

Due dignity: how are defendants treated in London magistrates' courts?

MARCH 2026

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Foreword

If they are to receive justice, defendants must be able to participate effectively in court proceedings. The principle of effective participation is at the heart of the right to a fair trial, guaranteed by Article 6 of the European Convention on Human Rights. Under Article 6, defendants' minimum rights include the right to be informed about the nature and cause of the accusation against them; to have time and facilities to prepare their defence; to defend themselves in person or through legal assistance; to examine witnesses; and to receive free assistance from an interpreter where needed.

Despite the central importance of effective participation, there are multiple aspects of everyday court practice that make it a struggle for defendants to participate actively in their case. This fifth report of the Transform Justice CourtWatch London project vividly conveys the extent and nature of these barriers to participation in London magistrates' courts.

At the most basic level, defendants often find it difficult to hear, let alone understand, what is going on at court – whether they are appearing via a shaky video link, or are physically present in the court but (as is most common) seated in the secure dock at the back of the room, behind a perspex screen. Courtroom language tends to be complex, convoluted and full of jargon: not easy for any lay person to understand, and more so for people who are anxious, tired, mentally unwell or otherwise vulnerable. For those whose first language is not English, obstacles to understanding are higher still, compounded by inadequate interpreting provision. And the large minority of defendants who are unrepresented face additional challenges as they seek to navigate the court process.

Participation implies not only understanding the process, but also making oneself heard. Yet defendants' voices are frequently silenced. Opportunities to speak during proceedings are limited, and again are impeded by the practical barriers imposed by the secure dock or remote attendance. There is an essential paradox that while criminal proceedings, at their core, are about the defendant – about what they have or have not done, and what is the appropriate penalty if they did commit the alleged offence – they are often pushed to the margins of the courtroom, more an absence than a presence.

Closely linked to the theme of participation is the quality of treatment defendants receive at court. Most court professionals are conscientious and respectful. The courtwatchers observed judges, magistrates, lawyers and court staff who took time to explain proceedings; responded calmly and with compassion to displays of distress, confusion and anger; and offered extensive support to unrepresented defendants. Yet good treatment of defendants is by no means universal. Court professionals are working within an overloaded, creaking and under-resourced system. They are under pressure to complete cases quickly, in order to reduce the delays that

permeate all stages of the criminal justice process. Consequences include an over-emphasis on speedy 'processing' of many cases and inadequate consideration of individuals' specific circumstances and needs. And while the humanity of many court professionals shines through courtwatcher accounts, it is evident also that there are judges, magistrates, lawyers and court staff who are rude, dismissive and careless in their interactions with defendants.

The treatment received by people in contact with the criminal justice system has significant repercussions. We know from existing research on procedural justice that people involved in legal processes are more likely to regard those processes – and indeed the wider justice system – as trustworthy and legitimate if they feel they have been treated with dignity and respect. Also essential to perceptions of good treatment is the experience of having a 'voice': that is, being acknowledged as an individual and being heard by those making the decisions. In other words, quality of treatment is integral to participation, and vice versa.

The findings of the CourtWatch London project resonate with research that my colleagues and I have carried out over many years at Birkbeck's Institute for Crime & Justice Policy Research. In our own work spanning the criminal (magistrates', youth and Crown), family and coroners' courts, we have repeatedly identified barriers to court users' understanding of and engagement with legal processes. We have also seen how respectful, humane treatment can make a profound difference to people's experience of justice. We have noted that seemingly small acts of kindness and attention can significantly enhance the sense of being supported and included; and, conversely, that professionals' dismissive or thoughtless behaviour can be deeply damaging. What the courtwatchers have observed in magistrates' courts across London should therefore be understood as one part of a much greater picture of how justice is delivered and experienced. There is much that can be done to strengthen participation, good treatment and fairness in court practice, and the recommendations in this report set out important steps for achieving this.

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Executive summary

How are defendants treated by the magistrates' courts? Are they able to effectively participate in their hearings?

This report, based on observations of over 2,300 hearings in London magistrates' courts, examines defendant treatment and participation in magistrates' court proceedings. Volunteer observers (courtwatchers) gathered extensive data on the prevalence and impact of legal representation, interpreters, video links, and the secure dock. They also noted how court professionals communicated with defendants – were they stern or solicitous? Did judges and magistrates pause to ask questions, or rush through?

How defendants were treated coloured courtwatchers' views on fairness. They thought courts should treat defendants with humanity, like 'rounded human beings' rather than 'chores on a list'. They liked to see empathy shown to defendants and others in the court. One courtwatcher particularly noted a kind usher. He fetched a glass of water for a mother who was weeping in the public gallery as her son was remanded. But courts were not consistent in the consideration they showed defendants; it varied depending on which magistrates or judge was in charge, who the defendant was (and what they'd been accused of), or even the time of day.

Courtwatchers were impressed by judges, magistrates and others who took the time to patiently explain what was happening, and were worried that many defendants weren't following what was going on, or even hearing what was being said. They observed some defendants appear totally detached from proceedings – especially when they were in the secure dock or on video link – and courts not always making much effort to involve them beyond asking them for their name and date of birth. Where defendants did try to intervene they were met with mixed responses. Observers were particularly concerned about defendants struggling to navigate proceedings without lawyers, or without an interpreter.

Courtwatchers were also critical of unprofessional behaviour in the courtroom, particularly banter or social chit-chat in breaks between hearings: observers saw court professionals discussing their weekends or gossiping about defendants in other cases. These court professionals were ignoring the defendant and family members who were waiting in the courtroom for a possibly life-changing decision. Courtwatchers felt this behaviour showed a lack of respect for defendants and their loved ones, and for the proceedings themselves.

This report finds that judges and court professionals do not consistently treat defendants with respect, nor support them to understand and participate in their court hearings. We set out how this approach could be improved through developing professional standards, training and by increasing scrutiny.

Introduction

About CourtWatch London

CourtWatch London is a mass court observation programme, where public volunteers observe adult criminal magistrates' courts hearings and report what they see. The programme is run by Transform Justice and aims to:

- Build public awareness, interest and ownership of our magistrates' courts by training and supporting volunteers to visit their courts, observe criminal hearings, and report what they see.
- Support Transform Justice's advocacy for a fairer, more effective, more compassionate criminal justice system by gathering evidence on what is happening in magistrates' courts, and public views on what they see there.

The first round of CourtWatch London, in 2023, focused on three London magistrates' courts. This second round expanded the project to all 15 London magistrates' courts.

Methodology

Courtwatchers were recruited through social media, council volunteer websites, local press, and e-newsletters. Volunteers completed two workshops (on the magistrates' court and on how to report observations) and were given a booklet of blank observation forms to take with them on court visits. They filled out an observation form per hearing, where possible, and a separate short form per visit about court openness and accessibility. Volunteers sent Transform Justice their notes afterwards via an online form.

The hearing observation form comprised a series of closed questions which captured details about the hearing, the defendant, the outcome, any delays or adjournments, and courtroom audibility, visibility and technology. We also provided space for open text comments on the outcome, reasons for any delays, defendant treatment, and any other overall reflections. Courtwatchers were asked to record some demographic information about the defendant including age group, gender, ethnicity and whether English was their first language. Except for the defendant's date of birth which is stated at the start of each hearing, this data is based on the courtwatchers' perceptions.

Trained courtwatchers were free to visit any London magistrates' court at a time that suited them. We encouraged volunteers to focus on cases brought by the Crown Prosecution Service although courtwatchers were free to observe and report on other cases such as motoring offences and breach hearings. Courtwatchers observed cases heard by magistrates (trained volunteers sitting as a panel of two or three) and by district judges, who are legally trained and sit alone. The courtwatching phase ran from 5 February 2025 to 31 July 2025. We kept in touch with courtwatchers through an email inbox, a WhatsApp community, fortnightly online check-ins and weekly update emails.

Courtwatchers received guidance on note-taking during training and via an online volunteer guidance document. Transform Justice also circulated additional note-taking guidance one month into the courtwatching period, based on a review of early data and feedback and questions from volunteers.

Courtwatchers observed over 2,300 hearings generating a large amount of both quantitative and qualitative data. We used an analysis software called Dedoose to code the qualitative data using a theme-based coding framework. Quantitative data was cleaned and analysed in Excel. Quotes in this report are taken from the data submitted in courtwatcher observation forms.

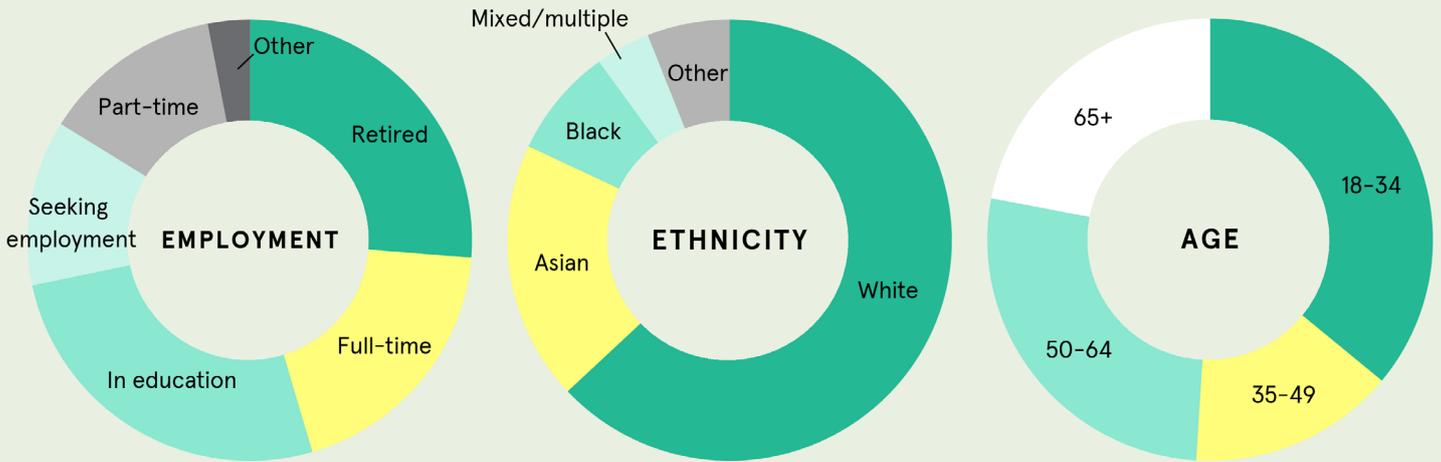
Most of the hearings courtwatchers observed were not trials. So the participants they concentrated on were defendants and their families, rather than victims and witnesses (since the latter only usually attend trials).



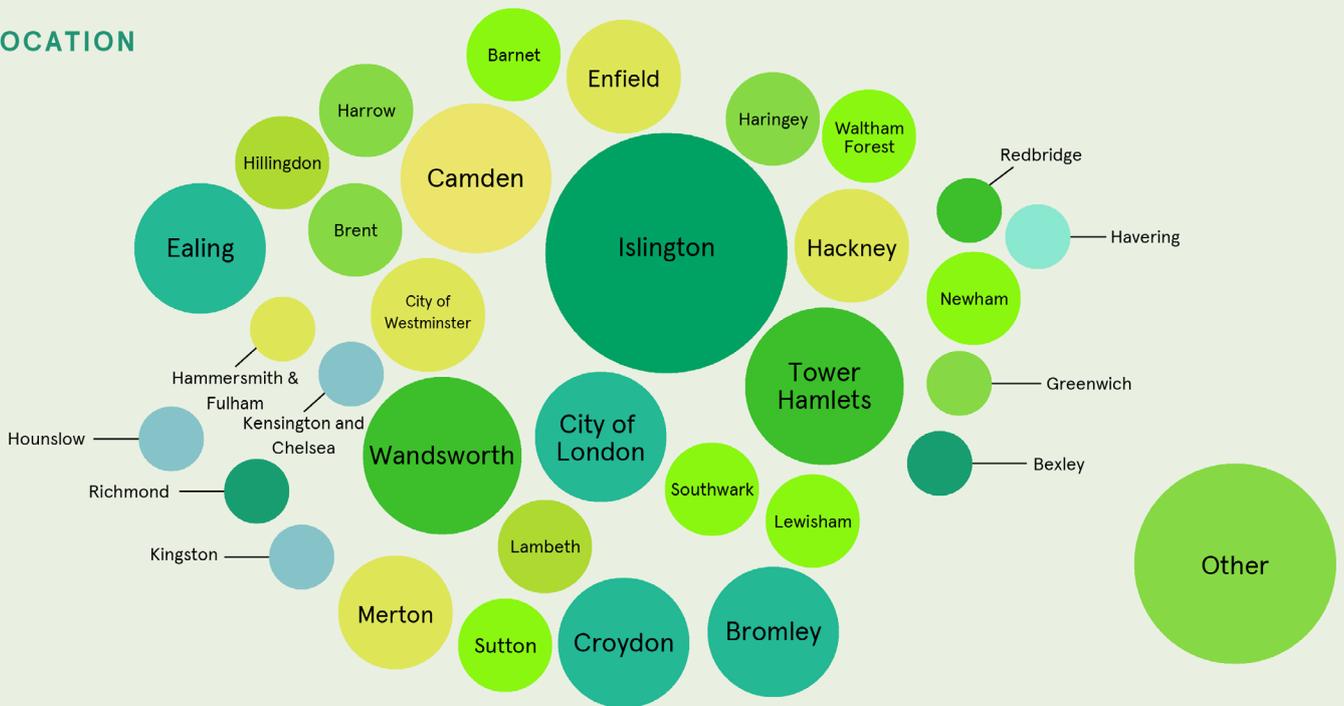
About the courtwatchers

Our 174 courtwatchers represented a diverse range of Londoners, drawn to courtwatching for wide-ranging reasons. Many were simply looking for an interesting volunteering role and liked the sound of learning something new. Some brought a specific interest in the law or the justice system, stemming for example from their studies or work, and were hoping to gain some first-hand insight into what the court system was like: “Excellent opportunity to understand more about the magistrate system from a very limited base.” Others had been affected by the justice system and wanted to give their time to make our courts better: “Had a terrible experience in family court, then became a volunteer with prisons and saw a lot of injustice. Hope to make a change?” Some had a wider interest in social justice and felt the volunteer role aligned with their desire to make positive change in the world.

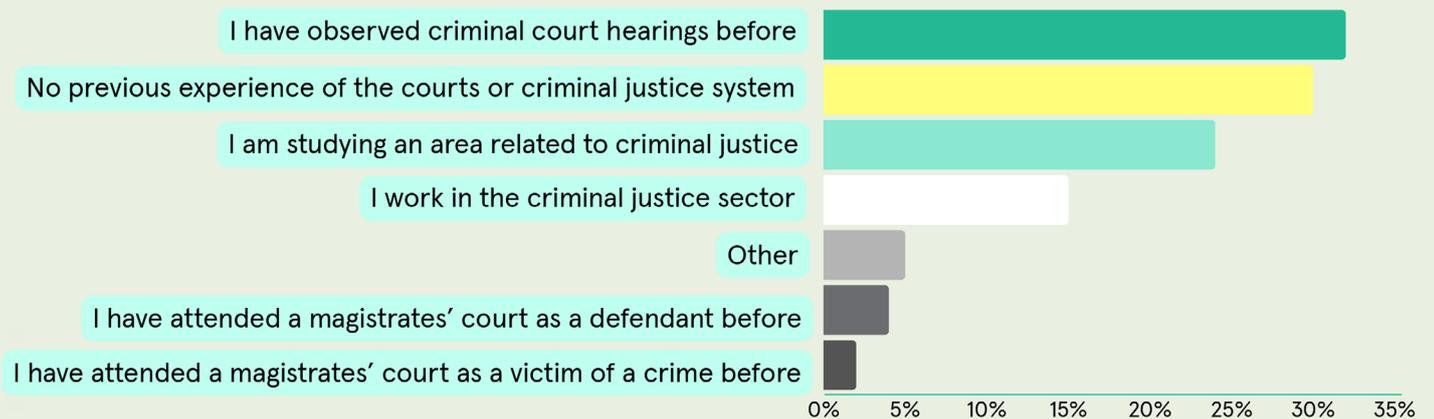
FIGURE 1: who are our courtwatchers?



LOCATION



COURTS AND CRIMINAL EXPERIENCE



Acknowledgements

This report would not have been possible without the 174 courtwatchers who volunteered to attend magistrates' courts and took the time to send us their detailed, thoughtful observations. Thank you to all our volunteers, and special thanks to Namiqa Bhatti, Michelle Esezobor and Isabella Hucknall for appearing in our court photographs. Thank you to the members of the project's advisory group, listed in appendix 1, for their engagement and support throughout the project, including those who hosted or supported our volunteer training sessions. Thanks to Dr Shaun Yates and the London Metropolitan University students who tested an early version of the observation form, and to Mark Yin for his support processing and analysing the vast amount of observation data. Finally, thank you to the magistrates' court staff for accommodating our courtwatchers during their visits, and to HMCTS for allowing us to take photographs in magistrates' courts to use in this report.

This project and the production of this report has been kindly supported by The Crucible Foundation and The Hadley Trust.

Respect is due in the courtroom

“The magistrate treated him with humanity, like a rounded human being, not simply a perpetrator. When he made interjections, she did not rebuke him, as had happened in another courtroom, she listened and gave a reasoned response, whilst keeping the proceedings moving forward. She is obviously highly experienced.”

Are defendants and other court users treated with consideration and respect by the court? Courtwatchers felt defendants should be treated with respect and in general thought they were, although there were many exceptions. Respect shown to defendants had a positive ripple effect – on the confidence of courtwatchers in the fairness of the process and on defendants’ own experience of it.

“The judge acknowledged the defendant’s frustration. She did not react to his swearing. The judge’s kind and calm manner prompted a congenial response from the defendant.”

“Really calm and actually pretty friendly”

Courtwatchers reported many hearings where the magistrates, judges, lawyers and court staff were polite and courteous towards defendants. Emotions can run high for anyone facing criminal court proceedings. Courtwatchers appreciated court staff who remained calm even when defendants or family members became frustrated or angry. Court professionals do sometimes face abuse from angry and/or prejudiced defendants. One courtwatcher was impressed by a district judge – a Black woman – who was professional but firm when subject to misogynistic and racially abusive comments.

“Judge recognised defendant and said to defence lawyer to go outside and warn him she would not tolerate racist abuse. When he came in he started shouting I’m not being judged by a XXX from another country and continued like this for some time. Judge said ‘you are in a court of law. You can’t talk like this. You must apologise to the court and to me and behave with respect.’ He ignored all this...After a while, judge said ‘If you are not quiet I am going to have you arrested.’ Officers took him out. He came back and did apologise. Judge said ok. Trial date is X, he asked for it written down – entire court searched for a bit of paper. He was escorted out of the building.”

They were also impressed by court staff skilled at de-escalating potential conflict, such as when a defendant played music loudly through his headphones while in the public gallery.

“The usher was great – she was really calm and actually pretty friendly with him, and eventually persuaded him to leave the gallery if he would not put his phone away. He didn’t really seem to understand much about what was ok and what wasn’t in the court, and he also said some slightly offensive things to the usher, but she was really professional and got a good rapport with him.”

Courtwatchers valued and often observed empathy from magistrates, judges and other court professionals, such as when they took time to make sure defendants understood the court process. Courtwatchers saw compassion in small acts, and in practical steps to accommodate defendants’ lives and circumstances.

“The legal advisor was extremely kind and explained in lay terms the law to the defendant. She was getting emotional and was about to cry. He told her not to worry. It’s not life or death. Only a fine. Not worth getting upset over. Asked her if she wanted some water.”

“The defendant became emotional while giving evidence and the staff provided tissues etc to him and provided time for him to calm down.”

“Judge was very reasonable. Defendant has a holiday booked from 4 July and the judge was amenable to changing the original [hearing] date.”



Compassion, to a point?

“I realise that courts aren’t there to emotionally tend to defendants, but it seemed like everyone was so focused on the procedure at hand that they didn’t notice what was happening with the defendant in the dock.”

Some regular courtwatchers felt compassion varied from hearing to hearing. They noticed a friendlier atmosphere when the defendant was younger, had no previous offending history, or was demonstrably struggling with issues such as drug addiction or homelessness. Others felt the courts were more brusque when the defendant was seen to ‘misbehave’ in some way, for example if they had missed a previous hearing, got frustrated or interrupted.

“Compared to the similar previous case with a man who was older and less proactive, the magistrates were much nicer. It was a much more light-hearted atmosphere. I think because the man was only in his early 20s and was trying to make a life for himself – working 40 hours a week with a stable job, he was much more respected.”

“There was a lot of sympathy in the courtroom for this case. The defendant’s lawyer said he was street homeless most of the time, no income and no benefits. She said he’s got serious drug problems, he previously tried to seek help, the council said they’d lost him on the system. The judge said: ‘If it is possible to help him, we want to.’ Everyone spent time figuring out how best to make sure he received the letters.”

“Magistrate reluctant to listen to the defendant on reasons he missed the hearing, and was stern. Before the defendant came into court he [the magistrate] stated ‘he can’t be trusted’.”

Courtwatchers concluded that some magistrates and judges were simply more empathetic to defendants than others. They also observed magistrates and judges taking a paternalistic tone, which they didn’t always feel was appropriate, and several being overly abrupt, stern or unkind.

“When told to appear on 5th June, the defendant genuinely got worried because he had unpaid work on that day. Instead of reassuring him, the magistrate dismissed his concerns by saying that going to court takes priority over his other commitments. I thought that was a bit harsh.”

“The magistrate looked disapprovingly at the defendant, shaking his head and wagging his finger at him, which came across as very condescending and unprofessional to me.”

“The magistrate was very patronising and dismissive – speaking to the defendant with his eyes closed then rolling his eyes a bit, leaning back in his chair, sighing lots, speaking over the defendant, not explaining things properly.”

“This made me really sad. He was clearly desperate and in need... was about to be evicted, chronic alcoholic. When he left, the court were saying things like ‘another happy customer, he’ll be back soon’ etc.” (Homeless person fined for criminal damage to a library computer screen and possession of cannabis)

“Very harsh and brutal”: cruelty in the courtroom

Reports of outright unkindness from the courts towards defendants were rare, but one courtwatcher observed a particularly upsetting exchange: “The defendant was explaining that he had stolen to fuel his drug addiction, but that he was now taking medication for his mental health issues and was ready to fully cooperate with a DRR [drug rehabilitation requirement]. The defendant said that he was soon to be 40 and wanted to use this as a turning point. At this, the lead magistrate interjected saying, ‘You know what they say about drug users turning 40? They either use it as a turning point, or they kill themselves.’

“This seemed very harsh and brutal. It was not said in an encouraging way. It seemed more of a shock tactic, which I didn’t think was necessary as the defendant had volunteered the information about his motivation to change and was clearly trying to demonstrate his willingness to engage with drug rehabilitation services.

“The defendant’s mum and another woman (the defendant’s partner or sister, I think) were sitting on the other side of the courtroom. When the magistrate said this, I... saw that the sister/partner had started to cry. I thought the magistrate’s attitude and comments were insensitive and that she had not considered what it would be like for the defendant’s family to hear them.”

Courtwatchers did not always think sternness was a bad thing – especially if the crime was serious. One courtwatcher reflected that too kind a tone could undermine the court process.

“I feel like there was a lot of ‘promising’ in court today; the magistrates asking for promises to be kept and the defendants saying that yes of course, they will keep them. It makes me feel that the system is less than serious if we are asking defendants for promises... you don’t want to be too hard, but being too soft can potentially undermine the seriousness of the situation.”

Magistrates and judges ranged from rude and condescending to courteous and compassionate. This indicates little consistency in the treatment defendants can expect to receive. Respectful treatment is valued not just by defendants and their families but by courtwatchers with no direct stake in proceedings, so more should be done to ensure all defendants receive compassionate treatment. Guidance and training for magistrates and judges should cover tone and treatment of defendants, including advice to keep defendants posted about delays (see box on the next page).

Defendants kept waiting

Courtwatchers felt courts should be more sympathetic to defendants who were kept waiting for a long time. One 22-year-old man without a lawyer had been waiting all morning for his hearing without being told it had been moved to the afternoon: “When it was finally time for his hearing, he entered the dock with his hat on. The magistrate asked him to take it off, the defendant asked him why, the magistrate explained that those were the rules, the defendant said he just wanted to finally get on with his hearing that he had waited for all day, and the magistrate lost his patience and sent him out again to wait even longer. The magistrate seemed to have little understanding of the distress the young defendant was clearly displaying.”

Another defendant, who had been waiting all morning for her hearing, repeatedly entered the courtroom to ask when her case would be heard. She was instructed to wait outside without any explanation of why she was having to wait so long. At one point she shouted “I have been waiting for hours now – have you forgotten about me?” The courtwatcher reflected: “A simple explanation about the court’s scheduling process could have helped manage her expectations and eased her distress.”

“Jovial and relaxed throughout”: should courts be more serious?

Courtwatchers felt the courtroom should be a professional space, given the significance of court decisions. As such they were alarmed by what they saw as inappropriate behaviour by those working in the court.

Most shocking to courtwatchers were the tone and volume of the discussions that sometimes took place while the magistrates or judge left the room to deliberate (and the defendant remained in the courtroom). Court professionals often took this opportunity to discuss courtroom logistics, but conversations also strayed to opinions on other cases or defendants, or more informal chit-chat about weekend plans and other unrelated topics.

“Some members of the court started having a conversation about another case that they had found unfair while the defendant was still in the dock, before his sentence had been delivered. This must have given an incredibly poor impression of the court to the defendant, who was a first-time offender and only 19 years old.”

“While the judge deliberated on her decision, the defence lawyer started chatting loudly with someone else in the court about his recent travels to China. His defendant was meanwhile freaking out in the dock, rocking back and forth and almost seeming to be

having a panic attack, but his defence lawyer didn't notice. I found his behaviour very inappropriate."

Courtwatchers felt this behaviour was disrespectful towards defendants and their families waiting in the public gallery (and to any witnesses or victims).

"I was quite shocked by the chatty, cheerful court, getting ready for their weekend, and the distraught, crying family members in the room, worried about their sons. While court hearings can be traumatic events for the defendants and family members, the people working in the court seemed quite immune to what they treated as a routine process."

Courtwatchers did observe some professionals making the effort to recognise the anxiety of families in an otherwise noisy courtroom.

"The defence lawyer spoke to the family before and after, saying she hoped she had done 'right by them'. The family were extremely emotional, sobbing and calling across to the defendant when the magistrates were out deliberating. Their lawyer seemed very emotional too. Courtroom atmosphere and other staff jovial and relaxed throughout."

Courtwatchers observed other behaviour which they felt showed a lack of respect or professionalism. This included: court staff laughing or not being serious during proceedings, side conversations while the hearing was in progress, and negative remarks about members of the judiciary.

"The judge made a remark about the alleged associates of the defendant and started laughing. Don't think that there was any malice. However, as this concerned the freedom of a young man I don't think a joke about his associates was appropriate or helpful."

"Whilst the magistrates retired, the prosecutor expostulated in a loud voice: 'I knocked some sense into them' (the magistrates). I think this loud critique of colleagues in the public court is unprofessional behaviour. It would likely prompt disciplinary action in my workplace."

"Let's not even get into it": time pressure in court

Courtwatchers recognised that courts were struggling to deal with long caseloads each day (see our separate report on [efficiency in the magistrates' court](#)). But there were times when they felt that hearings were too rushed. This was observed particularly in hearings towards the end of the day, or in the overnight court (which deals with defendants who have been arrested by the police and held in police cells until the court opens).

"The magistrate kept interrupting [the defence lawyer] or speaking over him. It seemed that the magistrate was getting more and more rushed as it was getting closer to 5pm. It came across as a little rude and unprofessional to me."

“When the defence tried to talk about the defendant’s mental health issues, the magistrate interrupted him by saying ‘let’s not even get into it’, in a tone that I perceived as rushed and dismissive.”

Courtwatchers felt that rushing indicated a lack of respect for defendants. It also undermined courtwatchers’ perception of how fair the hearing was.

“We had 11 hearings within the span of 3 hours. In almost every hearing I wish the magistrates had taken more time to show compassion and care for the difficult circumstances of the people they were sentencing.”

“When the judge walked in, she turned towards the defendant, said ‘I don’t know who you are, but please sit down,’ before she herself sat down to look at the documents relating to this case. I understand that the judge must be going through many cases each day, but her acknowledgement that she was unprepared for this case struck me as rather unprofessional.”

Recommendations: respect and consideration in the courtroom

- 1 Improve magistrates’ and judges’ treatment of defendants by including how to support effective participation in their compulsory training, and in any ongoing training and development.
- 2 Issue court guidance on appropriate behaviour of all court professionals in the courtroom when magistrates or judges are not in the room. The legal advisor should ensure those in the courtroom comply.
- 3 Introduce 360° appraisals for magistrates and district judges and/or more regular observation of practice by judges/magistrates from a different court.

Did the defendant have a voice in proceedings?

“The way defendants are just not looked at or properly acknowledged when they come in and out of the dock makes me feel that they are not treated as people – they are just chores on a list to be ticked off.”

Courtwatchers reflected on whether defendants were able to have a voice in their hearing – how much they were acknowledged, helped to hear and understand, listened to, and supported to participate. While there was some good practice observed, courtwatchers reported many instances where the defendant appeared to be excluded or ignored, or even actively discouraged from participating.

Struggling to hear

“COULD NOT HEAR!!! COULD NOT HEAR!!! COULD NOT HEAR!!! This was the case for all cases on July 11 2025 in Wimbledon magistrates’ court... Quite disappointing and I am positive that the defendant could not hear due to the dock being glass and serving as an additional auditory barrier.”

It was disappointing that courtwatchers and defendants faced considerable challenges in being able to hear what was going on in court – one in five courtwatchers could not clearly hear proceedings. This was particularly disappointing given courtwatchers encountered this problem in 2023; we reported it immediately and HMCTS committed to improve audibility at that time.

Courtwatchers usually sat in the public gallery and defendants in the secure dock. Courtwatchers strained to hear and observed defendants doing the same and sometimes complaining that they couldn’t hear. Observers found both judges and lawyers hard to hear.

“The defendant repeatedly stated that he could not hear his lawyer’s remarks, but his warnings were not heeded.”

“When the defendant was spoken to she had to ask for questions to be repeated. The magistrate was not easy to understand – accent and softer tone.”

Judges, magistrates, lawyers and court staff sometimes took proactive action – asking whether defendants could hear and intervening when it became clear they couldn’t.

“The magistrates were very kind and understanding. They checked in with the defendant frequently, ensuring that he could hear and understand what was happening.”

“The probation officer and another unidentified person were having a conversation while the hearing was in progress. The judge kindly but firmly asked them to take their discussion outside, showing his commitment to ensuring fairness and clarity for the defendant.”

“Prosecutor reminded a witness to speak up so the defendant could hear (no one had checked that he could at this point). It wasn’t until almost the break for lunch that the defendant got the attention of the woman beside the legal advisor and said he couldn’t hear. Finally the chair suggested he come out and sit in court behind his lawyer. I’m not sure why he couldn’t have sat there from the start.”



Understanding the court process

“I noticed the use of abbreviations and acronyms in the courtroom discussion...(I looked up the terms later as I did not know what they meant). At one point during the hearing, the defendant said she didn’t know what ‘RAR’ is. By this time, the acronym had been used numerous times in discussing her non-attendance.”

Courtwatchers often found it hard to understand what judges and lawyers said, even when they could hear. Courtwatchers noticed that defendants seemed as, or more, bemused than them. At least one defendant didn’t seem to understand what he had been charged with. Courtwatchers were critical of judges who used legal jargon.

“The lead magistrate explained the outcome to the defendant using complex language e.g. ‘caveats and provisos’. I think the average person might struggle with that vocabulary, but it seemed particularly inappropriate with someone who has learning difficulties and struggles with communication.”

“The judge gave long and confusing instructions to the defendant. The defendant looked like Billy no mates – no volunteer support, or family in the gallery.”

Courtwatchers were concerned that judges and lawyers were sometimes ready to assume defendants understood proceedings, when they really didn’t.

“Because the defendant spoke fluent English and didn’t look confused at all at first, the magistrates, prosecutor and lawyer assumed he was understanding what was going on. However, when asked ‘what do you plead?’, the defendant didn’t reply and looked at his lawyer. The lawyer came to him and repeated the question, at which point it was clear from the defendant’s face that he had no idea what this meant. The lawyer then told him ‘guilty or not guilty?’ and the defendant just said ‘ermmmm not guilty.’ It almost felt like he randomly said that without understanding what it meant.”

Sometimes both bench and defendant were confused.

“The court took a while to understand the right information about the defendant – they initially did not know why he was in custody, and for how long, before he appeared in court. There was a lot of hushed discussion about the defendant that he clearly couldn’t hear as he was trying to lean into the speaker. The defendant asked twice why he was appearing in court that day as he didn’t know, and no clear answer was given.”

While there were many occasions when things in court seemed very confusing to one or more of the participants, there were also shining examples of clarity.

“Amidst the confusion, I noticed that the lead magistrate was careful to ensure that the defendant understood what was going on. The magistrate explained what the problem was and why the hearing could not continue without a PET form. He also explained the acronym PET [preparation for effective trial], which rarely seems to happen when acronyms and abbreviations are used in court.”

“When laying out the conditions of her bail, the magistrates again were kind and helpful, trying to put across the consequences of her breaking her restraining order again.”

“I do not want to hear from you”: silenced defendants

“No one spoke with the defendant, even though everyone was discussing her life in detail. It really struck me that she didn’t seem to have a voice in her own hearing. In fact, I didn’t notice she was sitting there until 20 minutes in.”



Defendants are expected to stay quiet during all hearings, only speaking when spoken to by the legal advisor, magistrate or judge (such as when giving evidence in their own trial). If they are represented, the defendant’s lawyer speaks on their behalf, usually only bringing them in to clarify something. If they have no lawyer, defendants might raise a hand to indicate they want to say something. Interrupting hearings can result in being removed from the court, or even being found in ‘contempt of court’, an offence in its own right.

Courtwatchers were sympathetic to defendants who (presumably unaware of these rules) tried to speak up and have their say during their hearings. They felt it was odd for defendants to be excluded from proceedings, and were pleased when courts let them contribute rather than sought to shut them down.

“Courteous head magistrate – asked respectfully for any detail on [the defendant’s] thinking and apologised at one point for interrupting him.”

“Judge was kind. Defendant wanted to speak from the dock but she politely said ‘I will come back to you, I just need to finish listening to the prosecutor.’”

“Everyone was mindful and respectful of the defendant in the dock: the legal advisor let him know that ‘the bench will be here any moment’; his defence lawyer spoke to him briefly once the mags had gone out to deliberate.”

Courtwatchers observed judges, magistrates and staff who hardly seemed to notice the defendant entering the dock, who did not seek input from them and who did not allow them to speak during the hearing.

“When the defendant was brought in, he was waiting in the dock for a long time before the hearing started. No one in the court greeted or even acknowledged him, or explained why there was a delay, which I thought was a little disrespectful.”

“There was incomplete information and discrepancies which the defendant tried to elaborate. Whenever he did so, he was told by the prosecutor to be quiet, and then also by the [presiding] magistrate. Later, when he tried to interject during discussion of the sentence, [the presiding magistrate] told him ‘I do not want to hear from you, that is what [the lawyer] is here for.’”

Courtwatchers had mixed views about the response of magistrates and judges to interruptions.

“I found the main magistrate a bit stern. Towards the end, when she was telling the defendants what would happen next, one of them tried to ask a question but was told not to interrupt. I don’t really see what other choice the defendant had if she needed to say something.”

“The judge and the defence lawyer worked around what seemed to be the defendant’s mental health problems (she talked to herself and interrupted court proceedings). In order to prevent her from being charged with contempt of court, the judge had her removed from the court and dealt with her lawyer as her representative. The judge explained to the defendant what he would do and why. I felt the judge was trying to give the defendant as fair a trial as possible.”

“The judge made sure the defendant did not potentially incriminate himself by directing the defendant to his lawyer when the defendant wanted to ask a question.”

Recommendations: defendant voice in proceedings

- 4 Review and communicate core principles for effective defendant participation to prosecutors, ushers, legal advisors, magistrates and judges and appraise their performance in adhering to these principles.
- 5 Ensure that all those in the public gallery and defendants in the dock can hear what is said in court. This means ensuring microphones and speakers work and are turned on, and court staff and judges proactively check that participants and observers can hear.
- 6 Simplify court proceedings and language so they are intelligible to a layperson. Judges, magistrates and lawyers should avoid or explain jargon and speak in plain language. This should be incorporated into initial training and be part of any feedback loop.

“I don’t understand, but OK”: defendants with language barriers

“The whole experience was confusing to me whose first language was English, so not sure how the defendant was supposed to make sense of it.”

Interpreters enable defendants who don’t speak fluent English to understand and participate in proceedings. So why are there still so many cases where defendants need, but don’t get, an interpreter?

All defendants have a right to an interpreter if they cannot understand or speak the language used in court. Roughly a quarter of defendants in the cases observed did not speak English as a first language. Not all of them required an interpreter; many were fluent enough to understand and participate in the court process (at least as well as someone who speaks English as a first language, which may still not be very well). Around 10% of hearings observed by courtwatchers involved a defendant who required an interpreter (in the courtwatcher’s judgment). But an interpreter was provided in less than half of those cases.

Coping without an interpreter

Many defendants who struggle to communicate in English have already struggled before getting to court. One defendant had misunderstood his licence conditions and failed to notify the police of his address while he was of no fixed abode, even though he had informed his probation officer. The court also had the wrong name for him, because the police had noted it down incorrectly when he was interviewed without an interpreter in police custody. Other defendants appeared in court without lawyers as they had no interpreter to help them apply for legal aid. Another defendant’s pre-sentence report had several errors due to the poor quality of the interpretation of their meeting with probation: “Said he was single, he is married. Said he was driving to the airport, he was driving to a hotel. Failed to mention his mother is in a wheelchair. The lawyer explained this clearly to the courtroom and suggested that it was due to the language barrier and potentially a less experienced interpreter.”

Once in court, courtwatchers observed defendants without interpreters not understanding what was happening in their hearing, the questions asked of them, nor the nuances of the state's case against them. The following defendant was appearing for the first time in court for damaging a door in his local council's office, for which he was given a conditional discharge.

"Due to a lack of interpreter, I don't feel the defendant was clear on what his options were. The CPS produced photographs as evidence of the defendant committing the crime but no video, which they previously claimed they had. Originally, the defendant had agreed the photo was of him but didn't show him committing any crime. After... the subsequent change of plea [to guilty], the defendant still appeared to be confused by the situation."

Another defendant left her sentencing hearing, which disqualified her from driving, without understanding what had happened and without being able to voice concerns about her treatment by the police. She had wanted a lawyer but could not afford one.

"She did not understand what goes on in a magistrates' court and was not sure of the charges. She spoke some English but I think she should have had an interpreter because she did not understand some things and she was also distressed about how she was dealt with by the police. When she got disqualified from driving she did not understand."

Other defendants plainly stated that they did not know what was going on. The courts pressed ahead nevertheless, presumably deciding that the defendant's comprehension was not important enough to slow the wheels of justice.

"Defendant: 'I don't understand, but OK.' District judge: 'There will be an interpreter in Westminster [court for the next hearing]. Until then you will remain in prison [on remand].' An interpreter was definitely needed as the defendant clearly expressed that he did not understand."

Family members tried to fulfil the role of interpreter for defendants who needed one. This goes against CPS guidance, which requires all court interpreters to be registered to a national body to ensure good quality and standards. Some courtwatchers condoned this approach as a pragmatic solution, but others felt it was not appropriate.

"The defendant would have struggled if his brother had not been there, as it seems his brother was helping with explaining what was going on."

"I felt sorry for the young son, being there to witness his father in court [accused of theft], and being placed with the responsibility of interpreting. Understanding exactly what the magistrates say, or what they mean, is always a challenging task. I imagine that he would have been very intimidated by the situation, even though he tried not to show it. My heart went out to him... In the end they didn't speak, as the hearing was moved and set for May 30th."

Sometimes those working in the court assisted. In one hearing, the defendant's lawyer who, like the defendant, spoke Punjabi, explained to the defendant what was happening, although the

judge said a professional interpreter would be needed for his trial. In another case, one of the magistrates happened to speak Urdu and could explain what was happening to the defendant. In a third hearing (which was adjourned once the court established that the defendant could not even provide his date of birth without an interpreter), the prosecutor used Google Translate on his laptop to communicate the next hearing date to the defendant.

How do courts decide if an interpreter is needed?

"What level of English would disqualify someone from the need to have an interpreter? A defendant can speak basic English, but the likelihood of them understanding legal jargon is very low."

Before a hearing starts, the legal advisor, magistrates or judge are supposed to assess the defendant's comprehension by asking simple questions and observing their behaviour. If the defendant seems confused, silent or is making inappropriate responses, it may indicate a language barrier or other communication need. If in doubt about a defendant's grasp of English, the court is meant to arrange an interpreter even if the defendant is reluctant to have one.

Courtwatchers reported that this process wasn't always followed. In some cases the defendant was asked directly if they felt they needed an interpreter, or the defence lawyer was asked on their behalf. Defendants refusing interpreters (perhaps because they did not want to delay their case) were sometimes encouraged to reconsider, but not always.

"Defendant dismissed interpreter saying he doesn't need one. So interpreter was sent away."

"The legal adviser asked if he'd need an interpreter for the trial. He said no. The advisor recommended he accept as it was free and there would be legal language so it might be useful."

"The legal advisor asked him how long he had been in the UK. He said the date, indicating it was a long time and then she said well then you don't need an interpreter then and he said no. However as they continued to ask him questions it was apparent that he did not understand a lot of things and then she said actually you may benefit from an interpreter but he already said no and doubled down."

The right to an interpreter (who should be accredited, not informal) applies to all stages of the criminal process - including at the police station, first appearance at the magistrates' courts, and bail hearings. But the type of hearing seemed to influence whether or not an interpreter was sought and, if necessary, adjourned for. Courts often resigned themselves to muddling through earlier hearings as long as an interpreter was booked for the trial:

"Not enough care was taken to make sure the defendant could understand the hearing. At one point, the chair asked if she understood - she hesitated and said, "half" but not one of them did anything about it until the discussion about the trial."

“When the defendant said I don’t understand, the district judge just replied in English, making no effort to ensure she was understood. [The hearing] only took 5 mins, and might have been standard procedure, a stepping stone before the main trial at Westminster, but still relevant to consider why it was deemed not important that this defendant understood what was going on at this particular hearing.”

How well do courts accommodate interpreters?

Courtwatchers saw mixed practice in the courts’ accommodation of interpreters. Many volunteers saw court professionals slow down their pace of speaking, pause for interpreters to translate, or use shorter sentences and simpler language: “The judge, prosecutor and defence lawyer spoke in short sentences, leaving time for that sentence to be communicated to the defendant.” Magistrates or judges sometimes prompted lawyers to speak more slowly, or explained delays to the interpreter so they could tell the defendant what was happening.

Courts weren’t always so accommodating. Lawyers, particularly prosecutors, could appear impatient with having to slow down to allow interpreters time to translate. In one case the prosecutor appeared to take advantage of the defendant’s need for an interpreter to undermine his case:

“When the prosecutor was speaking, he often didn’t wait for the interpreter to catch up with her translations. The magistrates asked him several times to slow down, but he kept not waiting for her. You could tell the interpreter was getting frustrated, talking louder and louder to remind the prosecutor of her presence.

The lead magistrate had to instruct the defence to slow down and wait for the interpreter to finish speaking, although he continued to talk at the same time as the interpreter, who also had to ask him to repeat himself, as she had missed parts of what he was saying.

Many of [the prosecutor’s] questions were convoluted and tricky, with lots of conditional clauses and idioms, and if the defendant didn’t immediately understand what the interpreter said, the prosecutor cut them both off, saying things like, ‘It’s a perfectly simple question!’. That seemed cheap, unfair and potentially discriminatory.”

Relaying the statements made by defence lawyers and prosecutors is one of the interpreter’s jobs. But they also need to help the defendant understand what’s happening in other parts of the hearing too. This means interpreting discussions in open court about evidence and court procedure. In one hearing, the court appeared to forget that this was necessary.

“The prosecutor was trying to show the magistrates the CCTV footage, and there was some back and forth between the magistrates, the prosecutor, and the defence. No one was waiting for the interpreter anymore, and though she initially tried to keep up, she eventually threw up her hands in exasperation, sat down, and stopped interpreting. No one else in the court noticed, and the defendant missed at least a third of his own hearing.”

Recommendations: defendants with language barriers

- 7 Give judges and magistrates training in how to assess defendant language comprehension and in the need to adjourn any hearing if an interpreter is needed but not available.
- 8 Support defence lawyers to request adjournments when an interpreter has not been provided when needed.
- 9 Investigate why an interpreter is not always provided when needed, including auditing the current booking system for interpreters, and take action to address failures.



Location, location, location

How does a defendant's physical location during a hearing shape their ability to participate effectively in proceedings? Courtwatchers observed that where defendants were placed impacted communication, comprehension and fairness. If defendants were on a video link, or otherwise physically separated by being in the secure dock, it was harder for them to hear, to confer privately with their lawyers, and to signal confusion or distress. Some judges and court staff worked to mitigate these barriers with care and compassion, but too often defendants' meaningful participation was undermined by their physical location.

Defendants on video link

"There were several appearances by video in the cases I saw today – one by an interpreter, and two by defence lawyers. I get that it's cheaper and more time efficient, but it does seem to be to the detriment of the defendant. By this I mean the difficulty of conferring without clearing the court, and not picking up nuance in the room."



Courtwatchers observed many people on video links, some easier to see than others. Most were defendants, but there were also lawyers, probation officers and a judge or two. The defendants who appeared on video were mostly in prison, though a few were beamed in from police custody, and the occasional defendant appeared from home. Altogether, 5% of hearings involved a video link (no comparable national data is available). All these hearings were hybrid, with most participants in the courtroom but one or more on video.

The location from which a defendant appeared on video was usually clear, but the reason why wasn't. Vans are available to transport defendants from police custody to court. Yet several defendants appeared by video link from London police stations only a few miles from the courthouse. When these defendants were vulnerable, the decision to book them to participate on a video link was inexplicable.

There were many hybrid hearings where defendants on video were treated with compassion. A mentally ill defendant who “looked as if he did not understand what was going on” appeared on video from Lewisham police custody. He was meant to be entering a plea to a serious offence (intentional strangulation), but the judge agreed that video was not appropriate: “I felt that the defendant was treated well and fairly and the judge explained clearly what the next steps would be.” Less clear, maybe to the judge too, was why such a defendant was on a video link at all. The video hearing was a waste of time since the case was adjourned till the defendant could be seen in person. Because of this delay, this mentally ill defendant would have had to spend another night in police custody.

Courtwatchers were perplexed as to why a few lawyers appeared on video when most did not. The most mysterious were the district judges who appeared on video (no magistrates appeared by video). It would have been courteous for the district judges to explain to the defendants why they were on video, not in court, particularly as their internet connections were poor in these cases. One district judge “froze on screen at the worst possible moment, as she was about to tell the defendant his sentence”, another “disappeared from the link right at the end of the defence plea in mitigation.”

Another hearing “was particularly bizarre, as both the defendant and the district judge were appearing remotely over a video link. The PVL [prison video link] to Wormwood Scrubs made a loud and very echoey background noise. More worryingly, the judge appeared to freeze over the link at various points during the hearing, so it wasn’t always clear how much she heard what was being said.”

It was hard for courtwatchers to assess the impact of the use of video links, particularly as there were often technical problems: “The video link was utterly awful; impossible to see or hear.” Some observers saw video working effectively, but most felt video prevented defendants from understanding and fully taking part in their own hearing.

“Video-called the probation officer which worked well – he was displayed on three screens around the room. You could hear him well and he seemed to be able to hear and understand the proceedings well.”

“[The defendant who was on video] was clearly very keen to speak up about the situation (he perceived a lot of injustice in the [tagging] system) and didn’t have an opportunity to. He tried to interject several times, and finally said something at the end when it seemed somewhat out of place.”

Having a defence lawyer on video and their client in the court or vice versa created barriers to communication.

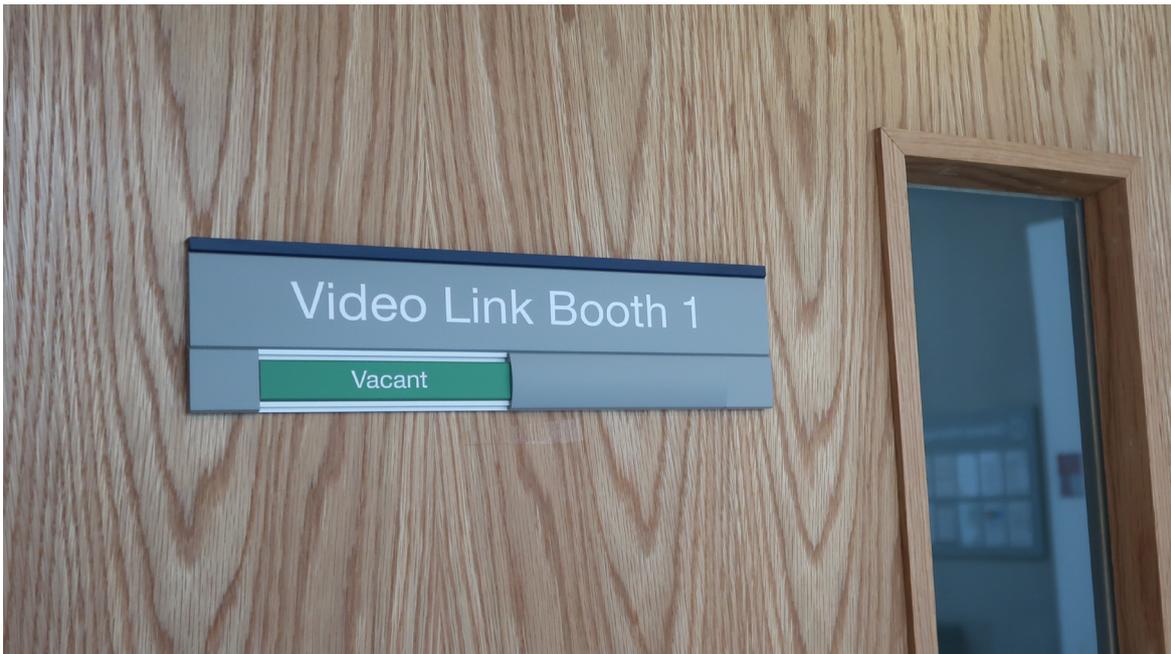
“Lawyer seemed unprepared, was not clear about the charges. Had a chat with the defendant on the court video link (this was muted for the duration), but seems like this could have been done before.”

“The defendant was on video link, barely visible. The magistrate asked him at the beginning if he could hear and he confirmed so. Thereafter there was no communication

with him until the decision. He sat with his head bowed throughout the deliberations. It felt like he was ignored.”

“Defendant and his lawyer initially gave different responses to plea. This was clarified following public discussion between them – public as the lawyer was on video link.”

“The duty solicitor was only able to interview the defendant over the phone/video link and she was unable to take proper instructions due to issues of capacity and/or him not understanding her properly via the technology used.”



Defendants in the secure dock

It was not clear to courtwatchers why defendants were on video. They were equally unclear why defendants were by default placed in the dock (75% were in the dock, 20% in the main courtroom, 5% on video), or the criteria for releasing defendants from the dock.

Nearly all magistrates' courtrooms have a 'secure dock', which is usually a perspex box in the corner of the room. There is one lockable door from the dock to the main courtroom and another exit to the court cells. Defendants who come up from the court cells are usually supervised by a security officer when in the dock. Judges and magistrates have absolute discretion to use the dock or not, but the default is to use the dock rather than let the defendant sit in the well of the court, even when the defendant is on bail. Courtwatchers felt the dock caused practical problems and the exclusion of defendants.

“This is the first time I have seen a defendant outside of the dock, and I assumed it was to facilitate communication and comprehension with the interpreter. I immediately felt greater connection and empathy with the defendant. Not placing them in the dock

humanised them and included them in the conversation. The dock has a strong effect of situating the person in it as 'other' that I feel is very problematic."

The greatest practical problem caused by the dock was that it prevented the defendant hearing what was going on in the courtroom. The dock is usually far away from the bench at the back of the courtroom and separated by a thick perspex screen with tiny slits in it.

"Defendant in dock says he can't hear - solicitor has to keep going to speak to him to the space in the screen."

"The defence lawyer repeatedly stood up to confer with the defendant at the glass partition to the dock and could be overheard by the court."

"The defendant had hearing loss... the Judge stated he could stand near the glass close to his defence lawyer who could highlight anything he couldn't hear."

Despite the considerable audibility problems caused by the secure dock, courtwatchers only occasionally saw a judge tell a defendant they could leave it. The rationale for these exceptions was not clear. Some people who were disabled and/or finding it hard to hear were allowed to sit outside the dock in the well of the court, while others weren't.

"The Magistrates noticed that he [the defendant] was using a crutch and had a brace on one foot so suggested he remain in the courtroom rather than entering the dock. However they did make him stand up to give his name and hear the charge. After about 10 minutes, when he was shaking, they suggested he sit down."

"The defendant suffered from Tourette Syndrome and he was allowed to sit in the open court (behind his defence lawyer) and with his father next to him. Everyone in the court treated him with compassion."

"He was in the dock which made me feel for him. He was frail."

Some defendants with interpreters struggled to understand when they were in the dock and the interpreter outside (the interpreters never seemed to go in the dock). In response some judges let the defendant sit next to their interpreter outside the dock, while others did not.

"It seemed hard for the interpreter and defendant to communicate at times because of the dock set up. Since the interpreter was not near a mic, they had to go up to the slats/holes in the dock and the defendant had to lean against it to hear each other."

Courtwatchers were particularly concerned to see defendants on bail (who had not come up from the court cells) sent into the secure dock.

"I wondered if this defendant really needed to be in the dock? She's a lady of about 60 with a sunflower lanyard on. I suppose the problem would be where to draw the line if some defendants were in the dock and some weren't."

“Defendant was in the dock which was absurd and illogical, because he was unaccompanied by [security] in the dock, he gave his statement in the main courtroom and returned to dock unaccompanied. Once he was back in the dock, door to dock was wide open till break. I don’t see any reason, why was he in the dock?”

“Was [it] really necessary for this defendant to be in the dock. Her offence was minor, and not violent, and took place four years ago. She was clearly emotional, and I wonder if it might have been slightly easier for her not to be put in the dock? I understand sometimes for everyone’s safety a defendant needs to be in the dock, but perhaps there are cases like this where being in the dock may not be necessary?”

Court professionals also seemed to believe the dock was the right place for defendants. Courtwatchers seldom observed defence lawyers asking for their client to be released from the dock.

“The defence lawyer seemed a bit casual in his treatment of the defendant. He brought him into court, indicated the glassed box down the side and said, ‘go in there.’”

However some courtwatchers felt that defendants could threaten both their and others’ safety, and so supported use of the dock.

“I was left in the courtroom with the defendant who was not in the dock by myself for two whole minutes. Don’t think that should happen!”

Recommendations: defendant location

- 10 Limit the use of video links for defendants, given substantial evidence that use of video impedes defendants communicating with their defence lawyer, and understanding and contributing to what is happening in their hearing. Prevent use of video links for defendants in police custody given proximity of police stations to the courts.
- 11 Where video links are used, use closed captions and improve the quality and position of the screen and camera so that everyone in the court including those in the public gallery can easily see the screen and so that the defendant can easily see the court. The judge should explain why video is being used for the defendant or anyone else participating in the process.
- 12 Make it the default for defendants to sit in the main courtroom rather than in the secure dock. The dock should only be used where there are risk based security concerns. Encourage judges to explain to the court why the defendant is in the dock. Mandate this explanation if the defendant is accused of a summary offence and/or is on bail.

Unrepresented defendants

Observers saw 500 hearings (23% of all hearings) where the defendant was not represented by a lawyer. Unrepresented defendants are disadvantaged because criminal procedure and the law are complex. Courtwatchers reported examples of unrepresented defendants who seemed to receive more negative outcomes than they would have done if they had had a lawyer, such as pleading guilty when they had a reasonable defence, or getting a more punitive sanction.

Why defendants do not have lawyers

“The magistrate told him, ‘You’re not legally competent to represent yourself’. I was glad to see this, as it showed concern for the defendant.”

Rules on who is entitled to free legal advice, and for what hearings, are quite complicated. All defendants accused of an imprisonable offence have a right to consult the duty lawyer at the court for free at their first appearance at court (unless they have already contacted a legal aid lawyer). Free legal advice after this first hearing is restricted to those on low incomes. Courtwatchers observed that many defendants did not know they were entitled to a lawyer nor how to access one. Other defendants simply didn’t think they needed a lawyer. And some rejected a lawyer because they didn’t trust them. In some cases it was not clear to courtwatchers why a lawyer had not been engaged.



Courtwatchers were impressed by judges and court staff who tried to persuade people to access legal advice, especially where they were accused of serious offences. In 66 of the 500 hearings where defendants were unrepresented, proceedings were adjourned for the defendant to find and consult with a lawyer. In many other hearings court staff and judges spent precious time investigating why the defendant didn’t have a lawyer and, unsuccessfully, trying to convince them to get one.

“Was concerned as to why the defendant and his solicitor were unaware that this second bail application hearing was taking place today. I don’t know who was responsible for this error. The impact on the defendant was that he had no solicitor and represented himself. He was given the option of adjourning the hearing, but he chose not to.”

“[The defendant said] that he had seen a duty solicitor last week, who had told him that he would have a different solicitor today. The defendant did not know why there appeared to be no solicitor representing him and it seemed to me that no one had checked this with him prior to the hearing.”

In some cases courts pressured unrepresented defendants to enter a plea, but encouraged them to get a lawyer for their next hearing. This meant that defendants who were willing to seek a lawyer may have missed out on crucial legal advice – on the implications of pleading guilty or not guilty. Despite attempts to persuade, some defendants just seemed adamant they wanted to represent themselves. Sometimes this was because they just wanted to get on with it (“the defendant decided to press on as he felt that there was no reason to further delay the process”), other times because they seemed resolutely opposed to getting a lawyer.

“The defendant said he didn’t want a lawyer and became loud and aggressive, shouting over the legal advisor and judge when they tried to explain that if he represented himself he could prejudice himself by not being able to cross-examine witnesses and have his legal aid withdrawn. He clearly had no concept of the process of representing himself in court but wouldn’t listen to the advice he was being given, repeatedly shouting, ‘You don’t understand – I don’t want a lawyer!’”

Another defendant said “that he didn’t trust anyone. He was clearly rattled and a bit unstable, and adamant that he didn’t want anyone speaking for him. It was disheartening because he clearly needed support but was refusing any sort of help from people there. It is more than likely that he will just end up in custody. This just highlighted how there are defendants who have such a deep distrust of the system that they end up making things worse for themselves.”

While our system is designed for lawyers, and is baffling to others, courts should and do make great efforts to get people to take up free legal advice if they are eligible. But the testimony of courtwatchers suggests the process of accessing legal aid should be simplified. For instance, it seems unfair that someone eligible for legal aid cannot access a duty solicitor if they have already contacted a lawyer who has (for whatever reason) not appeared for the defendant’s hearing.

Within the current system it would save court time if unrepresented defendants had a pre-hearing meeting on the day with someone who understands the legal aid system and the importance of having a lawyer. This person (possibly employed by the Legal Aid Agency) could persuade more unrepresented defendants to access legal advice before they walk into the courtroom. Court information office staff are too busy to fulfil this role. A more radical reform would be to change the legal aid system altogether. If all those who were accused of imprisonable offences had access to a legal aid solicitor throughout their case, the cost would likely be offset by a saving in bureaucracy, and in fewer wasted and slow court hearings.

From super helpful to downright hostile: how court staff behaved to unrepresented defendants

When, for whatever reason, hearings did proceed with unrepresented defendants, judges and court staff often made great efforts to help them understand court proceedings and exercise their legal rights. Courtwatchers observed judges, magistrates, legal advisors and prosecutors who tried to make the baffling understandable, and to deal with extremely stressed defendants.

“Although the defendant was unrepresented, he was treated respectfully and given time to speak. The court also adjusted the fine based on his income and showed patience during paperwork.”

“I could see something wasn’t quite right by the way the defendant spoke, his manner and behaviour in the dock. However, within the constraints of time and requirement to follow rigid procedures in the court hearing, there didn’t seem to be an opportunity for checks on the defendant’s wellbeing to take place. It was due to the skill, knowledge and thoroughness of the legal advisor that the reasons behind the defendant’s apparent disengagement became apparent.”

“An unrepresented defendant went to trial accused of possessing a bladed article. He said that he used it for his job – laying floors. The prosecutor was very kind and fair to the defendant. When the defendant was giving testimony, he said he was finished, but the prosecutor noticed that he’d brought several photos with him into the witness box, and asked him whether he wanted to show these to the bench or explain them. This turned out to be really pivotal to his defence. He’d brought along photos of other blades he used in the course of his work and was able to explain to the bench what they were for.”

But some judges and court practitioners were less than helpful.

“I feel the court system resents anyone who chooses to represent themselves and constantly strives to belittle them. Whereas new lawyers are given leeway with their representation.”

“A legal adviser told [the convicted defendant] that his appeal, which he had sent earlier in the day, was invalid, as he had not been sentenced at the point of submitting his appeal. Later, during a different hearing, the magistrates retired to deliberate, and the legal advisor and prosecutor made fun of the defendant in this case for not knowing how the appeals process works... I found this completely unacceptable and unprofessional.”

“The prosecutor was excessively hostile towards the defendant and deliberately used words that he didn’t understand when questioning him eg. expeditiously. Also appeared patronising towards him and came across as very entitled.”

Did unrepresented defendants get a worse outcome?

Despite observing some great kindness and support for unrepresented defendants, most courtwatchers were convinced they were at a significant disadvantage. They observed unrepresented defendants who neither understood the system, nor how to advocate effectively. Many defendants were bailed or remanded (imprisoned pre-trial) without a lawyer to make their case.

“The judge gave the defendant a chance to make a bail application but the defendant didn’t fully understand this. The security officer, who was in the dock with the defendant, had to explain what this meant in a whisper.”

One unrepresented defendant was remanded and the courtwatcher was convinced he would have been bailed had he had a lawyer. The defendant could not use the duty solicitor because he had already instructed another solicitor who was “not available”: “The court was minded to grant bail, and debated for some time how to make this work. If they were to grant bail, this would need to come with a condition relating to alcohol (they talked about an alcohol tag?),

because whenever he had offended it was always after heavy drinking... However ultimately, in the absence of a solicitor, they were not able to do this (I’m not sure why but I understand that the solicitor would be needed in order to record or set the alcohol conditions?). They were frustrated at this and said their ‘hands were tied’.”



Some unrepresented defendants struggled to know how to plead – whether to plead guilty or not. This is not straightforward since there are many viable defences to crimes (such as self-defence, duress, or genuine mistake) which are difficult to assess if you are not legally trained. “Defendant appeared rather confused and wanted to change her plea from guilty but this was ignored and a fine was imposed.”

In one case the court allowed a flagrant flouting of criminal procedure rules. The prosecution should provide the defence with some disclosure – initial details of the prosecution case (criminal procedure rules part 8) – before a plea is taken.

“Defendant representing himself. Pled not guilty on both counts as he had not seen the disclosure on either. Prosecution: invited magistrates to decline to hear the case as the starting point for sentence on count one was 1A – 18 months in prison. Told the defendant the prosecution was not obliged to provide disclosure now but would to the lawyer assigned for Crown Court trial.”

Other unrepresented defendants did not appear to understand court procedure.

“The magistrate asked the defendant if he wanted to be tried at the magistrates court or Crown Court. The defendant appeared to be disengaged from the proceedings and said he had no preference. I don’t think he understood the difference or why it mattered.”

“The defendant would have benefitted greatly from legal representation. He felt that he knew what had happened and so didn’t need it, but it was clear when he was questioning the witnesses that he was not aware of how this process actually went.”

In a number of cases courtwatchers felt that a different sentence might have been reached if the defendant had had a lawyer. A courtwatcher observed an unrepresented defendant who did not give any mitigation on their sentence, partly because they could not read: “the defendant said he didn’t want to read [the pre-sentence report] – ‘I’m not a reader.’ He was then sentenced without being asked for his comments. The court imposed a 4 month prison sentence suspended for 12 months... He was ordered to pay £239.00 costs and surcharge... The defendant could... have been encouraged to put his case before sentence. I think someone could have offered to read [the PSR] to him whilst the court adjourned. Probation were present.”

Another courtwatcher felt the punishment meted out to an unrepresented defendant did not fit the crime: “the defendant was a protestor who obstructed a police officer – we saw all the bodycam footage and there was barely any contact – it seemed very ridiculous. But because the defendant wasn’t represented his defence was not air tight. The legal adviser tried all they could to help him, offering questions etc. but in the end the magistrates still both gave him a 12 month conditional discharge and a £650 fine – I felt they were really very harsh.”

Recommendations: defendants without lawyers

- 13 Reduce the number of unrepresented defendants, particularly those accused of imprisonable offences:
 - A At every opportunity prior to the hearing, the police and the court should communicate accessible information about how to access a lawyer.
 - B Provide Legal Aid Agency staff in court to give information to unrepresented defendants on the importance of legal advice and how to access it.
 - C Where capacity is limited, get the Legal Aid Agency to increase the number of duty lawyers. Consider widening the eligibility criteria for access to the duty lawyer to include all those accused of an imprisonable offence.
 - D Through public legal education, increase understanding of the importance of legal advice and advocacy
- 14 Train judges, court staff and lawyers to support unrepresented defendants to understand proceedings and to access their legal rights. Use feedback and observation to develop better practice.

Conclusion

Courtwatchers observed that defendants face many barriers to meaningful participation in their own hearings. Being unheard, confused by legal language, prevented from speaking, denied an interpreter, or physically separated by screens, glass or distance all had the same effect: defendants were present, but not included. There were examples of judges and court staff who actively supported participation but, for defendants, it was the luck of the draw whether they were treated with consideration or indifference. This lack of consistency is not surprising. There is no system to scrutinise how defendants are treated, nor whether they are supported to effectively participate in their own hearing. There are some criminal procedure rules which would help, but they are seldom enforced.

Some judges and lawyers clearly see it as part of their role to treat people with respect, but neither they, nor less considerate judges, receive the feedback they need. Clearer language, reliable audibility, proactive use of interpreters, less use of the dock, and allowing defendants to ask questions, would significantly improve fairness without undermining authority or safety.

Courtwatchers viewed respect to defendants not as a marginal concern but as central to how justice is delivered. Courtwatchers observed that when magistrates, judges and court staff treated defendants with patience, calmness and humanity, it appeared to improve both the atmosphere of the courtroom and defendants' ability to engage with proceedings. Small acts – acknowledgment of frustration, flexibility around practical needs, or simple gestures of care – often had a disproportionate impact. They reassured defendants, and observers, that they were being heard as people, not processed as cases.

The most considerate treatment by judges and court staff could not overcome the structural barriers to defendants accessing justice. Many judges and court staff try hard to assist defendants who do not have lawyers, but the complexity of criminal procedure means that most struggle to understand their rights, make informed pleas, or present mitigation effectively. Courtwatchers observed many cases where lack of representation appeared to contribute to unnecessary remands, missed defences or harsher outcomes. Police, courts, lawyers and the Legal Aid Agency should make greater efforts to encourage those eligible to take up free legal advice.

Open justice plays a vital role in ensuring criminal courts get some level of scrutiny. The magistrates' court is not recorded, nor ever filmed. No one is even allowed to take a photograph of a court list. Few people observe hearings apart from those involved. So it's no wonder considerate judges and court staff get little positive feedback, while some colleagues act with impunity. Courtwatchers have the wisdom of strangers. They are eyes on the court, eyes which see good and bad, respect and indifference.

Recommendations

Respect and consideration in the courtroom

- 1 Improve magistrates' and judges' treatment of defendants by including how to support effective participation in their compulsory training, and in any ongoing training and development.
- 2 Issue court guidance on appropriate behaviour of all court professionals in the courtroom when magistrates or judges are not in the room. The legal advisor should ensure those in the courtroom comply.
- 3 Introduce 360° appraisals for magistrates and district judges and/or more regular observation of practice by judges/magistrates from a different court.

Defendant voice in proceedings

- 4 Review and communicate core principles for effective defendant participation to prosecutors, ushers, legal advisors, magistrates and judges and appraise their performance in adhering to these principles.
- 5 Ensure that all those in the public gallery and defendants in the dock can hear what is said in court. This means ensuring microphones and speakers work and are turned on, and court staff and judges proactively check that participants and observers can hear.
- 6 Simplify court proceedings and language so they are intelligible to a layperson. Judges, magistrates and lawyers should avoid or explain jargon and speak in plain language. This should be incorporated into initial training and be part of any feedback loop.

Defendants with language barriers

- 7 Give judges and magistrates training in how to assess defendant language comprehension and in the need to adjourn any hearing if an interpreter is needed but not available.
- 8 Support defence lawyers to request adjournments when an interpreter has not been provided when needed.

- 9 Investigate why an interpreter is not always provided when needed, including auditing the current booking system for interpreters, and take action to address failures.

Defendant location

- 10 Limit the use of video links for defendants, given substantial evidence that use of video impedes defendants communicating with their defence lawyer, and understanding and contributing to what is happening in their hearing. Prevent use of video links for defendants in police custody given proximity of police stations to the courts.
- 11 Where video links are used, use closed captions and improve the quality and position of the screen and camera so that everyone in the court including those in the public gallery can easily see the screen and so that the defendant can easily see the court. The judge should explain why video is being used for the defendant or anyone else participating in the process.
- 12 Make it the default for defendants to sit in the main courtroom rather than in the secure dock. The dock should only be used where there are risk based security concerns. Encourage judges to explain to the court why the defendant is in the dock. Mandate this explanation if the defendant is accused of a summary offence and/or is on bail.

Defendants without lawyers

- 13 Reduce the number of unrepresented defendants, particularly those accused of imprisonable offences:
 - A At every opportunity prior to the hearing, the police and the court should communicate accessible information about how to access a lawyer.
 - B Provide Legal Aid Agency staff in court to give information to unrepresented defendants on the importance of legal advice and how to access it.
 - C Where capacity is limited, get the Legal Aid Agency to increase the number of duty lawyers. Consider widening the eligibility criteria for access to the duty lawyer to include all those accused of an imprisonable offence.
 - D Through public legal education, increase understanding of the importance of legal advice and advocacy
- 14 Train judges, court staff and lawyers to support unrepresented defendants to understand proceedings and to access their legal rights. Use feedback and observation to develop better practice.

Appendices

Appendix 1: CourtWatch London project advisory group

The primary role of the advisory group was to advise, challenge and support Transform Justice for the purpose of making the project as effective as possible. Their involvement in the advisory group does not necessarily indicate endorsement of all the report's recommendations.

Advisory group members

- Becky Clarke, Manchester Metropolitan University
- Dhillon Shenoy, CourtWatch London volunteer
- Emma Snell, JUSTICE
- Professor Jessica Jacobson, Institute for Crime and Justice Policy Research
- Dr Lucy Welsh, University of Sussex
- Naima Sakande (chair), Reprieve
- Natalia Schiffrin, magistrate
- Dr Sally Reardon, University of the West of England Bristol
- Dr Shaun S. Yates, London Metropolitan University
- Tejal-Roma Williams, City Law School
- Dr Thomas Smith, University of the West of England Bristol

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