

Young minds, big decisions

An insight into the experiences of young adults pleading guilty to crimes in England & Wales



Fair Trials is an international NGO that campaigns for fair and equal criminal justice systems. Our team of independent experts expose threats to justice through original research and identify practical changes to fix them. We campaign to change laws, support strategic litigation, reform policy and develop international standards and best practice. We do this by supporting local movements for reform and building partnerships with lawyers, activists, academics and other NGOs. We are the only international NGO that campaigns exclusively on the right to a fair trial, giving us a comparative perspective on how to tackle failings within criminal justice systems globally.

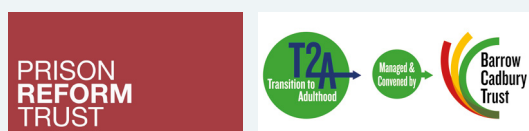
Contacts

Bruno Min

Legal Director (UK & International)
bruno.min@fairtrials.net

Griff Ferris

Legal and Policy Officer
griff.ferris@fairtrials.net



This report was produced in collaboration with the Prison Reform Trust and made possible due to support from the Barrow Cadbury Trust. The Barrow Cadbury Trust is an independent, charitable foundation committed to bringing about a more just and equal society. Charity number: 1115476.

 @fairtrials  @fairtrials  Fair Trials

First published by Fair Trials in September 2022. © Fair Trials 2022.

“Fair Trials” includes Fair Trials International, Fair Trials Europe, and Fair Trials Americas. Fair Trials International is a registered charity (no. 1134586) and in 2010 was incorporated with limited liability in England and Wales (No. 7135273), and is based at 5 Castle Road, London, NW1 8PR. In May 2014, Fair Trials International founded Fair Trials Europe, which is a registered public foundation in Belgium (registered number 0552.688.677). In 2018 we founded Fair Trials Americas, which is a registered 501(c)(3) public charity in the United States of America (No DLN17053243307017). We were initially founded in 1992 with the name “Fair Trials Abroad”.

Contents

Executive summary	4
Introduction	6
Methodology	7
Guilty pleas in England and Wales	8
Young adults in the criminal justice system	10
Perceptions of young adults	13
Motives	13
Support and assistance	15
Legal assistance	16
Lived experience	20
Information	22
Consequences of guilty pleas	24
Health and disabilities	25
Transitioning from childhood to adulthood	26
Conclusions and recommendations	28

Executive Summary

The majority of people accused of crimes in England & Wales are not tried in court. They plead guilty to their offences and are sentenced after waiving their right to present their defence, as well as a wide range of other fair trial rights. A significant proportion of these people are young adults, aged between 18 and 24, who make up about a third of criminal cases in England & Wales.

While young adults are legally treated as adults in criminal proceedings, research has shown that they share many neuropsychological characteristics as children, which often affect their decision-making processes and capabilities. Previous studies have shown that children are more likely to plead guilty to crimes they did not commit, on account of their increased susceptibility to incentives to plead guilty, and the additional challenges they face understanding their rights and making complex decisions.

Between 2021 and 2022, Fair Trials conducted research to highlight the experiences of people who have made plea decisions as young adults. Gathering testimonies from individuals serving prison sentences, and through conversations with people who had been criminal defendants as young adults, we sought to understand how young adults made their decisions, what support they received to help them make their choices, and the consequences of their pleas.

People who wrote to us and spoke to us painted a dire picture of the criminal justice system. They described a system that was motivated by financial interests rather than justice, and one that failed to treat young people with the respect and humanity they deserve. Their accounts detail a system that is not only failing to equip young adults with the knowledge and information to make the best decisions for their cases and inducing them to plead guilty to offences they did not commit, but they also highlight broader systemic failures that impeded justice and fairness for defendants, irrespective of age or experience.

The main challenges identified through this research include:

- **Motivation for Guilty Pleas:** The testimonies from people who made guilty pleas as young adults confirm existing research that suggests that guilty pleas are often motivated by potential sentence or charge reductions. However, there was little indication that long-term consequences of pleading guilty played a major role in the decision-making process. It was apparent that most decisions prioritised immediate outcomes, particularly with regard to their criminal cases, and even people who did consider the impact of their decisions not just on themselves, but also on others that were close to them seemed to focus on the short-term benefits of guilty pleas.
- **Inadequate Support and Assistance.** The general impression given by people involved in this research was the lack of support and assistance to make an informed decision about their pleas. Most of them reported negative experiences of working with their defence lawyers, who they felt unable to trust or depend on for reliable advice and support. Many chose to rely instead on the advice of other defendants and fellow prisoners, who they believed to be a more reliable source of support.
- **3. Lack of Information and Advice:** It is clear that many young people are not given adequate information to make their decisions on how to plead, or, where they are given such information, it is not provided in a way that it is easily understood. Many individuals felt that the pros and cons of entering a 'guilty' or 'not guilty' plea were not properly explained to them, including the impact that such decisions could have on their rights,

and that they were given inaccurate or misleading advice about the potential outcomes of their cases. This often led them to make decisions that they later regretted.

- **Unexpected Consequences of Guilty Pleas:** The lack of sufficient time, information, and support given to people to help them make their decisions about their pleas meant that in many cases, young people who pleaded guilty only found about the true implications of their decisions much later on. This included negative impacts on their career prospects and ambitions, as well as their rights and legal status. However, it was also clear from accounts given by certain people that pleading guilty could seriously damage their relationship with the legal system, and affect their outcomes in criminal justice proceedings in the future.
- **Insufficient Support for Health Conditions and Disabilities:** Several people expressed concerns that young people who faced additional communication challenges on account of their health conditions, characteristics, or disabilities, were being let down by the justice system, and that they were not receiving the support they needed to make informed decisions regarding their pleas.
- **Transitioning from Childhood to Adulthood.** Several people mentioned that their experiences of the criminal justice started even before their teenage years with little to no signs that they were treated more fairly, or even differently as children.

Based on these issues Fair Trials not only provides key observations but also a take on the recommendations provided by the people engaged for this research emphasising the importance of improving the quality of legal assistance by building the capacity and capabilities of legal professionals to provide age-appropriate assistance. Secondly, Sentencing Guidelines should be reviewed to remove incentives for early guilty pleas and encourage more carefully informed decision-making. Finally, it is recognised that although strengthening safeguards and improving support by potentially introducing additional judicial oversight procedures, or making available further assistance, there must be a much stronger emphasis on measures that are designed to identify and address the root causes of 'criminal' behaviour that are tailored to individual circumstances.

Introduction

The right of a person accused of a crime to have their day in court and to be tried by a jury are often heralded as fundamental cornerstones of 'British justice' – principles that are core to ensuring the fairness and trustworthiness of our criminal justice system.

The reality, however, is very different. Far from being the standard way that justice is done in England & Wales, jury trials only benefit a small proportion of criminal defendants. In fact, most defendants are not even tried, because most plead guilty to the charges against them. This means that as a general rule, there are no juries in criminal proceedings, nor are there cross-examinations, or any assessment of the facts of the case. In most circumstances, verdicts in criminal cases are determined by the accused, who needs to decide whether they are going to waive their right to a trial and the full range of defence rights associated with trial proceedings, in exchange for a reduction of their sentence or charges against them.

These are big decisions for anyone to make. Criminal proceedings are complex and difficult to navigate for most people. Outcomes of criminal cases can be difficult to predict, and sentencing can be influenced by a range of different factors. Further, the long-term consequences of criminal convictions can be broad, far-reaching, and extremely serious, yet difficult to anticipate. The decision on whether to plead guilty or not guilty should therefore be a complicated process, weighing up a multitude of pros and cons, and with careful consideration for the effect that such decisions could have on the rights of the accused person.

For young adults, who make up about a third of all criminal cases in England & Wales, these decisions are likely to be especially challenging. Young people aged between 18 and 24 are legally classed as adults, and as a general rule, they are not given any special treatment by the criminal justice system on account of their young age or lack of maturity. However, there is strong and growing evidence suggesting that young adults tend to share certain neuropsychological characteristics as children, which affect their decision-making capabilities and increase the risk of susceptibility to external influences. Given this, there could be an increased risk that young adults enter guilty pleas on an uninformed basis, or they make such decisions without considering the full range of implications that guilty pleas can have.

While research has shown that children aged under eighteen are more likely to plead guilty to crimes they did not commit on account of their immaturity and under-developed decision-making capabilities, the ways in which young adults make decisions regarding their pleas is not as well understood. In this report Fair Trials tries to fill in this knowledge gap by exploring the perspectives of young adults who have experienced making life-changing decisions in their criminal cases. We highlight the voices of people whose lives have been impacted by the criminal justice system, and we provide an insight into how they made their decisions on whether or not to plead guilty, how they were assisted in this process, and what the consequences of their decisions have been.

We would like to advise that this report contains distressing accounts provided by people with lived experience of the criminal justice system, including those reporting mental health challenges and suicidal thoughts.

Methodology

Fair Trials conducted research on existing laws and practices in England & Wales and other jurisdictions to understand how plea-bargaining, or 'trial waiver' systems are set up in various countries, including the types of safeguards that are available to defendants. This built on the existing research that we conducted for our 2017 report "The Disappearing Trial", which explored the global spread of plea-bargaining in recent decades. This was further supplemented with research on adolescent development and its implications on the rights of young people in conflict with the law.

We sought input from people with lived experiences of being in conflict with the criminal justice system in two ways:

1. We circulated a survey through advertisements in 'Inside Time' the national newspaper for prisoners and detainees in the UK, Women in Prison's bi-annual magazine, and through bulletins disseminated by the Prison Reform Trust. This survey was developed with input from Dr Rebecca Helm at the University of Exeter, and it invited people serving prison sentences to describe their experiences of making decisions on the pleas, and the impact that such decisions have had on their lives. We collected 27 responses from young adults in prisons across England & Wales; and
2. We conducted three group discussions in conjunction with the Prison Reform Trust, in which we held detailed structured discussions with 12 people who had experience of the criminal justice system as young adults. Participants in these group discussions were invited to explain how they made their decisions on whether to plead guilty or not guilty, what types of support they had, what the consequences of their decisions have been. In addition, we invited people in these discussions to share their views on the criminal justice system more broadly, and we asked participants to provide their opinions on the changes they would like to see to make processes fairer.

The details of the individuals whose testimonies we have highlighted in this report have been anonymised, in accordance with their wishes. We would like to thank them especially for lending their voices for our work, recognising that recalling difficult moments in their lives can be a painful and distressing experience.

Guilty pleas in England & Wales

It is a commonly held belief that as a general rule, people accused of crimes are tried for their offences in court, where they put forward their defence, and the prosecution's case against them is thoroughly scrutinised at an open hearing. In England & Wales however, this does not reflect the experience of most criminal defendants. Between January and March 2022, over two-thirds of people accused of crimes in England & Wales pleaded guilty to the charges against them in Crown Courts.¹ While the equivalent statistics for magistrates' courts are not regularly published, it has been shown that rates of guilty pleas are typically higher in magistrates' courts than in Crown Courts. This means that most defendants in England & Wales waive their right to a full trial and the full range of their rights associated with the trial process.

It is often assumed that people only plead guilty to offences that they have, in fact, committed. However, various studies and statistics have shown that it is remarkably common for innocent people to plead guilty to crimes they have not committed. According to unpublished raw data from the Criminal Cases Review Commission in England & Wales, of the 128 cases referred to the Court of Appeal by the Criminal Cases Review Commission as potential miscarriages of justice (for review of conviction or conviction and sentence) since 2012, approximately 50 cases involved defendants who initially pleaded guilty.² In the United States, the National Registry of Exonerations shows that in 2015, 44% of exonerations followed guilty pleas,³ and according to the Innocence Project, out of the 354 people whose convictions were overturned as a result of DNA analysis, 11% had pleaded guilty.

The propensity of innocent people to plead guilty is also highlighted by high profile miscarriages of justice. Out of the 81 former sub-postmasters cleared of wrongdoing in the Post Office scandal in 2021, 88% had pleaded guilty to at least one offence.⁴ These included people who pleaded guilty in accordance with the legal advice given by their lawyers, despite the fact that a faulty IT system was largely responsible for falsely accusing them of theft.

Plea-bargaining and other similar systems or processes that enable defendants to accept guilt in exchange for some benefit from the state (for example, in the form of reduced charges, or lower sentences) are designed to incentivise people to plead guilty. Studies have identified various types of incentives that may persuade a defendant to plead guilty in England & Wales. First, there are 'formal' incentives for guilty pleas – defendants can get charge reductions and/or sentence reductions (sometimes up to a third off prison sentences) in exchange for pleading guilty. Second, there are informal incentives that are not explicitly recognised by law, but that may also encourage defendants to plead guilty. These incentives include the opportunity to get out of custody sooner by pleading guilty, and the fact that pleading guilty is significantly quicker and easier than going to trial.⁵ Further, for many defendants who are ineligible for legal aid, pleading guilty offers a route to avoid financial hardship that might otherwise be caused by having to pay for legal fees.

In the US, where the practice of plea-bargaining is an especially well-established and widespread practice, the New York County Lawyers Association identified that primary incentives for guilty pleas differed according to the severity of the accusation that a defendant was facing. Misdemeanour defendants are more likely to consider their ability to afford the costs associated

¹ In Q2 2020, the percentage of defendants pleading guilty was even higher, at 79%

² Rebecca K. Helm, 'Constrained Waiver of Trial Rights? Incentives to Plead Guilty and the Right to a Fair Trial.' [2019] 46(3) *Journal of Law and Society* 424-425.

³ *Ibid.*

⁴ Exeter University Evidence Based Justice Lab, 'Post Office Project', <<https://evidencebasedjustice.exeter.ac.uk/current-research-data/post-office-project/>> accessed 22 September 2022

⁵ Helm (n 2) 435.

with trial proceedings as a significant factor, while felony defendants' decisions are more likely to be influenced by the risk of getting a longer custodial sentence in the event that they are tried and convicted. Defendants may also desire to spare the often excessively high expense and emotional cost associated with proceeding to trial, both to themselves and their families. Some defendants may also choose to plead guilty merely to put an end to their present situation, particularly if they are in jail pending a trial or other resolution.⁶ The same study found that criminal defendants may also be unfamiliar with the criminal justice system, and that they can feel powerless in a complex, opaque system. In such situations, some may decide that entering a plea of guilty, is better than being caught in a stressful situation about which they have little understanding and over which they perceive they have little or no control.⁷

Courts have recognised the potential for plea bargaining systems to violate the right to a fair trial, where there are insufficient procedural safeguards. In the case of *Natsvlishvili and Tongonidze v. Georgia*,⁸ the European Court of Human Rights stressed the need for plea bargaining processes to ensure that defendants make their decisions intelligently and voluntarily, and that they are subject to judicial review. More specifically, it identified the two conditions that needed to be satisfied as:

(a) the bargain [has] to be accepted by the first applicant in full awareness of the facts of the case and the legal consequences and in a genuinely voluntary manner; and

(b) the content of the bargain and the fairness of the manner in which it [has] been reached between the parties [has] to be subjected to sufficient judicial review.⁹

Under English law, a guilty plea must be entered by the defendant personally,¹⁰ and this must be done on a voluntary basis. If the defendant did not have a genuine choice whether to plead guilty or not guilty, the plea is, at least in theory, invalid.¹¹ It has been recognised by the courts that there are limited circumstances in which a defendant might be deprived of free and genuine choice regarding their plea, due to pressure from their lawyers.¹² However, the fact that a lawyer strongly advises their client to plead guilty does not necessarily mean that the defendant was denied the freedom of choice.¹³ Guilty pleas can also be invalidated where it can be shown that the advice given to the defendant was demonstrably wrong.¹⁴ Defence lawyers have a duty to explain to their clients the strengths and weaknesses of their cases, and to highlight the potential advantages and disadvantages of pleading guilty.¹⁵ Despite these legal standards, there is a notable lack of formal safeguards in England & Wales to ensure that guilty pleas are entered on an informed and voluntary basis. For example, while there are legal standards and guidelines that regulate what information and advice must be conveyed by lawyers to their clients to make sure that guilty pleas are informed and voluntary, there is no legal requirement that a defendant be advised or assisted by a lawyer before pleading guilty. There is also no formal process by which courts ascertain the degree to which defendants have understood their rights and the likely consequences of pleading guilty.

⁶ NYCLA Justice Center Task Force, 'NYCLA Justice Center Task Force: Solving the Problem Of Innocent People Pleading Guilty' (www.nycla.org, 2019) <<https://www.nycla.org/pdf/NYCLA%20Board%20Report%20-%20Solving%20the%20Problem%20of%20Innocent%20People%20Pleading%20Guilty.pdf>> accessed 23 September 2022

⁷ Ibid.

⁸ *Natsvlishvili and Togonidze v. Georgia*, App No 9043/05, Judgment of 29 April 2014

⁹ Ibid. Para. 89.

¹⁰ *R v Ellis* (1973) 57 Cr App R 571

¹¹ *R v Turner* [1970] 2 QB 321

¹² *R v Inns* (1974) 60 Cr App R 231

¹³ *R v Hall* [1968] 2 QB 788

¹⁴ *R v Sorhaindo* [2006] EWCA Crim 1429

¹⁵ *R v Herbert* (1991) 94 Cr App R 233; *R v Cain* [1976] QB 496

Young adults in the criminal justice system

Adults under the age of 25 represent 10% of the general population, but account for 30–40% of criminal cases.¹⁶ Young adult men are more likely than adult men to serve sentences for violent or property offences, and more likely to be involved in robbery or low-level drug dealing.¹⁷ Young adults also have the highest reconviction rates of any group. 75% are reconvicted within two years of release from prison.¹⁸ Young adults serving community sentences have equally poor outcomes. They have the highest breach rates of adults serving community sentences.¹⁹

There is overwhelming evidence that 'Black, Asian, and Minority Ethnic' ('BAME') people are significantly over-represented in the criminal justice system in England & Wales. Racial disparities are especially acute amongst young adults. According to official statistics from 2020, 5,124 of the 12,240 young adults (just under 42%) in prison were non-white. By contrast, non-white people made up 28.4% and 21.17% of prisoners in the 25–39 and 40–50 age groups, respectively.

Various studies have identified differences in the cognitive development and decision making processes between adolescents under the age of 18 and adults, including less future orientation; worse risk perception; increased susceptibility to peer influence; neurologically immature decision making; a greater imbalance between the development of motivational systems (subcortical regions such as the ventral striatum) and control systems (prefrontal regions) of the brain which might lead to developed motivation but a lack of self-control;²⁰ and a decreased ability to appreciate legally relevant information and meaningfully participate in their defence.

It has also been shown that children accused of crimes, like adults, plead guilty in order to take advantage of reduced charges, but, unlike adults, were much less likely to understand the nature of the rights waived by a guilty plea or to appreciate that a guilty plea would result in a criminal record.²¹ A study undertaken in the United States have shown that children are more likely to be susceptible to short-term benefits, and that this could influence how they make plea decisions. This research suggested that reasons for pleading guilty tended to reflect short-term orientation, whereas those who pleaded not guilty reflected long-term orientation in decision-making.²² These differences have been shown to result in differences in how adolescents experience the criminal justice system in comparison to adults, with decreased understanding and knowledge as to their legal rights, adjudicative competence, legal terminology and other legal decision making.²³ As a result, children are more willing to accept the incentives offered to encourage guilty pleas, which leads to innocent children pleading guilty to crimes they did not commit.²⁴

¹⁶ Barrow Cadbury Trust, 'Written evidence from the Transition to Adulthood (T2A) Alliance' (data.parliament.uk, 30 September 2015) <<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Justice/Young%20adult%20offenders/written/21967.html>> accessed 23 September 2022

¹⁷ National Offender Management Service, 'Better Outcomes for Young Adult Men Evidence Based Commissioning Principles' (assets.publishing.service.gov.uk, 21 September 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/462169/Better_Outcomes_for_Young_Adult_Men__P1_1_.pdf> accessed 23 September 2022

¹⁸ Barrow Cadbury Trust (n 16)

¹⁹ Ibid.

²⁰ Rebecca K. Helm and others, 'Too young to plead? Risk, rationality, and plea bargaining's innocence problem in adolescents' [2018] 24(2) *Psychology, Public Policy, and Law* 180–191

²¹ Tina M. Zottoli and others, 'Guilty pleas of youths and adults: Differences in legal knowledge and decision making.' [2019] 43(2) *Law and Human Behavior* 166–179

²² Tarika Daftary-Kapur and Tina M. Zottoli, 'A first look at the plea deal experiences of juveniles tried in adult court.' (2014) 13(4) *International Journal of Forensic Mental Health*, 323

²³ Allison D Redlich and others, 'To plead or not to plead: A comparison of juvenile and adult true and false plea decisions' [2016] 40(6) *Law and Human Behavior* 611–625

²⁴ Helm (n 20)

There have been fewer studies seeking to demonstrate such a difference between young adults and more mature adults. In its case for a change to the treatment of young adults in the criminal justice system, Parliament evaluated a range of evidence, which showed the following:²⁵

- Given neurological evidence that the typical adult male brain is not fully formed until their mid-twenties, young adult males typically have more psycho-social similarities to children than to older adults: the system to regulate and weigh long term gains against short term rewards is typically last to develop and this affects how young adults judge situations and seek to act;²⁶
- Criminal behaviour typically decelerates rapidly in an individuals' early twenties, importantly including those who had hitherto been persistent offenders, as they mature, develop temperance (which can influence anti-social decision making) and reach key markers of adulthood which are known to support desistance from crime (e.g. stability, self-identity and agency);²⁷
- The social context of young adults – including the removal of protective statutory services, restrictions on their gaining financial independence and increased likelihood of prior involvement in the criminal justice system – points to young adults being a distinct group with distinct characteristics and needs from more mature adults;²⁸
- The prevalence of neuro-psychological deficits, including cognitive difficulties with thinking, acting, and solving problems, emotional literacy and regulation, learning difficulties and language problems associated with Attention Deficit Hyperactivity Disorder (ADHD), autism, learning and language disorders and head injuries, is thought to be high in young adults and is associated with offending behaviour;²⁹ and
- Other adverse life circumstances such as exposure to chaotic lifestyles, complex histories, child abuse, violence or residential care may disproportionately impact young adults' maturity as affected individuals experience heightened levels of flight or fight reactions and increased chances of risk-taking behaviour, leading to higher involvement in criminal activity.³⁰

25 UK Parliament Justice Committee, 'The treatment of young adults in the criminal justice system' (www.parliament.uk, 24 October 2016) <<https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/16905.htm#footnote-292>> accessed 23 September 2022

26 Justice Committee, 'Oral evidence: Young adult offenders' (HC 2015 11 HC 397) question 9; National Offender Management Service (n 17); The UK Parliament, 'Brain maturity and injury and its implications for criminal justice - Written evidence from Professor Huw Williams, University of Exeter' (data.parliament.uk, 16 May 2016) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/young-adult-offenders/written/33385.html>> accessed 23 September 2022; The UK Parliament, 'Evidence from St Giles Trust' (data.parliament.uk, 29 September 2015) <<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Justice/Young%20adult%20offenders/written/21944.html>> accessed 23 September 2022 ;Justice Committee (n 25) Question 6. Prosocial behaviour is positive, helpful, and intended to promote social acceptance and friendship. See also The Howard League for Penal Reform: The UK Parliament, 'Written evidence from the Howard League for Penal Reform' (data.parliament.uk, 30 September 2015) <<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Justice/Young%20adult%20offenders/written/22056.html>> accessed 23 September 2022; The UK Parliament, 'Written evidence from the London Community Rehabilitation Company (CRC)' (data.parliament.uk, 23 December 2015) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/young-adult-offenders/written/26420.html>> accessed 23 September 2022; NACRO; Justice Committee (n 25) Questions 398 and 401.

27 Justice Committee (n 25) Questions 2, 3 and 6; The UK Parliament, 'Written evidence from the Royal College of Psychiatrists' (data.parliament.uk, 2 October 2015) <<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Justice/Young%20adult%20offenders/written/22190.html>> accessed 23 September 2022).

28 Barrow Cadbury Trust (n 16); The UK Parliament, 'Evidence from St Giles Trust' (n 25).

29 Justice Committee (n 26) Question 21.

30 The UK Parliament, 'Written evidence from Durham Tees Valley Community Rehabilitation Company (DTV CRC)' (data.parliament.uk, 3 December 2015) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/young-adult-offenders/written/25498.html>> accessed 23 September 2022; Justice Committee (n 25) Questions 156, 166, 343, 467 and 480. The UK Parliament, 'Written Evidence from Dr Kate Gooch and Dr James Treadwell Birmingham Law School, University of Birmingham' (data.parliament.uk, 30 September 2015)

Parliament argued that there was a strong case for a distinct approach to the treatment of young adults in the criminal justice system: young adults' brains are still developing neurologically up to the age of 25 and have a high prevalence of atypical brain development, which both impact on criminal behaviour and make young adults more challenging to manage and harder to engage. Young adults typically commit a high volume of crimes and have high rates of re-offending and breach, and yet they are the most likely age group to stop offending as they 'grow out of crime' in their mid-twenties. Flawed interventions that do not recognise young adults' maturity, it argues, can slow desistance and extend the period of their involvement in the system.³¹

<<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Justice/Young%20adult%20offenders/written/22104.html>> accessed 23 September 2022 .

31 UK Parliament (n 25)

Perceptions of young adults

Our conversations and correspondence with individuals who had been in conflict with the law as young adults painted a dire picture of the criminal justice system. They spoke about a system that was motivated by financial interests rather than justice, and one that failed to treat young people with the respect and humanity they deserve. Their accounts detail a system that is not only failing to equip young adults with the knowledge and information to make the best decisions for their cases and inducing them to plead guilty to offences they did not commit, but they also highlight broader systemic failures that impeded justice and fairness for defendants, irrespective of age or experience.

These accounts are largely consistent with existing research on the challenges faced by young people in the criminal justice system. While the research does not necessarily indicate that young adults have a greater propensity than older adults to plead guilty to crimes they did not commit, it does highlight characteristics and challenges that are specific to, or common in young adults that affect the ways in which they are impacted by the system, and in which they make decisions about their lives.

Motives

Our research confirmed that ‘formal’ incentives to plead guilty – the potential for defendants to get their charges or sentences reduced, was a major factor that motivated them to plead guilty. However, there was little indication that long-term consequences of pleading guilty played a major role in the decision-making process. It was apparent that most decisions prioritised immediate outcomes, particularly with regard to their criminal cases, and even people who did consider the impact of their decisions not just on themselves, but also on others that were close to them seemed to focus on the short-term benefits of guilty pleas.

There were some people who admitted that they had pleaded guilty, because they had in fact committed a criminal offence. Efrem, who wrote to us from prison, said that although he could have pleaded not guilty, and have successfully defended the charges against him, he chose not to do so. He did this because during his time on remand, he had reflected on his actions, and recognised the need to take responsibility for what he had done.

Lack of accepting what one did severely impacts one's potential to learn, grow, repent, transition, change... my guilt, my guilty plea meant that I began my life sentence without the crux of being in denial; most lifers waste a significant amount of years learning to accept responsibility for what they did... But most people, the majority of people plead guilty, because they know they're gonna get a lesser time and sentence, if they weren't going to get a lesser time in jail, they would have won the trial... And sometimes when you're talking, they say about the third off and all that, you know, sometimes it can be used, you know, if you're looking at a 20 or 15, or something like that, you would get a five knocked off. So, you know, when you're talking then that big chunk, you know, of course it's going to wet people's mouths and make people think "oh what, I'm probably gonna get found guilty anyway". And the people just don't want to run the race.³²

However, Efrem's experiences represented only a very small proportion of people who engaged with our research. It was much more common for people to highlight that they

were incentivised to plead guilty by the prospect of a more lenient sentence, and they doubted that most people who plead guilty do so for moral or ethical reasons:

I can't speak for everyone. But the majority of people plead guilty to get less time in prison. You know, it's not that... their conscience kicked in. Or some people might get a bad conscience, I think it depends...³³

There was some suggestion that decisions to plead guilty were not always entirely voluntary. Some felt that they were under immense pressure to plead guilty, and they did so even though they believed themselves to be innocent, and they thought they had a reasonable chance of defending themselves successfully.

I think I was always too fearful of the consequences of being found guilty. You know... even if I had a good chance of being found not guilty, you know, and the solicitor would always just go, okay, well just plead guilty then...³⁴

It was clear however, that for some people who contacted us, there were more complex factors that influenced their decision, which were not limited to likely outcomes and sentences in their cases. For example, one person who wrote to us said that while she took into consideration the likely benefits of a lower sentence, a significant factor that motivated her was her family, and her concerns about what might happen to them if she decided to contest the charges against her.

Amina's story

When Amina was first arrested, she had recently completed a master's degree in psychology, and had a job working in the public sector. Initially, she pleaded not guilty, and was not remanded in custody. However, as her case progressed, she faced subsequent arrests, and her mental health severely deteriorated to the point that she attempted suicide in police custody.

Amina's concern for her family played a major role in her decision to change her plea to 'guilty'. She was distressed by the toll that her criminal proceedings had on her father's health and welfare, especially after she was remanded into custody following her fourth arrest. By this point, Amina wanted her case to be concluded as soon as possible. She was also led to believe that her younger sister could also be prosecuted if her case went to trial. She was desperate to prevent this. Whereas she had benefited from university education and some life experience, she thought it was unfair to deprive her sister of the same opportunities in life.

Amina further explained that because she has borderline personality disorder, she has a tendency to make decisions emotionally and impulsively. When she pleaded guilty, she felt it was important to protect her family from further anguish and suffering in the short term, but she did not think about the long-term impact that a guilty plea could have on her own life.

Amina now regrets her decision to plead guilty, having spent a year in prison, during which time she has received therapy. She says that if she had a better legal team, things might have turned out differently, and she thinks that her life and career ambitions have been ruined by her decision to plead guilty. She also told us that she is upset about the impact her conviction has had on her family, and on her prospects of getting married in the future.

³³ Group discussion 1, Preston

³⁴ Group discussion 1, Blake

I just thought I would elongate the pain for my family. I didn't want anything to happen to my sister. I knew I had gone to university and experienced life a certain extent so my life didn't matter. I wasn't guilty so I should not have pleaded guilty but I had no support system or anyone to tell me they would fight for me for my innocence.

Amina's case highlights that the motives for pleading guilty can be complex, depending on the individual, and not solely centred around the direct consequences it might have for the defendant. Further, it illustrates that a defendant's individual circumstances, identity, and characteristics, including their sex/gender, ethnicity, religion, and family background, can make a notable impact on how they are motivated to plead guilty. Amina mentioned to us that as an 'Asian Muslim woman', she felt that 'there was no other choice' but to plead guilty, suggesting cultural and religious factors played a major role in influencing her decision.

The fact that Amina took into consideration the interests of her family might suggest a level of maturity in her decision-making. She recognised that her decisions could have serious implications not just for herself, but for others who are nearest and dearest to her. However, her account seems to also suggest that her decision prioritised short-term consequences, over the impact that it would have on her life in the long-run.

For some, the decision to plead guilty was largely motivated by their distrust of the criminal justice system and its ability to deliver fair and reasonable outcomes. Kieran, for example, mentioned in his letter to us that he pleaded guilty because he did not think that the justice system could produce any other result in his case, so he wanted to take the 'easy way'.

I plead guilty to the offence I was charged with... I have no faith in the system so always better to take the easy way. My lawyer also advised me to do it anyway. No one should be happy to be locked away from loved ones but I [get by].³⁵

Tom, who also wrote us from prison, told us that he did not think that he would get a fair hearing, because his case was a politically sensitive one that involved national security interests. He highlighted that much of the evidence in his case had been redacted, and because he was remanded in custody for a lengthy period of time, he was unable to do the research that might have strengthened his defence.³⁶

Support and assistance

The overall impression given by people who were involved in this research was that there was a lack of support and assistance that could have helped them to make informed decisions about their pleas, and have ensured the best possible outcome in their cases.

Several people mentioned that they felt like 'a number' to process in the justice system, which did not see them as individuals that had specific needs, and deserved to be listened to.

³⁵ Letter from Kieran

³⁶ Letter from Tom

I just feel like that whole thing was very, very rushed. And that I was just someone to get through that economy. It was just another body to process.³⁷

It was also clear that for many, the decision on how to plea was made in a highly pressurised, rushed environment, with inadequate consideration for the life-changing impact that it could have for a young person. This meant that defendants were often confused about what was happening in their cases, and found the process of making decisions on how to plea particularly daunting and stressful.

Legal assistance

It was apparent that almost all people who spoke or wrote to us had received professional legal advice before entering their plea. However, most reported negative experiences of working with their defence lawyers, who they felt unable to trust or depend on for reliable advice and support. In particular, everyone who took part in the group discussions expressed regret that they had not been adequately supported by their legal team.

A common complaint regarding the inadequacy of legal assistance was the length of time devoted by their lawyers to discussions about their plea. Sometimes, these conversations were limited to just 20 to 30 minutes before the court hearing, which led people to feel that their lawyers were uninterested in their cases and distant. In some instances, the rushed nature of solicitors' interactions with their clients created the impression that they wanted their clients to plead guilty, just to save time.

Like even when you go to court, you don't really get... what like 20-30 minutes with your solicitor before they call you up. They're even rushing [you] sometimes. I can remember clear yeah, my solicitor has been rushing me sometimes like "We're going to be putting up so gonna go guilty"... "They're probably going to give you this amount of time"... "You'll be out in duh duh duh"... I feel like a lot of it is kind of pressured...³⁸

There were also concerns that there were insufficient opportunities in criminal proceedings for young adults to make themselves heard, and that they had no influence over decisions that affected them. Some people who spoke to us said that they wanted people who worked in the criminal justice system to appreciate that they had difficulties expressing themselves for various reasons, and wanted there to be better opportunities for their voices to be heard and taken seriously.

There's a lot of pressure put on you. And I think a lot of the reasoning for that is because it can quite often feel the decisions already made for you.³⁹

... I felt like I didn't have a voice. I felt my voice weren't worth nothing. I weren't worth nothing, you know, there was no value in what I had to say. And half the time, I couldn't communicate it properly if I tried. Through fear, through whatever, I can't communicate what I'm really feeling or what I'm really saying. So, I'd do my best with a duty solicitor that I've got sort of a relationship with. But even that gets misinterpreted, and they miss what I'm trying to say. And you can't interrupt them when they're trying to explain that to the judge ... A space... Well, maybe not even to represent myself, but to have a say at least. I think that'd be really helpful.⁴⁰

³⁷ Group discussion 1, Blake

³⁸ Group discussion 1, Faisal

³⁹ Group discussion 1, Harvey

⁴⁰ Group discussion 3, Luke

The lack of time and sufficient opportunities given to defendants to make their decisions is likely to be driven at least partially by the fact that defendants in England & Wales are incentivised to plead guilty as early as possible. Defendants pleading guilty at the first stage of the proceedings can benefit from a one-third reduction of their sentence, but the maximum benefits for which they are eligible decreases gradually as their proceedings progress. The reasons for having such incentives are clear – the sooner a guilty plea is entered, the greater the potential savings on courts and other costs associated with criminal proceedings. Early guilty pleas also have the potential benefit of reducing delays and avoiding trial proceedings altogether, thereby lessening the anguish and uncertainty suffered by complainants and witnesses. However, it is apparent that these incentives can also have a coercive effect on defendants, pressuring them to make life-altering decisions, in highly stressful scenarios, with little time to consider their options.

There were several people who spoke to us that expressed a sense of voicelessness and helplessness when confronted with these life-changing decisions. Faisal, for example, explained that there were questions that he wanted to ask his lawyers, but felt unable to, in case he was seen to be a burden for his own lawyers. This meant that there was advice, or matters relating to his case that he did not understand.

There used to be a lot of things that I didn't understand. I used to ask. And sometimes it was the thing were, I didn't want to ask them like because I was just thinking like, I don't want to be asking too much questions. I don't want to feel like I'm coming off as a burden.⁴¹

The distance and the lack of care felt by some discussion participants were further emphasised in court, where barristers were described as being even further removed, and had even less interaction with their clients than solicitors. There were concerns that being represented by a barrister in court, who does not take direct instructions from defendants, disrupted communications between defendants and their legal team, which led to many feeling as though they were not being listened to, or being taken seriously.

...also disturbing is the fact that the predominant point of contact would be the solicitor, who I met at the police station and their firm, I'd only ever see the barrister for a very minuscule period of time, you know, they're always like, rushed off their feet as well. And I'd only see them when I eventually got to the Crown Court. And I wouldn't, they were so distant from me, they the only person they liaise with is the solicitors come with, the company that I was working with from the police station onwards. There was, I never felt that I was ever truly involved at the Crown Court level, with, with, with a team. You know, I never got any information from barristers that were working in the Crown Court, it was always at the solicitor level.⁴²

There were several people who took the view that lawyers were primarily motivated by financial gain rather than the best interests of their clients. In particular, they had little confidence that lawyers acting on legal aid would be able to, or even be inclined to put in their best efforts to defend their clients.

I don't expect them to be honest. Because like, they get paid regardless, they get paid if I lose, win or lose. There's like, slight. There's nothing really in it for them like that... If they're getting paid the bare minimum, you're going to do the bare minimum... With legal aid it is the bare minimum... they're going to give you the bare minimum.⁴³

⁴¹ Group discussion 1, Faisal

⁴² Group discussion 1, Blake

⁴³ Group discussion 2, Jordan

A popular belief held by those who spoke to us was that a defendant's chances of getting a fair outcome in their case depended heavily on their financial means. There was a strong assumption that defendants who were able to pay for their lawyers privately received better services and assistance that usually led to better outcomes. Duty solicitors and legal aid lawyers, it was argued, lacked financial incentives to ensure the best possible results in their clients' cases, given that they would be remunerated (poorly) for their services no matter the outcome.

It'd be good if everybody could kind of get a similar level of defence, you know, but we're not getting, we're not getting similar levels of defence, we're not. Legal aid and paid services – you see a vast difference. And I've seen that too because I've paid for solicitors and I've seen a vast difference.

Some went even further, accusing lawyers of corruption, and for acting against the interests of their own clients for financial gain. There were allegations that lawyers benefited financially from delays in criminal proceedings, and/or by getting their clients to change their pleas immediately before trial, so they had little interest in avoiding either of these outcomes, even if they went against the best interests of their clients. These are no doubt very serious allegations. It might not be possible to substantiate them, but they nevertheless suggest a strong level of distrust, or even hostility towards the legal professions from those who feel let down by the justice system.

For some, like Elisa, the failure by lawyers to provide effective assistance seems to have felt like a betrayal of their trust, and a traumatising experience. Elisa told us that she had opened up to her lawyers, and had confided in them by recalling the traumatic experiences she had in her childhood, and the mental and physical pain she had suffered due to domestic violence. She said that she was disappointed and shocked that her legal team did not take any of this into consideration, despite the fact that she needed to seek psychiatric help for recalling these traumatic events.

So you tell them all your bloody deep, deepest, darkest secrets, thinking that's gonna help you in some way. And then they don't even play against it in the defence.⁴⁴

There was also recognition that often, the reason why lawyers could not provide the necessary level of assistance to their clients was due to factors beyond their control. Many people acknowledged that the heavy caseload assigned to legal aid lawyers, combined with cuts to legal aid was largely responsible for their inability to devote adequate time and care towards advising their clients.

The workload that the people had that were working with me meant they just wanted to get me out of the way as quickly as possible anyway... it's so incredibly busy with such massive caseloads.⁴⁵

I was told well, you need to put everything into this so you need to be selling a lot of your stuff and go private, and you'll get better representation, and you'll get this better, you know, with all the cuts to legal aid.⁴⁶

Some people pointed out that one of the reasons why they felt unable to fully trust their lawyers was that they saw few differences between their defence barristers, prosecutors, and judges. They recognised that there was often considerable fluidity between the different roles, with many lawyers undertaking both defence and prosecutorial work, and a few becoming judges later in

⁴⁴ Group discussion 2, Elisa

⁴⁵ Group discussion 1, Blake

⁴⁶ Group discussion 1, Harvey

their careers.⁴⁷ This made them question whether their own lawyers were truly on their side. Some were also uncomfortable with the fact that many defence lawyers and prosecutors had cordial relationships outside the courtroom, and that they could even come from the same chambers.

I look at duty solicitors as part of the system. I don't... look at them as like, "they're gonna help me", I look at them like, after court... They'll go sit down and have a drink together, you know, like that, like?

⁴⁸The lack of confidence in the advice given by their lawyers meant that some resorted to conducting their own research to find out about their options and the impact their decisions could have on their sentence. Several group discussion participants reported consulting the CPS guidelines to figure out the likely sentences they would receive, and instructing their legal team to change their defence strategy on that basis. Darren, for example, told us that he had made his decision to plead guilty against the advice of his legal team, because his own research suggested that he would likely get a much lower sentence by pleading guilty to a lesser crime.

I'm glad that I pleaded guilty. I pleaded guilty because of my own research and diligence, to be honest. The CPS guidelines. I saw what was right for me and I asked my solicitor to ask the prosecution on my behalf. And then it was funny because my solicitor came back and was like, first, like I don't think they are gonna accept it and then they came back and was like... "they accepted your plea, you're a smart lad".⁴⁹

Jordan had a similar experience in his case. He told us that he consulted the CPS Guidelines and sought the advice of people around him, who helped him develop a strategy of pleading guilty to less serious charges. His legal team doubted that the prosecution would accept the offer, but they did, and he believes this resulted in a significantly better outcome.

I went on to the CPS guidelines and had a look at my case on the CPS guidelines. And I kind of created a strategy where I would get the charges reduced. So, I asked for a plea bargain. Because I know how the system works, where everyone was telling me, especially like, 'listen, they just want to get a conviction, as long as they get a conviction, and it's reasonable what they get, you can start asking for stuff'. So then when I went to court, I just started asking my solicitor to ask the prosecution for a reduced, not a reduced sentence to lesser charges.⁵⁰

The experiences reported by young adults in this study contrasts with similar research undertaken with children. According to research conducted between 2020 and 2021 to understand the experiences of children who have pleaded guilty, children tended to have more favourable perceptions of their lawyers, and they were likely to rate lawyers more highly as helpful sources of support than friends or family members.⁵¹ This might highlight the need to make a distinction between children and young adults, and perhaps suggests that young adults, with their additional life experience and knowledge, might be more inclined to scrutinise the assistance given by their lawyers, and feel more able to judge whether the advice they get is good or bad.

⁴⁷ Group discussion 2, Elisa

⁴⁸ Group discussion 2, Jordan

⁴⁹ Group discussion 1, Darren

⁵⁰ Group discussion 2, Jordan

⁵¹ Evidence-Based Justice Lab, University of Exeter, 'Incentivized Legal Admissions in Children – Part 2: Guilty Pleas' (2021), <https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2021/09/ChildGuiltyPleas_FullReport.pdf> accessed 22 September 2022

Lived experience

It was apparent from the discussions that many people had also relied significantly on the advice of fellow prisoners on remand, and/or friends and family members who had previous experience of the criminal justice system. It was generally perceived that these sources of support were more trustworthy, and that people with lived experience of the criminal justice system were not only able to empathise with them and their experiences, but also had a better understanding of the wider implications of plea decisions.

There should be somebody over in a police station or in the court that has lived experience, who you can [got to] as someone being detained or just been arrested. You should be given the option to... say to you "look before anything else happens, would you like to speak to somebody who's experienced what you've been, what what's happening to you right now?"... before they make their pleas... there should be... something there.⁵²

There was also some suggestion that fellow prisoners were providing crucial advice to defendants that they ought to have been getting from their lawyers, not just on matters relating to pleading, but also on other aspects of their criminal proceedings that had a significant impact on their rights. Cheryl, for example, explained that the only reason she was able to get out on bail after she had been remanded in custody was because fellow inmates advised her.

When I was remanded, that's when I had more information given to me from girls that was in there. You know like, you can probably do a bail, like – whatever it's called – hearing where you can try and get bail, stuff like that. That's when I was like, okay, let me call him call my mum and tell them to get him to do bail for me.⁵³

Some people who spoke to us claimed that they too had provided advice to their relatives or fellow prisoners to inform their plea decisions, and they seemed to believe that their advice had had a positive impact on other people's cases.⁵⁴

Fellow prisoners can be an important source of support for many facing trial, especially those who have no previous experience of the criminal justice system, and feel lost and confused. It is also inevitable that defendants on remand will speak to others in places of detention about their cases, and seek advice. However, the risks associated with seeking unprofessional legal advice cannot be ignored. There is no guarantee that such advice is being provided on a well-informed basis, with full awareness both of the particularities of the defendant's case, and of the laws, policies and procedures that are relevant to their decisions regarding their pleas.

According to the accounts given by those involved in this research, it was clear that this heavy reliance, or even preference for advice from those with lived experience was a symptom of a lack of trust in the criminal justice system, and a lack of confidence in the legal professions. One person even suggested that he was 'taught' during his first time in prison not to trust lawyers.

⁵² Group discussion 2, Elisa

⁵³ Group discussion 2, Cheryl

⁵⁴ Group discussion 2, Elisa

... When I had been in jail and the lads were talking about, and we'd all been in jail... then we would start saying stuff like, 'no comment', 'don't say anything to them, don't believe anything they say to you'. And so yeah, that's the sort of stuff, even with probation and solicitors.⁵⁵

Vince's story

Vince says that his family were supportive when he was a criminal defendant. They helped him make his decision on whether to plead guilty, while also reassuring him that the final decision was his to make. They also helped him appoint a solicitor, who advised him in simple terms what the possible outcomes of his decisions were likely to be. He made his decision to plead guilty, knowing not only that it could land him in prison, but also aware of what life would be like once he is released on licence, and he also thought about the impact that a criminal record would have for his long-term future. He also had the benefit of having supportive employers, who told him that he would be able to return to his previous job upon his release.

I knew that if I pleaded guilty there was a very high chance of a custodial sentence, which would be shorter than if I was found guilty at trial, although I didn't know how much shorter, and all the struggles after prison, like being on licence, and disclosing convictions for work etc. I knew all that would definitely happen if I pleaded guilty, whereas there would be a chance that it might be different if I took the conviction to a trial. Even with pleading guilty and knowing what was coming, it was still scary.⁵⁶

In Vince's case, his family seems to have played a positive, supportive role during what was clearly a very difficult time for him. They helped him find a lawyer, they offered advice, and they continued to support him after he was sentenced. While familial, and in particular parental, support is typically regarded as a safeguard reserved for children, Vince's case demonstrates that it can also be of significant benefit to young adults, and a key factor that enables them to exercise their rights more effectively.

Out of the many people who contacted us, or took part in group conversations, Vince was the only person who reported positive experiences of getting professional legal advice, and one of the few that felt that his decision was well-informed. It is crucial to acknowledge that Vince might have found himself in a position not enjoyed many, if not most other young defendants – a close support system that was not only willing to help him, but also had the time, resources, and capacity to do so. Vince's experiences can be contrasted with that of Faisal. Although Faisal did seem to have family members that took an interest in his case, and they were present when his proceedings were taking place, he did not think that they played a helpful role, because they were just as ill-informed as he was.

[as] for parents... they don't really know anything, unless you obviously told them and speak to them. So... they're basically... in the same boat as me... At the end of the day, they're not the professionals and they're not going to want to be 100% on you... because she doesn't want to make the mistake of like, if something does go wrong, is like kind of, that was her fault kind of thing. And so she obviously is, on the same wave as me like, I'm taking advice from the solicitor and it's like, [that] was the best option.⁵⁷

⁵⁵ Group discussion 3, Niall

⁵⁶ Letter from Vince

⁵⁷ Group discussion 1, Faisal

It is also apparent that in the absence of a legal right to be assisted by a parent or appropriate adult, young adults could be denied the opportunity to seek support from their family. One person who wrote to us said that he wanted to speak with his family before making up his mind about pleading guilty, but was not permitted to do so.⁵⁸

Information

A key concern expressed by the vast majority of people who spoke with us, or wrote to us, was that they had not been given adequate information to make their decisions on how to plead. Many individuals felt that the pros and cons of entering a 'guilty' or 'not guilty' plea were not properly explained to them, and that they were not made fully aware of all the options available to them.

While many recalled being advised on the positive short-term benefits of pleading guilty, there was little suggestion that they were asked to consider the long-term consequences of their choices, despite their young age, nor was there much recollection of being advised about the potential downsides.

Chery's story

Cheryl was studying for a university degree in tourism and business management when she was arrested and taken to court for having an illegal firearm in her house, which she says belonged to her boyfriend at the time. She was granted bail so that she could finish her degree, but because her laptop had been confiscated, she struggled to finish her dissertation.

She alerted her legal team that she was a non-British national, but she was reassured that if she pleaded guilty, she would only get a 12-month suspended sentence, and that it would have no impact on her immigration status. Despite this advice, she ended up serving time in prison after pleading guilty, and she has since struggled to find work in the travel and tourism sector due to her criminal record. She only found out earlier this year that she is ineligible to apply for British citizenship for another 5 years due to her conviction.

I told [my solicitor], "I'm not British, like what's going to happen?" He was telling me, you know, "nothing". He didn't tell me to the extent where I can't apply until 10 years... He didn't tell me any of that. I literally only found out last month when I went to apply.

It was apparent from our research that some people also made their decisions to plead guilty based on faulty legal advice, or legal advice that was poorly communicated or understood. Mourad, who wrote to us from prison, explained that when he pleaded guilty to murder, he was under the impression that he would benefit from a one-third reduction of his sentence like most other defendants who plead guilty at the first stage of the proceedings. He did not appreciate that this rule did not apply to murder, and that there were specific principles regarding the reduction of the minimum term. He was also unaware that he would be unable to appeal his conviction if he pleaded guilty.⁵⁹

⁵⁸ Letter from Charlie

⁵⁹ Letter from Mourad

Our complete faith is put in solicitors and barristers who may well be qualified but they [are not] transparent, helpful and fast to explain everything to a layman (their client), which is unfair on every level as it's a life altering decision/process. Further education qualification does not exactly correlate to being prof[icient] at the job and acting properly. There needs to be more accountability as a lot of solicitors/barristers are more interested in expediting the case to a conclusion for a pay cheque rather than care of the impact their lack of care will have on their client's life. In this regard there needs to be more oversight/accountability or specialist vetted solicitors/barristers for certain cases/crimes.

It was a common complaint amongst people who took part in this research that the sentences that people received were higher than what they anticipated, according to the advice given by their lawyers. This suggested that many people felt poorly advised by their lawyers, or that there was a lack of effective communication between them and their lawyers. Even Efrem, whose story is explained in more detail above, and who has no regrets about pleading guilty, told us that he did not really understand what sentence he was likely to get before his sentencing hearing.⁶⁰

My legal team said in a professional capacity they can't advise me on what to do, only that "the truth should be the right answer". I only had 10 minutes to decide.⁶¹

Some people expressed frustration that lawyers had not been fully open or transparent with them, and that they had not provided them with frank advice that would have resulted in a better outcome in their cases, including advice that could have persuaded them to plead guilty.

Elisa's story

Elisa had already admitted to the crime that she was being accused of during investigations, but she pleaded not guilty at the advice of her lawyers, and she was remanded in custody pending her trial. Elisa says that during her time on remand, which lasted 18 months, no-one discussed with her the option of pleading guilty to the charges, despite her earlier confession, and the apparent weaknesses in her defence.

Elisa continued to have difficulties communicating with her lawyers even after she was convicted. She recalled being sentenced on the same day she was convicted, and immediately afterwards, her barrister told her that he was going to start working on her appeal. She did not understand what was happening at the time, and she suggested that she had very limited contact with her lawyers during the year she waited for her appeal hearing to take place.

I was really badly advised, and I was on remand for 18 months... at no time did anybody tell me the consequences of my different types of pleas and nobody really advised me.

Elisa told us that she had felt badly let down by her lawyers, because in her view, she did not have a valid defence, and although pleading guilty could have helped her avoid months of remand custody, and get a much lower sentence, this option was never discussed with her. She was especially frustrated with the way her lawyers handled her case, because in her view, they continued to be paid for their work while she struggled in prison.

⁶⁰ Letter from Efrem

⁶¹ Letter from Charlie

Consequences of guilty pleas

The lack of sufficient time, information, and support given to people to help them make their decisions about their pleas meant that in many cases young people who pleaded guilty only found out about the true implications of their decisions much later on. As explored above, this included negative impacts on their career prospects and ambitions, as well as their rights and legal status. However, it was also clear from accounts given by certain people that pleading guilty could seriously damage their relationship with the legal system, and affect their outcomes in criminal justice proceedings in the future.

Reggie's story

Reggie was 18 years old when he was arrested by the police, and accused of committing an offence with two other youths. He knew that he could have a solicitor to advise him while he was being interviewed by the police, but he was dissuaded from engaging one by a police officer, who reassured him that he would be able to avoid prison, if he confessed and pleaded guilty.

Reggie says that as an impressionable young person, he trusted the police at the time, and although he did manage to avoid a prison sentence in the end, he soon regretted his decision to plead guilty. At the time of his arrest, Reggie was just weeks away from leaving his home town to study accounting at university. Although he eventually finished his course and got a 2.1 degree, he later found it difficult to find work due to his criminal record.

Reggie believes that he was misled by the police, and that pleading guilty not only robbed him of his opportunities in life, but also made him a burden, rather than a contributor to society. His experiences destroyed his trust in the police, which he views as institutionally racist.

I am not happy with pleading guilty but at 18 I trusted the police officer who gaslighted me, and had I gone to trial I would more than likely be found not guilty. I developed a severe dislike and distrust of the police and would never trust them again. I believe the police to be an institutionally racist part of society... The police often use young people's lack of knowledge about the law to coerce them into pleading guilty especially BAME kids while indigenous kinds may often be let off.

Reggie was not the only person whose dreams and ambitions were crushed as a result of their decision to plead guilty. Olu, for example, told us that he was studying for a qualification in accounting when he was arrested at the age of 18. He changed his legal team at the last minute before he was due in court, and pleaded guilty not fully understanding how recent changes to sentencing guidelines would affect his case. He was unable to finish his course, and he said that he is no longer able to pursue his dream of working abroad one day.⁶² Olu was also one of several people who reported that he is neurodivergent, and that he only found out about this after he had been sentenced.

Another consequence of guilty pleas that was not initially anticipated by people who spoke to us was the impact that criminal convictions would have on future criminal proceedings. Faisal, for example, found that his criminal convictions were used as evidence of bad character whenever he found himself in conflict with the law, and suspected that

⁶² Letter from Olu

they might have led to less favourable outcomes. He pointed out that there are many people that plead guilty only having regard to the short-term consequences of their decisions, while not appreciating the downstream effects that such decisions could have.⁶³

Health and disabilities

Several people expressed concerns that young people who faced additional communication challenges on account of their health conditions, characteristics, or disabilities were being let down by the justice system, and that they were not receiving the support they needed to make informed decisions regarding their pleas.

The prison system is made up of mostly vulnerable people, right? So how reliable is a guilty plea anyway? How reliable is a guilty plea?⁶⁴

The challenges described by people who took part in our research is consistent with existing studies on people with psycho-social and/or intellectual disabilities. These studies question whether people with such disabilities agree to plea bargains in sufficient awareness of their rights and likely consequences of their decisions, and suggest that people with disabilities are more likely to plead guilty to crimes they did not commit.

We noted that a significant number of people who took part in this research disclosed personal factors that could affect their ability to communicate, understand, and participate effectively in criminal proceedings. These included people with learning difficulties, such as dyslexia, people with mental health conditions, and neurodivergent people. There were several others that told us that they had struggled with substance abuse, which had impaired their decision-making capabilities.

Niall's story

Niall had serious difficulties reading and writing since childhood, and until he was 21, he could not spell his own name or write down his home address. This made it difficult for him to control his temper, and he often felt isolated, due to limitations on his communication abilities. He realised later in his life that this was because he had dyslexia. The first time that Niall came into conflict with the criminal justice system was when he was 8 years old, and he developed an addiction to 'Class A' drugs at a young age. Following this, he was arrested on numerous occasions in his youth, and pleaded guilty to the majority of offences he was charged with.

Even once he knew that he was dyslexic, Niall usually did not let others know about his condition for fear that he would be ostracised and be perceived as unintelligent. Because of this, he struggled to understand the advice and information given to him by his legal team, so he found it difficult to make decisions about his case.

A big thing... is just being able to understand the paperwork, something as simple as just being able to understand what they actually are saying. Because half the words that they use, you've never owned them in your life. So, what do they mean? Even if it's just putting it down, in the terms that I would understand, in layman's terms... Just being able to understand the paperwork, could have a massive impact.

⁶³ Group discussion 1, Faisal

⁶⁴ Group discussion 3, Jordan

Niall's experiences support recent findings by the Equality and Human Rights Commission that the criminal justice system in England & Wales is failing people with disabilities, and in particular, those with cognitive impairments, mental health conditions, and/or neuro-diverse conditions.

His learning difficulties, and the lack of attention and support that he received for them might have played a role in bringing him into contact with the police and the criminal justice system from an early age. Further, it seems apparent that Niall's dyslexia impeded his access to effective legal advice, and information that could have enabled him to make the best decisions in his case, including in relation to his plea. His communication challenges were neither recognised nor taken into consideration by those around him. Niall's experiences are comparable to those reported by Amina, whose experience was discussed in further detail above. In Amina's case, her borderline personality disorder, while not necessary preventing her from understanding or following her legal proceedings, impeded her ability to make sound, fully informed decisions about her case.

Jordan, who also has dyslexia, said that there was a tendency for people who have communication difficulties or struggle to understand paperwork, to develop a type of 'learned helplessness', making them more dependent on others, and more susceptible to advice or influences that might go against their interests.⁶⁵

Another challenge reported by some people who wrote to us was that the failure to have their conditions or disabilities identified early in their criminal proceedings prevented them from being able to fully appreciate the full range of defences and mitigating factors that might have been available to them. This meant that they pleaded guilty without fully understanding what the likely outcome would have been had their cases gone to trial. Patrick, for example, told us that following his conviction, he has been diagnosed as autistic, and he has been advised by his psychiatrists that his condition may have undermined his ability to appreciate that the actions he took could amount to a criminal offence. He suggested that if he had known about his autism, he might have made a different choice in his case by pleading not guilty, and that he might have ended up with a more favourable outcome.⁶⁶

Transitioning from childhood to adulthood

There were several people who spoke with us for this research whose experiences of the criminal justice system started long before adulthood. For example, Niall, whose story was explored in more detail above, had his first interaction with the police aged just 8. Blake, who also took part in one of the group discussions for this research, explained that he had started offending as a teenager, and that he had developed an abusive relationship with drugs from an early age.

In these cases, as well as several others, there were clearly identifiable socio-economic factors, and/or personal characteristics that drew young people into the criminal justice system. However, it was apparent that they did not benefit from more appropriate interventions or responses that addressed the causes of 'criminal' behaviour, and that could lead to more beneficial outcomes. Had Niall's learning difficulties been identified sooner, he might have been able to access the support and services that could have helped him manage the challenges he faced. If substance abuse was a root cause of Blake's offending, treatment, or other forms of assistance that might have helped to reduce

⁶⁵ Group discussion 2, Jordan

⁶⁶ Letter from Patrick

his dependence on drugs and improve his mental health had been provided, he might have avoided prison, and subsequent numerous criminal convictions that no doubt undermined his chances in life.

While the focus of this research is to understand how young adults make decisions regarding the pleas, the fact that many are being placed in such positions due to inappropriate decisions and interventions that they are subject to as children cannot be ignored.

Further, it seems from several accounts given by people who took part in our research that they had been experiencing the failings of the criminal justice system long before they became adults. There was little to no indication that they were treated more fairly, or even differently as children, and there was no suggestion that facing criminal accusations as an adult put them in a significantly worse position.

Faisal, for example, explained to us that he had experience of going to trial as a child (at the age of 13 or 14), and as a young adult. He knew that at least in theory, he was supposed to receive special treatment in courts because of his age, but he did not think these safeguards were in fact, applied. He thought that the process he went through as an adult was more or less the same as those he experienced as a child defendant.⁶⁷

⁶⁷ Group discussion 1, Faisal

Conclusions and recommendations

The fact that the vast majority of criminal defendants in England & Wales plead guilty to their crimes means that for many, if not most defendants, their decision on whether to plead 'guilty' or 'not guilty' is the single most important decision they make in their cases. Despite the fact that the law recognises the need for these decisions to be made on a properly informed, voluntary basis, the reality, as highlighted in this report, is often very different.

The testimonies and stories shared with us by those who had experience of making these very difficult, life-changing decisions highlighted that defendants are all too often left in harrowing situations, where they lack access to the support and information they need to make the right decision for themselves. They told us that their lawyers are not giving them the care and attention they need, there is no-one to give them reliable, impartial advice about the likely consequences of their decisions, and they are often given less than an hour to make up their minds on a matter that might have far-reaching, unforeseen consequences.

We have few reasons to doubt that these challenges are unique to young adults, but we recognise that young adults are at heightened risk of violations of their fair trial rights on account of their neuropsychological characteristics. This research has provided a glimpse of how young adults' decision-making tendencies, for example, can lead to devastating consequences for the rest of their lives, and highlights the need for special attention and assistance to be provided to young people. Further, we highlighted how many young adults who come into conflict with the criminal justice system have complex additional needs, on account of their health conditions, disabilities, or other factors that amount to obstacles to effective participation.

While the intention of this research was to focus on plea decisions, the stories that were shared with us also drew attention to more systemic challenges that the criminal justice system is facing, that have far broader implications beyond the rights of young adults and guilty pleas. These accounts provided an insight into an underfunded, overloaded criminal justice system that is routinely failing people accused of crimes – treating them as numbers in the system, rather than with the care, humanity, and attention they deserve.

Our recommendations are not intended to be an exhaustive list of legal and policy changes that need to be effected in order to 'fix' the challenges highlighted in this report. They should also not be considered in isolation, with the expectation that the adoption of any one of these proposed reforms will significantly improve the fairness of criminal proceedings for young adults. These recommendations reflect Fair Trials' key observations from our research, and our take on the recommendations provided by the people we engaged with for this research.

Legal and other assistance

The lack of appropriate legal advice and assistance was a very common criticism made by individuals who took part in this research. They pointed out the lack of care given by their lawyers, as well as their perceived incompetence and partiality, which resulted in poorly informed choices that had far-reaching, unforeseen consequences.

We acknowledge that these are perceptions of the legal professions, and that they do not provide the full picture of how legal assistance is being provided to young adults accused of crimes.

Participants for this study were not chosen randomly, and we recognise that many people who chose to volunteer their voices for this research might have had strong feelings about their experiences, including a deep sense of injustice. While this might have influenced the portrayal of the legal professions of this research, we have no reasons to suspect that the opinions expressed by people who took part in this research were in any way exceptional or unusual.

Many people who spoke to us understood that defence lawyers could not always provide the level of assistance they wanted to provide for reasons outside their control. There was awareness, for example, that the justice system was operating at far beyond its intended capacity, which resulted in heavy caseloads, and that the current legal aid system simply did not allow defence lawyers to put in the necessary time and effort into their clients' cases.

However, it was clear from the conversations that people wanted advice and information to be available to suspects and defendants from an impartial source. Lawyers were generally not regarded as impartial, and there was a strong preference for this advice to be provided by people with lived experience of the criminal justice system.

I'd like somebody with lived experience and objective observer who could have the information with me, and then take that information away and liaise with me, throughout the process, that would be the ideal situation. Somebody I can relate to with lived experience, whose objective you can take away the case with, like the solicitor, look for it, and then tell me the pros and cons of whether or not plead guilty.⁶⁸

Fair Trials sympathises with people who made these recommendations. We understand both the reasons why many people feel unable to trust their lawyers, and the importance of ensuring that the views and perspectives of people with lived experiences are not only heard, but also taken seriously. However, there are serious risks of formalising advice and assistance from people with lived experience as a procedural right of suspects and defendants. It might, for example, be difficult to ensure that any such advice is well-informed, accurate, or objective, and there is a risk that such advice or assistance will be considered to be a false equivalent to professional legal assistance.

It might be necessary to understand in more detail the root causes of what many defendants perceive to be inadequate or negligent legal assistance, and to get a better sense of the true scale of the challenge. We appreciate, in particular, that the perspectives of legal practitioners could be quite different. However, even from the limited research undertaken from this project, we see ample room for improvement in the quality of legal assistance provided to young adults. This should be a combination of both broader systemic changes to promote more effective legal assistance, as well as more targeted efforts to build the capacity and capabilities of legal professionals to provide age-appropriate assistance. Legal professional bodies, such as the Law Society and the Criminal Bar Association could, for example, take the lead through targeted training or other forms of support designed not only to benefit young adult defendants, but also specifically addressing the challenges they face in relation to plea decisions.

Removing incentives for early guilty pleas

The current rules on guilty pleas in England & Wales incentivise guilty pleas at the earliest possible stage by gradually reducing the sentence deductions available to

⁶⁸ Group discussion 1, Blake

defendants as their criminal proceedings progress. It is apparent from this research that these rules put many people under considerable pressure to plead guilty, and they often find themselves in extremely difficult situations where they are given less than half an hour to make decisions that could have a serious impact on their lives.

Plea decisions should be made carefully, in full awareness of the defendants' rights, and by taking into consideration the full range of implications of entering a guilty plea. Incentivising early pleas undermines these objectives for all defendants, but there is a more pronounced risk for young adults, whose decision-making processes and capabilities are often different from those of older adults.

Sentencing Guidelines should be reviewed to reflect the realities of how people make their plea decisions, and to be more mindful of the need to encourage more carefully informed decision-making. This might include the outright removal of time-based incentives to plead guilty, or a significant relaxation of the rules that might lessen the differences in deductions available to defendants according to the stage at which they enter their guilty plea.

Procedural safeguards

A number of people who took part in group discussions suggested that judges should play a greater role in ensuring that defendants considering a guilty plea are given the relevant information about the likely implications of their decision. They were of the opinion that judges, as impartial parties to legal proceedings, could be entrusted to carry out this role.⁶⁹

Everyone has a plea and trial preparation hearing. So, where you enter that plea, and that's when the judge could, you know, give that kind of warning. And... say, "you know that these are the outcomes". But I also think the good thing about that as well and coming from the judge, that's where you can get that tailored intervention, depending on the age so we can tailor that kind of response in terms of understanding, you know, that judge is there to ensure that the trial is fair, that is their role.⁷⁰

What our group discussion participants described is not dissimilar to safeguards found in plea bargaining processes of certain other legal systems, including in the United States, where many jurisdictions require 'allocutions' to be conducted before the court accepts a guilty plea. This is a process by which the judge questions the defendant to check that they have fully understood the implications of pleading guilty before the plea is accepted. Even in US states where there is no formal mechanism in place for judges to question defendants over their pleas, it is common for there to be a constitutional or other legal requirement for judges to be satisfied that the guilty plea is entered voluntarily. This could amount to an essential safeguard, especially for unrepresented defendants, who do not benefit from professional legal advice that should ideally be informing them about the likely implications of guilty pleas.

However, it must be acknowledged that the United States has rates of plea bargaining that are far higher than that of England & Wales, and the effectiveness of allocutions as a way of preventing uninformed or involuntary guilty pleas in US jurisdictions has been questioned. There have been criticisms, for example, that allocutions amount to no more than a series of standard questions that do not properly interrogate the defendant's level of understanding

⁶⁹ Group discussion 1, Preston

⁷⁰ Group discussion 1, Harvey

about their rights, nor question the voluntariness of their choice in a meaningful way.⁷¹ There is a risk that if similar procedures are introduced to England & Wales, they might create the illusion of judicial scrutiny while not, in reality, promoting better-informed plea decisions. This is an area in which further comparative analysis that highlights the key differences, as well as advantages and disadvantages of various models of judicial oversight, could be useful.

Diversion

For many people who we engaged with for our research, it was apparent that their first experiences of the criminal justice system often preceded adulthood. By the time they were young adults, they had already faced numerous arrests, and had appeared before courts on several occasions. It was clear to us that in many cases, there were underlying factors – social, economic, health-related, or otherwise, that were putting people into conflict with the criminal justice system as young people. However, the appropriate interventions that could have helped people to manage these challenges and avoid conflicts with the law were either not provided, or not sufficiently available.

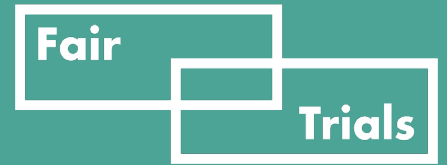
There's normally underlying issues that are driving that offending behaviour and why they're, you know, going down that path to crime. And without that early intervention, you're not going to be able to shape their future path, because they're just gonna keep committing crime. And then, you know, it's too late by that point, they're in that kind of spiral. Whereas, I think if you have an a different approach to young people and that individualised approach, and actually sitting down with them, and addressing those underlying issues that may be driving that, if any behaviour, whether it be poverty, or some kind of trauma, or issues at home, etc. That's how you kind of try and break down those barriers to not go in, on the right path, if that makes sense.⁷²

While strengthening safeguards and improving the support and assistance available to young adults might help them make better informed decisions in their cases, these changes will only play a limited role in ensuring better outcomes for young adults. It is crucial that young adults only plead guilty willingly and in full awareness of what will happen to them, but a far more impactful way in which to achieve justice and fairness for young defendants is to prioritise non-criminal law responses to their actions and their behaviour. There needs to be a much stronger emphasis on measures that are designed to identify and address the root causes of 'criminal' behaviour that are tailored to individual circumstances, and on reforms that favour early interventions and diversions out of the criminal justice system.

⁷¹ National Association of Criminal Defence Lawyers, 'The Trial Penalty - The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It' (nacdl.org, 2018) <<https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>> accessed 23 September 2022

⁷² Group discussion 1, Harvey

fairtrials.org



Fair Trials
5 Castle Road
London NW1 8PR
United Kingdom

+44 (0)20 7822 2370

© Fair Trials 2022

Fairness, equality, justice

 @fairtrials  @fairtrials  Fair Trials