

## Briefing

# Young people's voices on youth court

## Summary

In response to the shrinking caseload and changing cohort appearing before the Youth Court, the Centre for Justice Innovation and the Institute for Crime and Justice Policy Research embarked on a multi-year research project examining existing youth court practice and how well it meets the needs of children and young people. Central to our research and the resulting main report were conversations with 25 young people in 2019 about their perceptions of youth courts and their recent experiences as defendants.

Much of what they told us related to ideas around **procedural fairness** – a model which emphasises the importance of feeling fairly treated in determining future trust in and compliance with the law. Procedural fairness is driven by four factors: **understanding** the court process; having a **voice** in proceedings; being treated with **respect** and dignity; and being able to **trust** the neutrality of the decisions made. As a prelude to the publication of our main report – *Time to get it right: Enhancing problem-solving practice in the Youth Court* – we wanted to highlight the experiences of young people in their own words.

### “I didn't have a clue”

**Understanding:** The young people we interviewed had a variable but largely limited understanding of the court process, robbing them of a sense of agency- “It just happened, nobody was explaining what was going on.” Many did not know what to expect before they attended court and were unable to follow proceedings, with some leaving the courtroom still unsure of what had happened and why - “I didn't even know what my sentence was.”

### “When do I get my chance to speak?!”

**Voice:** While some young people felt heard, a common frustration was a lack of voice in proceedings - “I didn't think I could even slip a word in edgeways.” Even where the opportunity to engage existed, the atmosphere and layout of the court could render young people unwilling or unable to do so.

### “Speak directly to me!”

**Respect:** Some young people felt respectfully treated, but others noted that simple opportunities to communicate respectfully were not taken - “It would've made you feel a lot better if they would introduce themselves.” Worse still, a few felt openly disrespected by professionals' perceived belittling language and behaviour, as well as process requirements such as the dock - “You shouldn't have to sit in a box.”

### “There's a lot of politics going on”

**Trust:** Several young people appeared to trust that the process had achieved a just outcome - “It was right for what I did.” However, far from seeing the Youth Court as a benevolent and unbiased institution, some felt the process set them up to fail - “They're there to sentence, not think you're innocent.”

The Covid-19 pandemic, which struck the UK months after our research was conducted, adds an additional dimension to the challenges identified. With an accelerated move towards remote hearings in courts, for example, concerns about effective engagement and participation in proceedings are ever more present. We hope that this briefing paper and our main report will help explain how to get the system working effectively again, and the importance of doing more than simply restoring things to how they were on the eve of the crisis.

## Introduction

In the last decade, there has been a 75% decline in cases coming to the Youth Court, caused both by falls in youth crime and the youth justice system's success in diverting eligible cases away from court.<sup>1</sup> However, while there are currently fewer court-involved young people, they tend to have more significant needs as well as more serious offending profiles than they did a decade ago.<sup>2</sup> In response to this, the Centre for Justice Innovation and the Institute for Crime and Justice Policy Research set out to explore youth court practice through the lens of evidence-led problem-solving justice. The multi-year research programme, funded by the Nuffield Foundation,<sup>3</sup> examines the state of existing practice in youth courts and assesses how well they are functioning to meet the needs of children and young people.

Fieldwork was conducted in 2019 in three sites across England, comprising five youth courts and associated youth offending services. Central to the research were interviews and focus groups with 25 young people to learn about their recent experiences and perceptions of youth court. These young people were recruited with help from youth offending service (YOS) staff. Much of what they told us related to procedural fairness, a key dimension of problem-solving justice. Procedural fairness holds that when people feel fairly treated by the justice system, irrespective of the objective outcome of their case, they are more likely to trust and therefore confer legitimacy on it.<sup>4</sup> Evidence shows that when the public perceive the criminal justice system as operating fairly, it can increase their belief in the legitimacy of the system, making them more likely to comply with court orders and potentially less likely to reoffend in future.<sup>5</sup> When it comes to procedural fairness, therefore, the stakes are high.

There are four drivers of procedural fairness:

- **understanding** the process that is taking place;
- having a **voice** in the process;
- feeling that you have been treated with **respect**; and
- **trusting** the neutrality of the process.

This paper discusses procedural fairness of youth courts as perceived by the young people we spoke with, and witnessed during our youth court observations.

## Understanding

### *“I didn't have a clue”*

Understanding is perhaps the most intuitive aspect of procedural fairness and our interviews and court observations left us in no doubt that young people want and need to understand what is happening at court. The young people we interviewed welcomed efforts to make proceedings more coherent, with one comparing professionals at youth court favourably to those at crown court, saying, *“The ones in youth court talked to me directly so I understood better.”* One young person said they found a poster explaining who the various professionals in court are *“really helpful”*, while another appreciated that *“they told me who everyone was”* as it helped them better follow the process.

An interviewee praised their YOS worker for telling the magistrates not to use any *“big words”* because they have trouble understanding them. Another, who has Speech, Language and Communication Needs, spoke highly of the special measures put in place to help their communication with the court.

The intermediary “was really helpful”, showing them the courtroom layout beforehand and sitting next to them to explain the process throughout. The young person wanted this support to be made more widely available, saying: “I think it would help anyone... I know I might have different circumstances, but I think anyone would want to know what the hell is going on and need someone to ask.”

Indeed, many of the young people we spoke with reported not knowing what to expect before they attended court and not being able to follow proceedings, with some leaving the courtroom still unsure of what had happened and why. One interviewee stressed, “you have no idea of the actual court process so you’re kind of in the dark”. When asked to elaborate on what was confusing, another suggested the entire court process was left unexplained: “Just how they were doing things, whether to stand or sit, who to talk to, how it worked.” Of the process, one young person simply said, “I didn’t have a clue.” Moreover, a few interviewees indicated that they did not understand the sentence they had been given, with one saying, “I didn’t even know what my sentence was, ‘cause all they said was a bunch of numbers.” The work of explaining what happened in court and the implications often appeared to fall to YOS workers and defence lawyers operating after the fact. In the words of another young person: “I didn’t have a clue what it [the sentence] was until YOS said.”

As these quotes indicate, poor understanding largely seemed to stem from a lack of awareness of what to expect, as well as the use of technical language. Where protocols were in place to counteract these issues, they were not always well translated into practice. For example, where sites had established initiatives to help first time attendees better understand the process, young people were not always able to avail themselves of this support. When asked what advice they would give to a friend attending court for the first time, one young person (a first time attendee themselves) said: “I’d tell them how it works... all the information that I didn’t know that will make their life easier. I don’t want them going into court blindly like I did.” Another said, “It was my first time in court. I didn’t understand none of it.” Similarly, while the Youth Court Bench Book notes that jargon should ‘usually be avoided’, words including ‘adjournment’, ‘remand’ and ‘detention’ were often used during our observations.<sup>6</sup> Young people found such language difficult to follow, “they use words that I don’t understand, posh words”.

Of concern, in a couple of instances lack of understanding stemmed simply from the fact that the young person was not provided with an interpreter. When asked whether they understood what was happening in court, one young person just said, “No, because we do not speak English.” Another elementary failure involved a young person with a hearing impediment, which was not brought to the court’s attention, being unable to hear what was being said in court.

A lack of understanding has far-reaching implications. It can make young people feel that the court process is something outside of their control, robbing them of much-needed agency. As one young person said, “It just happened, nobody was explaining what was going on.” During the cases we observed, young people often noticeably disengaged when, for example, formal terminology was used or staff did not introduce themselves, compounding the problem by making them less able to concentrate and understand what was said thereafter. It is reassuring, then, that improving understanding need not be a heavy lift.

The benefits of improving understanding – telling young people what to expect in advance of attendance, introducing courtroom professionals’ roles, and using more child-friendly language – far outweigh the implementation effort required. Indeed, some of the measures are already embedded in protocol and just need to be put into practice more comprehensively with the support of robust training.

## **Voice**

### **“When do I get my chance to speak?!”**

Having the opportunity to be heard is key if people are to perceive the court process as fair. Interviews with young people and youth court observations highlighted several positive examples of voice and engagement. One young person said of a district judge, “[he] was friendly, he was dead, like, touchy [caring] with me. I liked him really”, adding: “I did speak with him a few times.” During observations, a magistrate made careful efforts to give the young person voice in the decision making, saying:

“We’ve talked a lot about you, but not to you. What do you think about this curfew situation?” and going on to agree a later curfew with the young person. In another instance, a young person was unresponsive at first, but sensitive probing by the chair elicited important detail, with the young person willingly voicing their difficulties with school and family life and being actively listened to. Young people, especially those anxious at the prospect of speaking in court, appreciated the opportunity to voice their side of the story through letters to the bench. One young person was proud of the “good impact” of their letter.

On the other hand, instances of limited voice and engagement were also evident. Some young people felt voiceless in court, saying, for instance: “I didn’t think I could even slip a word in edgeways. I felt like I could only speak when I was being spoken to and that wasn’t very often at all...that was just ‘yes’, ‘no’.” During observations, a young person irately asked the magistrates, “When do I get my chance to speak?” Others were frustrated at not being paid attention to when they did speak (“They weren’t listening to me!”); not having the opportunity to ask questions (“after that [sentencing] I went straight out, I didn’t even have time to ask questions”); and not being engaged with directly (“Speak directly at me! Not my solicitor.”). Often during cases that we observed, young people said nothing beyond confirming their name and address, with most of the conversation thereafter being among the court professionals. Some hearings were perfunctory, with little engagement with the young person. For example, in one case that we observed, the chair almost instantly declared that the case would be adjourned; the young person, their only contribution to the proceeding, replied “huh?” and was then promptly ushered out of the court.

As well as the *opportunity* to be heard, the atmosphere of the courtroom can affect young people’s willingness and ability to speak. For example, during observations we noted positive examples of benches putting young people at ease (e.g. by asking about their new pet and wishing them a happy birthday), making them more receptive to engagement. Conversely, some young people found the court “hostile” rendering them “too uncomfortable” or “anxious” to speak. Some interviewees suggested that the demographic and cultural gulf that exists between themselves and magistrates or district judges can make them less willing to engage; in the words of one young person, “they’re dead posh them judges”. However, during observations we witnessed some professionals who were cognisant of this gulf, making concerted efforts to bridge it through child-friendly engagement, and young people proving responsive to this.

The layout of the court can also be conducive or damaging to engagement. For instance, some young people said the dock hindered their ability to meaningfully engage in proceedings, with one describing it as a “communication barrier”, and others preferring less formal, non-traditional courtroom setups which were deemed “less hectic” and “less scary”.

As with understanding, giving young people voice and the opportunity to meaningfully engage in proceedings can help them identify as active agents in the process. The passive role young people at times feel bound to take in court was starkly highlighted by one interviewee who, when asked what advice they would give to a friend going to court for the first time, said: “You just have to listen to what the judge says and when he tells you to stand up you have to stand up, but you can’t ask questions.” Enhancing engagement need not be complicated. Simply speaking to young people directly, asking their side of the story and actively listening to them can go a long way to improving young people’s experiences and perceptions of the court process. Crucially, voice and engagement were not just seen as means for influencing the outcome of the case, but as good in and of themselves. For example, an interviewee said their sentence was “definitely” fair, but added “there were some questions I didn’t get to ask, obviously, which I didn’t think was fair”. Similarly, young people were often quick to take responsibility for their actions and accept their sentence, but they wanted the opportunity to provide context to the offence and for the judge to know “my past”, “my history”.

## **Respect**

### **“Speak directly to me!”**

Treating people with dignity and respect is vital if justice institutions are to be seen as fair and legitimate. This may be especially important for young people as research suggests that they “are more

sensitive to certain aspects of [system stakeholder] demeanour such as signs of rudeness and lack of respect.”<sup>7</sup> It is reassuring, therefore, that many young people we interviewed felt that they had been treated respectfully at court: “I think they [magistrates] treat me fairly. How they treated everyone else.”; “They were just showing basic respect really.”; “They didn’t talk down to us.” Even minor instances of courteous or helpful treatment were noticed and appreciated: “The usher said ‘it won’t be long now’ which was really nice to hear, she was friendly.” ; “I wasn’t on the list so the person on security called them and really helped me out.” During observations, we noted that young people were receptive to court staff’s displays of respectful treatment, for example asking what name the young person prefers to go by and apologising for the frustrating delays. A district judge frequently pointed out positive things in pre-sentence reports, acknowledging the young people as more than their offence and wishing them “good luck”, which they were visibly pleased by.

Unfortunately, young people did raise examples of what they perceived as disrespectful treatment. One told us the magistrates were “not very polite, I felt like they were like I was less than them”, while another reported that a magistrate had been “talking down to me, calling me disgusting and stupid”. Another young person was understandably angry at their solicitor for shopping online for bow ties during a court hearing, while another described the prosecutor as “borderline discriminatory” for querying their need for an intermediary.

Young people also felt that some standard aspects of the court process were themselves disrespectful. For example, being in the dock was perceived as being demeaning, with one young person stating, “You shouldn’t have to sit in a box.” Similarly, delays, both in cases being brought to court and being heard on the scheduled day, signalled to young people that they were unimportant. These negative experiences unsurprisingly coloured young people’s perceptions of the court professionals and the system they represent.

Young people’s ‘asks’ for respect were relatively straightforward. They highlighted that court staff could improve their experience of the process simply by introducing themselves, with one interviewee saying: “Obviously it’s not the nicest of places...but it would’ve made you feel a lot better if they would introduce themselves and been nice about it.” When asked what could be done to make the courts fairer, another young person said they wanted magistrates to “speak directly to me!” rather than through their solicitor.

## **Trust**

### **“There’s a lot of politics going on”**

Trust in a process, the final aspect of procedural fairness, denotes people’s perception that decisions are made in an unbiased way. Positively, many young people trusted that the sentence they were given was appropriate (e.g. “it was right for what I did”, “they gave me a fair enough punishment”).

One young person appreciated the court professionals’ neutrality in not embellishing the facts of the case, “they just said what happened”. Consistency of professionals also appears to engender trust, with one interviewee saying: “I much prefer having the same people so I don’t have to explain myself constantly.” Young people’s trust in the system often appeared to spring from confidence in the professionalism of those supporting them. For example, one interviewee praised their YOS worker as being “the one that got me out [of custody]”, and another, speaking about their defence lawyer, noted, “She did try and fight my corner and tried to make the experience a lot nicer.” Many young people spoke highly of the support YOS staff provided after court: “They are really helpful.”; “I’ve opened up and it’s been really, really good for me.”; “they’re going to be there for me no matter what and they’ve proved that definitely”.

On the other hand, far from seeing youth court as a benevolent and unbiased institution, some young people were mistrustful of its intentions. One interviewee said, “You’re supposed to be innocent until proven guilty, but it was the complete opposite way around... They’re there to sentence, not think you’re innocent.” Another noted, “I don’t think their [magistrates] intention, especially with how they treated me, is to help. It’s purely an authority thing, they abuse that power.” Young people did not always trust

that the court would judge their case on its merits, expressing concerns that the substantive outcome could instead unjustly hinge on their 'performance' in court. One young person, for example, stated, "I'm trying not to give a bad impression, so I keep quiet." Some young people interpreted the dock as setting them up to fail, with one saying, "You start sweating and look bang guilty." There were similar suspicions around the inadequate provision of interpreters. A young person whose case was adjourned twice for want of an interpreter suggested it may be down to a conscious decision to unfairly treat him, rather than a real lack of resources, insisting, "There's a lot of politics going on." Several felt their order did not address their offending. For example, a young person urged, "Stop giving us fines!", adding that an effective order would have included "more time to spend with the youth offending team". This shows that negative individual interactions can risk people's trust in the system as a whole.

Securing people's trust in the neutrality of court decision-making is not an easy task given that the court process, even for youth, is an adversarial one in which interests do not necessarily align. That said, there are some obvious steps that can be taken to improve trust. Much of the suspicion around the process appears to arise from a lack of transparency, with young people assuming arbitrariness or even deliberate manipulation of the system against them when decisions and ways of working are not explained. Our interviews and observations also showed that negative individual interactions can make people question the neutrality of the system as a whole. As such, by working towards ensuring young people understand the process, have a voice in it, and are treated with dignity and respect – i.e. that they have positive interactions at court – much of what is needed to gain trust is already in place.

## Conclusion

As well as being vital in maintaining the legitimacy and authority of the Youth Court, procedural fairness evidently matters to court-involved young people themselves. The shortcomings recounted in interviews and focus groups and observed at court indicate that change is necessary in order for young people to perceive youth courts as procedurally fair. Fortunately, some light lifts, such as a renewed focus on respectful communication and the use of child-friendly language, can realise big gains in young people's perceptions of court. Indeed, some of the desired good practice is already part of the Youth Court protocol, waiting to be comprehensively applied in practice. As one young person aptly remarked: "I think everything is set up quite fair, it just doesn't always happen."

We welcome efforts already in train centrally to improve practice. Her Majesty's Courts & Tribunals Service (HMCTS) are working with the Youth Advisory Network Ambassadors, a group of children and young adults aged between 14 and 25, to understand what improvements could be made. The group, convened by the Youth Justice Board, have all directly experienced the youth justice system and are advising HMCTS on how best to communicate and inform young people about what to expect when attending youth court.

As a result, they are designing a guide that addresses typical concerns and worries (such as what to wear); producing a 'who's who' poster; and reviewing their guidance to ensure that language is easy to understand and information is clear.<sup>8</sup> However, some larger-scale changes, inspired by the invaluable insights of the young people who contributed to our research, should also be implemented if procedural fairness is to be achieved.

As set out in our forthcoming national report – *Time to get it right: Enhancing problem-solving practice in the Youth Court* – to enhance procedural fairness, we recommend that:

- The Judicial College develop a suite of training resources for youth court magistrates including video guides to good engagement practice;
- The senior judiciary set a clear expectation that youth court magistrates and judges engage in continuous, monitored professional development; and
- HMCTS set a goal that all youth court cases should be heard in adapted courtrooms by the end of this parliament.

Together these improvements will help ensure that young people attending youth court: understand the process; have a voice in proceedings; are treated with respect and dignity; and trust the neutrality of the decisions made.

## Endnotes

1. Ministry of Justice and Youth Justice Board (2020). Youth Justice Statistics 2018/19.
2. See, for example: Prison Reform Trust (2016). In Care, Out of Trouble: How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system. Report of an Independent review chaired by Lord Lamming. London: Prison Reform Trust; Bateman, T. (2017). The State of Youth Justice 2017: An overview of trends and developments. London: National Association for Youth Justice; Bryan et al (2015). Language difficulties and criminal justice: the need for earlier identification, *International journal of language and communication disorders*, 50 (6), 763-775; and Ministry of Justice and Department for Education (2016). Understanding the Educational Background of Young Offenders. Joint experimental statistical report from the MoJ and DfE.
3. The Nuffield Foundation is an independent charitable trust with a mission to advance social well-being. It funds research that informs social policy, primarily in Education, Welfare, and Justice. The Foundation has funded this project, but the views expressed are those of the authors and not necessarily the Foundation. Visit [www.nuffieldfoundation.org](http://www.nuffieldfoundation.org)
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5. For more on procedural fairness in a court setting see Gold Lagratta, E. and Bowen, P. (2014). *To be fair: procedural fairness in courts* (Centre for Justice Innovation / Centre for Crime and Justice Studies). Available online at <https://justiceinnovation.org/publications/be-fair-procedural-fairness-courts>
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## About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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