

# The voices of young adult defendants

## Summary

Research shows that trust in the courts is heavily contingent on citizens feeling like they have been treated fairly. This emphasis on perceptions of fair treatment is known as procedural fairness, highlighting that people need to understand the process, feel they have been treated with respect; and have their voices heard. We therefore welcome Her Majesty's Courts and Tribunals Service efforts to engage with defendants and other stakeholders on their court experience as part of its reform plan.

In our work on identifying how the court process could be improved, we spoke to 21 young adult defendants with recent experience of attending magistrates' court. This is what they said.

### "They speak a different language"

**Understanding:** Almost all those we spoke to, including ones who had been to court before, were not sure what to expect before they turned up, were not able to follow proceedings as they happened, and some left the court still unsure what had happened and why— *"I want to know what is going on - it concerns me!"*

### "I wasn't allowed to speak at court"

**Voice:** The issue that came up most consistently for young people, and which most animated them, was frustration at not feeling their voices had been heard adequately. *"They don't talk to you, they talk about you."* It can lead to suspicion that in individual cases people are actively manipulating the system against them, *"I wasn't allowed to speak at court and information was misinterpreted. They misinterpreted what I said."*

### "Don't' chat about me while I'm there. It's rude!"

**Respect:** We found defendants had varying perceptions of how respectful they felt the process was to them. Some noted positive experiences—*"staff were polite"*—while others felt they were treated with habitual neglect, *"they don't talk to you, they come and get you and then bring you back out again."*

## Recommendations

In working with five magistrate court areas, we developed a model of procedural fairness in court that could be tested and evaluated to improve these experiences. The model includes the following core features:

- Providing better information to defendants before attending court, including preparing defendants for the opportunity for direct engagement with the bench;

## Key quotes



**"they kept saying 'sentence' which I thought meant prison", "I didn't understand my sentence; I didn't know what I was getting."**



**"I was just told I have court in the morning – that's it."**



**"in the dock I struggled to focus because I felt more stressed", "in the box I couldn't hear properly. I was locked in a glass cage."**

- Enhancing engagement during the hearing itself, for example, checking defendants' understanding through the hearing and explaining the roles of those in the court room where appropriate;
- Giving defendants an opportunity for direct engagement with the bench;
- Following up after hearings to check understanding and next steps;
- Supporting voluntary take-up of community services that are available locally to tackle wider needs that may be contributing to offending behaviour.

We recommend that the Ministry of Justice, HMCTS and HMPPS provide permission to the existing five local sites and new areas such as London who already wish to test out and evaluate this model of procedural fairness in court.

## Policy Context

In the justice system, public trust is not just a nice-to-have. It is the basis of the system's legitimacy and a foundation stone for people's compliance with the law.<sup>1</sup> It has been shown that in large part this trust comes from the basic components of procedural fairness: that people understand the process; feel they have been treated with respect; and have had their voices heard.<sup>2</sup> Issues highlighted in the Lammy Review have added to the pressure on the justice system to ensure it is engaged with communities, and demonstrating transparency and accountability.

As part of its £1bn, six year transformation programme, Her Majesty's Courts and Tribunals Service (HMCTS) is keen to engage with others on how proposals to transform their services will fundamentally change defendants' experience of courts. In particular, they want to, *"ensure that all defendants are dealt with swiftly and fairly and would like to hear directly from them about their experience of existing court processes... and by doing so increase our understanding of the specific needs of defendants, helping us to improve our future service provision."*

As recognised by the Justice Select Committee inquiry into young adult offenders,<sup>3</sup> there is strong evidence from a range of research disciplines that young adults are a distinct group with needs that are different both from children under 18 and adults older than 25. The Transition to Adulthood (T2A) Alliance, a coalition of criminal justice, health and youth organisations, has helped to establish a growing consensus that criminal justice system responses to the behaviour of young adults should adjust to reflect this evidence. While some aspects of justice system practice in England and Wales have done so, allocation within the court system continues to be driven purely by chronological age.

## Findings

### Background to the research

In response, key stakeholders including police, court staff, judicial office holders, the defence community, the CPS and probation (both NPS and CRC), and staff from the Centre for Justice Innovation, in five sites across England and Wales worked together to assess the current court experience of young adults and the means by which practice could be adapted in line with the evidence.

We spoke to 21 young people between the ages of 18 and 24 with recent experience of attending magistrates' court. The aim was to learn about how they experienced court: their feelings and understanding of the process, as well as how they could be involved in reimagining it where necessary. Here is what they told us.

## Understanding

### *“They speak a different language”*

There is no doubt that young people want and need to understand what is happening when they attend court. Yet almost all those we spoke to, including those who had attended repeatedly, reported difficulties at some – or all – stages, of what can be a confusing and technical process. We heard many reports of not being sure what to expect before they turned up, not being able to follow proceedings as they happened, and even some who left the court still unsure what had happened and why.

In advance, while experiences varied, we most commonly heard of a lack of any information other than the date and location of the hearing, *“I was just told I have court in the morning – that’s it.”* The impact this had on young people was clear, *“felt scared, did not know what to expect”, “wasn’t sure where to go, which court”, and “didn’t know if you had to wait for your solicitor or if they would find you.”*

In contrast, the one or two people who had received more information said they felt better prepared, *“I read everything so had a rough understanding.”* In one instance, the young person had been able to contact support services voluntarily based on information given around drug and money advice, though noting that this was not the usual experience, *“I had never been given them before. It should be more consistent.”* The potential for this to lead to wider changes in people’s lives should not be underestimated, as this young adult highlighted, *“I am now drug free after working with them.”*

During court hearings the young people we spoke to identified three specific difficulties that contributed to their lack of understanding – and gave examples of the difference it makes when these things are done right. The first is language, with the formal terminology used in the court room very difficult to understand, and with few examples where this was clarified, *“they speak a different language”, “I tried to ask to questions but was told [by magistrate] not to.”* In particular, sentences and the language used to communicate what these were and the reasons for them not only wasn’t understood by some young adults, but actively led to an increase in their stress that prevented their understanding further, *“they kept saying ‘sentence’ which I thought meant prison”, “I didn’t understand my sentence; I didn’t know what I was getting.”* On the other hand, when young adults had their sentences explained clearly, it affected how they perceived the whole process, *“I did understand my sentence, it was clear... I was happy with it, it was very well thought out.”*

The second difficulty surrounded who was present in the court room, with young adults often not knowing who people were or their roles, *“no idea who was there”, “there are too many people I don’t know.”* The impact of this on young people is two-fold: it increases the pressure they feel, making them less likely to understand other parts of the process, *“it was intimidating. I was intimidated by all the people... the amount of people is unnecessary”,* and it actively makes them feel disrespected, *“they break respect by letting in people to watch your case and not telling you about it.”*

And finally, the environment and atmosphere was noted as a particular barrier to young adults’ understanding as it led to increased feelings of discomfort and consequent inability to participate effectively, with the dock noted as especially problematic, *“in the dock I struggled to focus because I felt more stressed”, “in the box I couldn’t hear properly. I was locked in a glass cage.”* It was also suggested that processes such as wearing handcuffs had similar effects, *“don’t put cuffs on! It’s humiliating; I can’t look people in the eye when they’re on.”* Conversely, the impact that can be achieved by simple actions to improve the atmosphere can be very positive and long-lasting, *“I had one judge who put everyone one at ease. I still remember him now.”* This must be better than the current system, about which one young person said several weeks afterwards, *“I still don’t understand why I got this sentence now.”*

## Voice

### *“I wasn’t allowed to speak at court”*

Being heard is a key component of perceptions of fairness. Voice is the idea that people are more likely to feel they have been treated fairly if they are satisfied their side of the story has been heard, regardless of the outcome of the case. In all our conversations with young people about their experiences at magistrates’ courts, the issue that came up consistently and which most animated them was frustration at not feeling their voices had been heard adequately. Comments such as the one above were commonplace in our discussions and suggest that those young people we spoke to were not at all satisfied that this had been the case.

The ways in which the lack of voice affects young people’s views of the court process are demonstrated through several other comments. First, it can lead them to feel they are not involved and so disengage, setting an unhelpful precedent for the engagement that will be necessary if they are to go on and complete their sentences, *“they could have just called me up on the phone to tell me what I’d got.”* Second, it can lead to suspicion that in individual cases, people are actively manipulating the system against them, *“I wasn’t allowed to speak at court and information was misinterpreted. They misinterpreted what I said, I don’t know if it was by accident or on purpose.”* And third, individual interactions that are poorly experienced can lead to conclusions forming about the system as a whole: that it is impossible for them ever to be treated fairly, *“I gave a letter to a judge – he didn’t read it. Someone on £180,000 a year can’t put themselves in your position”, “as soon as you are in that dock, you are guilty.”*

What is clear from our discussions with young people, is that changing the outcome of their case is not their foremost concern in wanting to have a voice and many made a point of explaining, *“I take responsibility for my actions.”* However, they did express a keen desire to ensure that their offences were put into context and that they as individuals were recognised as being more than whatever incident was currently before the court. As one young person put it, the worst thing about the court experience was *“when they read out the charges without any context.”* Others noted, *“just want them to understand my background”* and *“I’ve not had the opportunity previously to talk about my background, they [the court] know more about my crime, than me.”* And while recognising that some people might not feel confident to speak, and that there is a fear that some may make the situation worse, they said *“I would feel confident speaking in court now but others that don’t can write a letter”* and *“some people might make it worse but it’s your right to do so.”*

The logic of engaging young people more effectively is not complex, *“if you trust them, you are more likely to open up.”* And again, the young people themselves were able to give clear examples of the impact it can have on their views of the process when a simple thing such as having a voice is done well, *“I have written a letter to my judge. He read it. It shows you are remorseful and it shows you have taken the time to think about it. I think it helped”* and – illustrating perfectly the link to perceptions of fairness – *“this time, they listened to my experiences, they covered everything – it was fair.”*

## Respect

### *“Don’t chat about me while I’m there, it’s rude”*

There is a wealth of research demonstrating the importance of perceptions of fairness in justice institutions, a key part of which is feeling you have been treated with dignity and respect. In addition, there is evidence to show that young people *“are more sensitive to certain aspects of [system stakeholder] demeanour such as signs of rudeness and lack of respect.”*<sup>4</sup> Therefore, statements such as the one above should be a concern to all those involved in delivering justice through our courts.

Reassuringly, feeling a lack of respect was by no means universal among those young people we spoke to, with some noting positive experiences, *“most of the time I’ve been to court I felt respected, yeah”, “staff were polite.”* But the essential nature of ensuring this is the case more consistently is exemplified by one young person’s comment, *“if they [the judge] don’t care, why*

*should we?"* This strikes at the heart of what procedural fairness is all about – the questioning of why we would play our part in complying with a system if we perceive it to be unfair. The damage of reinforcing this attitude can be long-lasting for individuals and society as a whole.

Those involved in delivering justice at court are clear that part of the reasoning behind the institution's formality is that it demands respect from defendants. But it is equally important that this is demonstrated in return, and this – in the opinion of young people – is not difficult to achieve in the majority of cases. The examples noted as revealing a lack of respect ranged from habitual neglect, *"they don't talk to you, they come and get you and then bring you back out again. They just get on with their job"* through more active assertions of authority perceived as unnecessary by young adults, *"they know they have power. They shout, "Sit up straight!" They make you feel nervous and uncomfortable"* and *"they shouldn't be higher than you: it's intimidating... that's why they are above you, because they think they are above us."* In a handful of cases, young people also reported disrespectful language directed towards them in court, *"I was called 'scum' by a prosecutor. She shot me in the foot before it even started."*

To counter this perception of a lack of respect, and its corresponding impact on perceptions of the system as a whole, young people's asks were relatively straightforward, *"they could've spoken to me"*, *"don't chat about me while I'm there, it's rude"*, *"your attitude and the way you speak to people is important"* and, foreshadowing the notion that context is vital to young people, *"evaluate the person not the offence."*

## Recommendations

*"There has got to be something better."*

The young people who shared their experiences of magistrates' court in the five areas we worked in with us revealed a huge amount and we have included only a small selection of what they said here. Few talked about dissatisfaction with the sentences they received. Yet, all highlighted the importance of understanding the process more clearly, their wish to feel they were treated with respect, and their desire to have a meaningful voice. They described positive experiences and negative experiences. All described – without knowing the terminology – the basic components of procedural fairness. All described the simple means by which their trust in the justice system could be enhanced.

Many young adults in the five areas we worked in had suggestions for how they felt the court process could be improved. These insights were, over the course of twelve months, synthesised with findings from in depth consultation and workshops with court practitioners and professionals, and research and data.

### A model for a procedurally fairer court process

The multi-agency groups we facilitated in each of the five magistrate court areas developed a model of procedural fairness in court that could be tested and evaluated to improve these experiences. The detailed of the model and the implementation plan to deliver it, are included in much more detail in the Centre's report, *A fairer way*, but includes the following features.

#### Providing better information to defendants before attending court

The agreed model recommended that better pre-court information would be supplied by police at point of charge or postal requisition. The information, designed by young people themselves, would cover issues including waiting times, what to wear, who will be present and what will happen in court (not specific to individual cases.)

#### Preparing defendants for the opportunity for direct engagement with the bench

The agreed model recommended that pre-court information would signal that defendants have the opportunity to speak or prepare something in writing for the bench directly and that they should consider this in advance. Defence advocates, where young adults are represented, should advise their clients of this in advance and where appropriate help them to think through how to respond in the hearing.

### Enhancing engagement during the hearing

The agreed model recommended that the hearing itself would continue to use adult sentencing guidelines but would have regard for the specific needs of young adults in understanding and engaging with proceedings. All young adult hearings would include the following enhanced features:

- Informed staff – all professionals involved in the court sitting should have received additional information on the specific needs of and effective responses to young adults, the means by which the hearings have been adapted to account for these needs and their roles within that;
- Understanding of the process – routine checking to ensure that the young adult understands what is happening through the process, the sentence given where applicable, and the reasons for this sentence. There is an emphasis on clear language; all staff should use plain English and avoid using jargon. Where technical and legal language is unavoidable, the bench and practitioners within the court room should check understanding, and where appropriate re-phase using clear and simple language.
- Explanation of roles – where required, young people should have it explained to them who is in the court room and what role each person has. Those potentially requiring this explanation should be identified through the pre-court meeting and may include those who are unrepresented or are attending court for the first time;
- Giving young adults a voice in the process – the court should provide an opportunity for young adults to have a voice either through a verbal or prepared statement before the bench retires. Where a pre-sentence report is requested, NPS court report writers should include direct quotes from the young adults;
- Family involvement – inviting a family member to court will always remain the prerogative of the individual. However, young adults will have been encouraged in advance to invite appropriate family members or other person in a supportive capacity. While not engaged with directly as part of the hearing, a family member may be invited to sit next to the young person where it is felt this could help him or her to be calmer and more fully comprehend proceedings;
- Adapted court layout – within the constraints of existing court buildings, efforts should be made to ensure clear lines of sight between young adults and the bench, by moving computer monitors and court staff, a reduction in the distance and height between the defendant and the bench, and young adults should be taken out of the dock unless absolutely necessary;
- Identification of needs – any communication needs or barriers to understanding experienced by young adults will ideally be made known at the pre-court meeting, but where not, defence advocates are asked to highlight these at the start of the hearing. In addition, where relevant, probation reports should include information on maturity and appropriate responses to young adults.
- Following up after hearings to check understanding and next steps; and
- Supporting voluntary take-up of community services that are available locally to tackle wider needs that may be contributing to offending behaviour.



### Post-hearing follow up

The agreed model recommended that once a young adult leaves the court room, they will again be asked whether they understood what happened and what they need to do now. This can be done by the defence advocate or probation officer. Where applicable, probation officers should either give them their next appointment before they leave, take their mobile number to arrange it to avoid sending letters that are not read and or conduct a home visit shortly after court.

### Supporting voluntary take-up of community services

The agreed model recommended that, in addition to young adults having a greater understanding of proceedings, there are several opportunities throughout the process to increase awareness of community services that are available locally to tackle wider needs that may be contributing to their offending behaviour. This will have been provided at point of charge or postal requisition. Once at court, information can also be provided to young people when needs are made known at a pre-court meeting, via probation assessments, or during a hearing.

### Implementation of the model

In April 2018, we published our report on enhancing procedural fairness in courts for young adults (funded by the Barrow Cadbury Trust) and have been liaising with those PCCs, MOPAC and local practitioners keen to take the approach forward.

However, the Ministry of Justice, in a response to the Justice Select Committee's report on young adults in September 2018, highlighted that they did not see a role for central Government in implementing the model. This means it will be for local practitioners to take forward the model in their area.

There are a number of areas, including the 5 original areas, who wish to take this forward. We recommend that the Ministry of Justice, HMCTS and HMPPS provide permission to the existing 5 local sites and new areas such as London who already wish to test out and evaluate this model of procedural fairness in court.

## Endnotes

1. Tyler, T (1990). *Why People Obey the Law*, Yale University Press. (updated 2006)
2. Gold LaGratta, E, Bowen, P (2014). To be fair: procedural fairness in courts. Criminal Justice Alliance.
3. <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/young-adult-offenders/>
4. Murphy, K (2010). *Policing youth: Can procedural justice nurture youth cooperation with police?* Research Gate [https://www.researchgate.net/profile/Kristina\\_Murphy/publication/267681569\\_WORKING\\_PAPER\\_N\\_0\\_06\\_Policing\\_youth\\_Can\\_procedural\\_justice\\_nurture\\_youth\\_cooperation\\_with\\_police/links/548b91e00cf214269f1dd6d1/WORKING-PAPER-N-0-06-Policing-youth-Can-procedural-justice-nurture-youth-cooperation-with-police.pdf](https://www.researchgate.net/profile/Kristina_Murphy/publication/267681569_WORKING_PAPER_N_0_06_Policing_youth_Can_procedural_justice_nurture_youth_cooperation_with_police/links/548b91e00cf214269f1dd6d1/WORKING-PAPER-N-0-06-Policing-youth-Can-procedural-justice-nurture-youth-cooperation-with-police.pdf)

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