

Unrepresented defendants in the Magistrates' Courts

Why better data is urgently needed and how the government can publish it

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Executive summary

- **We recommend that the Ministry of Justice starts publishing basic data on the legal representation status of defendants in Magistrates' Courts.**
- Research has shown that defendants who represent themselves in court tend to experience harsher justice outcomes, find it harder to engage with court proceedings and have a negative impact on court efficiency.
- Despite consistent demands from stakeholders to improve this data collection, no data is published by the MoJ. We don't know how many unrepresented defendants appear in Magistrates' Courts, the demographic make-up of these defendants, or their impact on court effectiveness.
- This briefing provides technical recommendations for how the MoJ could start to publish better data on legal representation and close a key justice data gap.

1. Unrepresented defendants

For a number of years, MPs and justice stakeholders have repeatedly asked the MoJ: how many defendants appear in magistrates' courts without a lawyer? And repeatedly, the MoJ says that the information cannot be provided, as the data is not centrally held.¹

¹ UK Parliament, '[Legal Representation](#)' (2021); UK Parliament, '[Legal Representation: Wales](#)' (2019); UK Parliament, '[Legal Representation](#)' (2018); WhatDoTheyKnow '[Freedom of Information Request](#)' (2018); UK Parliament, '[Legal Representation](#)' (2017); Transform Justice, '[Justice denied? The experience of unrepresented defendants in the criminal courts](#)' (2016)

Experts have said that one of the main barriers to improving the situation for unrepresented defendants is that not enough data is collected on the size of the population or their experiences.² In 2021, the Justice Select Committee recommended this data be collected by HMCTS and that its impact on court effectiveness be monitored.³

In England and Wales everybody has the right to be represented in a Magistrates' Court. Defendants are free to choose a lawyer, or can apply for legal aid if they are financially eligible and pass the 'interests of justice' test.⁴ The majority of cases in Magistrates' Courts are heard via the Single Justice Procedure (SJP), which are a way of courts to deal swiftly with non-imprisonable offences, such as most motoring offences or some types of shoplifting.⁵ Defendants charged with non-imprisonable offences are unlikely to meet legal aid criteria and experts have told us that the vast majority of defendants are unrepresented for SJP cases.

Besides not passing the eligibility criteria for legal aid, there are a number of other reasons a defendant might represent themselves: they may be unaware of their rights, they might choose to do so out of choice, or they might have failed to complete appropriate paperwork in time.

So we know that lots of people are representing themselves in Magistrates' Courts, but we don't have a clear figure of how many because no data is published. Estimates range from 13%-30%⁶ and survey data suggests there has been an increase in unrepresented defendants since legal aid reforms were introduced in 2013.⁷

2. Why does this matter?

For many types of cases, self-representation can be harmful for justice outcomes, the experiences of defendants and court efficiency.

Research conducted by Transform Justice in 2016 found that:

[u]nrepresented defendants face considerable difficulties at every turn, from knowing how to prepare for court, to understanding what they are charged with, to countering

² Justice Select Committee, '[Oral evidence: \(a\) Court capacity, HC 284; \(b\) The future of legal aid, HC 289](#)' (2021) Q368

³ Justice Select Committee, '[The Future of Legal Aid](#)' (2021) paragraph 68.

⁴ As of 2023, legal aid is automatically available to anybody in magistrates' courts below a minimum gross income threshold of £12,475 p/a (adjusted for household composition) and excluded to those above a maximum threshold (£22,325 p/a) - further eligibility tests depend on an applicant's disposable income. See here for details on eligibility - Gov.UK, '[Criminal legal aid: means testing](#)' (2022)

⁵ Gov.UK, '[Explaining the Single Justice Procedure in the magistrates' court](#)' (2021)

⁶ Magistrates Association, '[Written evidence to the Justice Select Committee](#)' (2020); Transform Justice, '[Justice denied? The experience of unrepresented defendants in the criminal courts](#)' (2016); Lucy Charlotte Welsh, '[Magistrates, Managerialism and Marginalisation: Neoliberalism and Access to Justice in East Kent](#)' (2016); WhatDoTheyKnow, '[Freedom of Information Request](#)'; Dr Vicky Kemp, '[Transforming legal aid: access to criminal defence services](#)' (2010)

⁷ Magistrates Association, '[Written evidence to the Justice Select Committee](#)' (2020)

*the evidence against them. Incomplete data makes it difficult to draw firm conclusions about the numbers involved and the scale of any changes.*⁸

90% of magistrates feel that unrepresented defendants have a negative impact on the court process.⁹ Stakeholders have raised the following concerns about lack of representation:

- 1. Negative experiences of defendants:** research suggests that unrepresented defendants' experiences in court are far worse than represented defendants. Unrepresented defendants generally find it harder to understand court proceedings, engage with case files, submit pleas, and generally feel as if they are underprepared for hearings.¹⁰
- 2. Harsher justice outcomes:** studies have shown that unrepresented defendants are less likely to be able to put the best possible defence forward, often due to a poor understanding of plea deals and charge-bargaining.¹¹ Prosecutors have raised concerns that many unrepresented defendants have pleaded not guilty when they had no good defence, and pleaded guilty when they did, which can greatly affect the outcome of a case and the severity of a sentence.¹² For SJP cases, where defendants are usually unrepresented, the language, culture and processes are the same as in a court with lawyers, and experts have expressed to us their concerns about the challenges for laypersons to understand how to get the best outcomes.
- 3. Lack of effective participation in cases:** digital reforms in courts have made it harder for unrepresented defendants to participate effectively. Both the Magistrates' Association and the independent Bellamy Review noted that Common Platform, HMCTS' new digital case management system, is designed to be used by established parties¹³ - e.g. initial prosecution details are sent out using email addresses which must be registered with Common Platform, which unrepresented defendants would not have. Remote hearings bring additional difficulties for unrepresented defendants, with less support to deal with technological difficulties, additional feelings of remoteness and struggling to access paperwork.¹⁴
- 4. Disparities in representation:** the lack of data means we don't know whether particular groups, related to age, sex, ethnicity or location, are more or less likely to appear in court without a lawyer, as noted in the Lammy Review.¹⁵
- 5. Court efficiency:** research suggests that legal representatives make court proceedings more efficient by negotiating pleas, co-operating with proceedings, and

⁸ Transform Justice, '[Justice denied? The experience of unrepresented defendants in the criminal courts](#)' (2016)

⁹ Magistrates Association, '[Written evidence to the Justice Select Committee](#)' (2020)

¹⁰ Charlotte Rebekah Walker, '[A Study Examining the Experiences of Unrepresented Defendants in the Criminal Courts](#)' (2021); WhatDoTheyKnow, '[Freedom of Information Request](#)'; Transform Justice, '[Justice denied? The experience of unrepresented defendants in the criminal courts](#)' (2016)

¹¹ Sentencing Academy, '[Defendants' Understanding of Sentencing](#)' (2021)

¹² Transform Justice, '[Justice denied? The experience of unrepresented defendants in the criminal courts](#)' (2016)

¹³ Christopher Bellamy, '[Independent Review of Criminal Legal Aid](#)' (2021); Magistrates Association, '[Written evidence to the Justice Select Committee](#)' (2020)

¹⁴ Charlotte Rebekah Walker, '[A Study Examining the Experiences of Unrepresented Defendants in the Criminal Courts](#)' (2021)

¹⁵ David Lammy, '[The Lammy Review](#)' (2017)

having a clear understanding of court operations.¹⁶ Research from cases with unrepresented defendants in Crown Courts suggests that hearings take longer and more hearings are often needed.¹⁷ Advocates and legal professionals have expressed a clear preference for defendants to have legal representation to reduce delays.¹⁸ As Magistrates' Courts aim to tackle a backlog of nearly 350,000, longer hearings times only contribute to inefficiencies, making it harder to close the backlog.

There's another important reason why this data matters - the MoJ has previously refused high-profile related requests. In 2015 the Government commissioned a review to understand the impact of legal aid reforms on legal representation. The MoJ published a six-page summary of the research which focussed solely on Crown Courts and contained little hard data,¹⁹ stating that a more detailed version did not exist.²⁰ The Information Commissioner later ruled that a full report did exist and should be published in its entirety.²¹

On publication, this report showed serious concerns from legal professionals about the impact of legal representation on courts, and included data on the frequency of unrepresented defendants in Magistrates' Courts.²² In the aftermath, MoJ staff were found to have used abusive language towards the reporter who broke the story.²³ MPs said the situation was "very concerning"²⁴ and a senior barrister warned the MoJ was "deliberately frustrating legitimate journalistic inquiry".²⁵ Public trust in the system has clearly been damaged: we suggest that an effective way to help rebuild it would be to publish clear and useful data.

¹⁶ Lucy Charlotte Welsh, '[Magistrates, Managerialism and Marginalisation: Neoliberalism and Access to Justice in East Kent](#)' (2016)

¹⁷ WhatDoTheyKnow, '[Freedom of Information Request](#)'

¹⁸ Justice Select Committee, '[Oral evidence: \(a\) Court Capacity, HC 284; \(b\) Future of Legal Aid HC 289](#)' (2021) q. 138; Charlotte Rebekah Walker, '[A Study Examining the Experiences of Unrepresented Defendants in the Criminal Courts](#)' (2021); Lucy Charlotte Welsh, '[Magistrates, Managerialism and Marginalisation: Neoliberalism and Access to Justice in East Kent](#)' (2016)

¹⁹ Transform Justice, '[Justice denied? The experience of unrepresented defendants in the criminal courts](#)' (2016)

²⁰ BuzzFeed News, '[This Leaked Report Reveals The Stark Warnings From Judges About Defendants With No Lawyer](#)' (2018)

²¹ Information Commissioner's Office, '[Freedom of Information Act 2000 \(FOIA\) Decision notice](#)' (2018)

²² Ministry of Justice, '[Unrepresented Defendants: Perceived effects on the Crown Court in England and Wales – practitioners' perspectives](#)' (2019). For data Magistrates' Courts see the full copy release via a Freedom of Information request - WhatDoTheyKnow, '[Freedom of Information Request](#)'

²³ BuzzFeed News, '[Ministry Of Justice Staff Called A BuzzFeed Journalist "Crazy" And A "Bitch" After She Published A Leaked Report](#)' (2019)

²⁴ BuzzFeed News, '[A Senior Tory MP Says He Is Very Concerned About A Ministry Of Justice Report Leaked To BuzzFeed](#)' (2018)

²⁵ BuzzFeed News, '[Ministry Of Justice Staff Called A BuzzFeed Journalist "Crazy" And A "Bitch" After She Published A Leaked Report](#)' (2019)

3. Solving the data gap

3.1 The data we need

The first question to ask when tackling this data gap is: what data is needed? Looking at calls made by justice stakeholders, we recommend that the MoJ look to publish the following data, at a minimum:

1. **The overall number of unrepresented defendants in Magistrates' Courts.** Current estimates vary wildly on the proportion of defendants that are unrepresented, ranging from one in eight to one in three. Reliable data on population size would help court services to recognise the scale of the problem, and provide policymakers with an idea of the level of resource needed to address it.
2. **Demographic information on unrepresented defendants.** The Lammy Review said that the paucity of data on representation status meant it was unknown whether particular ethnic groups are more likely to appear in court without a lawyer.²⁶ Data on legal representation should be broken down by age, sex and ethnicity to better understand disparities and which groups may be most vulnerable.
3. **Legal representation status by individual court.** Individual court-level data would help to provide a granular look at whether representation status differs across the country. This could improve understanding of why hearing times vary between courts, and help court services diagnose where support is needed most.
4. **Legal representation by offence.** As mentioned, for certain traffic and motor offences it is expected that defendants will represent themselves. But it is unknown whether defendants are more likely to represent themselves for other types of offences. This might provide an insight into why defendants self-represent.

3.2 How to publish this data

In theory, it should not be too difficult to collect this data. As the Legal Education Foundation told the Justice Select Committee in 2021:

Since 2010 the MoJ has been resisting calls to collect better data on litigants in person [unrepresented defendants in the civil courts]. It is not a new argument. The fact is that it was provided with a road map of the data it needed to collect a year before the pandemic hit. This is not an advanced system; it is the type of data you can capture very easily on an Excel spreadsheet. It is not rocket science. You can repurpose codes in your software.²⁷

In 2021, the Government responded to the Select Committee's recommendation for better data on unrepresented defendants by saying that "[m]uch of the Ministry's data is held in

²⁶ David Lammy, '[The Lammy Review](#)' (2017)

²⁷ Justice Select Committee, '[Oral evidence: \(a\) Court Capacity, HC 284; \(b\) Future of Legal Aid HC 289](#)' (2021)

legacy IT systems, particularly in our operations. This is often difficult to extract and join up. However, despite these challenges, we are making progress.”²⁸

Our research suggests that it would be possible for the MoJ to start publishing better data on representation status in magistrates’ courts. Currently, the Criminal Court Statistics Quarterly (CCSQ), published by HMCTS, derives operational data on cases from the One Performance Truth (OPT) database.²⁹ OPT extracts its administrative data from Magistrates’ Courts’ two digital case management systems, Libra and Common Platform.

Although the legal representation status of defendants is not recorded on Libra,³⁰ we have been told that it is recorded on Common Platform, which is currently being rolled out across Magistrates’ Courts to replace Libra, and which also records information on defendants.³¹ **It should therefore be relatively straightforward for HMCTS to extract this information, as well as demographic and geographical data on defendants, using OPT to extract data from Common Platform. This data could then be routinely published in the CCSQ.**

²⁸ Justice Select Committee, [‘The Future of Legal Aid: Government Response to the Committee’s Third Report’](#) (2021)

²⁹ Ministry of Justice, [‘Guide to criminal court statistics’](#) (2022)

³⁰ WhatDoTheyKnow, [‘Freedom of Information request’](#); we were told “There are no mandatory inputs on libra for recording the representation status of defendants, as there is no requirement on HMCTS to collect or retain this data”.

³¹ Although our FOI requests to MoJ on this subject have been refused, we have spoken to court clerks who tell us that defence barristers’ details are recorded digitally on Common Platform. It should therefore be possible to derive the presence or absence of representation as a binary flag for cases recorded in OPT.