

Increasing the Magistrates' Court fine limit – Equality Impact Assessment

Introduction

The Ministry of Justice tabled Government amendments at the Commons Report stage of the Legal Aid, Sentencing and Punishment of Offenders Bill to remove the £5,000 upper limit on fines imposed in the magistrates' courts and to provide a power to amend the upper limits on fines with existing maxima lower than £5,000. This equality impact assessment accompanies these Government amendments.

Equality duties

Under the Equality Act 2010 section 149, when exercising its functions, Ministers and the Department are under a legal duty to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and
- Foster good relations between different groups.

Paying 'due regard' needs to be considered against the nine "protected characteristics" under the Equality Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

MoJ has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and where a potential disadvantageous effect is identified how that is either mitigated or justified by reference to the objectives of the policy. MoJ records its fulfilment of its duties by completing an Equality Impact Assessment (EIA).

Summary

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

The proposal to remove the £5,000 upper limit on fines imposed in the magistrates' courts applies to all offenders given a fine. There is therefore no direct discrimination within the meaning of the 2010 Act.

Indirect discrimination

Although the proposal will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given fines of £5,000 or over. We have identified in particular potential differential effects in respect of age and sex and differential effects for organisations relative to individuals. However, even if it were established that these effects constituted a particular disadvantage, we believe that

removing the upper limit represents a proportionate response so that proportionate fines can be imposed on wealthy or corporate offenders and organisations.

Discrimination arising from disability and duty to make reasonable adjustments

In so far as this proposal extends to the disabled, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make any adjustment for disabled persons.

Harassment and victimisation

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

Advancing equality of opportunity

We don't think these proposals impact on the duty to advance equality of opportunity.

Fostering good relations

We have considered this objective but do not think it is of particular relevance to the proposals.

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to proceed with the proposal to remove the £5,000 upper limit on fines imposed in the magistrates' courts.

Aims and outcomes for the policy

The Government believes that financial penalties, set at the right level, can be just as effective as a community sentence at deterrence and punishment. It believes that there are persuasive arguments in favour of using financial penalties for many offenders before turning to other sanctions. The provisions in the Bill support this aim by encouraging greater use of the fine in the magistrates' courts.

The Government also wants to remove elements of the law that unhelpfully fetter courts' discretion and believes that the court which has heard all the evidence and all the facts about the offence and the offender is in the best position to make a just decision over sentencing. The provisions in the Bill would remove the upper limit to magistrates' powers when imposing fines for both summary and either way offences.

The maximum fines currently available to magistrates depend on the seriousness of the offence committed. For most summary only offences maximum fines are set by reference to five statutory levels, £200, £500, £1,000, £2,500 and £5,000. For triable either way offences magistrates may fine offenders a sum not exceeding a statutory amount, currently £5,000. There are some exceptional statutory maximum fines for offences suitable for being dealt with by magistrates, but where the financial gain realised by the offender is so large that the normal fine limits are inadequate. Such offences tend to be environmental or health and safety offences committed by companies, with maximum fines such as £50,000 or £20,000.

There is already a power to increase the statutory maxima (the levels for summary offences and the 'statutory maximum' for either way offences) in line with changes to

the value of money, but no power to raise them by any other amount, or to remove them altogether.

The provisions in the Bill would remove maximum fines of £5,000 and above available to magistrates on summary conviction as well as the maxima available for either way offences tried summarily. They would not immediately affect the maximum summary fines of £200, £500, £1,000 or £2,500, but the provisions do include a power to increase these amounts, keeping them in the same ratios one to another. This power is not tied to any changes in the value of money.

The way in which magistrates fix individual fines is governed by statute and sentencing guidelines. Where a court decides that a fine is the right sentence, it is required to fix a sum of money that reflects the seriousness of the offence and takes account of the known means of the offender. Seriousness is the main factor in deciding any sentence, but taking account of the income of the offender as well ensures that a fine poses an equal burden for a particular level of seriousness regardless of income.

Courts are also under a statutory duty to follow any relevant sentencing guidelines unless the court is satisfied that it would be contrary to the interests of justice to do so.

Under the current guidelines, a fine is based on one of three bands. Each band gives a starting point and a range defined in terms of the offender's "relevant weekly income" (RWI). This is calculated from information provided by the offender on a means form, which they are required by law to complete. The guidelines assume offenders who have a low income or are on benefits to have a weekly income of £100. Offenders not on benefit, but who do not provide means information are assumed to have a weekly income of £350. The levels of fine suggested by the guidelines take account of normal living expenses.

The guidelines' three bands are:

Band A:	Starting point: 50% of RWI	Range 25-75% of RWI
Band B:	Starting point: 100% of RWI	Range 75-125 % of RWI
Band C:	Starting point: 150% of RWI	Range 125-175% of RWI

Separate guidelines govern the fixing of fine amounts when the offender is a company.

We will be discussing with the Sentencing Council the impact of all the provisions in the Bill on current guidelines and any changes needed, including those relating to the setting of fines.

Under the above arrangements, most fines in the magistrates' courts fall well below the upper limits. But there are some cases, where the offence is at the serious end of the spectrum dealt with by magistrates and where the offender is relatively wealthy, possibly a corporate body, for which the current maxima - £5,000 in most cases or the exceptional maxima – curtail magistrates in the fines that they can impose.

Where such cases are triable on summary conviction only, and a community sentence is not available to them, magistrates have no choice but to adhere to the statutory maximum which can mean that an offender is fined an amount which does not represent a real punishment. Where the offence is summary only and a community sentence is available (in cases where the offence carries imprisonment and the offence being heard is serious enough to warrant a community sentence) the

court may choose to impose a community order if it believes that its powers to fine are insufficient. This is counter to the Government's aim to increase the use of financial penalties and is more costly and resource intensive.

Where the case is triable either way the magistrates can commit it to the Crown Court for sentence – fines are unlimited in the Crown Court – but this is bureaucratic, time consuming and costly. It also means that sentence is not passed by the court which heard all the evidence and convicted the offender. The provisions in the Bill would give magistrates the power to impose a realistic and proportionate fine in such instances, dealing with more cases in the magistrates' courts rather than the Crown Court.

For offences with fine maxima below £5,000, fines actually imposed are generally significantly below the upper limits. But again there may be scope for higher fines where offenders are particularly wealthy. The Bill's provisions do not remove these limits, which would lose the gradations in severity of punishment afforded by the current stepped levels, but provide a power to increase them by statutory instrument in a manner that would retain their relative values. The Government intends to consult before this order-making power is first exercised.

Methodology and evidence sources

In analysing the potential equalities impacts of these proposals, we have considered the impact on offenders, by comparing the characteristics of those given fines of £5,000 or over in the magistrates court with the characteristics of all those given fines. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

Data on court disposals are from the Court Proceedings Database. This holds information on defendants proceeded against, found guilty and sentenced for criminal offences in England and Wales. It includes information on the age of the defendant, their gender, ethnicity, the police force area and court where proceedings took place as well as the offence and statute for the offence. Information on gender reassignment, disability, pregnancy and maternity, sexual orientation, religion or belief or marriage and civil partnership for criminal offences may be held by the courts on individual case files. However it has not been possible to collate these data for this Equality Impact Assessment because of practical difficulties.

Stakeholder consultation and engagement

In the Green Paper "Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders" the Government set out its aim for the greater use of financial penalties and sought responses to the question "How should we increase the use of fines and of compensation orders so as to pay back to victims for the harm done to them?".

Many respondents supported the aim of increasing financial penalties. The main concerns were that this would not be achieved without improvements in means information and perceptions of the extent to which fines are enforced. Those representing particular groups of offenders, such as women, those with family responsibilities and substance misusers, were concerned about fines imposed at the lower end, on those on benefits or with low incomes. Such offenders would be highly unlikely to be affected by the removal of limits of £5,000 or above.

Analysis

This is an EIA on the potential impacts of the proposal to remove the £5,000 upper limit on fines imposed in the magistrates' courts and to provide a power to amend the upper limits on fines with existing maxima lower than £5,000. However, as the Government intends to consult before this order-making power is first exercised, we have not included an assessment of these impacts.

The EIA assesses the potential effects of the proposed reforms on the elimination of unlawful discrimination, harassment, victimisation and other forms of prohibited conduct, the advancement of opportunity and the fostering of good relations against the protected characteristics of sex, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation. It is designed to ensure that the Government has due regard to these needs, in accordance with its statutory duties under section 149 of the Equality Act 2010 ("the public sector equality duty"). The purpose of this EIA is to provide data and analysis used to flag potential equality impacts.

Impact on victims

This policy will enable magistrates' courts to issue higher value fines which victims should view positively, but we only expect it to impact a small number of cases.

Impact on organisations

1% of all fines in the magistrates court, and around 60% of all fines of £5,000 or over in the magistrates court, are issued to organisations. Therefore organisations will be differentially affected relative to individuals.

The vast majority of these fines are for indictable offences which the magistrates' can currently commit to the Crown Court if they think a fine of over £5,000 is appropriate. These cases are therefore unlikely to be affected, but it is possible that magistrates' don't currently commit these cases to the Crown Court because it is time consuming and costly and they may issue higher fines if they have the power to do so.

It is the organisations who commit summary offences and currently get fines of £5,000 or more who are most likely to be affected and they will be differentially affected relative to individuals. The number is however small.

Impact on offenders

In the absence of changes in sentencing courts' behaviour, the only fines that can be expected to increase are those that are currently set at or very close to the maximum of £5,000 and that would have been set higher if not for the current limit. Analysis of Magistrates court fines in 2010 found that substantially less than 1% of fines are at or close to the maximum. For these small number of offenders there could be increased revenue, although with the potential for additional enforcement costs. There is unlikely to be savings from retaining cases in the magistrates' courts by requiring fewer committals for sentence, because the numbers of fines close to or over £5,000 issued in the Crown Court is small.

More generally, there is a potential risk that by increasing the upper limit of fines this will serve as an indicator to sentencers to increase the level of fines generally, which might lead to increased revenue but there is also the potential for additional enforcement costs.

However, based on the evidence available, it is not anticipated that there will be a significant impact of raising the fine limits in the Magistrates court.

Potential Sex Impacts

Table 1 (Annex A) shows that those offenders given fines of £5,000 or more in the magistrates' court are more likely to be male than those offenders receiving fines generally in the magistrates court. However this is based on a small comparison group of the 117 individuals who were given a fine of £5,000 or more for all offences in 2010.

These data suggest that there is the potential for the removal of the upper-limit on fines to have a differential impact in relation to sex.

Potential Age Impacts

Table 2 (Annex A) shows that those offenders given fines of £5,000 or more in the magistrates' court are more likely to be aged 25 and over than those offenders receiving fines generally in the magistrates court. However this is based on a small comparison group of the 72 individuals who were given a fine of £5,000 or more in 2010 for indictable offences.

We have only included indictable offences because of data recording issues with summary offences. The pattern may be different for those sentenced for summary offences.

These data suggest that there is the potential for the removal of the upper-limit on fines to have a differential impact in relation to age.

Potential Disability Impacts

Due to the limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Gender Reassignment Impacts

Due to the limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Marriage and Civil Partnership Impacts

Due to the limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Pregnancy and Maternity Impacts

Due to the limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Race Impacts

Due to the limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Religion or Belief Impacts

Due to the limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Sexual Orientation Impacts

Due to the limitations in the available evidence we are unable to rule out the potential for any differential impact.

Mitigation and Justification

The most significant differential impact of the new provisions is likely to be on organisations when compared with individual offenders. We consider that this can be justified as, in general, organisations are likely to have greater funds at their disposal than individuals and are therefore more likely to be able to pay higher fines set by reference to their financial means.

There may also be a differential impact on male offenders when compared with females and on the over 25s compared with offenders under 25. Courts already consider offenders' means before deciding the appropriate level for financial penalties and we will be working to improve the provision of means information.

Monitoring

We will be monitoring the implementation of these reforms for positive, negative and mixed equality impacts. We anticipate that the earliest these changes will be implemented is towards the end of 2012. Subject to passage of the Bill through Parliament and commencement, we would anticipate therefore to have a first full year's data for a number of protected characteristics on which to base a review commencing in Spring 2014.

Annex A – Evidence

Table 1: Offenders sentenced to fines in the magistrates court in 2010 by gender

	Fines of £5,000 or more	All fines
<u>Sex</u>		
Female	10%	26%
Male	78%	70%
Non Specified	12%	4%
Total	117	883,982

Fines issued to organisations have been excluded

1% of all fines in the magistrates court and around 60% of all fines of £5,000 or over in the magistrates court are issued to organisations

Source:

Further analysis of Criminal Justice Statistics 2010

Table 2: Offenders sentenced to fines for indictable offences at the magistrates court in 2010 by age

	Fines of £5,000 or more	All fines
<u>Age</u>		
Under 18	3%	3%
18 - 24	0%	34%
25 - 34	38%	32%
35 - 44	19%	19%
45 - 54	21%	8%
55 - 64	13%	2%
65 +	7%	1%
Total	72	57,871

These figures only include indictable offences

Fines issued to organisations have been excluded

1% of all fines in the magistrates court and around 60% of all fines of £5,000 or over in the magistrates court are issued to organisations

Source:

Further analysis of Criminal Justice Statistics 2010