options on the menu and more than one has to be prescribed, a judge will try to make sure that, in the round, the penalty or combination of penalties is meted out that is appropriate to the offence. I understand why certain magistrates have been rather more lenient than they might have been, obviously had there not been the criminal courts charge, but that is not what the legislation provides and is not something that should be done.

The criticism is also advanced that there was a lack of parliamentary oversight in relation to these provisions, and the suggestion is that the statutory instrument severely limited that oversight. There is nothing improper about the time in which the regulations were laid. I can assure noble Lords that the criminal courts charge provisions underwent considerable scrutiny. I can personally testify to the level of scrutiny it underwent in this House. I have looked back at *Hansard* for the House of Commons, and the principle and the appropriateness of a criminal charge were considered in debates. The question of the actual level of the charge is a different matter—I see the noble Lord, Lord Beecham, grimacing. I wholly understand that there is a distinction.

However, the concerns raised in this Motion regarding discretion and the effects on plea decisions are points that were carefully considered and debated at considerable length at the various stages during the consideration of the Bill in both Houses. As to charge levels, draft charge levels were also published to inform parliamentary and public debate, the charge levels set out in the regulations being a slightly adjusted version reflecting up-to-date costing information. I do not consider that the Government at the time behaved improperly by laying the regulations when they did, especially in light of the significant amount of scrutiny that took place generally on the principle. It may be that magistrates expected there to be a greater amount. This was a difficult attempt to try to cost the use of the courts. The victim surcharge is another mandatory charge—there is no discretion—which was introduced in 2007 by the then Labour Government.

On the question of benefits assessment, regarding the suggestion that claims on savings cannot be substantiated, an impact assessment was published when the Act was introduced early last year that was based on indicative charge levels. Significant work was

then carried out to assess the costs of running the criminal courts, which resulted in the publication of the draft charge levels I have previously mentioned. This was published as an addendum to the original impact assessment and included an updated analysis of the benefits and costs of the policy. An updated impact assessment was produced to accompany the regulations and has now been published. It includes a considered analysis of the benefits and costs of the provisions, estimating total cash inflows arising from the charge at £95 million from 2019 to 2020.

A number of noble Lords remarked on the unfortunate response of a large number of magistrates. I agree with all noble Lords who have emphasised the importance of magistrates and what a vital task they perform for society in general, and we are of course concerned that any magistrates should not feel confident in the provisions of sentencing and indeed other provisions that they have to administer. Of course I have read about and the Government are well aware of those magistrates—reported in the media to number something like 50—who say that the courts charge was certainly one of the reasons for their resignation. Just for context, I should say that I understand that 350 magistrates have resigned in the relevant period, and of course others will have retired. They may have myriad reasons for doing so. However, I do not want to underestimate the significance of the general discontent referred to by the noble Lords, Lord Rooker and Lord Ponsonby, and others. The Secretary of State and the Ministry of Justice take that matter very seriously.

I also bear very much in mind what a number of noble Lords have said about the importance of rehabilitation. We do not believe that this will be an additional barrier to rehabilitation. The Government are extremely concerned that rehabilitation should be at the heart of reforms to our sentencing provisions and indeed in the way in which the prison service will, we hope, be changed in the following years. I should say that failure to pay the court charge will not extend the time it takes for a conviction to become spent for the purposes of the Rehabilitation of Offenders Act 1974. I take the point made by the noble Lord, Lord Ponsonby, that it is important that defendants feel that they have been dealt with fairly, and that itself can be relevant to their rehabilitation. However, we

consider that setting the repayment rate fairly and proportionally according to each offender's individual circumstances, as long as they provide the court with the details, should mitigate any sense they have of unfairness which may follow the criminal courts charge.

8.15 pm

Although the noble Lord, Lord Pannick, may not have extensive experience in the magistrates' court, he is none the less concerned for justice, and as such we benefited from his contribution to the debate. All noble Lords from all sides are of course concerned, as are the Government, that there should be justice and that the criminal courts charge should not impede that. However, I am sure that all noble Lords will also accept that Governments are reasonable in seeking to try to recover some of the costs of defendants appearing in court—the result when they are convicted of their own offences. I take the point made by the noble Lord,

Lord Pannick, that those who have greater means may well be regarded as being better able to contribute to those costs, which is a factor that should be borne in mind.

I will repeat in conclusion what I said at the outset—that we are listening; we have listened to the concern about these charges. The capacity to review is built in to the legislation. I will not give any undertakings or promises from the Dispatch Box or raise expectations, but I can assure the House that the matter is very much on the agenda of the Ministry of Justice.

The House has been greatly assisted by everything that has been said. I hope that the noble Lord, Lord Beecham, will accept from me the seriousness with which the Government take those concerns. This regret Motion has effectively underlined those concerns. I hope that, in that spirit, the noble Lord will feel able—notwithstanding the presence of a number of noble Lords on that side of the House—not to press this regret Motion.

Lord Beecham: My Lords, the Minister can live in hope. I have a certain sense of déjà vu when listening to the elegant defence the Minister makes of the indefensible. I remember the skill with which he sought to defend the previous Lord Chancellor's secure college proposal, which was interred not too long ago by the new Secretary of State, and I rather think he is in the same position tonight—I rather hope that he is.

The Secretary of State the Lord Chancellor is reported today in the press to have made a very significant change in the Government's policy relating to justice by persuading the Government to withdraw from their proposal to offer the service of the splendidly named Just Solutions International to the Government of Saudi Arabia in the light of the dreadful position of a British citizen that, unfortunately, we are all familiar with. The Lord Chancellor may need some support in seeking to change the system and these regulations—which he inherited—in order to promote, let us say, just solutions nationally as opposed to internationally. The opinion of this House may strengthen his hand with regard to discussions with colleagues who in the other context seem to have been somewhat recalcitrant. In those circumstances, therefore, I wish to test the opinion of the House.

8.19 pm

Division on Lord Beecham's Motion

Contents 132; Not-Contents 100.

Motion agreed.

Division No. 4

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