

Equality Statement – Proposed Changes to Victim Surcharge

1. This Equality Statement (ES) records the analysis undertaken by the Department to enable Ministers to comply with their obligations under the Public Sector Equality Duty (PSED) in relation to the following policy proposals:
 - a. increasing the Victim Surcharge (VS) in accordance with actual and expected inflation for 2018/19 – 2020/21; and
 - b. amending the way the VS is rounded, so that surcharge levels are rounded to the nearest £1 rather than to the nearest £5 (as has been done in the past).
2. The ES considers the impact of the policy on offenders who will be ordered to pay increased amounts of VS and victims who will benefit from funding to support victims of crime.
3. Please note that this ES builds upon the ES prepared in 2012 and 2016 accompanying previous changes to the VS.

Summary of proposals

4. The VS was introduced in April 2007 and ordered solely in relation to fines at a flat rate of £15. Following the consultation 'Getting it right for victims and witnesses' the government increased and extended the VS in October 2012 to encompass a wider range of sentences with the amount payable by an offender linked to the severity of the sentence. This was followed by further changes in 2014, which enabled the VS to be imposed in the case of immediate custodial sentences in the magistrates' court. In 2016 the VS levels were increased by compounding the annual CPI inflation for the years between October 2012 and March 2018, plus a one-off 5% uplift applied annually and compounded. The figures were then rounded to the nearest £5. [See Table 1].
5. The revenue raised by the VS is ring-fenced and used to fund support for victims and witnesses. During the 2016 change to the Surcharge the department committed to reviewing and increasing the Surcharge by inflation in early 2019. Failure to increase the surcharge by inflation would result in a decrease in real terms of the contribution by offenders to victim support services. We also propose altering the way the Surcharge is rounded, moving from a rounding to the nearest £5 to the nearest £1.
6. We have followed guidance from the Office for National Statistics (ONS) when deciding whether to apply CPI or RPI inflation. In March 2018 the ONS announced that CPI is a much more reliable measure of inflation than RPI, so we have used CPI. We have combined published CPI for 2018/19 with CPI forecasts from the Office for Budget Responsibility (OBR) to calculate expected inflation for the 2018/19 - 2020/21 period.
7. Due to the way the VS is rounded, there was a possibility that this inflationary increase alone would not lead to offenders, in a vast majority of cases, paying an increased VS. In 2016 we applied the inflators then rounded to the nearest £5, up or down. The issue with this approach is that smaller surcharges, for example the £30 minimum for the VS applied to adult/company fines, would not be inflated enough to push them to the next £5 rounding threshold and as a result would be unaffected by the inflation. On this basis we propose rounding to the nearest pound, which will

ensure that the inflationary change results in a tangible increase in the VS. [See Tables 2-3] In addition this leads to a more consistent approach across sentence types, as the percentage increase is less distorted by rounding.

Table 1: Current level of Victim Surcharge by sentence type

Surcharge type	Adults (Over 18)	Organisations	Youths (Under 18)
Conditional discharge	£20	£20	£15
Fine (10% Value) min	£30	£30	£20
max	£170	£170	£20
Community Order	£85		£20
Custodial sentence (6m and below)	£115		£30
Custodial sentence (6m to 2Y)	£140		£30
Custodial sentence (2Y to life)	£170		£30
Suspended sentence (6m-)	£115		£30
Suspended sentence (6m+)	£140		£30
Youth rehab or referral order			£20

Table 2: Proposed new level of Victim Surcharge by sentence type, rounded to nearest £5

Surcharge type	Adults (Over 18)	Organisations	Youths (Under 18)
Conditional discharge	£20	£20	£15
Fine (10% Value) min	£30	£30	£20
max	£180	£180	£20
Community Order	£90		£20
Custodial sentence (6m and below)	£120		£30
Custodial sentence (6m to 2Y)	£150		£30
Custodial sentence (2Y to life)	£180		£30
Suspended sentence (6m-)	£120		£30
Suspended sentence (6m+)	£150		£30
Youth rehab or referral order			£20

Table 3: Proposed new level of Victim Surcharge by sentence type, rounded to nearest £1

Surcharge type	Adults (Over 18)	Organisations	Youths (Under 18)
Conditional discharge	£21	£21	£16
Fine (10% Value) min	£32	£32	£21
max	£181	£181	£21
Community Order	£90		£21
Custodial sentence (6m and below)	£122		£32
Custodial sentence (6m to 2Y)	£149		£32
Custodial sentence (2Y to life)	£181		£32
Suspended sentence (6m-)	£122		£32
Suspended sentence (6m+)	£149		£32
Youth rehab or referral order			£21

Public Sector Equality Duty

8. The PSED, as set out in section 149 of the Equality Act 2010 (EA 2010), requires Ministers and the Department, when exercising their functions, to have due regard to the need to:
 - A. eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the EA 2010;
 - B. advance equality of opportunity between those who share a relevant “protected characteristic” and those who do not; and
 - C. foster good relations between those who share a relevant “protected characteristic” and those who do not.
9. The relevant “protected characteristics” are race, sex, disability, sexual orientation, religion or belief, age, gender reassignment, pregnancy and maternity. The protected characteristic of marriage and civil partnership is also relevant to the first limb of the duty.

Eliminating unlawful discrimination, harassment, victimisation and other prohibited conduct

Direct Discrimination:

10. We believe that the victim surcharge proposals are not directly discriminatory within the meaning of the EA 2010 as they apply equally to all victims and offenders, irrespective of which protected characteristic they have; we do not consider that implementing these proposals would result in people being treated less favourably because of any protected characteristic.
11. The surcharge levels currently in force differentiate on the basis of age, as the surcharge amounts differ depending on whether the offender is under 18 or not. The proposals here would be applied to all surcharge levels equally, and so would continue the existing differential treatment. However, we consider differential treatment to be objectively justifiable in this circumstance. Under the EA 2010, differential treatment on the basis of age does not constitute direct discrimination if it is a proportionate means of achieving a legitimate aim. We consider that to be the case here, as the surcharge levels for offenders under the age of 18 have been set taking into account the principles of the youth justice system and the generally reduced means of young offenders.

Indirect Discrimination:

12. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.
13. Using data from a variety of sources covering various time periods (from 2011 to 2018 due to data limitations, see Annex B), and comparing against general population characteristics (2011 census data), our analysis highlighted that males, individuals aged 18 and over, and those from the black ethnicity group are over-represented in the criminal justice system and therefore more likely to be affected by the VS increase. We also identified that increasing the VS may have a differential impact in relation to a person’s ability to pay the higher VS amounts. We identified that offenders aged 35-54; male offenders; offenders of white (North European) and black ethnicity and offenders residing in families with at least one person with a disability are more likely to experience financial hardship than offenders without these protected characteristics. On this point specifically, families with at least one member with a disability are more likely to be on a low income than households without. It is therefore likely that the increase to the VS may place a

greater financial burden on offenders with a disability and offenders living in households where there is at least one person with a disability.

14. We consider that any differential affects arising from the uplifted surcharge levels and rounding are justified as a proportionate means of meeting a legitimate aim. That is, making sure offenders who commit a crime contribute the correct amount towards the cost of supporting victims of crime. Any differential effects are further mitigated by the relatively small level of the increase and the proportionality to the nature of the offending. In addition, differential effects in terms of financial affordability will be mitigated by offender means testing within proceedings when setting fine level, as well as existing policies which allow offenders to make affordable payments by instalments.
15. We do not have information on gender reassignment, sexual orientation, pregnancy and maternity and religion or belief so have been unable to analyse the potential impacts on individuals who share these particular protected characteristics.

Harassment, victimisation and other conducted prohibited by the EA 2010

16. We do not consider that harassment, victimisation or any other conduct prohibited by the EA 2010 would arise as a result of the proposed changes.

Advancing equality of opportunity

17. We have also considered whether increasing the VS amounts will advance the equality of opportunity between people who share a protected characteristic and those who do not. In respect of victims, we believe that the VS reform will minimise the disadvantages suffered by those individuals with the following protected characteristics who are more likely to be a victim of crime, on the basis that the revenue from the VS is used to fund support for victims: single, aged 16-24, male and having no religion. We do not believe the VS increases will advance equality of opportunity for offenders.

Fostering good relations

18. This limb of the PSED aims to foster good relations between persons who share a relevant protected characteristic and persons who do not. In particular this involves having due regard to the need to tackle prejudice and promote understanding. We do not believe that this limb has any relevance to this reform as it does not focus on tackling prejudice or promoting understanding.

Equality Impacts on Offenders

19. We have used the Criminal Justice Statistics Bulletin to assess the distribution of protected characteristics in offenders sentenced, all of whom will receive a VS (Tables A1-A2). The latest data provided gives information for the 12 months (Jan-17 to Dec-17). Further age breakdowns for defendants aged over 25+ in the latest Criminal Justice Statistics are not currently available due to a change in methodology, and so we have also used 2014 data as the latest report with these more detailed breakdowns.

20. We have used data from the 2013 DWP/HMRC/MoJ data share report to assess the financial impact of increased VS amounts on offenders by protected characteristics (Tables A3-A5). We have used 'out-of-work benefits' as a proxy to reflect the likelihood of the offender population being on a low income.
21. We have also used data from the latest publication: Households Below Average Income (HBAI) produced by DWP and covering the period to 2016/17 to analyse the financial impact on households with at least one member with a disability (Table A6).

Age

22. Table A2 shows that (in 2014) individuals aged 21-24, 25-29, and 30-39 were overrepresented in the criminal justice system compared to the general population. This suggests that increasing the VS levels may have a greater effect on those aged 21-39 than offenders belonging to other age groups.
23. Table A3 shows that (in 2010/11) 49% of 35-44 and 45-54 year olds, compared to 39% of 21-24 year olds, claim out-of-work benefits one month after their conviction, caution or release from prison. This suggests that older offenders (aged 35-54) are more likely to be on low incomes, than younger offenders.

Disability

24. Table A6 shows that (in 2016/17) the percentage of working-age adults in families with at least one member with a disability in absolute low income (before housing costs) is 16% whilst the figure for working-age adults living in absolute low income in families where there are no family members with a disability is 12%. In consequence, increasing the VS may place a greater financial burden on offenders with a disability or offenders in households with at least one family member with a disability.

Ethnicity

25. Table A1 shows that (in 2017) offenders of black or black British ethnicity are overrepresented in the criminal justice system compared to the general population. 10% of all sentenced offenders are of black ethnicity whilst this group makes up only 3% of the general population.
26. Table A4 demonstrates that (in 2010/11) one month after conviction, caution or release from prison offenders of white (North European) (45%) and black (45%) ethnicities are more likely to be in receipt of out-of-work benefits and on a low income, than offenders of Chinese, Japanese or South East Asian ethnicity (17%). In consequence increasing VS levels, may cause more financial hardship on offenders of black and white (North European) ethnicity than offenders of other ethnicities.

Gender

27. Table A1 shows that (in 2017) a higher proportion of males (73%) than females (27%) are sentenced in the Criminal Justice System when compared to the general population, therefore an increase to the VS levels may have a greater impact on males than females when considering overall figures.

28. Table A5 shows that (in 2010/11), 53% of female offenders were on an out-of-work benefit one month after conviction/caution or release from prison, compared to 42% of male offenders. As female offenders are more likely to be on out-of-work benefits one month after caution/conviction or prison sentence than male offenders, female offenders are more likely to have a low income than male offenders. Increasing the VS amounts may therefore place a larger financial burden on female offenders.

Annex A

Table A1: Characteristics of persons sentenced in magistrates' courts and the Crown Court in 2017 (% of declared population only)

England and Wales		
	All sentences	General population (2011 Census Key Statistics)
Age Bands	100%	100%
10-14	0%	7%
15-17	2%	4%
18-20	6%	5%
21-24	12%	6%
25+	80%	79%
Ethnic group	100%	100%
White	79%	86%
Mixed/Multiple	3%	2%
Asian/Asian British	6%	7%
Black/African/Caribbean/Black British	10%	3%
Other ethnic group	1%	2%
Sex	100%	100%
Men	73%	49%
Women	27%	51%

Sources

Sentencing Tool - Criminal Justice Statistics Dec-18

Table A2: Characteristics of persons sentenced in magistrates' courts and the Crown Court in 2014 (% of declared population only), by age

England and Wales		
	All sentences	General population (2011 Census Key Statistics)
Age Bands	100%	100%
10-17	3%	21%
18-20	7%	4%
21-24	13%	5%
25-29	21%	7%
30-39	26%	13%
40-49	19%	15%
50-59	9%	12%
60 and over	3%	23%

Sources

Persons sentenced - Criminal Justice Statistics 2014

More detailed age band breakdown is not available in most recent Criminal Justice Statistics

Table A3: Proportion of working age offenders claiming out-of-work benefits one month either side of their conviction/caution or custodial sentence in 2010/2011, by age

England and Wales	No. of offenders	Before conviction/caution		After conviction/caution or release from prison	
		1 month before	At conviction/caution or release from prison	1 month after	
All	487,000	41%	39%	44%	
Age Bands					
18-20	81,000	34%	33%	38%	
21-24	90,000	36%	33%	39%	
25-34	147,000	42%	38%	44%	
35-44	101,000	46%	44%	49%	
45-54	54,000	47%	45%	49%	
55-62	15,000	43%	42%	45%	

Sources

Experimental statistics from the 2013 MoJ/DWP/HMRC data share: Linking data on offenders with benefit, employment and income data Joint statistical report from the Ministry of Justice and the Department for Work and Pensions

The significant amount of time and resource required to link and analyse DWP, HMRC and MOJ data means we have been unable to update these figures.

Table A4: Proportion of working age offenders claiming out-of-work benefits one month either side of their conviction/caution or custodial sentence in 2010/2011, by ethnicity

England and Wales	No. of offenders	Before conviction/caution		After conviction/caution or release from prison	
		1 month before	At conviction/caution or release from prison	1 month after	
All	487,000	41%	39%	44%	
Ethnicity					
White - North European	395,000	42%	40%	45%	
White - South European	9,000	30%	29%	33%	
Black	41,000	40%	37%	45%	
Asian	27,000	29%	27%	33%	
Chinese, Japanese or South East Asian	2,000	15%	14%	17%	
Middle Eastern	3,000	33%	31%	34%	

Sources

Experimental statistics from the 2013 MoJ/DWP/HMRC data share: Linking data on offenders with benefit, employment and income data Joint statistical report from the Ministry of Justice and the Department for Work and Pensions

The significant amount of time and resource required to link and analyse DWP, HMRC and MOJ data means we have been unable to update these figures.

Table A5: Proportion of working age offenders claiming out-of-work benefits one month either side of their conviction/caution or custodial sentence in 2010/2011, by gender

England and Wales	No. of offenders	Before conviction/caution		After conviction/caution or release from prison
		1 month before	At conviction/caution or release from prison	1 month after
All offenders who served	487,000	41%	39%	44%
Offenders who served a custodial sentence	54,000	41%	14%	54%
Gender				
All male offenders	396,000	39%	36%	42%
<i>Male offenders who served a custodial sentence</i>	<i>50,000</i>	<i>40%</i>	<i>13%</i>	<i>53%</i>
All female offenders	89,000	51%	50%	53%
<i>Female offenders who served a custodial sentence</i>	<i>4,000</i>	<i>54%</i>	<i>25%</i>	<i>61%</i>

Sources

Experimental statistics from the 2013 MoJ/DWP/HMRC data share: Linking data on offenders with benefit, employment and income data Joint statistical report from the Ministry of Justice and the Department for Work and Pensions

The significant amount of time and resource required to link and analyse DWP, HMRC and MOJ data means we have been unable to update these figures.

Table A6: Estimated percentage of individuals in absolute low income by disability, based on 2016/17 data

UK	Absolute low income before housing costs	
	Individuals in families where:	
	No-one is disabled	Someone is Disabled
2016/17	12%	16%

Sources

Households Below Average Income (HBAI) 1994/95-2016/17, Department for Work and Pensions: presents data on the household income by characteristics of individuals and households.

Annex B

The research and guidance used to inform this ES is from a range of national and local sources – to help identify relevant equality issues. The reports cited include:

Criminal Justice Statistics December 2018, England and Wales: Present key trends of activity in the Criminal Justice System;

Criminal Justice Statistics 2014, England and Wales: Present key trends of activity in the Criminal Justice System;

Experimental statistics from the 2013 MoJ /DWP/HMRC data share: Linking data on offenders with benefit, employment and income data Joint statistical report from the Ministry of Justice and the Department for Work and Pensions

Households Below Average Income (HBAI) 1994/95-2016/17, Department for Work and Pensions: presents data on the household income by characteristics of individuals and households.

Getting it right for Victims and Witnesses: Government Response Equality Impact Assessment 2012, Ministry of Justice.