

# Improving communication in court: evidence and practice briefing

## Context

When a member of the public enters a court building, they are likely to find themselves in a strange and unfamiliar place. They are often immediately faced with a metal detector and security. They then often stumble into an open plan lobby with fixed metal seats, its walls adorned with notices, posters and warnings. They must find where their case is being heard by scanning noticeboards crammed with long typed lists full of names and acronyms. Then they wait. And, very often, wait some more. Then they must try to make sense of a legal process largely performed around them even though it is about them. It is not surprising that research often finds that people attending court find it a bewildering experience.<sup>1</sup>

While the Government's court reform programme is investing money in trying to improve the physical fabric and signage in courts and to improve the information given to citizens pre and post court, there is still much that can be done to improve communication within court.

## Evidence

### Procedural fairness research

Improving the court experience is not just a matter of creating a better customer journey but is also likely to impact on individuals' overall trust in the justice system. Several rigorous evaluations have shown that acceptance of court decisions and overall approval of the court system are much more closely connected to perceptions of fair treatment in the court process than to the eventual court outcome. Perceived fair treatment during the court experience can actually be more influential than the actual case outcome (i.e., whether an individual "won" or "lost" the case).<sup>2</sup>

These studies show that when individuals perceive fair treatment, they are more likely to (i) accept court decisions; (ii) comply with court orders; (iii) form a more positive view of individual courts and the justice system; (iv) engage in future law-abiding behaviour. This body of research is known as procedural fairness.<sup>3</sup>

### Components of procedural fairness

The research commonly identifies that procedural fairness can be broken down into the following elements:

- **Understanding:** That individuals are able to understand court procedures, court decisions, and how decisions are made.
- **Voice:** The ability of individuals to participate in the case by expressing their own viewpoints.
- **Neutrality:** The consistent application of legal principles by



**"Explain what is happening. It could prevent me coming back." Young defendant quoted in 'A fairer way'**



**"In the dock I struggled to hear and to focus because I felt more stressed." Young defendant quoted in 'A fairer way'**



**"Defendant perception of the judge was the most important predictor of overall perceptions of the court's fairness." From 'To be fair'**

unbiased decision makers who are transparent about how decisions are made.

- **Respect:** That individuals were treated with courtesy and respect.
- **Helpfulness:** That individuals perceive court actors as interested in their personal situation (to the extent that the law allows).

## Who does procedural fairness work for?

Research suggests that a procedurally fairer court process is likely to have a significant impact for all individuals. However, there is some evidence that it may be particularly important to the following groups.

### *Children and young people*

Recent research suggests that procedural fairness may be significantly more important to young people than to adults.<sup>4</sup> This may be because young people are especially attuned to perceptions of unfairness and signs of respect. Empirical research has identified that young people's perception of their sentencer has the largest influence on their views of the overall legitimacy of the justice system, even when controlling for the outcome of their case.<sup>5</sup> The atmosphere of the courtroom itself has also been found to be significantly related to perceptions of legitimacy: young people who "experienced an atmosphere of confusion and unprofessionalism tended to view the entire justice system as less legitimate" than young people who had a better court experience.<sup>6</sup>

### *Young adults*

Research suggests that the use of complex and technical language and courts' formal setting makes it especially difficult for young adult defendants to follow, given their variable developmental maturity and brain development. The process can be difficult to understand, intimidating, and lacking in opportunity for direct engagement. These findings highlight that young people's perceptions of court procedures have a strong effect on how they view the justice system as a whole.<sup>7</sup>

### *Individuals with experience of trauma*

The court experience can be anxiety-provoking for anyone, but people who have experienced trauma, especially those who have been victims of domestic abuse in particular, are likely to experience high rates of trauma which could be easily triggered by disrespectful court staff or feelings of hopelessness over case outcomes. Trauma can also impact an individuals' understanding of the court process. Efforts to improve perceptions of fairness may reduce anxiety and the risk of re-traumatisation.<sup>8</sup>

## Improving Courtroom Communication

While there are a number of ways to improve individuals' perceptions of fairness of the court process, including in providing better information pre-court and in improving the ability of individuals to navigate the court building, improving the communication within the court room itself is particular important. Research suggests that all courtroom professionals can have an impact on perceptions of fairness. The treatment of individuals by all court professionals—including security staff, clerks, defence lawyers, probation, prosecutors, and the judge—contributes to the overall perception of fairness.

### Communication practice tips

There a number of ways court professionals can improve the communication in a courtroom to promote perceptions of fairness:

- **Introductions:** Ensure someone is appointed to introduce the professionals in the room at the beginning of proceedings. Court staff can recite the basic rules and format of the court proceedings at the beginning of each court hearing.
- **Be mindful of acoustics:** In particular, when secure docks are used, defendants struggle to hear what is going on.<sup>9</sup> Courts should consider how they best manage security concerns with promoting better understanding and more active participation in the proceedings. Equally, courts should check

acoustics for the individuals appearing when using video links.

- **Address any timing concerns:** If the court calendar is particularly busy, acknowledge this and outline strategies for making things run smoothly. This can help relax the individuals and make the process seem more transparent and respectful. This is best done by the judge/magistrates. Example: “I apologise if I/we seem rushed. Each case is important to me/us, and we will work together to get through today’s calendar as quickly as possible, while giving each case the time it needs.”
- **Explain the court process and how decisions are made:** The purpose of each appearance should be explained in plain language. Tell the individual if and when she will have an opportunity to speak and ask questions. Court professionals should demonstrate neutrality by explaining in plain language what factors will be considered before a decision is made.
- **Make eye contact:** Eye contact from an authority figure is perceived as a sign of respect. Judges and magistrates should check whether they are making eye contact when speaking and listening, as well as considering other body language that might demonstrate that they are listening and engaged. Court professionals should be conscious of court users’ body language too, looking for signs of nervousness or frustration and be aware that court users who avoid making eye contact may be from a culture where eye contact with authority figures is perceived to be disrespectful.
- **Ask open-ended questions:** Court professionals find opportunities to invite the defendant to tell his/her side of the story, whether directly or via their lawyer. The use of open-ended questions helps invite answers that go beyond more than a simple “yes” or “no” response. Examples include asking questions such as: “What questions do you have?” “Is there anything you would like me to know about your case?” “Do you have any needs or circumstances that I should know about before making a decision?”

## The use of reviews

For certain types of cases, courts can bring individuals back to court for a court review. This can be conducted as part of a deferred sentence, as a review of community sentence with a Drug Rehabilitation Requirement or as a review of a suspended sentence order. Where courts are conducting hearing of this type, the research suggests that there a number of ways court professionals can promote perceptions of fairness:

- **Consistency of judge/magistrates:** The same judge should see the same defendants throughout the period of reviews. International evidence shows that those courts that “rotated their judicial assignments or required participants to appear before alternating judges had the poorest outcomes in several research studies”;
- **Predictably frequent:** There is evidence that judicial monitoring is effective when the hearings are predictable and frequent, especially in the initial period of supervision;
- **Procedurally fair:** Judicial monitoring is more effective when compliance hearings provide defendants a chance to explain their circumstances, where hearings lasted more than three minutes and where the judicial behaviour was marked as respectful, fair, attentive, enthusiastic, consistent and caring;
- **Certain:** There is also some evidence that monitoring that emphasises certainty are more effective than ones where what constitutes non-compliance is less clear. Those courts with clear procedures for non-compliance, and where those procedures are communicated at the start of sentence to defendants, and where those procedures are reliably used seemed to have more positive impacts;
- **Swift:** There is some evidence that responding immediately to breaches of community supervision demonstrates to offenders that the system is serious, and can lead to better outcomes.

## Endnotes

1. See A. Kirby. (2017). 'Effectively Engaging Victims, Witnesses and Defendants in the Criminal Courts: A Question of "Court Culture"?' Crim LR 949, 953.; J. Jacobson, G. Hunter and A. Kirby. (2015) *Inside Crown Court: Personal Experiences and Questions of Legitimacy*, (Policy Press: Bristol); Citizens Advice. (2015) 'Responsive Justice: How citizens experience the justice system', available online at <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Crime%20and%20Justice%20Publications/Responsivejustice.pdf>
2. See: Casey, P., Burke, K., & Leben, S., (2013) *Minding the Court: Enhancing the Decision-Making Process*, 49 CT. REV. 76 (2013) (an AJA White Paper), available at <http://goo.gl/RrFw8Y>; Lee, C.G., et al. (2013). *A Comprehensive Evaluation of the Red Hook Community Justice Center: A Community Court Grows in Brooklyn*. Williamsburg, VA; Rossman, S., Roman, J., Zweig, J., Rempel, M., and Lindquist, C. (eds.). (2011) *The Multi-Site Adult Drug Court Evaluation*. Washington, DC: The Urban Institute Burke, K., & Leben, S., (2008) *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 CT. REV. 4 (2007-2008) (an AJA White Paper), available at <http://goo.gl/afCYT>; Tyler, T. (2008). *Procedural Justice and the Courts*, 44 CT. REV. 26 (2007-2008), available at <https://goo.gl/UHPkxY>; Tyler, T. and Huo, Y. (2002). *Trust in the Law*. New York, NY: Russell Sage Foundation.
3. Bowen, P. & LaGratta, E. (2014) *To be fair: procedural fairness in courts*. Available at: <https://justiceinnovation.org/publications/be-fair-procedural-fairness-courts>
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6. Greene, C., Sprott, J., Madon, N., Jung, M. (2010). *Punishing Processes in Youth Court: Procedural Justice, Court Atmosphere and Youths' Views of the Legitimacy of the Justice System*. *Canadian Journal of Criminology and Criminal Justice*, 52(5), 527-544. Cited in Lacey, L. (2012). "Youth Justice in England and Wales: Exploring young offenders' perceptions of restorative and procedural justice in the referral order process."
7. See discussion of evidence in Thomas, J. & Ely, C. (2017) *A fairer way: procedural fairness for young adults at court*. Centre for Justice Innovation. Available online at: <https://www.justiceinnovation.org/publications/fairer-way-procedural-fairness-young-adults-court>
8. Malangone, D. (2017). *Integrating Procedural Justice in Domestic Violence Cases: A Practice Guide*. Center for Court Innovation.
9. Blackstock, J. (2015) *In the Dock: Reassessing the use of the dock in criminal trials*. JUSTICE. Available online at: <https://justice.org.uk/wp-content/uploads/2015/07/JUSTICE-In-the-Dock.pdf>

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