Engaging with legitimacy: An examination of lay participation in the criminal courts

2019

Amy Kirby
Sociology PhD
University of Surrey
Declaration of Originality

This thesis and the work to which it refers are the results of my own efforts. Any ideas, data, images or text resulting from the work of others (whether published or unpublished) are fully identified as such within the work and attributed to their originator in the text, bibliography or in footnotes. This thesis has not been submitted in whole or in part for any other academic degree or professional qualification. I agree that the University has the right to submit my work to the plagiarism detection service TurnitinUK for originality checks. Whether or not drafts have been so-assessed, the University reserves the right to require an electronic version of the final document (as submitted) for assessment as above.

Signed: [signature] Date: 11th April 2019

Word count: 89,391 (excluding References and Appendices)

Word count: 104,218 (including References and Appendices)
Abstract

This study adopted a qualitative approach, comprising in-depth interviews and observations at four courts, to examine the perceived legitimacy of the court process among members of the public who come into direct contact with the criminal courts. Examining the extent to which members of the public, or ‘lay participants’, engaged with the court process provided a valuable means of assessing the degree to which the courts are perceived to occupy legitimate authority among those that they serve. In this thesis, engagement is characterised in one of five ways, ‘active alignment’, ‘passive alignment’, ‘dull compulsion’, ‘resistance’ and ‘withdrawal’, based upon the extent to which an individual is aligned with, and participates in, the court process. The findings point to evidence of weak levels of engagement, particularly among court users, such as complainants, defendants and prosecution witnesses, who have the least power but most at stake in the process. This is indicative of legitimacy deficits which, if unaddressed, limit the degree to which the courts can continue to claim to be valid holders of power. The findings suggest that perceptions of legitimacy can be cultivated in two ways. This is firstly through the use of lay adjudicators, namely juries and lay magistrates, who – despite challenges arising from the visibility of the perceived benefits of lay decision-making in practice – were found to confer legitimacy on the criminal courts. Secondly, engagement could be cultivated through the presence of ‘procedurally just’ interactions between court users and those who occupy positions of power within the courts. However, the strength of the latter claims, this thesis concludes, should not be overstated because in order to fully enhance perceptions of legitimacy there is a need to look beyond the confines of the courtroom and towards issues in wider society that shape the experiences of court users.
Acknowledgements

There are many people that I would like to thank. Firstly, and perhaps most importantly, I am immensely grateful to each of the 43 ‘lay participants’ who participated in an interview as part of this research. Thank you very much for the time that you donated in providing such rich accounts of your experiences; without this, it would not have been possible to conduct this study. Many thanks must also go to HM Courts and Tribunals Service, the Judicial Office and Citizens Advice for supporting the study by granting research access and to the local gatekeepers in each of the study courts for greatly facilitating the fieldwork process. Thanks are due to the University of Surrey, and particularly my supervisors, Professor Nigel Fielding and Dr Paul Hodkinson, for the invaluable support and guidance offered over the last four years. Nigel, I’m indebted to you for continuing to supervise me into your retirement; and Paul, thank you for your enthusiastic and diligent supervision on a topic that is beyond your usual field of study – I hope you enjoyed it! I’m also very grateful to the Economic and Social Research Council for funding the study.

I would like to thank the PhD community at the University of Surrey and my Birkbeck colleagues at the Institute for Criminal Policy Research for their encouragement. Dr Jessica Jacobson deserves special thanks both for urging me to undertake doctoral research and for being an immeasurable source of support and guidance throughout. Thank you to all of my family and friends, particularly my parents and brother, for having faith in me and for always cheering me on. Finally, thank you to Tom, for being the biggest and brightest surprise that I encountered along the way and for filling my PhD journey with more laughter, love and warmth than I had ever anticipated.
# Contents

Declaration of Originality ........................................................................................................ i

Abstract ................................................................................................................................... ii

Acknowledgements .................................................................................................................. iii

Chapter 1: Introduction ............................................................................................................. 1

1.1 Situating the study within the framework of legitimacy ......................................................... 2

1.2 Lay participation in the criminal courts ................................................................................. 4

1.3 Aims and Research Questions ............................................................................................. 9

1.4 Methodological approach .................................................................................................. 10

1.5 Structure of remaining chapters .......................................................................................... 12

Chapter 2: Literature Review .................................................................................................... 14

2.1 Theoretical underpinnings: Legitimacy .............................................................................. 15

2.1.1 Legitimacy: origins, definitions and place within the criminological imagination ......... 15

2.1.2 The relative role of process and outcome in perceptions of legitimacy ......................... 23

2.1.3 Criticism: Dialogic legitimacy and beyond ................................................................. 27

2.2 The role of lay participants within the criminal courts ....................................................... 30

2.2.1 Court users: complainants, prosecution witnesses and defendants ............................ 31

2.2.2 Lay adjudicators: juries and magistrates ................................................................ 41

2.3 Concluding thoughts ........................................................................................................ 53

Chapter 3: Methodology ........................................................................................................... 56

3.1 Methodological approach .................................................................................................... 56

3.1.1 Multi-sited ethnography ............................................................................................... 57

3.1.2 Selection of research sites and overarching access negotiations ............................... 60

3.1.3 Interviews with court users ......................................................................................... 63

3.1.4 Observations of court proceedings ............................................................................. 73

3.1.5 Interviews with magistrates ....................................................................................... 77

3.1.6 Interviews with Witness Service volunteers .............................................................. 79

3.2 Ethical issues ...................................................................................................................... 81

3.2.1 Informed consent and maintaining participant well-being ........................................... 81

3.2.2 ‘Situated ethics’ ........................................................................................................ 85

3.2.3 Researcher well-being and positionality ................................................................... 86

3.2.4 Data security and retention ....................................................................................... 89

3.3 Analytical approach .......................................................................................................... 90

3.3.1 Philosophical underpinnings of analytic approach ....................................................... 90

3.3.2 Illustrating the process of analysis: Conceptualising the ‘continuum of engagement’ .... 93
Chapter 4: Lay adjudication: understanding, perceptions and the question of legitimacy ......................................................... 100
  4.1 Levels of understanding and awareness of lay adjudication .................................................................................. 101
    4.1.1 Understanding and awareness of juries ................................................................................................. 101
    4.1.2 Understanding and awareness of lay magistrates ............................................................................ 109
    4.1.3 Summary: understanding and awareness of lay adjudication ......................................................... 119
  4.2 Perceptions of lay adjudication and the question of legitimacy ............................................................................. 120
    4.2.1 Factors which help to confer legitimacy on the justice system ..................................................... 121
    4.2.2 Barriers to conferring legitimacy on the justice system ................................................................. 132
    4.2.3 Lay adjudication, legitimacy and the wider criminal justice process ........................................... 150
  4.3 Concluding thoughts ........................................................................................................................................ 156

Chapter 5: A continuum of engagement for lay participation in the criminal courts ......................................................... 161
  5.1 Defining ‘engagement’ and the place of legitimacy .............................................................................................. 162
  5.2 A continuum of engagement .................................................................................................................................. 164
    5.2.1 Types of engagement .......................................................................................................................... 166
    5.2.2 Methodological note ............................................................................................................................. 168
  5.3 Types and levels of engagement among lay participants in the criminal courts ..................................................... 170
    5.3.1 Lay adjudicators ...................................................................................................................................... 170
    5.3.2 Complainants and prosecution witnesses .......................................................................................... 185
    5.3.3 Defendants .............................................................................................................................................. 208
    5.3.4 Characterising court user engagement: commonalities and differences across the sample .......................................................................................................................... 226
  5.4 Concluding thoughts ........................................................................................................................................ 232

Chapter 6: Fostering engagement in the criminal courts: from procedural justice to ‘unfinished’ legitimacy ......................................................... 236
  6.1 Barriers to engagement in the criminal courts .................................................................................................... 237
    6.1.1 Operational constraints: structure, culture and context ...................................................................... 238
    6.1.2 Court users: Individual needs and social context ............................................................................. 259
    6.1.3 Summary: the interplay between operational constraints and individual circumstances ................. 275
  6.2 Cultivating engagement in the criminal courts: procedural justice and ‘beyond’ ................................................. 275
    6.2.1 Considerate and inclusive interactions in cultivating engagement: the role of procedural justice ................. 276
    6.2.2 The ‘intricate’ and ‘unfinished’ character of legitimacy ........................................................................ 279
  6.3 Concluding thoughts ........................................................................................................................................ 286

Chapter 7: Conclusion ............................................................................................................................................ 288
  7.1 Main findings .................................................................................................................................................. 289
7.2 Implications .......................................................................................................................... 297
    7.2.1 Lay adjudication in the criminal courts ........................................................................ 298
    7.2.2 Bringing engagement from the ‘shadows’ to the ‘centre-stage’................................. 302
7.3 Future research .................................................................................................................... 309
References .................................................................................................................................. 312
APPENDIX I .................................................................................................................................. 349
APPENDIX II .............................................................................................................................. 351
APPENDIX III ............................................................................................................................ 352
APPENDIX IV ............................................................................................................................. 357
APPENDIX V ............................................................................................................................... 359
APPENDIX VI ............................................................................................................................. 361
APPENDIX VII ........................................................................................................................... 362
APPENDIX VIII .......................................................................................................................... 364
APPENDIX IX .............................................................................................................................. 366
APPENDIX X .................................................................................................................................. 367
APPENDIX XI ................................................................................................................................ 369
APPENDIX XII ............................................................................................................................ 370
Chapter 1: Introduction

Within the discipline of criminology, the criminal courts occupy largely under-researched terrain (Rock, 1993). Criminology as a discipline tends to specialise in research and teaching on criminal justice institutions such as prisons and the police — and in particular upon the responses of those individuals subject to the authority of these criminal justice agencies — but few teaching and research programmes include a substantial focus upon the courts.¹ The lack of attention is surprising due to the relative ease with which cases coming before the criminal courts can be observed under the principle of ‘public justice’.² Research that has been carried out in the criminal courts tends to take place in the Crown Court (such as, Rock, 1993; Fielding, 2006; Jacobson, Hunter and Kirby, 2015). With the exception of several well-known ethnographic studies conducted thirty to forty years ago (such as, Carlen, 1976; McBarnet 1981; Darbyshire, 1984), the magistrates’ courts have received much less attention (cf. Darbyshire, 1997).³

This study aimed to address these gaps in criminological understanding by conducting empirical research that specifically examined how members of the public, or lay participants, understood, perceived and experienced the court process in both the Crown and magistrates’ courts. This involved a specific focus upon levels of understanding and perceptions of the use of lay adjudicators in the criminal courts — that is, juries and

¹ For example, though the most recent edition of the Oxford Handbook of Criminology (2017) includes Chapters focused upon policing (Jones, Newburn and Reiner, 2017) and prisons (Crewe and Liebling, 2017), an examination of the criminal courts is confined to a discussion on sentencing (Ashworth and Roberts, 2017).
² For an overview of the theoretical underpinnings of the notion of public justice, also referred to as ‘open justice’, see Duff, Farmer, Marshall and Tadros (2007).
³ Empirical examinations of the magistrates’ court have increased in recent years (see, for example, Ward, 2017; Soubise, 2017); however, such studies have tended to focus on procedural or systemic issues facing the magistrates’ courts and have not involved empirical research with court users.
magistrates – and a broader consideration of how lay participants engaged with the court process. A focus upon how lay participants engaged with the court process was thought to be of particular value because it provides a window through which to examine the extent to which the courts can claim to hold legitimate authority in the eyes of those they serve (cf. Tyler, 2006; Bottoms and Tankebe, 2012).

1.1 Situating the study within the framework of legitimacy

The power dynamics existing within social structures and criminal justice agencies – along with the interplay between forms of formal and informal social control – are an established concern of sociologists and criminologists. Classic theoretical discussions of such issues include Durkheim’s (1893) study of anomie; which was elaborated upon by Merton (1938; 1957) in his theorisations on social structure and ‘strain’. More recently, Foucault (1977) charted the growth of the ‘carceral society’ and Garland (2001) spoke of the ‘culture of control’ that exists between the State and civil society. Studies of the power structures and dynamics that exist in the criminal courts have tended to focus on the means by which forms of formal and informal control are achieved in the courtroom setting (see, for example, Carlen, 1976; Rock, 1993).

Framing an examination of lay participation in the criminal courts through theorisations of legitimacy, however, offers a different way of exploring the power dynamics that characterise how members of the public engage with the court process. Proponents of legitimacy theory, such as political theorist David Beetham (1991, 2013) and social psychologist Tom Tyler (2006), argue that in order for institutions to uphold valid power
they need to be perceived as legitimate in the eyes of the citizens that they serve. In contrast to disciplines such as political theory and social psychology, in which discussions of legitimacy are long-established (Tyler, 2006), the concept of legitimacy has only come to the attention of criminologists relatively recently (cf. Tankebe, 2013). Since coming to prominence the study of legitimacy has received substantial amounts of criminological attention; particularly among policing scholars who have tended to focus their attention upon measuring the impact of ‘procedural fairness’ – such as, fair decision-making and respectful treatment – on perceptions of legitimacy.⁴

Perhaps one of the attractions that the study of legitimacy offers to criminological scholars is that it provides an opportunity to move away from accustomed theoretical and policy approaches that have explored the ways in which authorities can secure cooperation or compliance among citizens through recourse to instrumental forms of power or control via gains and incentives,⁵ or through the imposition, or threat of imposition, of sanctions.⁶ The study of legitimacy on the other hand, enables the focus to be upon normative modes of achieving compliance or cooperation from citizens; such as shared moral or ethical standards (see, for example, Hough and Sato, 2011; Tyler, 2011; Beetham, 2013). It is, after all, illuminating that the study of legitimacy has come to the fore within criminology at a time when crime control policies have undergone a ‘populist’ shift (see Hough and Sato, 2011). Moreover, because prominent scholars argue that legitimacy can only be achieved if citizens display expressed consent for the ‘power-holder’ role occupied by institutions and criminal justice actors (Beetham, 1991; Bottoms and Tankebe, 2012), this means that

---

⁴ Recent examples of this include Wolfe, Nix, Kaminski and Rojeck (2016) and Skinns, Rice, Sprawson and Woof (2017).
⁵ See, for example, Mertonian theorisations on social structure and anomie (Merton, 1938; 1957).
⁶ See, for example, Classical theorisations on deterrence, such as Beccaria (1764) and Bentham (1791).
'audience legitimacy' can be empirically measured by examining the extent to which citizens cooperate with, or exhibit a willingness to cooperate with, agencies (Hough and Sato, 2011; Roberts and Plesničar, 2015). Importantly, attention has been drawn towards the need for empirical research on legitimacy to be able to distinguish between ‘true legitimacy and dull compulsion’ (Bottoms and Tankebe, 2012: 149) or, to put it plainly, to examine ‘what it is that sets consensual authority apart from naked power’ (Loader and Sparks, 2013: 109). Therefore, a focus upon how court users engage with the process helps to make such distinctions explicit within an institution that has rarely been the focus of legitimacy research.

1.2 Lay participation in the criminal courts

Members of the public, collectively known as ‘lay participants’, attend the criminal courts for a variety of reasons. This includes as the alleged victim of, or witness to a crime, as the defendant accused of criminal wrong-doing, or in order to offer support to a friend or family member who is required to attend court. Moreover, because the criminal justice system of England and Wales relies heavily on decision-making by members of the public in the form of lay adjudication, individuals also attend the court in the capacity of jurors and lay magistrates. Finally, members of the public can attend court in a number of other capacities, for example, as an observer of proceedings under the principle of ‘public justice’ or as a volunteer for a charitable organisation or criminal justice agency with a role in the criminal courts, for example the Witness Service. The term ‘lay participant’ is thus used in this research in order to describe individuals who participate in the court process as citizens as opposed to those who participate because they are being remunerated for their role,
such as judges, advocates or court staff. Though broad, this definition enables lay
participation to be examined within and between groups of citizen who have different levels
of power and stake in the process. This was regarded as essential to generating a nuanced
understanding of perceptions of legitimacy in the criminal courts. For the purpose of this
study, two main categories of lay participant are under focus. The first group is those who
attend court in the capacity of complainants, witnesses, defendants and their supporters;
this group is collectively referred to as ‘court users’. The second group are members of the
public who attend court as jurors and lay magistrates; collectively referred to as ‘lay
adjudicators’.

Court users are the main group under study because they occupy the primary ‘audience’
upon which to examine perceptions of legitimacy.\(^7\) Existing studies involving court users
have outlined the relatively powerless and marginal status of complainants, witnesses and
defendants alike (see, for example, Jacobson et al. 2015). While some court users may
choose to attend court out of their own volition, defendants have no choice in the
proceedings that are carried out against them; likewise, upon making a statement to the
police, complainants and prosecution witnesses can be legally compelled to attend court. At
the same time, court users – particularly complainants and defendants – are likely to have
much at stake in the outcome of proceedings; be it their liberty (in the case of defendants)
or the making of a decision on something which may have significantly impacted upon their
lives (in the case of complainants). Examining court users’ perceptions of legitimacy thus
generates understanding of the extent to which the courts are regarded as a legitimate

\(^7\) Lay adjudicators, on the other hand, can be regarded as an ‘audience’ but they are also in the unusual
position of acting as ‘power-holders’ due to their decision-making responsibilities.
power-holder among those with least power and most at stake in the process (cf. Benesh and Howell, 2001). Research on this subject has scarcely been conducted in the criminal courts of England and Wales.  

This study set out to examine court users’ levels of understanding and perceptions of the use of juries and magistrates with a view to gaining an understanding of the extent to which the use of lay adjudicators could confer legitimacy on the criminal courts. England and Wales is regarded as relatively ‘unique’ in the extent of its reliance on lay adjudicators in the administration of justice (Morgan and Russell, 2000; Ward, 2017); despite this, empirical research on this topic is relatively scant. Conducting research on the topic of juries is heavily circumscribed in England and Wales due to the restrictions imposed under the Contempt of Court Act 1981. Empirical research on juries, in this jurisdiction and at an international level, is thus often conducted through the use of mock juries (see, for example, Ellison and Munro, 2009). Meanwhile, the lay magistracy has been ‘neglected’ by many, including successive governments, academia and the media (Darbyshire, 1997). This is an interesting anomaly because over 90 per cent of criminal cases are completed in the magistrates’ court (Ministry of Justice, 2016a). In-depth empirical studies of the magistracy are relatively uncommon, notable exceptions to this include Morgan and Russell’s (2000) study of the judiciary in the magistrates’ court and Ward’s (2017) study of the positioning of the magistracy within the contemporary landscape surrounding ‘summary justice’. There has been hitherto little exploration of how members of the public with least power in the

---

8 One notable exception to this is Jacobson et al.’s (2015) study of public’s experience Crown Court; however this study examined the Crown Court only and did not include a focus specifically upon engagement or perceptions of lay adjudication.
process (that is, court users) think about the notion of criminal justice decisions being
decided upon by other members of the public (that is, jurors and lay magistrates).\(^9\)

Examining levels of understanding and perceptions of the use of lay adjudicators remained a
principal aim throughout the study. However, as the research progressed it became
increasingly apparent – for the reasons that will be set out during the course of this thesis –
that court users’ perceptions of legitimacy regarding the use of lay adjudicators could not be
considered in isolation from their broader experiences and perceptions of the court process.
Overall perceptions of legitimacy, as will be argued, are best examined through the lens of
how lay participants engage with the court process. The second aim of the study therefore
sought to examine how lay participants’ levels of engagement in the court process could be
characterised with a view to understanding the nature of their overall perceptions of the
legitimacy of the criminal courts.

In addition to examining court users’ levels of engagement in the court process, it was also
deemed necessary to understand how the second group of lay participant, lay adjudicators,
perceived and made sense of their own role. This is because existing research on the topic
of legitimacy has come under criticism for its almost exclusive focus on ‘audience legitimacy’
and its lack of focus on perceptions of legitimacy among those in positions of power
(Bottoms and Tankebe, 2012).\(^{10}\) This aspect of the study relies solely on the views of
magistrates due to the aforementioned legal restrictions surrounding jury research.

\(^9\) Some research exists into perceptions of lay adjudication among members of the public more broadly.
However, this is limited to research on public perceptions of the magistracy (Morgan and Russell, 2000;
\(^{10}\) Exceptions to this include Lielbing’s (2004) study of prison officers and recent policing research which has
examined police officers’ perspectives of self-legitimacy (such as, Nix and Wolfe, 2018).
Examining perceptions of legitimacy from the position of lay magistrates has the potential to offer unique insight on power-holder notions of legitimacy among those who carry out a judicial role in a voluntary capacity.

Further to generating understanding of perceptions of legitimacy in the under-researched terrain of the criminal courts, this study is particularly timely because there are indications that lay participation in the criminal courts is declining, or at the very least, is at a point of transition. Decreasing levels of recorded crime over a twenty-year period (see, ONS, 2018a), alongside greater uses of ‘out of court disposals’ (Judicial Office, 2018), have contributed to falling caseloads in the criminal courts.¹¹ This has in part led to a wide-scale court closure plan which has resulted in the closure of 121 courts and tribunal centres across the court estate (Ministry of Justice, 2018a). Meanwhile, the criminal courts are undergoing a number of technological reforms that may reduce the need for court users to be physically present during proceedings (Ministry of Justice, 2018a). Finally, the magistracy has shrunk by almost fifty per cent in less than a decade (see, Judicial Office 2011; Judicial Office, 2018) and there have been repeated calls to limit the remit to trial by jury (Auld, 2001; Leveson, 2015). The study thus offers insight into how members of the public who are coming before the courts engage with it and perceive it as legitimate at a time when the very nature of engagement in the criminal courts is at a crucial juncture.

¹¹ However, this is notwithstanding recent data which indicates an upward lift in recorded crime trends for some offence types (see ONS, 2018a).
1.3 Aims and Research Questions

This study of lay participation in the criminal courts had two main aims. The original aim was to examine court users’ levels of understanding and perceptions of lay adjudication with a view to assessing the degree to which lay adjudication could confer legitimacy upon the criminal courts. However, when it began to emerge that examining court users’ perceptions of legitimacy of lay adjudicators would only provide a partial understanding of court users’ overall perceptions of legitimacy – because these overall perceptions of legitimacy were also influenced by court users’ broader experiences and perceptions of the court process – a second aim was introduced. This was to examine how lay participants’ levels and types of engagement in the court process could be characterised in order to gain a thorough understanding of the nature of lay participants’ overall perceptions of the legitimacy of the criminal courts. The study had four main research questions. The first two research questions correspond with the first aim of the study; while the latter two research questions concern the second aim of the study:

1. To what extent are court users aware of the roles of lay adjudicators and to what extent do they understand these roles?

2. Do each of the two types of lay adjudication help to confer legitimacy on the justice system?

3. How can lay participants’ levels and types of engagement with the court process be characterised?
4. Overall, what are the main factors that support or undermine court users’ perceptions of the legitimacy of the justice system?

1.4 Methodological approach

A qualitative approach was selected as the most suitable means to achieve the above aims. The specific approach adopted was a multi-sited ethnography (cf. Marcus, 1995) that centred upon in-depth interviews and court observations. The research was conducted in four criminal courts in England and involved in-depth interviews with 43 lay participants\(^\text{12}\) and observations of 126 court hearings that were carried out, predominantly, over a period of 14 months.

Notwithstanding the limits to generalisability and representativeness inherent in carrying out qualitative research (see, Bryman, 2012), this approach was thought to be the most valuable method for answering the research questions for several reasons. Firstly, a qualitative approach is generally recognised as one of the most suitable methods for eliciting an in-depth understanding of how individuals perceive, experience and interact with the ‘social worlds’ (cf. Rock, 1993) which they occupy. This was regarded as particularly important for examining how lay participants engage with the court process and their associated perceptions of legitimacy. The use of in-depth interviewing was regarded as an

\(^{12}\) This included: 17 interviews with complainants and prosecution witnesses, 7 interviews with defendants, 4 interviews with individuals who had attended court to provide support to a friend or family member (hereafter, ‘supporters’) and 8 interviews with lay magistrates. In addition to this a further 7 interviews were carried out with Witness Service volunteers. Conducting interviews with Witness Service volunteers provided a point of comparison of volunteering experiences with lay magistrates and provided context to some of the issues raised by prosecution witnesses.
essential means of gaining an understanding of lay participants’ nuanced and subjective experiences of the criminal courts and of their understanding and perceptions of lay adjudication (cf. Arksey and Knight, 1999). This is especially because in-depth interviewing is also regarded as a valuable method for giving ‘voice’ to the views of groups that can be considered as marginalised, such as court users (see, for example, Shapland, Willmore and Duff, 1985; Goodey, 2005; Jacobson et al. 2015; Carlen, 1976).

The use of ethnographic approaches is common in existing research conducted in the criminal courts (see for example, Bottoms and McLean, 1976; Rock, 1993; Fielding, 2006) and was thought to be an important overarching approach to adopt in this study. This is because it enables the generation of insight into the complex interactional dynamics that can be at play within a social setting (cf. Fielding, 2015), such as the criminal courts, and one which would help to generate insight into how lay participants engaged with the court process. Conducting a multi-sited ethnography at four criminal courts, specifically, enabled comparisons to be drawn both between and within the different types of court under study (magistrates’ and Crown Courts).

Moreover, the use of a qualitative approach was also thought to be particularly beneficial to generate knowledge on the concept of legitimacy. A plethora of studies have examined perceptions of legitimacy using large-scale quantitative surveys (see, for example, Sunshine and Tyler, 2003; Jacksonn Bradford, Hough et al. 2012; Hough, Jackson and Bradford, 2013; Tankebe, 2013). The reliance on such approaches has come under criticism recently for insufficiently examining the intricate nature of perceptions of legitimacy (Harkin, 2015) and for examining perceptions of legitimacy in relative isolation from the context in which they
are generated (Loader and Sparks, 2013; Skinns et al. 2017). This points to the value of examining lay participants’ perceptions of the criminal courts through the use of a qualitative approach.

1.5 Structure of remaining chapters

The thesis is structured into seven chapters. Chapter 2 provides a more detailed discussion of the basis for framing the study within the concept of legitimacy. The various approaches to, and conceptualisations of, legitimacy within the disciplines of political theory, social psychology and criminology are examined and the relative strengths and weaknesses of existing theories are evaluated. Further to this, Chapter 2 reviews existing literature which has examined the roles of complainants, prosecution witnesses and defendants within the criminal courts and includes a focus upon existing theoretical studies and empirical research regarding the justifications for, and limitations to, the use of lay adjudicators in criminal justice decision-making.

Chapter 3 sets out the methodological approach adopted; namely, a multi-sited ethnography of four criminal courts which included interviews with an array of lay participants and observations of court proceedings. This includes a description of how access was negotiated via Her Majesty’s Courts and Tribunals Service, the Judicial Office and Citizens Advice and an examination of the main ethical issues under consideration in the study. The various strengths and weaknesses of the approach are critically examined and the approach to analysing the rich set of qualitative data that the study generated is outlined.
Chapters 4, 5 and 6 are dedicated to a discussion of the study findings. Chapter 4 addresses Research Questions 1 and 2 by describing the findings relating to court users’ levels of understanding of juries and magistrates before proceeding to examine the factors relating to lay adjudication that contribute to enhancing perceptions of legitimacy, and those which limit it. Importantly, Chapter 4 also outlines the reasoning behind the assessment that perceptions of the legitimacy of lay adjudications cannot be considered in isolation of court users’ overall perceptions of the legitimacy of the criminal courts. Following on from this, Chapter 5 argues that the notion of ‘engagement’ offers a lens through which to examine overall perceptions of legitimacy among court users and lay magistrates. The Chapter, in consideration of Research Question 3, sets out a continuum for engagement that is based upon two axes: the extent to which an individual is aligned with the court process and the extent to which they participate in the court process. Five types of engagement are identified and critically examined. Chapter 6 considers the factors that can act as a barrier to engagement in the criminal courts (and associated perceptions of legitimacy) and those which can help to cultivate it, with a view to addressing Research Question 4. Within this discussion, particular attention is paid to examining the interplay that exists between the ‘machinery’ (Jacobson et al. 2015) of the criminal courts and those relating to the specific needs of court users and the wider social context in which they are set.

Finally, Chapter 7 sets out the conclusions of the research. This includes a summary of the main research findings and how they address the specific research questions. It also includes a discussion of the theoretical and policy implications arising from the study and makes suggestions for future research programmes.
Chapter 2: Literature Review

The aim of this Chapter is to position this examination of lay participation in the criminal courts within the wider literature. It begins by situating the study within the broader theoretical framework of legitimacy by considering existing conceptualisations and attendant debates surrounding the study of legitimacy. In doing so, it outlines the potential contribution that this study offers in terms of expanding upon emerging theorisations on the ‘dialogic’, or interactive, nature of legitimacy in the under-researched terrain of the criminal courts (cf. Bottoms and Tanebe, 2012). In line with criticisms of existing conceptualisations, which are centred upon the ‘thin’ and predictive nature of large-scale quantitative studies of legitimacy (Harkin, 2015; Skinns et al. 2017), I argue that a qualitative examination of the ways in which lay participants directly engage in the court process helps to make clear the distinction between ‘true legitimacy’ and ‘weak legitimacy’ with regard to perceptions of the criminal courts (cf. Bottoms and Tankebe, 2012).

Drawing upon existing theorisations which have stressed that perceptions of legitimacy are based upon context and circumstance (Fagan, 2008; Bottoms and Tankebe, 2012; Loader and Sparks, 2013; Skinns et al. 2017), the second half of the Chapter outlines the rationale for examining perceptions of legitimacy among members of the public who come into direct contact with the criminal courts; that is, lay participants. I argue that a particular focus on court users’ perceptions of legitimacy is required because they are the main ‘audience’ under study and are arguably those with the least power, yet most at stake, in the process (cf. Benesh and Howell, 2001). Moreover, with regard to the specific aim of examining court users’ levels of understanding and perceptions of the use of lay adjudicators, the final
section considers the origins of lay adjudication and outlines some of the prominent justifications for, and associated criticism of, the use of juries and magistrates. Throughout the Chapter the various policy initiatives that have a bearing upon the research, and indicate its relevance, are also considered.

2.1 Theoretical underpinnings: Legitimacy

The concept of ‘legitimacy’ provides a useful framework for an examination of lay participation in the criminal courts. This is because its proponents (such as Tyler, 2006; Jackson et al. 2012) have argued that in order for institutions, including criminal justice institutions, to operate effectively they need to hold legitimate authority in the eyes of those they serve. This means that exploring perceptions of legitimacy among lay participants provides a means by which ‘audience legitimacy’ can be empirically examined (cf. Bottoms and Tankebe, 2012) in a setting which has been subject to little empirical attention from scholars within existing studies of legitimacy.

2.1.1 Legitimacy: origins, definitions and place within the criminological imagination

Theorisation on the concept of legitimacy has a ‘long history’ (Tyler, 2006: 393) which spans a number of disciplines including the social sciences, political philosophy and social psychology. Such theorisations initially came to the fore in both the United States and United Kingdom during the latter half of the twentieth century in the aftermath of two World Wars and various periods of civil unrest and was borne out of a ‘fear that, without legitimate authorities and institutions, societies would descend into anarchy and chaos’
Yet it is only in the last twenty-five years that legitimacy has begun to attract considerable attention from criminologists (cf. Tankebe, 2013). Since then, an abundance of studies have been spawned into perceptions of legitimacy in the field of criminal justice, particularly on the topic of policing (Bottoms and Tankebe, 2012; Loader and Sparks, 2013; Roberts and Plesničar, 2015). Before examining how the concept of legitimacy can be applied to the particular study at hand, it is first important to examine why legitimacy has come to hold such a prominent place within the criminological imagination.

Firstly, it is generally accepted amongst leading scholars – such as Beetham (1991, 2013), Tyler (2006) and Bottoms and Tankebe (2012) – that in order for institutions to be regarded as valid power-holders they must be seen to hold legitimate authority in the eyes of those they serve. Legitimacy thus serves to act as restraint, or to set limits to the ‘naked power’ (Loader and Sparks, 2013: 109) of states and institutions. This is described by Beetham (2013: 39):

‘Legitimacy is not the icing on the cake of power, which is applied after baking is complete, and leaves the cake essentially unchanged. It is more like the yeast that permeates the dough and makes the bread what it is.’

Central to many arguments is the idea that the presence of legitimacy enhances normative forms of cooperation and compliance with states and institutions – such as shared moral or ethical standards – rather than forms of power that seek to secure compliance through instrumental means, such as by incentive, threat or sanction (Tyler, 2011; Tyler et al. 2013;
This has made the study of legitimacy particularly important to criminologists who have noted, especially since the advent of ‘populist punitiveness’ (Bottoms, 1995), the limited impact of instrumental methods in securing compliance (Hough and Sato, 2011). A focus on legitimacy, and the impact of this on securing normative cooperation, also helps criminology as a discipline to move forward from the criticism it has faced for its extensive focus on why people do not comply with the law rather than examining why ‘most people’ comply ‘most of the time’ (Tyler, 2006: 375; Bottoms, 2001; Hough and Sato, 2011). Finally, because the study of legitimacy entails a focus on how institutional authority is perceived by the members of the public it serves, it means that the concept can be subject to empirical testing (Tyler, 2006; Hough and Sato, 2011; Roberts, and Plesničar, 2015). This is evidenced in the plethora of studies devoted to measuring citizen perceptions of legitimacy among criminal justice actors, particularly the police. This has perhaps made it particularly attractive to criminological researchers and theorists who are familiar with longstanding critiques levelled at the limited empirical base for prominent criminological and sociological ‘truisms’ (Hough and Sato, 2011: 12), such as Merton’s (1938) theorisation on social structure, strain and anomie (Agnew, 2006; Morrison, 2006).

Notwithstanding such claims, the definition and operationalisation of ‘legitimacy’ is contested and, despite numerous attempts both within and between the aforementioned disciplines, lacks ‘a single consensual position’ (Roberts, and Plesničar, 2015: 34). This provides insight as to why the concept has been described as ‘slippery’ (Hough et al. 2013)

---

13 Theories concerning the latter, which had been prominent among existing criminological thinking, stemmed from Classical theories of deterrence (such as Beccaria, 1764 and Bentham, 1791) and structural theories of strain and anomie (such as Merton, 1938; 1957).

14 Recent examples of this include Wolfe et al. (2016), Skinns et al. (2017), Nix and Woofe (2018).
and ‘elusive’ (Bottoms and Tankebe, 2012: 168). One of the most prominent legitimacy scholars of the last thirty years is political theorist David Beetham (1991, 2013). His work offers a useful starting point for a discussion of legitimacy because other notable scholars (such as, Sunshine and Tyler, 2003; Bottoms and Tankebe, 2012; Jackson et al. 2012; Hough et al. 2013; Tankebe 2013) have derived, at least in part, their own conceptualisations of legitimacy from his work.

Beetham (2013: 16-17) put forward a three-fold model of legitimacy, arguing that an institution can be regarded as legitimate to the degree that:

a) ‘it conforms to established rules’: that is, there needs to be a ‘legal validity’ to the expression of power that is derived from following the rules;

b) ‘the rules can be justified by reference to beliefs shared by both dominant and subordinate’;

c) ‘there is evidence of consent by the subordinate to the particular power relation’: that is, there needs to be evidence of ‘expressed consent’ of this power relationship among those upon which it is enforced.

For Beetham (2013), all three components are required to work together to contribute to the legitimacy of an institution. The extent to which each of the components is realised, however, is not absolute but to a degree. In order to examine the extent to which the criminal courts are regarded as legitimate by lay participants, it is important to pay closer attention to these components – legal validity (commonly referred to as ‘legality’), the presence of shared beliefs (or ‘shared values’), and expressed consent – and to examine
how Beetham’s theorisation has been used to frame other theoretical discussions of legitimacy.

Legality

The first component of legitimacy identified by Beetham is that of legal validity; this is often referred to as ‘legality’ or ‘lawfulness’ (Bottoms and Tankebe, 2012; Tankebe, 2013; Hough et al. 2013). Legality is something which exists when authorities act in accordance with the law, or ‘conform to established rules’, and has often been identified as a main component of legitimacy among criminological thinkers (Bottoms and Tankebe, 2012; Beetham, 2013: 16; Tankebe, 2013; Hough et al., 2013). However, it is of note that less weight has been placed upon ‘legality’ in recent years (Bottoms and Tankebe, 2012; Jackson et al. 2015). For example, Jackson, Hough, Bradford and Kuha (2015), after having originally presented a three-component model of legitimacy which included legality, moral alignment and consent (see Hough et al. 2013), presented a revised model of legitimacy comprising only the latter two components. This is because they found there to be a high degree of correlation between moral alignment (see below) and lawfulness (Jackson et al. 2015). In line with this, the present study focuses principally on the second two components of Beetham’s theorisation, that of ‘shared values’ and ‘expressed consent’, when examining lay participants’ perceptions of legitimacy. This is because the very premise of dealing with alleged offending within the confines of the criminal courts is, as will become clear in the Chapters that follow, imbued with an implicit legality.
**Shared values**

The interrelated terms ‘shared beliefs’, ‘shared values’ and ‘moral alignment’ occur frequently in discussions of legitimacy both between and within a variety of disciplines (Fagan, 2008; Beetham, 2013; Bottoms and Tankebe, 2012; Tyler, 2011; Jackson et al. 2012, Hough et al. 2013; Tankebe, 2013; Jacobson, et al., 2015). The concept of shared values – particularly shared *moral* standards – has frequently been identified as a component of legitimacy (Beetham, 2013; Jackson et al; 2012; Hough et al. 2013; Jacobson et al. 2015).¹⁵ Beetham (2013) argued that authorities lack legitimacy if the rules of power cannot be justified on the basis of shared beliefs. Bottoms and Tankebe (2012: 142) furthered the place of shared values within the concept of legitimacy by explaining that shared values ‘set limits that define the conditions within which legitimate power may be exercised ... as well as furnishing those who govern with rules and resources within which they can seek to realise certain societal objectives.’

In recent years criminologists have developed the concept of *moral alignment* – the ‘belie[f] that the institution acts according to a shared moral purpose with citizens’ – within conceptualisations of legitimacy (Jackson et al., 2012: 1051; Hough et al. 2013). Jackson et al. (2012: 1054) argued that demonstrating moral alignment requires institutions to negotiate power in a manner that maximizes consent among citizens, which is important because ‘such consent may be more readily granted when people feel that the values [that the authority is] upholding accord with their own sense of right and wrong.’ At a broader level, it has been argued that the fostering of shared values between institutions and the

---

¹⁵ However, others regard shared values either as a means by which other components of legitimacy can be examined (Tankebe, 2013) or as a social motivation distinct from legitimacy (Tyler, 2011).
public can enhance the social capital of communities and promote a civic culture of voluntary co-operation with the law (Tyler, 2011; Jackson et al. 2012; Tyler, Jackson and Bradford, 2013).

The notions of ‘shared values’, and ‘moral alignment’, are particularly relevant concepts to the present study. When examining lay participants’ perceptions of legitimacy, this research considers the extent to which ‘shared values’ exist between lay participants and those responsible for exerting authority in the criminal courts. This is examined at an overall level and also specifically in relation to court users’ perceptions of lay adjudication. This has seldom been the focus of existing research.

*Expressed consent*

The final condition required by Beetham in order to achieve legitimacy is ‘expressed consent’. This is particularly important to Beetham, who is critical of definitions of legitimacy – such as that of Weber (1968) – which focus solely upon the public’s belief that an institution or State is legitimate. Rather he argued that:

> ‘Legitimacy is to be equated with people’s … specific actions that publicly express it … these are important because they confer legitimacy on the powerful, not because they provide evidence about people’s beliefs. They confer legitimacy because they constitute public expressions by the subordinate of their consent to the power relationship and their subordinate position within it; of their voluntary agreement to the limitation of their freedom by the requirements of a superior’ (Beetham, 2013: 91).
Importantly, Beetham’s notion of ‘expressed consent’ has been linked to criminological theorisations which have examined the impact of perceived legitimacy on citizens’ felt obligation to obey the law and cooperate with legal authorities (Jackson et al. 2012; Hough et al. 2013). Social psychologist Tom Tyler, who has written extensively on the subject, has argued that legitimacy offers a means by which institutions can obtain citizen obligation to obey the law (Tyler, 1990; Sunshine and Tyler, 2003; Tyler, 2007) or, more broadly, can obtain voluntary co-operation among citizens (Tyler, 2011). Legitimacy, therefore, is regarded as a key way in which institutions can secure compliance with the law (Tyler, 1990; Sunshine and Tyler, 2003; Tyler, 2007).

However, others have argued that the association between the perceived obligation to obey, or compliance with, the law and legitimacy is not straightforward; people may feel obliged to obey the law for reasons other than legitimacy (Bottoms and Tankebe, 2012; Tankebe, 2013). It is not the aim of the present study to assess the relationship between court user perceptions of legitimacy and felt obligation to obey the law in the future. Instead this study examines the extent to which an individual lay participant’s direct engagement with the court process is indicative of their expressed consent for the authority held by the criminal courts.\(^\text{16}\) Now that the main components of legitimacy relevant to this study have been identified and defined, attention is drawn to existing debate over the factors that are commonly regarded to shape, or ‘drive’ perceptions of legitimacy (Sunshine and Tyler, 2003; Hough et al. 2013).

\(^\text{16}\) It is difficult to measure ‘expressed consent’ for the use of lay adjudicators, specifically, because court users’ have a limited degree of choice as to whether or not decision-making in their individual case is carried out by lay adjudicators. This is described in further detail in Chapter 4.
2.1.2 The relative role of process and outcome in perceptions of legitimacy

Further to the discussion of the components required for institutions to be perceived as legitimate, an interconnected debate exists surrounding the extent to which perceptions of legitimacy are shaped by procedural factors, such as fair treatment and decision-making (‘procedural justice’), in comparison to factors relating to outcomes, such as the fair distribution of outcomes between different groups in society (‘distributive justice’) and perceptions of how well criminal justice actors perform their role (‘effectiveness’). These debates are of particular relevance to this study because they suggest that court users’ perceptions of lay adjudicators specifically, and the criminal courts more broadly, are likely to be influenced by factors relating to both process and outcome.

*Procedural justice*

Perhaps Tyler’s main contribution to the study of legitimacy is through his development of the body of research surrounding procedural justice. Procedural justice is a branch of work that has become relatively *en vogue* in recent years with criminologists in their study of legitimacy and compliance with the law (Bottoms and Tankebe, 2012). In particular, a number of studies have sought to examine the impact of procedural justice on perceptions of the legitimacy of the police (see, for example, Sunshine and Tyler, 2003; Hough et al., 2013; Jackson et al., 2012; Tankebe, 2013). Proponents of procedural justice theory argue that the fairness of the processes and procedures (procedural fairness) deployed by institutions in exercising their authority shapes the extent to which they are perceived as legitimate (Tyler, 2006; Hough et al. 2013).
It is generally accepted that assessments of procedural justice between citizens and institutions are made upon two dimensions: fair decision-making and respectful treatment (Tyler, 2011; Bottoms and Tankebe, 2012). Fair decision-making, Tyler (2011: 73) explained, is based upon the perceived neutrality of the decision-maker, the transparency of the process, factuality and giving citizens the opportunity to provide input – or to ‘have their say’ (Bottoms and Tankebe, 2012: 145). Bottoms and Tankebe (2012) argued that the independence and competence of the decision-maker, alongside consistency in decision-making, are also relevant to perceptions of fair decision-making among legal authorities.

Assessments of the respectful treatment received by citizens relate to factors such as being treated with respect, dignity and ‘in a true sense as a human being’ (Bottoms and Tankebe: 2012: 145; Tyler, 2011). The perceived fairness of the decisions made by those responsible for administering authority in the courts, generally, and lay adjudicators, specifically, are central themes explored by this study; as are court users’ perceptions about the extent to which they feel that they have been treated with respect, dignity and consideration by professional court actors and lay adjudicators.

Existing research regarding procedural justice and the courts has been mainly been confined to large-scale quantitative surveys in the United States (Tyler and Huo, 2002; Rottman, 2005; Benesh and Howell, 2001; Benesh 2006). Benesh and Howell (2001) found that aspects of procedural justice, such as being treated with courtesy and the ability of courts to

---

17 However, Jacobson et al. (2015) noted that in practice it is difficult to separate out the interconnected dimensions of fair decision-making and respectful treatment.

deal with cases in a timely manner, influenced court users’ levels of confidence in the courts. Tyler (2007: 30) identified four principles of procedural justice in the court setting:

a) ‘Voice’: court users should be given the opportunity to ‘tell their side of the story’;

b) ‘Neutrality’: decisions should be made by neutral decision-makers who follow established rules;

c) ‘Respect’: court users should be treated with respect by all those involved in the court process;

d) ‘Trust’: court users should feel as though they are treated in a sincere and considerate manner and feel as though they are listened to and treated without prejudice.

In one of the only existing studies which has explored procedural fairness in relation to juries, MacCoun and Tyler (1988) found that perceptions of procedural fairness among jurors were more important to participants than juror competence and cost considerations; though it is possible that such perceptions were based on the notion that fair procedures would be likely to lead to accurate decisions. None of the existing court-based research has focused on court user perceptions of procedural fairness with respect to the roles occupied by juries and magistrates.

*Distributive justice and effectiveness*

The other body of theories that have sometimes been included in models of legitimacy are focused upon the role of ‘outcomes’, rather than ‘process’, in shaping perceptions of legitimacy. The two principal outcome theories in this arena are that of ‘distributive justice’
and ‘effectiveness’. Distributive justice – or distributive fairness – is concerned with the fairness of outcomes and particularly that outcomes (such as decisions to prosecute, trial verdicts or sentence severity) are fairly distributed between different groups within society (Sunshine and Tyler, 2003; Hough et al. 2013; Tankebe, 2013). Fagan (2008) explained that there are two specific aspects to distributive fairness. Firstly, outcomes should be proportionate to the level of wrongdoing and secondly that outcomes should be applied consistently and across different groups. Effectiveness concerns perceptions of how well criminal justice agencies, such as the police and the courts, perform their respective duties (Sunshine and Tyler, 2003; Hough et al. 2013; Tankebe, 2013). This study includes a consideration of the extent to which the perceived distributive fairness and effectiveness of criminal justice actors and lay adjudicators shapes lay participants’ perceptions of legitimacy.

However, it is important to note that there is ambiguity with regard to the relative influence of process and outcome upon perceptions of legitimacy. For example, existing policing studies have found that though concerns about distributive fairness and effectiveness have an impact on legitimacy, the impact is usually less pronounced than that of procedural fairness (Sunshine and Tyler, 2003; Hough et al. 2013; Tyler et al. 2013). Meanwhile, one of the few court-based studies of legitimacy found that though procedural justice considerations were important to court users’ perceptions of legitimacy of the court process, positive outcomes (such as the verdict in contested cases or the length and perceived severity of the sentence in non-contested cases) ‘matter[ed] decidedly more than process’ (Jacobson et al. 2015: 172). The ongoing debate regarding the relative importance
of ‘process’ and ‘outcome’ in perceptions of legitimacy is an area of theoretical uncertainty that this study sought to pursue.

2.1.3 Criticism: Dialogic legitimacy and beyond

Despite widespread criminological interest in legitimacy in recent decades, existing theorisations have been criticised on a number of interrelated grounds; including difficulties and disagreement about the definition and operationalisation of legitimacy (Roberts and Plesničar, 2015; Harkin, 2015) and the ability of large-scale but ‘thin’ quantitative studies to generate sufficiently nuanced accounts of the ‘dialogic’ nature of legitimacy (Bottoms and Tankebe, 2012; Harkin, 2015). A review of existing criticism in relation to the study of legitimacy helps to lay the foundation for the contribution of the present study.

Bottoms and Tankebe (2012: 168) provided one of the most robust critiques of existing criminological study of legitimacy, in which they argued that scholars have become preoccupied with the role of procedural justice in shaping perceptions of legitimacy. In particular, they asserted that existing criminological accounts were under-theorised, and that a thorough conceptualisation of legitimacy required the inclusion of what constitutes power-holders’ ‘recognition of the right to govern’, rather than simply ‘audience compliance’. The latter had been the focus of much existing research. They therefore recommended that future research take into account levels of power-holder ‘self-confidence’ in their ‘right to govern’ as well as audience legitimacy (p. 154). This provides a strong basis for the present study’s specific focus upon how lay magistrates perceive their decision-making role within the criminal courts.
Crucially, Bottoms and Tankebe (2012: 129) stressed that existing work had failed to sufficiently recognise the ‘dialogic’ – or interactive – nature of legitimacy whereby power-holders make claims to legitimacy which audiences may accept or reject:

‘Legitimacy should not be viewed as a single transaction; it is more like a perpetual discussion, in which the content of power-holders’ later claims will be affected by the nature of the audience response.’

As a result of this ‘perpetual discussion’, it is asserted that perceptions of legitimacy are likely to be dependent upon circumstance. For example, it was argued that the responses of those subject to de facto authority – for example, prisoners for whom the imbalance of power between themselves and those in power is large – may be one of ‘dull compulsion’: ‘I have to do this’ (p. 165). Bottoms and Tankebe concluded that there is a need to be able to empirically disentangle ‘dull compulsion’ from ‘true legitimacy’. Jacobson et al. (2015) made some progress with this with respect to their research on public perceptions of legitimacy in the criminal courts. They found that defendants’ participation in the Crown Court was often one of ‘passive acceptance’. This represents a weak form of legitimacy but one which is stronger than ‘dull compulsion’ – ‘it is the conception that the court system is as it is because this is how it has to be, even if there is no clearly or explicitly normative aspect to this belief’ (p. 167). The present study aimed to go further in the quest to disentangle ‘true legitimacy’ from ‘dull compulsion’, or ‘weak legitimacy’, by examining the detail of how lay participants engaged with the court process. The ethnographic nature of the study provided a strong foundation for this because it enabled dialogic legitimacy to be examined in the direct context in which interactions occurred.
This is, arguably, of value because legitimacy theorists have also been criticised for the extent of their reliance upon quantitative methods (Bottoms and Tankebe, 2012; Harkin, 2015; Skinns et al. 2017). As noted above, the vast majority of studies that have generated existing models of legitimacy have done so through the use of large-scale quantitative surveys (see, for example, Sunshine and Tyler, 2003; Jackson et al. 2012; Hough et al. 2013; Tankebe et al. 2013). The reliance on such methods has generated ‘thin’ accounts of legitimacy that fail to take into account the context and intricacies of interactions between power-holders and audiences (Harkin, 2015: 604; Skinns et al. 2017). Moreover, existing studies have tended to focus upon predictive accounts of future behaviour – for example the extent to which an individual is likely to comply with the law or cooperate with authorities in the future, rather than on the responses of individuals in the present – with members of the public who are often not in direct contact with criminal justice agencies (Bottoms and Tankebe, 2012; Harkin, 2015; Skinns et al. 2017). This has led to calls for research to be conducted using other methods, such as longitudinal surveys (Bottoms and Tankebe, 2012) or ‘thicker’ qualitative methods including depth interviewing (Skinns et al, 2017) and ethnography (Harkin, 2015: 604). The use of qualitative methods in this study may bridge some of the methodological gaps that exist in the study of legitimacy.

Overall, this study has the potential to significantly contribute to existing research on the topic of legitimacy. It involved conducting research on empirical legitimacy in both an under-researched terrain (the criminal courts) and through the adoption of an under-utilised methodological approach (ethnography). The use of such an approach meant that, in addition to generating understanding on perceptions of legitimacy with respect to a
specific aspect of the court process – that is, the role occupied by lay adjudicators – data was also generated on court users’ direct experience of the court process. This helps to build upon discussion of the dialogic nature of legitimacy and is something which, as highlighted above, is less visible in existing research on legitimacy. Moreover, as well as furthering understanding on court users’ perceptions of legitimacy (audience legitimacy), conducting interviews with lay magistrates provided unique insight into power-holder perceptions of legitimacy; namely from the perspective of power-holders undertaking voluntary judicial positions.

2.2 The role of lay participants within the criminal courts

As outlined above, existing theorisations have stressed that perceptions of legitimacy are based upon context and circumstance (Fagan, 2008; Bottoms and Tankebe, 2012; Loader and Sparks, 2013; Skinns et al. 2017). This provides a basis for assessing perceptions of legitimacy by examining levels of engagement among those who come into direct contact with the criminal courts; that is, lay participants. In line with this, it is necessary to explore in more detail the existing literature regarding the roles of lay participants in the criminal courts. This section begins by examining the literature which has focused upon the roles of complainants, prosecution witnesses and defendants in proceedings; close attention is paid to the areas of commonality between the roles of different groups of court users. The second part of this section focuses upon the roles of lay adjudicators in criminal proceedings in order to provide context to the study’s focus upon court users’ understanding and perceptions of juries and magistrates. The origins of the jury system and lay magistracy are outlined, as is the limited amount of empirical research that has been conducted on the
topic of lay adjudication. Particular attention is paid to literature surrounding theoretical justifications, and associated criticisms, of the use of lay adjudicators.

2.2.1 Court users: complainants, prosecution witnesses and defendants

It is generally agreed that the onset of the adversarial system in the eighteenth century contributed to the vastly reduced role played by court users in criminal proceedings. This is because developments, such as the introduction of a system of public prosecutions and the introduction of legislation that afforded defendants the right to counsel, afforded enhanced positions to the judiciary and criminal advocates (Landsman, 1990; Langbein, 2003; Rock, 2004; Hostettler, 2006; cf. Kirby, 2017a). In line with this, research findings suggest that the nature of the adversarial system is such that court users – complainants, prosecution witnesses and defendants alike – despite being likely to have a great deal at stake within criminal proceedings (cf. Benesh and Howell, 2001), occupy a marginal role within the court process (see, for example, Carlen, 1976; Shapland and Hall, 2010; Jacobson et al. 2015).

Complainants and prosecution witnesses

A discussion of the roles of ‘complainants’ and ‘prosecution witnesses’ necessitates that brief attention be drawn to the longstanding and widespread debate by politicians, policymakers, practitioners and academics about the role of ‘the victim’ in the criminal justice system (see Maltravers, 2010; Fairclough and Jones, 2018; Rock, 2004; Doak, 2008; Shapland and Hall, 2010). This includes the presence of arguments about the choice of the most appropriate term to use to describe an individual who alleges that a crime has been committed against them.
Legal scholars – and courtroom practitioners – tend to refrain from using the term ‘victim’ to describe those alleging criminal wrong-doing, in preference to the term ‘complainant’, until there has been a finding of guilt (see Padfield, 2015; Fairclough and Jones, 2018).

Meanwhile, criminologists and sociologists, such as Shapland and Hall (2010) have argued that by not using the term ‘victim’, the individual alleging wrongdoing is ‘reincarnated as a witness’ (p. 166) in the court process only to subsequently be required to ‘change identity’ (p. 176) in the event that an alleged offence is proven. This is argued to contribute to the failure of the justice system to recognise victims who attend court but are not required to give evidence; such as those who opt to observe proceedings from the public gallery (Shapland and Hall, 2010). 19

Nevertheless, the terms ‘complainant’ and ‘prosecution witness’, specifically, have been adopted for this study. 20 This is not done with the intention of denying such individuals ‘victim’ status but to enable the specific examination of their experience through the lens in which they are brought into the court process; that is, as a ‘complainant’. It is also because this study included a focus upon individuals who gave evidence as witnesses but who were not the direct ‘victim’ of the alleged offence; namely other kinds of ‘prosecution witnesses’.

Moving on from a discussion of terminology to one pertaining to the broader nature of the role occupied by complainants and prosecution witnesses, there has been much critical

---

19 This is perhaps a pertinent time to note that it is widely accepted – as successive sweeps of the Crime Survey for England and Wales illustrate – that many instances of victimisation are not reported to the police and an even smaller proportion of victimisation is brought before the courts (see Maguire and McVie, 2017; ONS, 2017a).

20 It was decided at the outset of this study that, unfortunately, defence witnesses would not be included in the sample. This was due to perceived difficulties surrounding the identification of defence witnesses (cf. Jacobson et al. 2015). This is discussed in further detail in Chapter 6.
commentary surrounding constraints placed upon the participation of complainants and prosecution witnesses within the court process. Much has been written about the difficulties that individuals face when giving evidence. This includes – but is not limited to – the formal, unknown and often antiquated physical environment and language of the courtroom (Rock, 1993; Shapland and Hall, 2010; Jacobson et al. 2015); being required to recount very personal, intimate or distressing matters in an open court environment (Shapland and Hall, 2010; Jacobson et al. 2015); the impact of ‘belittling’ or ‘aggressive’ cross-examination techniques (Kirby, 2017a: 960; see also, Rock, 1993; Doak, 2008); and not being given the chance to provide a narrative account of the incident, or ‘tell their story’, when giving evidence (Rock, 1993; Fielding, 2006; Doak, 2008; Shapland and Hall, 2010; Jacobson et al. 2015).

Many of these issues arise because complainants and prosecution witnesses in the jurisdiction of England and Wales lack decision-making powers and thus their role in criminal proceedings is limited to that of ‘information-provider’ (Edwards, 2004). Such issues have led to arguments that the court process engenders feelings of ‘secondary victimisation’ among complainants and prosecution witnesses (see, for example, Doak, 2008; Fairclough and Jones, 2018). Moreover, because the State assumes the responsibility of prosecuting the case, it has been argued that crimes are effectively ‘stolen’ from individual victims (Christie, 1977). This means that complainants and prosecution witnesses are not afforded certain ‘rights’, such as access to legal representation (see, Rock, 2004; Spencer, 2010).

21 See Doak (2008) for an in-depth account of the framing of victims’ ‘rights’ within politics and practice.
As a result of widespread concerns surrounding the ‘bit-part’ (Shapland and Hall, 2010) role of complainants and prosecution witnesses in criminal proceedings, the last forty years has witnessed a ‘sea-change’ (Rook, 2015) in reforms aimed to improve complainants’ and prosecution witnesses’ experience of the court process; particularly for those who are regarded as vulnerable. Exhaustive lists of the available provision are provided elsewhere, however, in order to provide context as to the nature of the roles of complainants and prosecution witnesses, the main reforms can be summarised as follows. Pivotal legislative reform aimed at enhancing the engagement of complainants and prosecution witnesses came in the form of the Youth Justice and Criminal Evidence Act 1999. This enabled complainants who were regarded as ‘vulnerable’ (Section 16) or ‘intimidated’ (Section 17) to apply to the court to give evidence through the use of special measures. This includes: pre-recorded evidence in chief; giving evidence via live-link outside the courtroom; giving evidence from behind a screen and, for those with communication needs, the use of communication aids and giving evidence with the assistance of a registered intermediary. In addition to this is the as yet unimplemented provision of giving pre-recorded cross-examination (Section 28), which has recently been piloted (Baverstock, 2016). Other reforms have included: the introduction of Victim Personal Statements in 2001, which enable the victim to express their views about how a crime has affected them by providing a statement that is read by the decision-maker at the point sentencing; the roll-out of the Witness Service in 1994 which provides separate waiting areas and support and information to witnesses while they are waiting to give evidence; and the (revised) Code of Practice for Victims of Crime (Ministry of Justice, 2015) which sets out victims’ entitlements within the

---

22 Recent examples include Jacobson and Harlow (2017); Fairclough and Jones (2018).
23 For more detail see, Ministry of Justice, (2013a); Roberts and Manikis (2011).
criminal justice process. Nevertheless, it should be stressed that many of the above reforms afforded to complainants and prosecution witnesses pertain to ‘service rights’, such as the provision of support, without altering the ‘fundamental facets of the criminal justice system’ (Doak, 2008: 16) or affording any kind of substantive decision-making role to complainants and prosecution witnesses (Edwards, 2004; Jacobson et al. 2015).

Finally, it is necessary to consider arguments which have suggested that enhancing the provisions available to complainants and prosecution witnesses may come at the expense of the due process rights of defendants (or vice versa) in what has been described as a ‘zero-sum game’ (see, for example, Doak, 2008; Tonry, 2010; Hoyano, 2015). These debates are set in the context of the politicised nature of crime control, which has included calls from politicians to ‘rebalance the criminal justice system in favour of the victim’.24 However, it appears that such concerns may have been ‘exaggerated’ because it has been argued that better provisions for one group can be beneficial to all (Doak, 2008: 247); that is, ‘win-win’ to both parties (Fairclough and Jones, 2018: 212). This is perhaps particularly so in view of the assertion that complainants and defendants often ‘share mutual concerns’ (Doak, 2008: 248) and arguments pertaining to fallacy of dichotomising ‘victims’ and ‘offenders’ into opposing groups due to the overlapping nature of offending and victimisation (Bottoms and Costello, 2010; Tonry, 2010).

**Defendants**

With regard to the role occupied by defendants in criminal courts, it is generally agreed by legal scholars (such as, Duff et al. 2007; Owusu-Bempah, 2017) and criminologists (such as, 24 A number of statements of this nature were made by the New Labour administration. For a full discussion of this see Tonry (2010) and Doak (2008).
Carlen, 1976; McBarnet, 1981; Jacobson et al. 2015) alike that defendants occupy a marginal role in proceedings. This has particular implications with regard to their level of engagement in the court process.

Though defendants are usually present throughout the entirety of proceedings against them, be it in person or via video-link, it is argued that defendants are effectively ‘incidental’ to proceedings (Jacobson et al. 2015: 92) or the ‘seen but not heard’ (Carlen, 1976: 86) participant. The formality and ritual of the courtroom environment, including the complex and antiquated language used, are commonly cited reasons for a defendant’s ‘marginalisation’ or ‘powerlessness’ within proceedings (see, for example, Carlen, 1976; Rock, 1993; Jacobson et al. 2015). Moreover, it has been argued that the use of the dock, particularly a secure glass dock, contributes to a defendant’s ‘captive state’ (Carlen, 1976: 21) and prevents the individual from being able to adequately hear proceedings or to be able to properly communicate with their advocate (Carlen, 1976; Mulcahy, 2011; Mulcahy, 2013).

Nevertheless, defendants are regarded by some as being the bearers of enhanced ‘rights’ within the criminal justice system in comparison to complainants and prosecution witnesses (cf. Doak, 2008). For example, defendants are afforded access to legal representation and their right to ‘effective participation’ is formally recognised under the European Convention on Human Rights and the case law that supports it (Jacobson with Talbot, 2009; Owusu-Bempah, 2018). However, both of these issues have been subject to debate within the academic community.
Owusu-Bempah (2018) recently argued that the parameters of ‘effective participation’ for defendants are ‘uncertain’. In seeking to address this uncertainty, she drew upon on the relevant case law, in order to assert that effective participation for defendants requires:

‘A right to a “broad understanding” of the proceedings and a comprehension of the “general thrust” of what is said in court ... It also includes some specific requirements, such as: an understanding of the significance of any penalty which may be imposed; an ability to understand what is said by prosecution witnesses; and an ability to instruct one’s lawyers.’

Furthermore, the role of legal representation and the extent to which it can enhance or stymie a defendant’s participation within the court process has been subject to scrutiny. An absence of legal representation, it is argued, contributes towards a defendant’s ‘dummy player’ role in criminal proceedings (Carlen, 1976: 69; Baldwin and McConville, 1977; McBarnet, 1981). The implications arising from a lack of legal representation has returned to prominence in recent years as a result of legal aid reforms (Ministry of Justice, 2013b). Research by Gibbs (2016) found that unrepresented defendants had a limited understanding of rules of evidence and struggled to conduct cross-examination. However, legal representation is not necessarily perceived to enhance the role of defendants in criminal proceedings. Baldwin and McConville (1977), for example, found that defendants often struggled to make their views effectively heard via their legal representative and could

---

26 This is in contrast to the civil arena, in which Adler (2008) found that the representation ‘premium’, that is, the instances in which the applicant or appellant received a better outcome because they were represented, accounted for only 5 per cent of cases under study.
feel under pressure from their advocate to enter a guilty plea (see also, McConville, Hodgson, Bridges and Pavlovic, 1994).

Some of these arguments are set in discussions about whether or not to place more emphasis on the participation of the individual defendant or the participation of the defence as a party (Duff et al. 2007; Owusu-Bempah, 2018) and are connected to broader debates about the extent to which individual defendants should in fact participate in the court process. For example, Duff et al. (2007) argued that trials should be ‘participatory’ in nature and thus advocated a ‘communicative’ role for defendants in criminal proceedings. However, Owusu-Bempah (2017: 2) asserted that ‘it is wrong for defendants to actively participate in proceedings against themselves’. This is because ‘obligating’ defendants to participate in proceedings circumvents the normative function of the criminal justice process, which is to call the State to account for its allegation against the defendant. The overriding consensus, nevertheless, appears to be in favour of ensuring that a defendant’s participation in proceedings takes place on a voluntary rather than an obligatory basis (Duff et al. 2007; Owusu-Bempah, 2017).27

Finally, recent debate has focused upon the quality of provision available to defendants; particularly those who are regarded as vulnerable.28 The Criminal Practice Direction 2015 outlines a number of provisions available for defendants including: the removal of wigs and gowns by legal professionals; the use of clear and understandable language; allowing for regular breaks in proceedings; and allowing defendants to be seated with a supporter and in

---

27 This is not to be confused with a defendant’s presence in proceedings, either in the form of physical presence in the courtroom or remotely via video-link, which in the vast majority of instances is obligatory.

28 See, for example, Cooper and Norton’s (2017) edited collection on vulnerability in the criminal justice system.
a position that facilitates communication with their legal representative. In addition to this, vulnerable defendants are entitled to apply to give evidence via live-link under the Youth Justice and Criminal Evidence Act 1999. However, there has been critical commentary surrounding the limited availability of provision for vulnerable defendants in practice. Fairclough (2017) found the provision for vulnerable defendants to give evidence via live-link is seldom used; meanwhile, Hoyano and Rafferty (2017) provided a detailed critique of a recent amendment to the Criminal Practice Direction (2016) which states the use of intermediaries for defendants with communication difficulties should only be used on ‘rare’ occasions. Particular attention has been drawn to the perceived lack of parity in provision for vulnerable defendants in comparison to vulnerable prosecution witnesses with regard to special provisions (Hoyano and Rafferty, 2017; Fairclough, 2018; Fairclough and Jones, 2018).

Common themes in existing research with court users
The discussion in the pages above suggests that there are a number of commonalities in the roles occupied by complainants, prosecution witnesses and defendants within criminal proceedings. This includes those about the extent to which court users can, should and do participate in the court process. This is perhaps best encapsulated in persistent findings that court users, be it complainants, witnesses or defendants, experience significant degrees of marginalisation or powerlessness within the court process. Existing studies have often used the ‘court as theatre’ analogy to describe the ‘them and us’ roles occupied by court users and legal professionals in the court process (Jacobson et al. 2015). In such discussions it has been argued that courtroom professionals – namely the judiciary and advocates – take on ‘starring roles’ in proceedings while witnesses take on ‘walk-on’ (Jacobson et al. 2015: 92) or
‘bit player’ (Shapland and Hall, 2010: 163) parts and defendants assume the position of ‘ever-present-extra’ (Jacobson et al. 2015: 83). In a similar vein, court users have been described as the ‘outsiders’ of the court process, in comparison to legal professionals, court staff and judges who occupy ‘insider’ status (Rock, 1993).

The apparent marginalisation of court users in proceedings provides a strong rationale for a study generating understanding on the extent to which the courts are perceived as legitimate. This is because it enables perceptions of legitimacy to be examined among those who arguably have most at stake yet least power in the process (Benesh and Howell, 2001). The extent to which both types of criminal court – Crown and magistrates’ court alike – are perceived as legitimate among court users has scarcely been a feature of existing research; with the magistrates’ courts being particularly under-researched. Neither has existing research included an explicit, or empirical, focus upon court users’ levels of engagement in the court process or their levels of understanding and perceptions of lay adjudication. These are gaps which this study sought to fill.

Moreover, this research is arguably of value at a time in which the very nature of a court user’s role within the process is arguably at a point of transition. The various special provisions afforded to court users, which have a bearing upon how court users engage in proceedings, have been discussed above. In addition to this, are a number of policy developments – many of which are set in the context of fiscal austerity – which suggest that an examination of the ways in which court users engage in proceedings is timely from a policy perspective. These include widespread court closures (Ministry of Justice 2016b; 2018a); technological reforms that are likely to impact upon the extent to which court users
are required to be physically present during proceedings (Ministry of Justice, 2018a); changes to legal aid provision (see Ministry of Justice, 2013b); and efforts to achieve ‘swift and sure’ justice by reducing delay and ensuring that cases are handled in an efficient manner (Ministry of Justice, 2012; Leveson, 2015).

2.2.2 Lay adjudicators: juries and magistrates

Moving on from a discussion of court users, this section focuses upon the roles of lay adjudicators in criminal proceedings. This includes a consideration of the origins of lay adjudication, the specific roles of juries and magistrates and empirical research carried out on the subject of lay adjudication. Moreover, due to the specific aim of examining how the lay adjudicatory role is perceived by court users, substantial attention is devoted to the literature which has sought to evaluate the roles of lay adjudicators in criminal proceedings. This discussion sets the premise for examining court users’ levels of understanding and perceptions of lay adjudication and highlights the sizable gap in knowledge surrounding the perceived legitimacy of lay adjudicators among court users.

*Origins of lay adjudication*

Generally speaking, there are three types of adjudicatory approach in criminal justice systems across the world: professional (involving judges), lay (involving members of the public) and hybrid (involving judges and members of the public) (Doran and Glen, 2000). The criminal justice system of England and Wales is unusual because it relies heavily on lay adjudication in the administration of justice (Morgan and Russell, 2000; Lloyd-Bostock and Thomas, 2000; Darbyshire, 2014; Ward, 2017). Within this jurisdiction lay adjudication takes
the form of lay magistrates in the magistrates’ courts and juries in the Crown Court. Other jurisdictions involve lay adjudicators in a variety of ways. For example, other common law jurisdictions, such as the United States, rely heavily on the use of juries in trials (Ma, 1998; Morgan and Russell, 2000). On the other hand, civil jurisdictions, including European countries such as Germany, France and Sweden involve lay adjudicator’s – or ‘lay assessors’ – sitting with professional judges to make decisions upon the outcome of cases (Ma, 1998; Morgan and Russell, 2000; Voight, 2009).

The use of lay adjudicators in the administration of justice in England and Wales has a long history. The signing of the Magna Carta in 1215 provided the formal basis for a trial by jury (Blake, 1988; Lloyd-Bostock and Thomas, 2000). There is some ambiguity with regard to the origins of the magistracy; however scholars such as Milton (1967) and Darbyshire (2014) agree that though the appointment of ‘keepers of the peace’ originated in the late twelfth century, magistrates (formerly Justices of the Peace) first became formally recognised in the Justice of the Peace Act of 1361.

There are two levels of criminal court in England and Wales; the Crown Court and the magistrates’ court. The large majority (more than 90 per cent) of cases begin and end in the magistrates’ court (Ministry of Justice, 2016a). Within the magistrates’ court cases are decided upon either by magistrates sitting in panels of two to three or a district judge (formerly known as a stipendiary magistrate) sitting alone. Over ninety per cent of magistrates’ court cases are heard by magistrates (Morgan and Russell, 2000). At present there are approximately 15,003 magistrates in England and Wales, 140 District Judges and

29 It should be noted that some scholars have questioned the assertion that the Magna Carta specifically stipulated that jury trials are a necessary feature of the trial process (see Darbyshire, 1991).
30 Unfortunately, more recent figures are not available.
Deputy District Judges (Judicial Office, 2018). Magistrates are unpaid members of the public who receive training to sit in court; they carry out the role on a voluntary basis and undertake regular training to sit in court. In contested cases that fall within their jurisdiction, magistrates are required to make decisions upon ‘the facts’ of the case; that is, it is their duty to make a decision about the guilt or innocence of the defendant. If a defendant pleads, or is found, guilty, magistrates are required to make decisions about what sentence should be imposed if the case falls within their jurisdiction. Magistrates are required to carry out 26 half-day sittings per year and are assisted by a legal adviser.31

In Crown Court trials 12 jurors are selected to hear the case. In contrast to magistrates, jurors are required to be ‘triers of fact’ only; they make decisions as to the guilt or innocence of the defendant but have no input to sentencing decisions. Jurors are members of the public who have been selected at random from the electoral register. Anyone on the electoral register who is between 18 and 75 is liable for jury service,32 however, some people are disqualified from serving on a jury, including those who have recently been to prison or served a community sentence.33 In 2017, 179, 600 people ‘were supplied to the court’ for jury service. Unfortunately, data is not available as to the total number of jurors who went on to serve on a case; however the juror utilisation rate for 2017 was 69 per cent (Ministry of Justice, 2018b).34

---

33 For more detail, see HMCTS (2017).
34 The juror utilisation rate is the number of sitting days divided by the sum of sitting, non-sitting and non-attendance days.
Theoretical justifications for, and associated criticism of, lay decision-making

Moving on from the origins of lay adjudication, a review of the literature surrounding the proposed benefits to, and associated criticism of, the role provides a basis for examining perceptions of lay adjudication among court users. There are a number of justifications for the use of juries and magistrates within the criminal justice system. The main rationale is the democratic function of lay adjudication. Lay adjudication can be regarded as a form of ‘participatory democracy’, which means that active engagement of citizens is required in order for a jurisdiction to be regarded as fully democratic (Pateman, 1970; Morgan and Russell 2000). Lay adjudication allows members of the public to participate in the governance of society (Mazzone, 2006) and to influence the way in which they are governed (Redmayne, 2006). The jury system has been regarded as ‘the most powerful means of ensuring that the people rules’ [sic] (Tocqueville, 1895: 127). Moreover, it is asserted that allowing members of the community to have an adjudicatory role in the criminal process confers normative legitimacy onto the criminal justice system (Diamond, 1990; Morgan and Russell, 2000; Crawford, 2004; Mazzone, 2006). This is because lay people can be regarded to be more responsive to ‘community norms’ than the government or members of the professional judiciary (Diamond, 1990; see also MacCoun and Tyler, 1988). However, little has, as yet, been done to examine the empirical legitimacy of lay adjudication; that is, the extent to which lay adjudicators are perceived to occupy a legitimate authority among the audiences that they serve. This is something which this research aimed to address.

A further stated benefit of the participatory democracy element of lay adjudication is that it offers a means by which defendants can receive ‘judgement by peers’ (Morgan and Russell, 2000; Crawford and Newburn, 2002; Crawford, 2004; Mazzone, 2006). Lay adjudication –
particularly in the form of juries – allows defendants to be tried by a cross-section of society (Sanders, 2002; Redmayne, 2006). Meanwhile, the magistracy, though less socially representative than juries, can act as a ‘democratic bridge’ between the community and the courts (Sanders, 2002: 326-327). In addition, magistrates and juries are likely to be less jaded or ‘case-hardened’ than professional judges (Morgan and Russell, 2000; Sanders, 2002; Ipsos MORI, 2011). Instead, lay adjudicators offer a community perspective on justice and are likely to provide local justice, borne out of an understanding of concerns impacting upon the local areas in which they serve (Morgan and Russell, 2000; Vidmar, 2000).

The panel element of lay adjudication is regarded as beneficial due to the perception that ‘fact-finding’ is enhanced by the use of a panel of adjudicators deliberating together, rather than an individual sitting alone (Sanders, 2002; Mazzone, 2006; Redmayne, 2006). Several commentators noted the value that lay adjudication can bring to promoting a sense of citizenship among members of the public who act as jurors or magistrates (Redmayne, 2006; Gastil, Deess, Weiser et al. 2008). The educative role of sitting on a jury or a magistrates’ bench is also regarded as a benefit of lay adjudication (Tocqueville, 1895; Blake, 1988; Diamond, 1990; Redmayne, 2006; Gastil et al. 2008).

At a broader level, the use of lay adjudicators is thought to serve as a ‘check’ on government which may help to guard against oppressive policies and practices (Blake, 1988; Diamond, 1990; Lloyd-Bostock and Thomas, 2000; Vidmar, 2000; Crawford, 2004; Mazzone, 2006; Redmayne, 2006). This is connected to the argument that lay adjudicators provide a means by which community standards can be brought into the decision-making process (Morgan and Russell, 2000; Sanders, 2002; Vidmar, 2000; Redmayne, 2006). For example, ‘jury
nullification’ – whereby jurors choose not to apply the law in cases where it is perceived that a defendant’s interests are not being protected by the State – has been suggested as a way in which lay adjudicators express disquiet about certain laws (Redmayne, 2006). For Llyod-Bostock and Thomas (2000: 88), jury nullification is a vital aspect of the democratic function of the jury because it gives juries the right to act ‘according to conscience’.

Nevertheless, despite the various benefits of lay adjudication in the administration of justice, the use of juries and magistrates has attracted criticism on a number of grounds. Some commentators have questioned the extent to which many of the perceived benefits of lay adjudication are visible in practice (Diamond, 1990; Hörnle, 2006). The fact-finding ability of lay participants has been subject to intense scrutiny. Jurors’ capacity to understand the law in complex cases has been questioned (Ma, 1998; Auld, 2001; Findlay, 2001; Lloyd-Bostock and Thomas, 2000; Redmayne, 2006), as has the ability of magistrates to interpret and apply the law (Morgan and Russell, 2000). Furthermore, it has been argued that magistrates may defer to ‘court and judicial cultures’ (Morgan and Russell, 2000: 7); in particular, it has been suggested that they may be more willing than jurors to accept prosecution or police accounts (Vennard, 1981; Darbyshire, 1997; Morgan and Russell, 2000; Sanders, 2002).

The argument that lay adjudication contributes to the maintenance of a democratic state has also been challenged (Sanders, 2002; Hörnle, 2006; Redmayne, 2006; Gibbs, 2014a). This is associated with a recurrent critique that lay adjudicators are not, in composition, representative of the general population. Lay magistrates are unrepresentative of the general population in terms of age, ethnicity and socio-economic status (Darbyshire, 1997;
Dignan and Wynne, 1997; Morgan and Russell, 2000; Sanders, 2002; Gibbs 2014a). Judicial Office (2018) statistics show that magistrates are fairly evenly balanced in terms of gender (55 per cent are female); however, comparing judicial diversity statistics with data from the 2011 census (Office for National Statistics, 2012) shows that magistrates are more likely than the general population to come from white ethnic backgrounds and are also more likely to be older than the general population (Judicial Office, 2018). Moreover, existing research suggests that magistrates are more likely than the general population to come from middle class backgrounds (Dignan and Wynne, 1997; Darbyshire, 1997; Morgan and Russell, 2000; Gibbs, 2014a).

The representativeness of juries has been subject to fierce debate (see Darbyshire and Thomas, 2008). Darbyshire (2001) argued that juries are insufficiently representative of women, ethnic minorities and some occupational groups; whereas Thomas with Balmer (2007) found that women were adequately represented among serving jurors and that in most courts there was no significant difference between the proportion of serving jurors from ethnic minority backgrounds and the proportion of members of the local population from ethnic minority backgrounds. However, the highest rates of jury service were among those from middle to high-incomes (Thomas with Balmer, 2007). Meanwhile, the ‘random’ nature of jury selection has been questioned. In the United States, debates about this have tended to centre on the impact that the use of the ‘preemptory challenge’ – whereby advocates from the prosecution or defence can challenge the selection of individual jurors without having to provide a reason – can have on the composition of the jury bench (Sommers and Norton, 2008; Flanagan, 2015). This is less of a concern in England and Wales because the defence right to challenge jurors ‘without cause’ was abolished under section...
118 of the Criminal Justice Act 1988 and the prosecution are instructed to exercise this right ‘sparingly and in exceptional circumstances’ (Attorney General’s Office, 2012).

These debates are set in the context of reports of an overall decline in use of both juries and magistrates (Ma, 1998; Vidmar, 2000; Crawford, 2004; Mazzone, 2006). There are a number of ways in which restrictions have been imposed on the use of juries in England and Wales, including widening the remit of cases dealt with by the magistrates’ courts (Blake, 1988; Lloyd-Bostock and Thomas, 2000) and extending the remit of instances in which jurors may be disqualified from service (Blake, 1988). Ma (1998: 91) pointed to the use of hybrid panels in European countries and jury reforms in England and Wales in her assertion that

‘The twentieth century has marked a general decline of the impact of lay participation on the world scene. There seems to be a shared scepticism about the significance and the effectiveness of lay participation in criminal matters. The all-lay jury, with the exception of a few countries, has all but disappeared outside the common law world.’

From a policy perspective, the onset of the twenty-first century saw Lord Justice Auld recommend that defendants be given the choice to opt for a trial by a judge sitting alone in indictable cases and, due to concerns about juror levels of understanding such as those outlined above, proposed various limits to jury trials in serious and complex fraud cases (Auld, 2001). More recently, the Leveson Review (2015: 87) included an out of scope

---

35 However, this does not perhaps present the full picture. Lloyd-Bostock and Thomas (2000: 54 & 91) argued that while the use of juries in England and Wales is ‘shrinking’, this is not the case in some other jurisdictions such as Russia, where the jury system has recently been implemented or Spain where the use of juries has been ‘revived’.
observation to remove the right of a defendant to elect a jury trial on the basis that, ‘a court not a defendant ... should decide how he is tried’.

Empirical indicators of reduced democratic participation are evident in the declining number of lay magistrates. The number of serving magistrates was relatively stable in the twenty-year period from 1990 to 2010 when the total stood at around 30,000 (Ministry of Justice, 2008; Judicial Office 2011). However, since the turn of the decade the number of serving magistrates has fallen sharply by just under fifty per cent, from 29,270 in April 2010 to 15,003 in April 2018 (Judicial Office, 2011; Judicial Office, 2018). The fall in the number of serving magistrates coincides with government calls to relieve the magistracy of ‘high-volume, low-level “regulatory” cases’ (Ministry of Justice, 2013c: 38) and the aforementioned court closures (Ministry of Justice, 2016b, 2018a). The Judicial Office (2018:13) cited the reason for the fall in the number of magistrates as ‘a consequence of falling workload in the magistrates’ courts due to increased use of out of court disposals and downturn in recruitment, combined with relatively consistent annual levels of resignations and retirements’. The substantial reduction of the number of serving magistrates, in a period of less than a decade, points to the value of conducting interviews with lay magistrates in order to generate understanding about how they perceive and make sense of their role within the justice system.

Overall, this brief summary of the theoretical debates surrounding the use of lay adjudicators has highlighted the perceived benefits that lay adjudicators bring to achieving participatory democracy. This is particularly in relation to the educative value of serving as a lay adjudicator, the potential for lay adjudication to provide a form of ‘judgement by peers’
and the way in which lay adjudication can bring community norms into decision-making and act as a ‘check’ on government. However, much of the criticism surrounding the use of lay adjudicators reflects the perceived limits to the theoretical benefits of lay adjudication being visible in practice. Specific concern has been drawn to the extent to which lay adjudicators are representative of the populations they serve and the degree to which lay decision-makers are adequately able to carry out the fact-finding nature of their role. In view of this, the current research explored the extent to which some of these theoretical benefits, and associated criticisms, were visible in the responses of court users and, importantly, the impact of this on the degree to which lay adjudicators were perceived to confer legitimacy on the criminal courts.

*Lay adjudication: empirical research*

The above section presented the various *theoretical* debates surrounding the use of lay adjudicators in the criminal courts; however, it is also necessary to explore existing *empirical* research into lay adjudication. A review of the literature indicates the limited volume of research conducted on the topic of lay adjudication and provides further impetus for conducting this piece of research. Empirical research into the role of juries in this country is heavily circumscribed due to restrictions under Section 8 of the Contempt of Court Act 1981.36 Despite these restrictions, conducting research with juries is not impossible (Darbyshire, 2001; Thomas, 2008) and a small amount of research has been conducted with serving jurors. These include Warner and Davis’ (2012) study of juror attitudes to sentencing, Matthews, Hancock and Briggs’ (2004) study of jurors’ levels of confidence and

---

36 This has led to the development of a substantial body of empirical work, both in this and other common law jurisdictions, conducted using mock juries (Ellison and Munro, 2009; Tait, 2011).
satisfaction in the jury system and Thomas’ (2010) research into the extent to which outcomes in jury decision-making are fairly distributed across different ethnic groups (see also, Thomas, 2017a).

Empirical research into the role of magistrates is relatively sparse. Darbyshire (1997) vehemently argued that lay magistrates have been ‘neglected’ by many; including successive governments, academia and the media. This anomaly is interesting because, as highlighted above, over ninety percent of criminal cases are completed in the magistrates’ court (Ministry of Justice, 2016a). Existing in-depth studies into the magistracy include Carlen’s (1976) study of social control in the magistrates’ courts, Darbyshire’s (1984) study of the magistrates’ clerk (a role now occupied by legal advisers) and Morgan and Russell’s (2000) study of the judiciary in the magistrates’ court. Studies involving the magistracy have tended to focus on local court cultures or upon the use of specific types of penalty (Rumgay, 1995; Hucklesby, 1997; Duff and Leverick, 2002; Birkett, 2016). Perhaps the most significant piece of recent research into the magistracy is Ward’s (2017) ethnography of the nature of summary justice in the magistrates’ court in which she argued that magistrates occupy an increasingly ‘professionalised’ role within the lower courts. Existing empirical studies have not examined the lay roles of juries and magistrates in tandem, nor have they looked at the use of juries and magistrates from the perspective of court users.

Within this discussion, it is necessary to consider existing empirical research on the broader topic of public attitudes to lay adjudication. Public support for lay adjudication is underpinned by the ‘symbolic’ value of the jury (Darbyshire, 1997; Lloyd-Bostock and Thomas, 2000; Roberts and Hough, 2011); however, there has been a lack of academic
research into public knowledge of and attitudes towards the jury (Roberts and Hough, 2011). The limited existing research suggests that the use of juries to ascertain guilt in criminal trials is very widely supported by the general public (MacCoun and Tyler, 1988; Auld, 2001; Bar Council, 2002; ICM, 2010; Roberts and Hough, 2011); however, the reasons for this support are unclear (Roberts and Hough, 2011). The present study provides an opportunity to shed light upon the factors that underlie, or conversely inhibit, public support for the jury.

In contrast to the symbolic value that is often afforded to the jury – ‘the lamp that shows that freedom lives’ (Devlin, 1956) – it has been argued that the role of the magistracy is ‘not visible to the public’ (Sanders, 2001: 2). Roberts et al. (2012) specifically noted the absence of research into public attitudes towards the magistracy. In recent years some research into public knowledge and attitudes towards the lay magistracy has emerged, however such studies have found members of the public to be ill-informed about the nature of the role of lay magistrates (Morgan and Russell, 2000; Sanders, 2001; Roberts et al. 2012). Despite this, studies have shown that when provided with information about the nature of the role, members of the public display a good level of support for the magistracy (Morgan and Russell, 2000; Roberts et al. 2012).

Overall, the limited amount of research on the topic of public understanding and perceptions of juries and magistrates suggests that the public hold generally positive views about both forms of lay adjudication. However, there is an absence of research that has looked at levels of understanding and perceptions of the two forms of lay adjudication together. Furthermore, there is scant research that addresses the understanding and
perceptions of those who come into direct contact with juries and lay magistrates: that is, court users. It is important to examine court users’ levels of understanding and perceptions of lay adjudication, specifically, because perceptions of legitimacy are likely to be influenced by direct experience and interaction. As Fagan (2008: 139) explained:

‘legitimacy for most people is the aggregation of their experiences, or the experiences of those around them, and the emotions they generate.’

This provides a strong basis for the study’s first aim of examining court users’ perceptions of legitimacy regarding the use of lay adjudicators and the second aim of examining the extent to which lay participants perceive the criminal courts as occupying legitimate authority, more broadly.

2.3 Concluding thoughts

This Chapter has situated the current study within the wider literature in order to highlight the value of conducting empirical research on the subject of lay participation in the criminal courts and forms the basis of the discussion taken forward in later Chapters. Positioning the research within the conceptual framework of legitimacy offers a strong rationale for this study. This is borne out of the argument that in order for institutions to hold valid power they need to be perceived as legitimate in the eyes of those they serve (see, for example, Beetham, 1991; Tyler, 2006; Bottoms and Tankebe, 2012). In particular, I have suggested

37 Notwithstanding Sanders’ (2001) research within which 6-8 serving prisoners participated in focus groups about their perceptions of the magistracy, Sanders found that offenders can perceive magistrates to be inconsistent in decision-making and lack representativeness in comparison to the wider community.
that examining the ways in which lay participants engage in criminal proceedings provides a means by which the concept of dialogic legitimacy (Bottoms and Tankebe, 2012) can be expanded upon within the under-researched environment of the criminal courts.

Existing research which has highlighted the marginalised status of court users – complainants, prosecution witnesses and defendants alike – provides a further basis for this research. It is, arguably, essential to examine perceptions of legitimacy among those who have most at stake yet least power in the process (Benesh and Howell, 2001) and is something which existing research with court users has largely failed to address. With regard to the specific aspect of the study that sought to examine court users’ levels of understanding and perceptions of lay adjudicators, a review of the literature suggests that despite the heavy reliance on juries and magistrates in the administration of justice, little is known about the public’s understanding and perceptions of juries and magistrates and even less is known about this from the point of view of court users. This means that the study provides an opportunity to generate knowledge both in relation to perceptions of the use of lay adjudication in the administration of justice and court users’ perceptions of legitimacy of the overall court process. Moreover, an examination of how lay magistrates perceive and make sense of their role provides a unique opportunity to examine perceptions of legitimacy among those who occupy power-holder roles on a voluntary basis.

Finally, this Chapter has highlighted that much of the existing research on the study of legitimacy has come in the forms of large-scale quantitative studies. These have been

---

38 An exception to this is Jacobson et al. (2015) who examined court users’ perceptions of legitimacy in the setting of the Crown Court, only.
criticised for giving insufficient attention to the impact of context and circumstance upon perceptions of legitimacy (Bottoms and Tankebe, 2012; Harkin, 2015; Skinns et al. 2015). Specific attention was drawn to the fact that such studies have also tended to focus upon predictive perceptions of legitimacy among members of the general population who may have come into little or no direct contact with authorities. Conducting an ethnographic study of legitimacy within the under-researched terrain of the criminal courts provides scope for generating a ‘thick’ (Harkin, 2015) account of the extent to which lay participants regard the criminal courts as occupying a legitimate source of authority. A full account of the methodological approach adopted by this study is provided in the Chapter that follows.
Chapter 3: Methodology

This Chapter provides a discussion of the methodological approach to this study of lay participation in the criminal courts. An ethnographic approach involving in-depth interviews with lay participants and observations of court proceedings was selected as the most suitable means of addressing both the broad aim of examining lay participation in the criminal courts and the specific research questions relating to court users’ levels of understanding and perceptions of lay adjudication. The study was based at four courts in England and involved interviews with 43 lay participants (including court users, magistrates and Witness Service volunteers) and observations of 126 court hearings. In addition to providing a detailed description and evaluation of the methods used, this Chapter also describes the process for obtaining access to the research sites, explores the various overarching and situated ethical considerations relevant to the study and outlines the study’s approach to data analysis. In line with the qualitative tradition within which this study is grounded, and to enhance the reflexivity of the study findings, my own position within the research is considered.

3.1 Methodological approach

The overall methodological approach adopted by the study is a multi-sited ethnography (cf. Marcus, 1995). This primarily involved carrying out in-depth interviews with 43 lay participants and observations of 126 court hearings at four courts in one geographic region of England.
3.1.1 Multi-sited ethnography

An ethnographic approach, set in the qualitative tradition, was selected as the most suitable means for studying lay participation in the criminal courts. There are several reasons for this. Firstly, as highlighted in the previous Chapter, there is an absence of existing research which focuses on either the specific aim of examining court users’ levels of understanding and perceptions of lay adjudication or the broader aim of exploring lay participants’ perceptions of legitimacy of the overall court process. The use of an ethnographic approach, which involves a degree of immersion in the social setting under study (Hammersley and Atkinson, 1995; Jirón, 2011), provides a means by which an in-depth understanding of lay participation in the criminal courts can be elicited. Moreover, the use of an ethnographic approach acts as a valuable ‘method of discovery’ (Fielding, 2015: 321) for under-researched terrains such as this and befits the interpretivist epistemology within which the study is grounded (Bulmer, 1984; Matthews and Ross, 2010). The ethnographic method is particularly well suited to court-based research, as evidenced by the fact that the vast majority of in-depth accounts of the court setting have adopted this kind of approach (see Bottoms and McLean, 1976; Carlen, 1976; Rock, 1993; Fielding, 2006; Jacobson et al. 2015; Ward, 2017). However, it should be stressed that because court-based ethnographies, including this one, are based around formal court processes and usually involve researchers acting as ‘peripheral members’ (Adler and Adler, 1987) of the setting, they tend to be less immersive than traditional sociological and anthropological ethnographies that involve extended periods of participant-observation (such as Foster, 1995; Hodkinson, 2002).
This study adopted a multi-sited ethnographic approach, which involves examining ‘associations and connections’ across research sites (Marcus, 1995: 96). Specifically, this involved conducting interviews and carrying out observations across four courts in one region of England. As lay participation spans both the Crown Court and the magistrates’ court jurisdiction, it was deemed necessary to conduct the research in at least two sites in order to cover both levels of criminal court. It also seemed pertinent to conduct the research in more than one geographic area within the region in order to allow for comparisons both between type of court and between areas. The use of a multi-sited ethnography was thought to be of particular value because it allows connections and associations to be made both within and between the types of lay participation and types of court under study. There is some disagreement among methodologists as to whether multi-sited ethnography offers a new approach to ethnography, or whether it is simply a ‘buzzword’ that has been applied to the existing study of ethnography (Falzon, 2009: 2). For example, the majority of the aforementioned court-based ethnographies involved research at multiple court sites. However all of these studies, with the exception of Bottoms and McClean (1976), focused on only one type of criminal court, usually the Crown Court. The term multi-sited ethnography was therefore adopted for this study because it aptly conveys both the immersive nature of the research and its focus on the multiple types of lay participant and multiple types of criminal court.

An enduring criticism levelled at multi-sited ethnographies is that they offer ‘diluted’ or ‘shallow’ forms of traditional bounded ethnographies (Falzon, 2009; Candea, 2009; Coleman and Hellermann, 2012; Marcus, 2012). However, the relatively small number of sites under study in this research, combined with the amount of time spent in the field, meant that the
scope for achieving depth was substantial. This is particularly because conducting research across four sites within two geographic locations enriches the analytic potential of the data; as does the adoption of a reflexive approach to the collection and analysis of data (cf. Marcus, 1995).

This study, like others which are qualitative in nature, is limited because its findings are not generalisable to the wider population. However, due to its inductive and exploratory nature, the study did not seek to offer a representative account of lay participation in the criminal courts; nor do the findings seek to be statistically generalisable to courts or lay participants across England and Wales. Nevertheless, the study generated rich qualitative data that permitted a deeper understanding of court users’ experiences and perceptions of lay participation in the criminal courts (cf. Fielding, 2015) and offers an analytically ‘thick’ alternative to the large number of existing studies which have examined the study of legitimacy using quantitative methods (Harkin, 2015: 604).

The interpretivist nature of study entails a reliance on the ‘subjective’ views and interpretations of a single doctoral ethnographer (cf. Hammersley and Atkinson, 1995; Fielding, 2015). The development of ‘thick description’ (Geertz, 1973) through the production of ‘comprehensive’ fieldnotes (Wolfinger, 2002) and verbatim interview transcripts is one way in which such concerns, and those relating to the perceived ‘shallow’ nature of multi-sited ethnography (cf. Falzon, 2009: 9), were addressed. Another crucial method of enhancing the validity of the study findings was through adopting a reflexive approach to the design, collection, analysis and presentation of data. Hammersley and Atkinson (1995) asserted that it is ‘futile’ to seek to remove the effects of the researcher
from a study of this nature; instead the impact of the researcher needs to be identified and understood in a reflexive manner. Therefore, in addition to the production of ‘comprehensive note[s]’ (Woolfinger, 2002) of each day spent in the field and producing verbatim transcripts of each interview, I also kept a Research Diary which provided an immediate account of emerging thoughts, feelings and analytic observations. This was referred back to at various points during the analysis and write-up phases of the study.

As part of this reflexive approach, it is important to acknowledge that this study is situated within a social science framework rather than a legal one. This means that the study is arguably limited due to my lack of legal expertise (both in terms of theory and practice). However, this meant that I was able to occupy the position of ‘outsider’ (cf. Becker, 1963) within the social world under study; this is something which is often regarded as valuable in this type of research. This is notwithstanding my previous experience, from 2011 onwards, of conducting empirical research in the criminal courts in the course of my role as Research Fellow at the Institute for Criminal Policy Research (ICPR), which is based at Birkbeck, University of London. Nevertheless, prior to carrying out the present study, my experience of carrying out ethnographic research had largely been confined to the Crown Court.

3.1.2 Selection of research sites and overarching access negotiations

It was decided at the outset that two contrasting areas (hereafter known as Amber City and Indigo Town) within a single region of England would be selected for study. Within each

39 See, for example, Jacobson et al. (2015); Wigzell, Kirby and Jacobson (2015); Kirby (2017a).
40 The geographic locations under study, along with the research participants, have been given pseudonyms in order to help protect the anonymity of interviewees.
area a Crown Court and a magistrates’ court was selected, thus providing a total of four research sites. This number of research sites was deemed appropriate because it was practically feasible and allowed for comparisons to be drawn between court type and area.

Amber City is a densely populated inner-city urban conurbation. A comparatively high proportion of residents in Amber City – above the national average for England and Wales – are from Black, Asian and Minority Ethnic (BAME) backgrounds or White Other backgrounds. The mean age of residents in Amber City is lower than that of the national mean age, which is 39 years. The unemployment rate is higher than the national average. Indigo Town, on the other hand, is a provincial town with a population density that is slightly higher than the national average. The percentage of residents from BAME backgrounds in Indigo Town is lower than the national average; though the proportion of residents from White Other backgrounds above the national average. The mean age of residents in Indigo Town is similar to national mean age of residents in England and Wales. The unemployment rate for Indigo Town is lower than the national average. With respect to police recorded crime rates, Amber City has a higher than average crime rate; while Indigo Town has a lower than average crime rate (ONS, 2017b).

As the below account illustrates, the approach to access to the four court sites was a layered one. At the overarching level, approval was required from Her Majesty’s Courts and Tribunals Service (HMCTS) – which is an executive branch of government sponsored by the

---

41 This section has been compiled using data from the 2011 Census, which is published by the Office for National Statistics (ONS). See: http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-286262 [accessed 22.07.16].
Ministry of Justice\textsuperscript{42} – in order to carry out research in each court. This process involves the submission of a Data Access Panel (DAP) application and accompanying proposal for the methodological approach.\textsuperscript{43} HMCTS also requests that potential courts be selected prior to the submission of an application.

I therefore began the approach to access negotiation by seeking informal permission from the Resident Judge at the Crown Court in each of the selected areas in the view that the DAP application would be stronger with the support of members of the judiciary in the proposed courts. The resident judges of Amber City and Indigo Town both provided ‘in principle’ support for the research on the basis that a successful access application was submitted to HMCTS. With regard to the selection of magistrates’ courts, in any given area criminal cases that are not resolved within the magistrates’ court jurisdiction are sent or committed (depending upon the nature of the case) to the Crown Court from one of the magistrates’ courts in the local area (the number of magistrates’ courts in the area generally depends upon the size of the local area). The two magistrates’ courts under study were selected on the basis that they operated as one of the local courts which sent or committed cases to the Crown Court under study. The selection of magistrates’ courts was also premised in part upon the fact that none of the courts were facing potential closure under the HMCTS court closure programme (Ministry of Justice, 2016b).

Once the potential research sites had been selected, and informal support had been sought, the DAP application was submitted to HMCTS. This involved the completion of an

\textsuperscript{42} See: \url{https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service} [accessed 18.07.16].

\textsuperscript{43} Previous experience of submitting research access applications to government bodies, including HMCTS and the Judicial Office, had been gained through my role at ICPR.
application form, and the submission of an outline of the proposed methodology, which
detailed the nature of the study and the intended approach. Access was granted, subject to
some small adjustments (see below for more detail) to the proposed methodological
approach, in November 2015. The main portion of fieldwork took place over a 14-month
period in 2016 and 2017. In addition to this further access requests were made to the
Judicial Office and Citizens Advice in late 2016 to request permission to interview
magistrates and Witness Service volunteers, respectively. Both requests were successful and
interviews were conducted with magistrates and Witness Service volunteers in 2017. In
addition to securing access from the aforementioned central sources, once the study was
under way regular communication was also required with a number of local gatekeepers at
the courts under study such as court staff, Witness Service staff and volunteers, and legal
professionals. The implications of this layered approach to access negotiation are
considered, where relevant, as the Chapter progresses.

3.1.3 Interviews with court users

In-depth semi-structured interviews were selected as one of the main methods for
collecting data on levels of understanding and perceptions of lay participation among court
users. The use of in-depth interviews is widely recognised as a flexible method for eliciting a
detailed and nuanced understanding of participants’ views (Arksey and Knight, 1999;
Bryman, 2012). In-depth interviewing is arguably a particularly valuable method for research
with court users, who can be regarded as marginalised. This is particularly in relation to their
ability to adequately express themselves within the court process. For example, existing
research has identified the constraints faced by victims and witnesses in being able to tell
their story or have a ‘voice’ during court proceedings (Shapland et al. 1985; Goodey 2005;
Fielding, 2006; Jacobson et al. 2015); while the passive – ‘ever-present extra’ or ‘seen but not heard’ – role of defendants at court has also been documented (Carlen, 1976; Jacobson et al. 2015). (Further detail of the semi-structured format of the interviews is provided on pages 70 and 71).

**Sampling and recruitment**

The difficulties inherent in recruiting court users for interview have been outlined in previous research (see McLeod, Philpin and Sweeting et al., 2010) and may help to explain recent commentary about the relative scarcity of academic research in England and Wales that involves court users (Shapland and Hall, 2010; Padfield, 2015). The approach adopted by this study represents a synthesis of two existing court ethnographies which successfully recruited court users for interview: Fielding (2006) and Jacobson et al. (2015).\(^4\)

Court user participants were recruited purposively (cf. Bryman, 2012) from the pool of court users attending each court during the timeframe in which the research was conducted. Interviews were conducted with adults (those aged 18 or older) only. Once HMCTS had granted permission for the research to proceed, access to prosecution witnesses was negotiated via the Witness Service at each of the selected courts. The Witness Service operates in all Crown and magistrates’ courts in England and Wales. At the time of writing, the organisation was run by Citizens Advice. It provides witnesses with a waiting area alongside information and support during their time at court.\(^5\) Each Witness Service is

\(^4\) Fielding (2006) recruited court users for interview from the pool of court users coming before the court in the period under study; Jacobson et al. (2015) recruited complainants and prosecution witnesses for interview via the assistance of the Witness Service.

\(^5\) See: [https://blogs.citizensadvice.org.uk/blog/ten-things-you-need-to-know-about-the-witness-service/] [accessed 21.07.16]
staffed with a single paid manager and a number of volunteers. Support from Citizens Advice was elicited at the outset of the study and they subsequently provided me with access to the Witness Service waiting area at each court in order to recruit witnesses for interview. Defendants were recruited in court waiting areas upon the completion of their hearing. The recruitment of defendants in this manner, unfortunately, restricted the recruitment of those on remand and those who received custodial sentences. In addition to interviews with court users, the study sought to interview a small number of individuals who had attended court to support a family member or friend who was appearing in court. The sampling and recruitment of ‘supporters’ was conducted alongside the recruitment of witnesses and defendants.

The recruitment process involved me approaching court users in their designated waiting area and providing potential participants with an information sheet (and accompanying consent form) which outlined the study and explained what participation involved; a verbal explanation was provided and any questions were answered.\(^46\) Potential interviewees were then asked to consider whether or not they would like to participate. Those who agreed to participate were asked to complete a reply slip which included their name and contact details so that I could contact them to arrange an interview for a later date.

It was originally conceived that the majority of interviews would be conducted on court premises after the completion of evidence (in the case of witnesses) or completion of the

\(^{46}\) See Appendices i and ii for copies of the information sheet and consent form provided to participants. Note, three separate versions of the information sheet were produced: one for witnesses, one for defendants and one for supporters. All of the information provided was the same other than the use of the word ‘witness’, ‘defendant’ or ‘supporter’ depending on the type of participant. Therefore only one version of the information sheet, the ‘witness’ version, has been provided in the Appendix.
hearing (in the case of defendants). This was based upon a similar approach being adopted in previous studies involving court users (see Fielding, 2006; Adler, 2008). However, when reviewing the DAP application HMCTS raised concerns about conducting interviews with court users on the day of their court appearance. The approach was thus altered to accommodate this with the caveat that the option for ‘same day’ interviewing be retained in the event that a court user expressly stated that they would prefer to participate in an interview straightaway. Ultimately, this only happened in one instance and, at the request of the participant (a defendant), the interview was carried out via telephone several hours after the hearing had ended. All other interviews were conducted at a later date convenient to the individual court user.

Aside from this, and in line with Baldwin’s (2008: 378) assertion that conducting court-based research is a ‘very tricky undertaking’, a number of difficulties were encountered when recruiting court users for interview. A main issue was that the pool of court users eligible for recruitment, particularly in the Crown Courts, was smaller than expected. With regard to the recruitment of witnesses, there were a small number of occasions on which no witnesses attended court on the allotted fieldwork day. Reasons for this included witnesses failing to attend court as requested or because trials were at a stage where witnesses were not yet, or no longer, required. Of the pool of witnesses who attended court, recruitment was constrained for a number of reasons. This included the defendant(s) in the case entering a late guilty plea on the day of trial – which meant that the witness was not required to give evidence – or, as is discussed in detail below, because the witness was regarded as too upset or distressed to be approached about the study. The number of
defendants eligible for recruitment in the Crown Court was extremely small.\textsuperscript{47} The main restrictions on eligibility for recruitment in relation to defendants was that a significant proportion of defendants were either on remand or sentenced to custody upon the completion of the hearing. The majority of defendants approached in the magistrates’ courts declined to participate in the study. A further constraint on the recruitment of both witnesses and defendants, particularly in Amber City, was that language barriers – evident in the court user’s receipt of an interpreter – prevented individuals from being invited to take part.\textsuperscript{48} Drop-out also occurred after the point of recruitment; approximately half of the witnesses and defendants recruited for interview did not respond to contact attempts post-recruitment. Table 3.1, below, provides a break-down of the number of court users who were approached, recruited and subsequently interviewed as part of the study.

Overall, 28 court users were interviewed; this includes interviews with 17 prosecution witnesses, seven defendants and four supporters.\textsuperscript{49} This number is lower than the number originally anticipated – particularly in relation to defendant interviews – however, overall the supervision team agreed that the number of interviews conducted provided a rich set of qualitative data that would significantly contribute to answering the research questions; particularly given the marginalised, or hard-to-reach, nature of the population under study (cf. Croall, 2017).

\textsuperscript{47} Ten days were spent on the recruitment of defendants in the Crown Courts and in total just 7 defendants were eligible for recruitment.

\textsuperscript{48} Provisions for interviews to be conducted with the aid of an interpreter, due to economic and logistical reasons, were not allocated to this study.

\textsuperscript{49} This total includes a pilot interview with a former defendant that was conducted when testing out the interview schedule (see below for more detail).
Table 3.1 Break-down of court user recruitment

<table>
<thead>
<tr>
<th></th>
<th>Prosecution witnesses (including complainants)</th>
<th>Defendants</th>
<th>Supporters</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. approached</td>
<td>52</td>
<td>32</td>
<td>5</td>
</tr>
<tr>
<td>No. recruited*</td>
<td>34</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>No. interviewed**</td>
<td>17</td>
<td>6**</td>
<td>4</td>
</tr>
</tbody>
</table>

*Recruitment’ was defined as instances in which prospective participants, after reading the information sheet, completed the reply slip and returned it to the researcher.
**Excludes additional pilot interview.

Interviewees were fairly split across the Crown Court and magistrates’ courts: 14 were recruited while attending the Crown Court and 13 were recruited while attending the magistrates’ court. Interviewees had attended court in relation to a range of offending and alleged offending. Roughly a quarter of interviewees had attended court regarding a violent offence, such as assault, ABH or GBH and just under one fifth had attended court in relation to an allegation of theft, including fraud and burglary. The remaining interviewees had attended court regarding cases including alleged: sexual offending, drug-related offending, driving offences and harassment. Just under one-fifth of interviewees had attended court in relation to cases involving alleged domestic abuse. However, although the sample included court users appearing before the courts in a range of cases, due to the aforementioned sampling constraints – such as not recruiting defendants in custody – it is likely to underrepresent those appearing before the courts in relation to the most serious of cases.

Six of the 17 prosecution witness interviewees were the complainant; the remaining 11 gave evidence in relation to cases in which they were either not the complainant or in which the

---

50 The former defendant who participated in the pilot interview had experience of attending both the Crown and magistrates’ court.
alleged offence did not involve an individual complainant, for example in some fraud or
drug-related cases. Among the prosecution witness sample, the defendant(s) who the
witness had given evidence against was found guilty of the main alleged offence in more
than three quarters of instances. Of the defendant sample, five of the defendants
interviewed appeared before the court for a trial; three were found guilty and two were
acquitted. The remaining two defendants appeared at court for sentencing hearings only. Of
the supporter sample, two attended court to support prosecution witnesses and two had
attended court to support defendants. The majority of court users interviewed (10
prosecution witnesses, 5 defendants and 3 supporters) had no previous experience of
attending court. Five prosecution witnesses had appeared as a prosecution witness on a
previous occasion, two defendants had appeared in court as a defendant on a previous
occasion and 3 court users (1 prosecution witness, 1 defendant and 1 supporter) had prior
experience of serving as a juror.

Demographic characteristics of sample
Although this study did not seek to obtain a representative sample, it is nevertheless
important to situate the forthcoming discussion of the study findings within the context of
the demographic profile of interviewees. Appendix xi provides an anonymised breakdown of
the main demographic characteristics of court user interviewees. In summary, the majority
of interviewees were women (17 women were interviewed in comparison to 11 men); this
means that women were over-represented in the sample in comparison to the national
population and local populations of Amber City and Indigo Town. Just over two thirds of the
sample (19 interviewees) were from White British backgrounds. The remaining interviewees
were fairly evenly split across BAME groups: three were from Black backgrounds, two were
from Asian backgrounds, two were of mixed ethnicity; the remaining two interviewees were from White Other backgrounds. This means that BAME and White Other groups are overrepresented in comparison to the national population but under-represented in terms of the local population of Amber City. English was not the first language of five of the 28 interviewees.\(^5\)

Court user interviewees were fairly evenly split across age groups; the age range was 18 to 70 and the mean age was just above the national average at 40 years. In terms of occupation, as illustrated in Appendix xi, interviewees were drawn from a wide range of occupational backgrounds including managerial and professional roles; skilled trade roles; clerical and administrative roles; and hospitality and caring roles. One interviewee was a student and three interviewees were retired. This means that the sample, generally speaking, had a higher level of employment than both the national average and the local populations of Amber City and Indigo Town.

**Interview structure and mode**

A semi-structured interview schedule was used for all court user and supporter interviews (see Appendix iii). This enabled a broad consistency across topic areas at the same time as allowing for the flexibility required of in-depth interviewing (cf. Bryman, 2012). In interview, participants were asked to reflect upon topics including their direct experiences of juries and magistrates; their views of juries and magistrates; and their perceptions of the wider court process. Questions about court users’ direct experiences and perceptions of juries and

\(^5\) All five had appeared in court without the assistance of an interpreter and stated that they were comfortable with the interview being conducted in English.
magistrates were designed to contribute to the examination of whether or not the two types of lay adjudication can help to confer legitimacy on the justice system (Research Question 2); while questions about the wider court process sought to draw out discussion of what other factors could support or undermine perceptions of legitimacy of the justice system, and help to answer Research Questions 3 and 4. In order to examine levels of understanding of juries and magistrates (Research Question 1), in interview, court users were asked to describe the role of i) a jury and ii) a magistrate. Upon providing a description of the role, participants were then provided with basic information about each of the lay adjudicatory roles (see Appendix iv) and asked to discuss their thoughts upon receiving this information.

The interview schedule and information cards were piloted with three participants (one prosecution witness, one defendant and one individual with recent experience of observing a case from the public gallery) in advance of the fieldwork commencing. Two of these interviews were conducted face-to-face and one was conducted via telephone. In addition to this, and in order to reflect issues emerging from early interviews, some small amendments were made to the schedule; such as adjustments to topic order and the addition of a small number of questions under the topic of ‘direct experience’ designed to give context to participants’ responses to later questions about understanding and perceptions. All interviews were audio-recorded and transcribed in full. (The approach to data management is outlined in Section 2.2.4.)

The vast majority of interviews (24 out of 28) took place via telephone at the request of the participant; the remaining four court users were interviewed face-to-face. The request to
participate in telephone interviews may reflect technological advancements that render mobile phone ownership relatively common practice (Trier-Bieniek, 2012; Fielding and Thomas, 2016). Methodological texts have raised concerns about the use of the telephone as a mode of interviewing in qualitative research, particularly when compared to face-to-face interviews (Irvine, Drew and Sainsbury, 2012). Concerns have tended to centre around perceived difficulties in establishing rapport (Rubin and Rubin, 2005; Trier-Bieniek, 2012); the loss of visual cues (Rubin and Rubin, 2005; Fielding and Thomas, 2016) and the limits to achieving ‘natural’ interactions during telephone interviews (Fielding and Thomas, 2016: 287). The impact of such issues was minimised in the following ways, and meant that subsequently the use of telephone interviewing provided an invaluable means of data collection. The building of rapport was strengthened by the fact that I had already met each participant at court prior to conducting the interview; a technique which has been found to be useful in existing research involving telephone interviewing (Rubin and Rubin, 2005; Sturges and Hanrahan, 2004). Moreover, as the study progressed I became gradually more at ease with adopting approaches to mitigate the absence of visual cues. This included my reminding participants at the beginning of the interview that they would be given the opportunity to pause in order to reflect upon their answers, or by pausing for a few additional seconds myself at the end of participants’ responses to ensure that they had finished fully answering the question.

Further to this, a number of the stated benefits of telephone interviewing were discernible in this study. For example, the use of telephone interviewing was found to be a very flexible method for accessing hard-to-reach groups (cf. Sturges and Hanrahan, 2004; Trier-Bienick, 2012), such as court users. This is because it meant that those who, for practical reasons,
were unable or unwilling to participate in a face-to-face interview were still able to participate in the research. The use of telephone interviews also acted as a means of enhancing researcher safety in the field (cf. Sturges and Hanrahan, 2004).

3.1.4 Observations of court proceedings

In addition to interviews with court users, an integral feature of the approach involved observations of court proceedings. Essential to the ethnographic approach is immersion in the field under study (Emerson, Fretz and Shaw, 1995; Bryman 2012); conducting court observations was thus regarded as an essential tool to achieve this. Observations were conducted of open-court proceedings (i.e. those which are open to members of the public to attend) at the four selected courts. Closed court proceedings, namely those that involve young defendants, were not observed due to reporting restrictions set out under Section 49 of the Children and Young Persons Act 1993. Observations took place from the public gallery of each court.

Notwithstanding Baldwin’s (2008: 383) note of caution that observations carried out in an open court setting are limited because ‘only the public face of justice’ is presented, the observations provided one means by which Research Questions 3 and 4 – which concern the characterisation of lay participants’ engagement in the process and the factors that can support or undermine court users’ perceptions of legitimacy, respectively – could be addressed. Principally, observations provided a way of gaining a ‘lived experience of the courthouse’ (Ward, 2017: 19) and a means by which ‘the minutiae of proceedings within – and immediately outside – the courtroom’ (Jacobson et al. 2015: 18) could be understood.
Observations thus enabled interviewee accounts to be contextualised, particularly in terms of how court users’ direct experiences of the court process could shape perceptions of legitimacy. Observations also facilitated the collection of a rich source of interactional data in relation to how lay participants understood and engaged with the court process. In addition to observing aspects of proceedings that did occur, observations also generated data about what did not happen. This included instances in which reluctant witnesses failed to attend court or when trials did not proceed as scheduled for other reasons, such as a defendant entering a late guilty plea or because a defendant was not ‘produced’ to the court from a local prison. Observations about levels of cooperation with ‘the rules’ of the court process further aided the examination of perceptions of legitimacy because they provided data about the extent to which ‘expressed consent’ (Beetham, 2013) for the role of the justice system was evident or absent in the actions of court users.

Court observations provided a method of gathering contextual data about local and temporal features of the court environment. This included data relating to the impact of policy imperatives, such as those designed to increase the efficiency of the courts system (Ministry of Justice, 2012; Leveson, 2015), and data relating to other contemporary matters, such as the identification and treatment of need or vulnerability within the court process. Observations of this kind generated data about factors which impacted upon the nature of lay participants’ engagement in the criminal courts and data about factors which could serve to support or undermine court users’ perceptions of the legitimacy of the justice system.
Overall 126 hearings across the four courts under study were observed. This included 19 full trials, 16 partial trials, 58 sentencing hearings and 33 other hearings (see Table 3.2 for more detail). The amount of time spent conducting observations was split fairly evenly across the Crown and magistrates’ courts under study, however because magistrates’ court hearings are generally much shorter in length than Crown Court hearings, observations conducted in magistrates’ courts account for the highest volume of hearings documented. The volume of magistrates’ courts observations carried out for this study offers particular insight in view of arguments that magistrates’ courts are under-researched in comparison to the Crown Courts (cf. Darbyshire, 1997).

It was decided at an early stage that the study would not seek to observe Crown Court trials in full. Having conducted a number of pilot observations in the Autumn of 2014, it was viewed that observing full Crown Court trials – due to their length – would generate an extremely large volume of data, much of which was likely to be of limited relevance to the overall research questions. Instead, Crown Court observations focused upon aspects of the process most likely to involve significant interactions with lay participants. This included the observation of jury selection and empanelment, evidence from witnesses and defendants, closing speeches from counsel, judges’ summing up, jury questions, the return of verdicts and sentencing hearings. However, one relatively short (three-day) trial which involved an allegation of ABH, was observed in full. In contrast, the majority of trials observed in the magistrates’ courts were documented in full; however, four partially observed trials have been included in the sample. Each of these was included because they contained data which was not otherwise present in the sample. For example, one of the partially observed cases
provided the only instance in the study in which a defendant gave evidence with the assistance of an intermediary.

Decisions as to which cases to observe were usually facilitated by a discussion with the Listings Office at the beginning of each fieldwork day and were centred upon the recruitment of court users. ‘Comprehensive note[s]’ (Wolfinger, 2002: 90) were made of all proceedings under observation; notes were typed-up into full fieldnotes as soon as possible after each observation in order to maximise recall and preserve the ‘idiosyncratic [and] contingent character’ of individual observations (Emerson et al. 1995). A full outline of all of the hearings observed is provided in Appendix xi.

<table>
<thead>
<tr>
<th></th>
<th>Crown Courts</th>
<th>Magistrates’ Courts</th>
<th>All courts/total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full trial</td>
<td>1</td>
<td>18</td>
<td>19</td>
</tr>
<tr>
<td>Partial trial</td>
<td>12</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>Sentencing hearing</td>
<td>11</td>
<td>47</td>
<td>58</td>
</tr>
<tr>
<td>Other hearing</td>
<td>2</td>
<td>31</td>
<td>33</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>26</strong></td>
<td><strong>100</strong></td>
<td><strong>126</strong></td>
</tr>
</tbody>
</table>

My presence in each of the courts also gave rise to a number of informal conversations about the research with a range of individuals. This included Witness Service staff and volunteers, police officers, probation officers, court staff, legal advisers, advocates and members of the judiciary. This kind of practice is a longstanding feature of ethnographic research (Bryman, 2012; Fielding, 2012); discussions were usually premised upon me either being formally introduced to such individuals or through a conversation that arose from becoming a familiar face within the court. Insights gleaned from such conversations were
not formally included in data collection and analysis but undoubtedly shaped my reflections of the field and contributed to the overall ‘analytic density’ (Fielding, 2009) of the study.

3.1.5 Interviews with magistrates

In addition to interviews with court users and observations of court proceedings the study also sought to include the voices of lay adjudicators themselves, specifically those of magistrates. 52 This was in order to understand how lay adjudicators perceived and made sense of their own role with a view to generating further understanding of ‘power-holder’ perceptions of legitimacy (cf. Bottoms and Tankebe, 2012). In this vein, permission to interview 10-12 magistrates was sought from the Judicial Office. This is the standard route for seeking permission to access members of the judiciary, in which magistrates are included. 53 Research access was granted in May 2017, subject to some small adjustments to the recruitment approach based on the Judicial Office’s existing experience of facilitating research access.

Befitting the ethnographic approach of the study, and due to the relatively small sample required, magistrates were recruited purposively from the two magistrates’ courts under study. Upon being informed of the successful access request by the Judicial Office, the Chairman of the Magistrates’ Association and the Chair of the National Bench Chairman’s Forum contacted the magistrates from Amber City and Indigo Town on my behalf and invited them to take part in the study. Magistrates who expressed an interest in

---

52 Conducting similar interviews with former jurors would have been beneficial – and limitations under the Contempt of Court Act 1981 do not make this impossible (Darbyshire, 2001; Thomas, 2008) – however, there remain legal and practical challenges which rendered this unfeasible for the present study.

53 Further detail is available at: https://www.judiciary.uk/publications/judicial-participation-in-research-projects/ [accessed 21.06.18].
participating were then put into contact with me, via email, in order that the interview could be arranged and to enable the opportunity for me to answer any questions prospective interviewees had about the nature of the research. Nine magistrates expressed an interest in participating and interviews were conducted with eight of these individuals.54 Six of the eight magistrates participated in a face-to-face interview; two participated in a telephone interview. Face-to-face interviews were conducted in a private room within the court building or on university premises. Informed consent was gained from magistrates through the use of an information sheet and consent form (see Appendices v and vi).

In-depth interviews with lay magistrates were designed to supplement the issues emerging from in-depth interviews with court users and to contribute to answering Research Questions 3 and 4; that is, the questions concerned with characterising lay participants’ engagement in the process – which included the engagement of lay magistrates – and understanding the factors that could support or undermine court users’ perceptions of legitimacy. In interview, magistrates were asked to reflect upon their motivations for joining the magistracy; the benefits they felt that their role brought to the justice system and the associated challenges; and their views about how court users perceived and understood their work.55 Interviews with lay magistrates were audio-recorded and transcribed in full.

In order to protect the anonymity of interviewees, an individual-level breakdown of the demographic profile of magistrates (and Witness Service volunteers) is not provided.56

54 The ninth individual, though having expressed an initial interest in participating in the study, did not respond to further contact attempts.
55 A copy of the semi-structured interview schedule is provided in Appendix vii.
56 There is a chance that providing an individual-level breakdown, due to the small sample size, could increase the risk of the interviewee becoming identifiable to gatekeepers or other interviewees. (This is known as
However, the demographic profile of magistrates under study can be summarised in the following manner. Interviews were conducted with three women and five men, all of whom were White British. The youngest interviewee was in their forties; the remaining seven were in their fifties or sixties. This broadly reflects the national composition of the magistracy in terms of gender and age; although women were slightly under-represented in the sample (Judicial Office, 2018). Magistrates from BAME backgrounds were particularly under-represented in – or in fact absent from – the sample; 12 per cent of serving magistrates are from BAME backgrounds (Judicial Office, 2018). Four of the interviewees were retired; the occupational background of the remaining four was varied. However, all eight interviewees either currently held or had held professional roles.

3.1.6 Interviews with Witness Service volunteers

A final group of lay participants under study were Witness Service volunteers. The nature of the aforementioned witness recruitment process meant that I worked in close proximity to Witness Service volunteers at each court. This included accompanying volunteers as they carried out their duties in order to a) assess whether or not witnesses were of a sufficiently comfortable demeanour to be approached about the study; and, if so, b) to facilitate the subsequent introduction of the study to the witness. As outlined above, this process often led to informal conversations with volunteers about the nature of the volunteer role and about the different ways in which witnesses engage with court proceedings. It therefore became apparent that conducting a small number of in-depth interviews with Witness

\footnote{‘jigsaw identification’ (Information Commissioner’s Office, 2012: 31)). This was not thought to apply to court user interviewees due to the larger sample size and because the majority of interviewees were unknown to each other.}
Service volunteers could provide a valuable means by which some of the conversational topics could be explored formally and in greater depth, with a view to contributing to knowledge in relation to Research Questions 3 and 4.

Witness Service volunteers were recruited purposively (cf. Bryman, 2012) from the courts under study. Permission to carry out interviews with volunteers was granted from the Citizens Advice Area and Regional Managers in Amber City and Indigo Town. Volunteers were sent an invitation to participate in the study on my behalf via an email from the Witness Service manager in the participating courts. Those who expressed an interest in participating were asked to contact me directly in order for interviews to be arranged. As with all other interviews, informed consent was gained from Witness Service volunteers through the use of an information sheet and consent form (see Appendices viii and ix).

A total of 7 volunteers were interviewed as part of the study. All interviews took place face-to-face and were conducted in vacant rooms within the Witness Service offices. In interview, volunteers were asked to reflect upon their motivations for volunteering for the Witness Service and their views about how witnesses perceived, understood and responded to the court process. Four of the interviewees were women; three were men. Five interviewees were White British; the remaining two were Black British. The youngest interviewee was in their thirties, one interviewee was in their fifties and the remaining five were over 70. Perhaps in reflection of the average age of the sample, the majority of

---

57 A copy of the semi-structured interview schedule is provided in Appendix x.
interviewees (5) were retired; the remaining two were volunteering alongside professional roles in the charitable and educational sectors.\(^5\)

### 3.2 Ethical issues

The study received a favourable ethical approval from the University of Surrey Ethics Committee. There were various ethical issues of relevance including: the overarching ethical principles of obtaining informed consent from interviewees, maintaining participant and researcher well-being, confidentiality and the secure use and storage of data. In addition to these overarching principles, this section also considers some of the ‘situated’ ethical decisions that arose as the fieldwork has progressed (cf. Calvey, 2008) and my own positioning within the research.

#### 3.2.1 Informed consent and maintaining participant well-being

Court users, such as defendants and prosecution witnesses, can be considered as ‘vulnerable’ groups (cf. Goodey, 2005; Jacobson et al. 2015), therefore several steps were taken to ensure that the well-being of participants was upheld at the point of recruitment as well as both during and post-interview.\(^5\) The recruitment of witnesses and defendants at court required sensitivity to each prospective participant’s recent experience of the

\(^5\) Unfortunately, there is no available information as to the national demographic profile of Witness Service volunteers.

\(^5\) It should be noted that seeking to define ‘vulnerability’ among court users is recognised as an extremely complex task (Jacobson, 2018). For this reason, issues of defining levels of need and vulnerability in the court process are explored in further detail in Chapter 6.
courtroom; this included taking care to ensure that anyone who appeared visibly emotional or distressed by their court appearance was not approached.

Informed consent was gained from all interviewees through the use of an information sheet and consent form. The information sheet outlined the purpose of the study and what participation entailed, including its voluntary and confidential nature. Court users who agreed to participate in an interview were asked to read and complete a consent form confirming that they were aware of the purpose of the study, that their responses were confidential and that their participation was voluntary. Participants were informed that confidentiality would only be broken if a participant disclosed an intention to harm themselves or others or admitted to the committal of serious crimes unknown to the police. (There were no instances of this.) Consent to digitally record the interview was also obtained.

It should be noted that although court user interviews involved participants being asked to discuss their court experience within a short period of time following their court appearance, the nature of the study was such that the focus of the interview was not on the detail of specific (alleged) offences in connection to which people were appearing at court. Rather, participants were asked about their experience of the court process and about their understanding and perceptions of juries and magistrates. Nevertheless, at the outset of the study it was agreed that if a court user participant were to become distressed or upset during the interview, I would offer to refer them to a relevant support agency, such as Victim Support or Citizens Advice – a practice which I have adopted in previous research. Overall, there was one instance in which an interviewee was offered the opportunity to be
referred to Victim Support. Upon discussing this with the interviewee, it transpired that she was already in contact with Victim Support and other support services; therefore, no further action was taken.

As outlined above, interviewees were given a choice between taking part in a face-to-face or telephone interview. Enabling participants to make a choice about the mode of interview provided a further means of upholding their well-being as it may have allowed participants to feel at ease during interview by facilitating the negotiation of any power, status or cultural differentials between myself and the interviewees (cf. Arksey and Knight, 1999; Sturges and Hanrahan, 2004; Rubin and Rubin, 2012). At the beginning of each interview participants were reminded of the voluntary and confidential nature of the interview and any questions they had were answered. At the end of each interview, by way of debriefing, participants were given the option of selecting their own pseudonym to be used in the written account of the research; they were also asked if they would like to receive a summary of the research findings.

The same ethical principles for securing informed consent, confidentiality and maintaining participant well-being were applied to the subsequent interviews conducted with magistrates and Witness Service volunteers. All magistrate and Witness Service volunteer interviewees were provided with an information sheet which outlined the purpose of the study and what participation in the study entailed, including its voluntary and confidential nature in advance of their participation in the study. All interviewees were asked to read

---

60 For a recent discussion of the use of pseudonyms in social research, see Lahman, Rodriguez, Moses et al. (2015).
and sign the consent form confirming that they were aware of the purpose of the study, that their responses were confidential and that their participation was on a voluntary basis. One interviewee declined the request for the interview to be audio-recorded but agreed to hand-written notes of the interview being made instead. Participants were given the choice of participating in a face-to-face or telephone interview and were also given the option of selecting their own pseudonym and receiving a copy of the research findings.

With regard to obtaining informed consent when conducting court observations, it was unfortunately deemed impractical and unfeasible to individually alert all those involved in proceedings to the presence of an observer due to the disruption that it would cause to the formal legal proceedings being observed.\textsuperscript{61} However in addition to the formal negotiation of access, I also carried an information poster (which outlined the nature of the research) into courts in which proceedings were being observed. This was shown to any individual who requested information as to my purpose in the courtroom; a verbal explanation was also provided and any questions were answered. (This was used on a small number of occasions.)

\textsuperscript{61} As previously noted, observations of legal proceedings are relatively common in existing court-based research (see Bottoms and McLean 1976; Carlen 1976; Fielding, 2006; Jacobson et al. 2015; Ward, 2017). Consistent with the approach outlined above, it does not appear that any of these existing studies involved the gaining of informed consent from each member of the courtroom; this is perhaps due to the public nature of open court proceedings.
3.2.2 ‘Situated ethics’

It is also important to consider some of the ethical considerations that were required in situ as the fieldwork progressed. This decision-making process is known as ‘situated ethics’ (Duster, 1970; Simons and Usher, 2000; Calvey 2008):

‘It is in the particular cases of the here and now with participants that ethics are situationally accomplished … [they are] contingent, dynamic, temporal, occasioned and situated affairs.’ (Calvey, 2008: 908 & 912)

Situated decisions were regularly required to uphold the ethical integrity of the study. These were principally required in relation to the recruitment of court users, particularly in terms of making decisions about who to approach and how. As outlined above, any court user who appeared visibly upset or distressed by their court appearance was not approached, however an individual’s demeanour was not always static and could change over the period within which they were at court. 62 Decisions about approaching witnesses were often made in discussion with Witness Service staff and volunteers; complainants in cases involving sexual violence or domestic abuse in the Crown Court were often regarded as being under too much strain to be approached. Decisions about approaching defendants were sometimes made in discussion with defence advocates but were often reliant on the demeanour of the defendant. For example, defendants who were visibly upset, distressed or angry about the outcome of their hearing were not approached. Neither were those in

62 See Jacobson (2018) for a useful discussion surrounding how vulnerability is defined and responded to within the court process.
cases in which the mental health needs, intellectual capacity, or substance dependency of the individual – as described to the court during the hearing itself – were such that it was deemed that the practice of obtaining informed consent may have been compromised.

Likewise, while in most instances observation notes were made ‘live’ as the hearing progressed, there were a small number of instances in which I chose not to make detailed notes until after the hearing had ended. This was usually in cases in which I had been sat in the public gallery of a Crown Court in very close proximity to a family member of a defendant as the fate of the defendant was announced.

3.2.3 Researcher well-being and positionality

Discussion of the situated nature of ethical decisions leads on to a further ethical consideration, that of maintaining my well-being (and safety) as a researcher. This is related to the wider issue of positionality within the research. My role in the field was largely that of a ‘peripheral member’ (Adler and Adler, 1987) and was characterised by a sense of ‘marginalisation’ and ‘loneliness’ that is commonplace in ethnographic research (Fielding, 2015). In fact, Baldwin (2008: 382) argued that court-based researchers occupy a ‘similar’ position to that of court users and ‘may feel a sense of exclusion, estrangement, and alienation that is comparable to that experienced by defendants.’ Moreover, Bahn and Weatherill (2012) noted the impact that in-situ decision-making, particularly when research involves vulnerable groups, can have on the well-being of the researcher. I encountered similar experiences during the course of this research. This included when making decisions about whether or not to approach court users about the study or when observing cases that were perceived to be of a distressing nature. Nevertheless, the need to carefully manage
my own role to uphold the ‘delicate separateness’ (Fielding, 2006: 53) required of court-based interaction was essential to integrity of the research and the associated detachment derived from the experience of ‘marginality’ in the field was, arguably, crucial to the research (cf. Fielding, 2016: 325).

Moreover, when thinking about issues of positionality and well-being, particularly when negotiating the spatial and temporal aspects of the court environment, I became attuned to my own role within what has been described as the ‘them and us’ divide between professional court-based actors and court users (Jacobson et al., 2015). In being granted permission to conduct the study I had access to some of the ‘inner zones’ (Rock, 1993) of the court that are largely occupied by professionals, such as the Listing Office. However, I also frequently occupied the public areas of the court building, or ‘outer zones’ (Rock, 1993), that are used by court users; such as entrances and exits to the building, waiting areas and the public gallery of individual courtrooms. This meant that I was required to move between the two zones and, to some degree within my ‘peripheral’ membership role (Alder and Adler, 1987), be mindful of how I might be perceived by professional actors and lay participants when carrying out the research.

I took several steps to negotiate this. In addition to carrying with me the aforementioned poster which outlined the purpose of the research, I also wore my University of Surrey ID badge. This was both so that I could prove my identity if required to by a gatekeeper, or if asked to by a court user when outlining the research, and also to signify my independence.

---

63 A consideration of this was first provided in a paper presented as part of the ‘Courtroom ethnography: Doing Justice in everyday legal praxis’ stream at the Socio-Legal Studies Association Annual Conference in April 2017 (see Kirby, 2017b). A copy of this presentation is available from the author upon request.
from the setting under study. When thinking about ‘impression management’ (Fielding, 2015: 323) I considered how my physical attire may impact upon my position within the research setting. Dressing very smartly may have led to my being perceived by court users as occupying the ‘inner sphere’ (Rock, 1993) occupied by professionals but dressing too casually may have appeared unprofessional to local gatekeepers. I therefore aimed to dress in a smart-casual manner; that is, in a similar way to how I would usually dress for a day spent working in a university office. Moreover, due to existing research findings that have pointed to the ways in which court users are sensitive to – and can feel excluded by – displays of ‘chummy relations’ between professional actors within the courtroom (Jacobson et al. 2015), I tried to avoid entering into lengthy conversations with professional actors about the research in the presence of court users.

A further mechanism for dealing with the interconnected issues of positionality and well-being was via the use of a Research Diary. The Research Diary is a separate document to fieldnotes. It was filled in regularly throughout the fieldwork period, and contained any reflections that I had about ‘in-situ’ decision-making in the field, thoughts about progress and analytic observations. Completing the Research Diary acted as a source of release for the ‘messiness’ and ‘hidden struggles’ of fieldwork and assisted with the process of data analysis (Punch, 2012: 92). It also served to enhance reflexivity of the study and, arguably, prevented the written account from becoming ‘sanitised’ (cf. Calvey, 2008; Punch, 2012).

Finally, mechanisms to maintain my physical safety were negotiated by conducting interviews in public places (such as in an office on university premises), or via telephone, as opposed to conducting interviews in the homes of participants.
3.2.4 Data security and retention

A final ethical issue of relevance to this study is that of data security. Personal data, in the form of name, telephone number and/or email address collected from interviewees for the purpose of arranging interviews, is stored in a password-protected file in a secure location on the University of Surrey server. Paper-based reply slips and consent forms are stored in a locked filing cabinet on secure university premises.

As outlined above, all interviews, with the exception of one, were digitally recorded and fully transcribed. Recordings were deleted from the recording device once they had been saved and stored securely. In order to help to protect the anonymity of interviewees, any use of names, exact dates and/or locations were removed from interview transcripts and observation write-ups. When preparing the thesis for publication, careful steps were taken to ensure that the anonymity of interviewees was further protected by the use of pseudonyms and the removal or ‘masking’ of other contextual features in accordance with guidance provided by the Information Commissioner’s Office (2012).

In accordance with the University of Surrey Ethics Committee guidance, all research data, such as audio recordings, interview transcripts and observation write-ups, are held for 10 years from the completion of the study. Research project data, such as consent forms and participant contact details, are held for six years from the completion of the study. All digital data collected has been placed in a secure location on the University of Surrey server for long-term storage.
3.3 Analytical approach

The nature of ethnographic fieldwork is such that it involves the production of a voluminous source of rich qualitative data, however the analysis of this data can be ‘demanding’ (Fielding, 2016: 331) and necessitates that sufficient time and consideration is dedicated to this process. The approach to analysis adopted by this study comprised elements of Glaser and Strauss’s (1967) grounded theory approach to analysis and Becker’s (1970) ‘sequential analysis’. Both approaches are regarded to be of value in the analysis of ethnographic research (cf. Hodkinson, 2016; Fielding, 2016) and are well-suited to the interpretivist epistemology of the study.

3.3.1 Philosophical underpinnings of analytic approach

In his writing on sociological work, Becker (1970: 79) advocated the value of carrying out ‘sequential’ analysis of qualitative data which is collected over an extended period of time. This involves analysis being carried out alongside data collection in a way that enables the researcher to ‘work up’ (Fielding, 2016: 331) from the data by reflecting on possible meanings arising from initial data gathering in order to guide subsequent data collection. Elements of sequential analysis were adopted during this study. The production of Research Diary entries throughout the fieldwork process enabled the process of analysis to develop in this manner. Analytic thoughts were also generated and recorded in the process of transcribing interviews and in the compiling of observation fieldnotes. Carrying out sequential analysis during the data gathering process enabled the research to adapt to the field under study. In particular, it helped to crystallise the shift in focus from primarily
examining court users’ perceptions of legitimacy through the lens of lay adjudication

(Research Questions 1 and 2), to also include a broader examination of how an individual’s engagement with the court process served to shape their overall perceptions of legitimacy (Research Questions 3 and 4). Shifts such as these are a common feature of sociological studies, particularly those which involve a qualitative approach, as Becker (1970: 80) attests:

‘Researchers frequently discover that the problem they set out to study ... cannot be studied except in the context of, some other problem they had not anticipated studying.’

Adopting a sequential approach to analysis thus facilitated an understanding of how – when seeking to examine perceptions of legitimacy – court users’ levels of understanding and perceptions of lay adjudication could not be considered in isolation from their overall experience of the criminal courts. This is described in further detail in Chapter 4.

The study’s analytic approach was also heavily influenced by the grounded theory approach to the research process which was originally developed by Glaser and Strauss (1967). It involves an inductive approach to the generation of theory; that is, ‘the discovery of theory from data’ (Turner, 1981: 225), rather than pre-determined hypotheses (see Glaser and Strauss, 1967; Turner, 1981; Corbin and Strauss, 2008). Grounded theory is thought to be of particular value in qualitative research, particularly that which involves analysing data generated from interview and observations (Turner, 1981). In the period in which Glaser and Strauss were writing the development of grounded theory was commended for providing an alternative to the dominance of deductive approaches, grounded in a positivist

Grounded theory also provided a clear process for data analysis which was hitherto largely absent from qualitative research (Hodkinson, 2016). However, Glaser and Strauss’ model has received criticism for being overly prescriptive and researchers attesting to the use of grounded theory have been criticised for failing to fully employ the strategies outlined by Glaser and Strauss (Hodkinson, 2016).

Due to concerns arising from an ‘orthodoxy of approach’ in Glaser and Strauss’ model, Turner (1981:226) outlined a modified approach to grounded theory to aid the practical process of analysis for individual researchers. Derived from Glaser and Strauss’ original conception, Turner identified nine stages required in the development of grounded theory. This includes: developing and saturating categories through the use of open and ultimately selective coding; defining categories and applying these definitions to the data; developing links between categories and considering under what conditions the links hold; and making connections to existing theories, as relevant (Turner, 1981: 231). Due to the aforementioned limitations regarding the prescriptive nature of Glaser and Strauss’ approach to grounded theory, alongside the fact that this study could not claim to adopt a fully inductive approach – none the least because the concept of legitimacy was identified as a potentially useful theoretical framework through which to examine lay participation in the criminal courts at an early stage in the research process – I elected to analyse my dataset using elements of Turner’s (1981) adapted approach to grounded theory. 64 The

---

64 Analytic approaches which involve incorporating ‘selective features’ of the grounded theory approach are relatively common in ethnographic research (Hodkinson, 2016: 98).
following section outlines how I applied elements of Turner’s approach to my dataset in order to expand upon existing theorisations of legitimacy.

3.3.2 Illustrating the process of analysis: Conceptualising the ‘continuum of engagement’

Qualitative approaches have been criticised for a lack of transparency in the process of data analysis (Turner, 1981; Hodkinson, 2016), therefore the remainder of this section provides an illustration of the process of data analysis in this study. This is achieved by outlining a specific strand of analysis and subsequent theoretical development: the process by which the continuum of engagement, and its application to the study of legitimacy, emerged. This strand of analysis has been selected in order to illustrate the ‘messy degree of complexity’ (Turner, 1991: 240) involved in qualitative data analysis and, perhaps more importantly, because the development of the continuum of engagement (the findings of which are presented in Chapter 5) is arguably the main theoretical contribution of this study.

As outlined above, the process of analysis began while the fieldwork for the project was underway. The main form of analysis at this stage was in the writing of analytic thoughts in my Research Diary and compiling analytic observations alongside the transcription of interviews and writing of observation fieldnotes. At the end of the fieldwork period, before beginning to analyse the dataset, I spent time thinking about analytic themes that had emerged from the data collection phase of the project and devised an initial list of 15 codes. Those that relate to the association between ‘engagement’ and ‘legitimacy’ included: ‘understanding’, ‘normative cooperation’, ‘instrumental compliance’ and ‘moral alignment’. These \textit{a priori} codes became the first codes of the dataset (cf. Silver and Lewins, 2014).
Interview transcripts and observation write-ups were analysed together with the aid of the computer-assisted qualitative data analysis software package, MAX-qda.

Once all interview transcripts and observations had been uploaded to MAX-qda, I began the process of open coding, which involves coding each paragraph of data, in order to begin to develop categories (cf. Glaser and Strauss, 1967; Turner, 1981). In addition to the development of the initial categories outlined above, further codes developed during the open coding phase of analysis that have a bearing upon engagement included: ‘expression’, ‘acceptance of status quo’, ‘challenge to status quo’ and ‘rejection of status quo’.

Definitions were developed for each category and revised where necessary; particularly at the early stages of analysis when the overall framework was at the initial stages of development. The use of definitions is particularly important in the process of grounded theory because it helps to generate ‘a deeper and more precise understanding of the nature of the phenomena being examined’ (Turner, 1981: 236). As the analysis progressed, categories were added, renamed, recoded or merged where necessary to allow further distinctions to be made or to resolve any areas of overlap. For example, the initial code ‘support’, defined as ‘reference to support received from practitioners or others’, was merged with the code ‘information’ to form the code ‘support and information’ due to instances of overlap between the two codes.

A memo was written at the end of each day spent analysing data in order to record the analysis process. This included making a note of any revisions that had been made to the coding framework or thoughts about the potential further development required,
depending upon how the analysis progressed. Memos were also written for each individual category in order to develop links and make connections between categories and to record how categories had evolved over time. Areas of contradiction, particularly those which occurred within the same case – for example, within a single interview transcript – were highlighted and linked through the use of the hyperlink function in MAX-qda (see Silver and Lewins, 2014). This feature enabled areas of contradiction to be viewed alongside each other.

Gradually, as the analysis progressed open coding was superseded by selective coding, particularly as the categories became saturated. At around two thirds of the way through the process of data analysis, at which point all interviews and around one third of observations had undergone initial coding, I began to make connections between the coding frame and existing conceptualisations of legitimacy. In particular, an association was beginning to emerge between an individual’s engagement based on their alignment with and participation in the court process, and their perceived legitimacy – in terms of ‘shared values’ and ‘expressed consent’ (Beetham, 1991) – of the courts. In this vein, an overarching category termed ‘spectrum of engagement’ was developed with the following five sub-categories to reflect different types of engagement in the court process:

- Active - meaningful
- Passive - aligned
- Passive - acceptance
- Reluctant - resistant
- Withdrawal
The process of analysis continued – that is, existing data were re-coded and yet to be coded data were coded – until all of the data had been coded along these categorisations. This analysis served to form an initial version of the ‘continuum of engagement’ outlined in Chapter 5. At this stage, this ‘spectrum’, rather than ‘continuum’, was viewed as a linear typology comprising the five aforementioned types of engagement and an initial draft of the Chapter was produced on this basis. However, upon producing this draft, two main issues became apparent. The first was that construing ‘active’ engagement – originally defined as ‘active, meaningful participation in the court process’ – in terms of whether or not it was ‘meaningful’ was problematic because of the difficulties in defining and conceptualising the, arguably subjective, term ‘meaningful’. Moreover, the term ‘meaningful’ was deemed to be insufficiently specific to the task of discerning an individual’s level of alignment with the process. Secondly, the category ‘reluctant-resistant’, though providing an accurate depiction of an individual’s weak alignment with the court process, failed to capture the differences in levels of participation between those who lacked alignment with the court process but participated in a ‘passive’ manner with those who lacked alignment with the court process but participated in an ‘active’ manner. Upon further inspection of the data and theoretical refinement it was judged that the original development of the typology did not adequately capture the distinction between levels of alignment and levels of participation. This was resolved by mapping the categories in the typology onto quadrants within two axes: alignment and participation. The five main categories were redefined, and data were recoded, as follows:

- Active aligned (formerly, ‘active meaningful’)
• Passive aligned (with ‘passive acceptance’ representing the weakest form of passive alignment)

• Dull compulsion (representing data previously coded as ‘reluctant-resistant’ but in which participation was passive)

• Resistant (representing data previously coded as ‘reluctant-resistant’ but in which participation was active)

• Withdrawal

The process by which the ‘continuum of engagement’ was developed and refined – through ‘constant comparison’ (Glaser and Strauss, 1967) in the development of category definitions and the coding and recoding of data in order to establish the ‘conditions under which the links hold’ (Turner, 1981: 231) – provides a concrete example of how the process of conceptual development emerged. All full depiction of the conceptualisation of the continuum of engagement is provided in Chapter 5; this includes a graphical illustration of the axes and a definition of each category within the continuum. However, it is perhaps useful at this stage to note the way in which elements of existing theory have been expanded upon in order to generate an original contribution to conceptualisations of legitimacy. Two of the categories used to form the continuum, ‘passive acceptance’ and ‘dull compulsion’, are derived from existing conceptualisations of legitimacy; Jacobson et al. (2015) and Bottoms and Tankebe (2012), respectively. Drawing upon this existing work enabled the theoretical conceptualisation of legitimacy to be expanded upon; particularly regarding Bottoms and Tankebe’s influential concept of dialogic legitimacy. The process by which this was achieved acts as a form of ‘hermeneutic elaboration’ (Fielding, 2009: 436) and is further examined in Chapter 5.
3.4 Concluding thoughts

This Chapter has examined the methodological approach to this study of lay participation in the criminal courts. It provided an exploration of the methods selected for the study and the various rationales for their use, including how these relate to the specific research questions under study. The Chapter also outlined the layered approach to access negotiation and explored the overarching and in-situ ethical considerations relevant to the research. This included by reflexively examining my own position within the research through the lens of the ‘them and us’ divide between professional court actors and court users (cf. Jacobson et al. 2015). The final section of the Chapter examined the study’s approach to data analysis, which comprised elements of sequential analysis (Becker, 1970) and grounded theory (Glaser and Strauss, 1967), by providing an illustration of the process of a specific strand of analysis; that which concerns the theorisation of the continuum of engagement, presented in Chapter 5.

The use of an ethnographic approach was deemed to be the most valuable means of generating understanding of the subjective realities of those experiencing the court process in order to achieve both the original aim of generating knowledge of court users’ understanding and perceptions of the use of lay adjudicators and also the broader aim of understanding lay participants’ overall perceptions of the legitimacy of the criminal courts. The research was greatly facilitated by the level of access afforded to the study, not only from overarching bodies such as HMCTS, the Judicial Office and Citizens Advice, but also the local gatekeepers in each of the courts – such as court staff and the Witness Service – who provided assistance throughout the fieldwork period.
The study has a number of limits, particularly in relation to the lower than anticipated number of interviews conducted with defendants. Meanwhile, the ‘self-selecting’ nature of the interview sample means that the sample may be more likely to represent those with the strongest views (Bryman, 2012). Nevertheless, the challenges presented in the recruitment of court users reflect both existing difficulties encountered in carrying out this type of research and the inherent difficulties that the courts face in bringing cases to fruition (cf. Jacobson et al. 2015). Moreover, the problems encountered, in fact, provided valuable insights as to the ways in which court users engaged with the court process.

Overall, the 43 interviews conducted with lay participants along with the substantial data generated from the observation of 126 court hearings produced a rich volume of qualitative data. This has facilitated the generation of an in-depth and nuanced account of lay participation in the criminal courts, which has informed the following Chapters.
Chapter 4: Lay adjudication: understanding, perceptions and the question of legitimacy

The original aim of this thesis was to examine perceptions of juries and magistrates from the viewpoint of court users in order to assess the extent to which lay adjudication is able to confer legitimacy onto the criminal courts. In order to assess the degree to which lay adjudication confers legitimacy on the criminal courts (Research Question 2), it was first necessary to look at the extent to which the twenty-eight court users interviewed were aware of, and understood, the roles occupied by juries and magistrates (Research Question 1). Court user interviewees tended to have a good grasp of the main function of the jury; however, in line with previous studies, understanding and knowledge of the magistracy was more limited. The study findings indicate that court users support the use of both types of lay adjudicator in the administration of justice. It appears that perceptions of lay adjudication are influenced by a range of common themes or factors, including: the composition of juries and magistrates; the level of responsibility afforded to lay adjudicators; and the extent to which lay adjudicators are regarded as impartial and competent decision-makers. These factors have a bearing on the extent to which lay adjudication can promote or inhibit perceptions of legitimacy in the criminal courts. Importantly, however, it is stressed that court users held nuanced and sometimes ambivalent views regarding lay adjudicators, and that the use of lay adjudication should be considered as just one of a myriad of features that served to shape court users’ overall perceptions of legitimacy in the criminal courts.
4.1 Levels of understanding and awareness of lay adjudication

In order to fully examine court users’ perceptions of the use of lay adjudication, the extent to which court users understood the roles occupied by juries and lay magistrates was explored. Understanding of lay adjudication was examined by asking court users, in interview, to describe the role of juries and magistrates. Upon doing so, interviewees were provided with information about each of the lay adjudicatory roles and asked to discuss their thoughts upon receiving this information.

4.1.1 Understanding and awareness of juries

Though juries are regarded as the ‘pillar’ of the criminal justice system (Roberts and Hough, 2011: 247), little is known about levels of understanding of the jury among members of the public, generally, and court users, specifically. The vast majority of interviewees were able to talk with relative confidence about the role of the jury, particularly in relation to its fact-finding and decision-making function. For example, interviewees often consistently described the role of a jury as being to listen to the evidence and to make a collective decision about whether or not a defendant is guilty or not guilty. This suggests a recognition of the jury’s twin role of ‘fact finder’ and ‘decision-maker’ and is illustrated in the following quotations:

‘They are 12 impartial people that listen to the evidence and try and make a decision as to whether they think the person is guilty or not.’ (Sian, prosecution witness)
‘My understanding of juries is like they are members of public sitting on the court hearing, before the judge; they’ve got to give the verdict. Members of public are juries, they decide about who is guilty or not guilty.’ (Usman, defendant)

Even those with more limited knowledge about the role of juries were able to describe the basic decision-making function of a jury; ‘I thought they were the people that sit and make a decision for the judge’, said complainant interviewee Aylin. Only one participant, defendant interviewee Irenka, was not able to describe the role of a jury in any form; she attributed this to being from an Eastern European country which does not have a common law system.

Court users tended to be less confident in their descriptions of some of the specific aspects of jury service, such as the process of juror selection and eligibility. A substantial proportion of interviewees described jurors as being selected at random: ‘It’s just 12 random people off the streets I believe, isn’t it? Well not off the street but you get summoned by letter’, said Natalie, a complainant. Few were aware of the mechanism for selection. Defendant interviewee, Martin, was one of the small number of interviewees who was aware that juries are selected via the electoral register:

‘As the film says [they are] just 12 angry men. 12 working class, 12 members of the public selected from the electoral register.’

Limited knowledge of the process for juror selection is perhaps unsurprising given that only a quarter of court user interviewees reported ever having been called for jury service. This
corresponds with existing findings from the US which showed that the majority of respondents (just under 60 per cent) were not aware of the means by which jurors are selected (Oliver and Wolfinger, 1999; Knack, 2000).

The majority of court users correctly estimated that 12 jurors are selected to hear the case in Crown Court trials; estimates from other interviewees ranged from 6 to 20. However, a number of those who did state that 12 jurors were selected to hear the case were often hesitant or uncertain in their response; ‘I think it’s 12, I’m not sure’, said Gloria, who had attended court to support her grandson.

Comments about perceived eligibility for jury service tended to be in line with, or varied only slightly from, current practice. The most commonly given reason for potential exclusion was thought to be the possession of a criminal record; other stated reasons for potential exclusions included: those with mental health issues; those aged under 18; those working in a profession which may compromise their position as a juror; or those who are known to individuals involved in the case. All of which are grounds, or potential grounds, for exclusion. Such responses highlight a correspondence between court users’ expectations of juror eligibility and current practice. However, interviewees often caveated responses to questions about the selection and eligibility process with phrases such as ‘I’m guessing’, ‘I

---

65 Having a criminal record alone does not prevent participation in jury service, however an individual with a criminal record is excluded from serving upon a jury if, for example, he or she is currently in prison, has ever been sentenced to a significant period of imprisonment (5 years or more), or if, in the last 10 years, he or she has served a custodial sentence, a suspended sentence or a community order. In relation to grounds for exclusion for those with mental health issues, an individual can be disqualified from jury service if he or she is: liable to be detained under the Mental Health Act 1983; residing in a hospital under the Mental Health Act 1983; subject to a guardianship order or a community treatment order under the Mental Health Act 1983; or lacks the mental capacity to serve as a juror. See HMCTS (2017) for further detail.
assume’ or ‘I’m not sure’, indicating a higher level of uncertainty in their response to such questions in comparison to those about the core role and function of a jury.

Nevertheless, a strong level of understanding of the core function of the jury was displayed by the vast majority of the interviewee sample; who, as outlined in the previous Chapter, together comprised a range of demographic backgrounds. This suggests that the role of the jury is well within the realm of public consciousness. To many court users, an understanding of the function of the jury was part of their ‘everyday’ knowledge and understanding of the workings of society. There is very little existing research about public knowledge and understanding of the jury system, perhaps precisely because such knowledge and awareness is regarded as assumed among members of society. When asked about where they thought their knowledge about juries came from, responses included ‘it was in the back of my mind’ (Viv, prosecution witness) and ‘I think it’s common knowledge – no one has told us or taught us, it’s something we just hear’ (Frank, supporter). It is also perhaps indicative of the ‘symbolic’ value that the jury holds in the eyes of members of the public (Devlin, 1956; Darbyshire, 1997; Hough and Roberts, 2011).

This ‘everyday’ or ‘common’ understanding about the role and function of juries appeared to stem from one or more of a number of influences including: the media; friends and family; education and experience. Court users tended to regard the media as a primary source of information about the role of juries, particularly due to the high volume of fictional courtroom dramas produced in the United Kingdom and United States. ‘It’s too much CSI, isn’t it?’ laughed Gemma, a prosecution witness, upon being provided with the information in Information Card A and realising that she had given a fairly detailed and
accurate account of the workings of the jury system. She also reflected upon the prominence with which Crown Court cases are reported on in the news media, in comparison to the magistrates’ court in which she appeared, and how this impacted upon her level of understanding:

‘The Crown Court seems to be on the news a lot more. There’s a lot more kind of coverage of it. Obviously big cases seem to be there, so there’s quite a lot that you see. ... It is probably a bit of a television influence and also like newspapers and stuff like that, so I probably picked up bits from there.’

Gemma was not the only court user who reflected upon the extent to which fictional and non-fictional court-based television programmes impacted on levels of awareness of juries. For example, prosecution witness Evelyn stated:

‘I’ll be honest with you, for me, I like watching Law & Order [laughs]. The TV programmes all have 10 to 12 people on a jury. ... Honestly I’ve never ever set foot in [a Crown] court in my life, I haven’t got a clue – just watching those programmes Law & Order, The Bill, all those programmes.

However, as well as providing court users with an awareness about the role of the jury, fictional media had the potential to provide individuals with an inaccurate picture. For example, when asked about the jury selection procedure, a couple of respondents described a selection process more akin to the US system, where advocates have an influential role in
the selection of the eventual jury panel due to the use of the preemptory challenge. This is illustrated in the following quotation from prosecution witness Candice:

‘I believe each barrister gets to choose – and I don’t know if it’s TV telling me that – but I believe that it comes down to the barristers get[ting] to select a certain amount [of jurors] after they get selected randomly.’

Court users also described how everyday conversations they had entered into with friends or family members impacted upon their awareness of the jury. This was described by complainant Zara:

‘Growing up, school, parents. I think my mum told me about the jury service ages ago. Usually someone will be called into jury in a family, so you know, you just learn about it as you grow, gradually.’

Few interviewees reported feeling that formal education had impacted upon their awareness of the jury role. Those that did tended to have gained this knowledge as a result of further, or higher, education. Belle, for example had completed an AS level Law qualification and was able to describe the jury role in detail; while Suzie was the only court user interviewee in possession of a Law degree. She felt that this, along with other aforementioned sources, such as family and the media, was the strongest influence on her awareness of the jury role:
'I just think I probably knew [about the jury] growing up – because it’s quite a topic of conversation. And if anyone talks about a trial in any kind of respect there normally is an argument if you are, you know, for or against a jury and then I went and did a Law degree. And then my favourite film became *12 Angry Men* [laughs]. … Probably most of my in-depth knowledge comes from my Law degree.’

The most likely educational forum for school children to receive teaching on the roles of lay adjudicators is in the subject of ‘Citizenship’, which is a statutory educational requirement for all secondary school children. Although the National Curriculum guidance for Citizenship does not stipulate a specified learning requirement in relation to lay adjudication, teaching of this topic may fall under the following areas of required teaching, as outlined in the Citizenship syllabus:

- ‘the nature of rules and laws and the justice system, including the role of the police and the operation of courts and tribunals’
- ‘the legal system in the UK, different sources of law and how the law helps society deal with complex problems’
- ‘parliamentary democracy and the key elements of the constitution of the United Kingdom, including the power of government, the role of citizens and Parliament in holding those in power to account, and the different roles of the executive, legislature and judiciary and a free press’

(Department for Education, 2013, pp. 2-3).
Citizenship was introduced as a statutory requirement for secondary school pupils (aged 11-16) in the National Curriculum in 2002, meaning that around two thirds of court user interviewees, due to their age, would not have undertaken formal teaching on the subject. Moreover, due to the lack of requirement for teaching on lay adjudication specifically, it is not clear whether the small proportion of interviewees who should have undertaken Citizenship education would have received teaching on the workings of the jury system. This is in contrast with the United States where children receive education about the jury system at school (Vidmar, 2000). What is clear is that participants in this study did not attribute their understanding of the jury system to education received at the primary or secondary level. These findings support those of Matthews et al. (2004) who found that levels of knowledge and perceptions about the criminal justice system among serving jurors were often strongly influenced by the media, and to some extent by family and friends, but were rarely influenced by the education system.

Experience, perhaps understandably, contributed to court users’ levels of awareness of juries. Several court users attributed their awareness of the juror role, at least in part, to their direct experience of attending court. In some instances the individual had attended court in the course of their occupation. For example, supporter Frank had attended both the Crown Court and magistrates’ court as a witness on previous occasions due to his former role as a security guard. Meanwhile, Natalie reflected that she had ‘greater knowledge than other people possibly just through [the] experience’ of attending court as a complainant.

Overall, the responses of court users indicate a high degree of understanding of the core function of the jury. This was evident both among those who were recruited via the Crown
Court and those who were recruited via the magistrates’ court. This awareness stemmed from a number of sources including the media, discussions with friends and family and direct experience of the court process. Importantly, the findings provide support for the argument of the ‘symbolic’ value held by the jury (Devlin, 1956; Darbyshire, 1997; Hough and Roberts, 2011), as indicated by the place it occupies within the public consciousness.

4.1.2 Understanding and awareness of lay magistrates

In contrast to the strong level of understanding of juries, court users’ levels of understanding and awareness of the magistracy were much more mixed. It was not uncommon for court users to find it difficult, or to be unable, to describe the role of a magistrate when asked in interview:

‘I don’t know ... I’m not sure ... I don’t know if it is higher than the Crown Court, I don’t, I really don’t understand about magistrates, I really don’t to be honest with you.’ (Gloria, supporter)

‘I have no idea, the only thing that I sort of think I know is that the Crown Court is for more serious crimes than the magistrates’ court.’ (Jake, prosecution witness)

---

66 However, it is perhaps of note that the small number of interviewees who displayed a limited level of understanding of the jury were recruited via the magistrates’ court and did not have prior experience of attending the Crown Court.
In other instances, descriptions of the role of magistrates were partial, or in the words of Roberts et al. (2012: 1081), ‘sketchy’. This is illustrated in the following quotation from prosecution witness Sandrine:

‘I think a magistrate is – there’s no jury – it’s for much more minor offences, I think. And it’s just put before the magistrate and he makes, I think he makes a decision, I think – I don’t actually know – I think that’s what he does. I’m not really sure what happens in a magistrates’ court.’

Those who displayed some knowledge of the magistracy tended to be familiar with the decision-making function and summary nature of the role but were often unclear about other aspects of the role. Sandrine, for example, was unfamiliar with the group nature of the decision-making task.

Magistrates were often described by court users as ‘judges’. For example, when asked to describe the role of a magistrate, supporter Theresa responded: ‘Oh, well, when you say magistrate, you mean a judge?’ Although magistrates are indeed ‘judges’ in the sense that they are members of the judiciary who make judgements on the outcome of cases and applications, the notion of a ‘magistrate’ as a ‘judge’ appeared to be more connected to the perception that magistrates are qualified legal professionals or, in the words of prosecution witness Evelyn, ‘specialists’. Prosecution witness Gemma stated: ‘I’d presume [a magistrate] would be a lawyer or a solicitor – that would be my kind of presumption off the top of my head.’ In a similar vein defendant Martin specifically described how he did not think
someone from his own occupational background, a railway worker, would be able to assume the role of a magistrate:

‘I thought [a magistrate] was like a lay person who’s been in some way a solicitor or a councillor or something like that, in a previous life and now they’ve got to a stage where they are giving something back. ... I know they get paid, but I think it’s, I don’t know a bit of a part-time job. It’s something they might do a couple of days a week, a bit like consultant surgeon or something, in the sense that they would work a little bit, that’s how I see it. ... You’d have to have some kind of degree or something, I wouldn’t have thought that if I looked up [at the bench] there’d be an old railway man sitting there.’

Upon being provided with Information Card B, it was not uncommon for court users to be surprised to hear of the voluntary, and unpaid, nature of the magistrate role. This is well-illustrated in the responses of Jake and Martin to receiving this information:

‘I didn’t know any of it. One bit that surprised me is that magistrates are members of the public that are trained. I thought it would have to be somebody like a fully legal representative or something.’ (Jake)

‘So you or me can be a magistrate? That is a surprise ... So perhaps there are railway men o[on] there somewhere! [Laughs]’ (Martin)
In line with the perception that magistrates occupied a ‘specialist’ role, only three participants – before being provided with information – demonstrated an awareness that magistrates sit with the assistance of a legally qualified adviser.

These findings correspond with existing research on levels of understanding of the magistracy among members of the public. A third of respondents in Roberts et al.’s (2012) study thought that magistrates were part-time professional judges or criminal justice professionals. Likewise, over one third of respondents in Sanders (2001) study thought that magistrates were paid and a third of respondents in Morgan and Russell’s (2000) study were of the view that magistrates were required to have a formal legal qualification. Taken together, these findings strongly indicate that the role of the magistrates does not occupy a firm position in the public consciousness, particularly in comparison with that of juries, and that this is even the case amongst those who have direct experience of attending court. Moreover, it lends some support to those who have argued that magistrates occupy a ‘professionalised’ (Ward, 2017: 99) or ‘quasi-professional’ (Dignan and Wynne, 1997: 196) role in the criminal justice system because magistrates tended to be regarded as professionals by the uninformed court user. This should be considered in the context of arguments about the overall professionalisation of magistrates’ justice due to the increase in the number of district judges appearing in the magistrates’ courts in the last forty years (cf. Seago, 2000).

However, a good level of knowledge of magistrates was demonstrated by around a third of court users. These interviewees were able to describe key aspects of the magistrate role
including its lay nature. For example, complainant Natalie described the role of magistrates in the following manner:

‘Erm, now I’ve had this conversation with someone quite recently actually. Now I believe that again they are not necessarily qualified in law or anything like that, I think they are just normal people again. I don’t know how they, what criteria they have to apply, but again my understanding is they are not qualified either, they are just random people. I think they have to be of a certain profession, possibly, but not necessarily. You know like a judge that you get in the Crown Court, obviously he’s you know quite high up and qualified, as I imagine anyway, but I don’t think it’s quite the same level with the magistrates.’

Nevertheless, even those respondents who were able to describe the core features of the magistrate role often did so with some uncertainty, as Natalie’s response illustrates.

Corresponding with the findings of Roberts et al. (2012), none of the court users were well-informed as to the selection and appointment process for lay magistrates. Most were not able to say how magistrates were appointed. In terms of eligibility, as with juries, the most commonly stated exclusion proffered was being in possession of a criminal record; others suggested that magistrates were likely to be of a particular standing in the community:

‘You probably have to be perfect. And like never have had debt or something ... Do they have to be like a community leader or something?’ (Suzie, complainant)
‘I think they are leading members of a community, like the elders in villages in other countries. They are respected, they’ve never been in trouble, they are upstanding citizens, kind of the people we can aspire to be like that have contributed to society at large in a positive kind of a manner.’ (Iumi, prosecution witness)

Official guidance on eligibility for the magistracy states that magistrates are required to be of ‘good character’ and that it is ‘unlikely’ that an individual will be taken on as a magistrate if he or she has been:

1. ‘found guilty of a serious crime’
2. ‘found guilty of a number of minor offences’
3. ‘banned from driving in the past 5 to 10 years’
4. ‘declared bankrupt’

Therefore – as with juror eligibility – a criminal record would not necessarily exclude an individual from joining the magistracy, however depending on the nature and/or frequency of conviction(s), it is likely to make joining the magistracy more difficult. Comments from interviewees about the magistracy being made up of ‘upstanding citizens’ are reflected, in part, in the guidance which states that in addition to ‘good character’, lay magistrates are required to demonstrate qualities such as ‘social awareness’ and ‘maturity and sound

68 Chambers, McLeod and Davis (2014: 53) have argued that the imposition of such guidance means that ‘the magistracy is weighted against ex-offenders’.
temperament.' As with juries, court users’ views about eligibility to join the magistracy tended to be in line with current practice.

Those with a stronger level of understanding of the role of magistrates tended to be those more familiar with magistrates and their work, for example, through knowing a magistrate or through having experience of attending the magistrates’ court. Six court users referred to knowing a magistrate, usually in the form of a friend or family member. Alex, a defendant with previous experience of the magistrates’ court and whose mother is a magistrate, was able to describe the role of a magistrate in some detail:

‘Well are they supposed to be a lay person. That kind of means someone who’s just a member of the community, I guess. So, a cross-section of the community, different ages, different ethnic backgrounds and they are not legally trained. Well they get the magistrate training, which is probably guidelines, I don’t know – I’ll have to ask my mum but I think she’s got loads of books of guidelines but she hasn’t got any legal knowledge. [Laughs] Yes, and they are supposed to be representatives of the community, I think. And three of them sit.’

Direct experience of attending the magistrates’ court could contribute to participants’ levels of knowledge about the magistrate role. For example, the defendant Holly described how her solicitor explained the role of magistrates to her upon her asking why the magistrates in her case ‘weren’t wearing them funny wigs’:

69 There are six qualities in total which, in addition to the above, include: ‘understanding and communication’, ‘sound judgement’ and ‘commitment and reliability’ (Judicial Office, 2017: 2).
‘Like I say it was my first experience and when I went I would have just called them judges. It was only they weren’t wearing them funny wigs [that] I actually asked my solicitor like “What are they? Why’s there three of them?”’

However, experience did not necessarily equate to increased levels of awareness.

Interviewees who had attend the magistrates’ court did not display visibly higher levels of understanding of the magistrates’ courts than those who had attended the Crown Court. In fact, those with weaker levels of understanding of the magistracy were fairly evenly split between court users recruited from the Crown Court and those recruited from the magistrates’ courts. Meanwhile, not all respondents who knew, or knew of, a magistrate displayed a good level of awareness of the role; and some of the more experienced court users had limited levels of knowledge about the magistracy. For example, former police officer Geoff was unaware that lay magistrates are not required to be legally qualified or that the role is unpaid. This was despite having attended the magistrates’ court on a number of occasions due to his former role.

As with juries, education was rarely cited as a factor contributing to levels of understanding of magistrates. Again, only those who had received further or higher education in Law, namely Suzie and Belle, cited their education as contributing to their level of understanding of magistrates. Importantly, several court users’ with limited levels of knowledge of the magistracy attributed this to a lack of public awareness of the role, providing support to Sanders (2001:2) assertion that the magistracy is ‘not visible to the public’. In stark contrast to the ways in which court users’ awareness of the jury was influenced by the media, no
respondents referred to the media as having a role in contributing to their awareness of the magistracy. Dominic, a prosecution witness, even joked: ‘No TV programme is made about boring magistrates’ cases, are they?’ The lack of visibility of the magistrates’ court, particularly in media depictions of the courts, contributed to McBarnet’s (1981: 195) assertion that ‘the magistrates’ court is a theatre without an audience’. Crucially, she argued that this is due to an ‘ideology of the triviality’ of the magistrates’ court; that is, that magistrates’ justice is interpreted as ‘trivial’ by the public, media and criminal justice actors, rather than because the cases before the courts are actually ‘trivial’ in nature. The lack of public visibility of the magistrates’ court is particularly striking given that, as previously highlighted, the vast majority of criminal cases are heard in the magistrates’ court.

Prosecution witnesses Candice and Evelyn, reflected upon how the lack of visibility of the magistracy may impact on both awareness, and representativeness, of the magistracy:

‘It’s not something you hear in a conversation. ... So yeah we just assume these are legal[ly] qualified representatives. And you think they’d get paid for it as well, definitely. ... If you are trying to get the general public, it’s not known, information is not out there. It’s not recognised – I didn’t know.’ (Candice)

‘I suppose again knowledge is power; I suppose a lot of people probably aren’t aware that they don’t need to have got this highly specialised training to be a part of [the magistracy]. ... I suppose it’s probably not publicised well in the volunteering sector either because if I didn’t have this conversation with you I wouldn’t know that. So it’s probably not publicised enough, unless you are in that group, in that
group of people of work. I don’t think it’s something out there that normal lay
persons know. I know a lot of people that does volunteering but I don’t know anyone
personally that does volunteering in the magistrates’ sector.’ (Evelyn)

Magistrate interviewees were asked about their views on the extent to which their role is
understood by members of the public and court users. The dominant response among
interviewees was that understanding of the magistracy among both members of the public
and court users is poor. As magistrate Sam explained:

‘Oh they don’t understand it at all. I think, even to be honest, when they are in our
courts they don’t understand that we are a lay magistracy. ... I don’t think the
general public has a clue frankly ... I think they just think we are the judge, they often
call you “Your Honour”; it depends how educated they are or whether they have
ever had any interface. But I honestly think most members of the public, if you ask
them what a magistrate was, they would be able to tell you they are some sort of
judge, they would probably think they were qualified in some way.’

Interestingly, magistrates’ responses to this question, as the above quotation from Sam
indicates, tended to reflect the ways in which their role was understood – or perhaps, more
aptly, misunderstood – by court user interviewees.
4.1.3 Summary: understanding and awareness of lay adjudication

Overall, the findings presented above suggest that levels of understanding of juries are relatively strong but understanding is much more mixed in relation to the magistracy. Generally speaking, court users – across both types of criminal court – displayed a strong degree of familiarity with the core function of the jury; that is, to act as ‘fact-finders’ and to collectively come to a decision upon the outcome of cases. Strong levels of understanding of the jury were exhibited by court users across a range of demographic characteristics including age, gender and ethnicity. However, this study has replicated findings of existing research which have shown that levels of understanding of the magistracy are weak. There were no clear differences in levels of understanding of the magistracy based upon age or gender; however, a slightly higher proportion of those from BAME and White Other backgrounds displayed weaker levels of understanding of the magistracy. The implications of this will be further examined as the Chapter progresses. Moreover, one of the most salient points to emerge is the finding that even those with experience of attending the criminal courts – over two-thirds of interviewees had attended the magistrates’ court on at least one occasion – were ill-informed as to the basic premise of the magistrate role, namely, that decision-making tasks are carried out on a voluntary and unpaid basis by those who are not required to be in receipt of legal training. It is important to highlight this contrast between the ‘symbolic’ presence of the jury in the public consciousness in comparison to the lower levels of ‘visibility’ of magistrates before moving on to examining perceptions of the two types of lay adjudicator.
4.2 Perceptions of lay adjudication and the question of legitimacy

The centrality of the position occupied by juries and magistrates in the criminal justice system means that it is important to explore the extent to which members of the public perceive their role and function as legitimate. The perspectives of court users, specifically, were sought because it has been argued that in order for institutions to be afforded the ‘right to govern’, they must be perceived as legitimate by the audiences they serve (Bottoms and Tankebe, 2012: 168). In particular, existing research suggests that perceptions of legitimacy are influenced by direct experience and interaction (Benesh and Howell, 2001; Fagan, 2008).

This section focuses upon how court users perceived the use of juries and magistrates by examining the aspects of lay adjudication which court users expressed support for and those which inhibited this support. A detailed consideration of court users’ perceptions of the value of, or limits to, lay adjudication enables perceptions of legitimacy to be examined. This is because doing so provides an indication of the extent to which lay adjudication accords with the ‘shared values’ of court users. The presence of ‘shared values’, as previously outlined, is regarded as one of the core components of legitimacy (see Beetham, 2013; Jackson et al. 2015).70

---

70 The other core component of legitimacy salient to this study, that of ‘expressed consent’, is difficult to ascertain due to court users’ limited degree of choice as to whether or not lay adjudicators were used in their case. This means that there is little ‘specific action’ an individual court user can take during the court process to ‘publicly express’ support or dissent for the use of lay adjudicators (cf. Beetham, 2013: 91). Assessments of legitimacy which are based upon both the presence of ‘shared values’ and ‘expressed consent’ are presented in the remaining Chapters.
Overall, the vast majority of court users expressed support for the use of magistrates and juries in the administration of justice, particularly at trials; however, this support was often dependent upon the extent to which it was perceived that just and impartial decisions could be brought about by a group of lay individuals.

4.2.1 Factors which help to confer legitimacy on the justice system

Findings from interviews with court users suggest that interviewees value the use of lay adjudicators in the criminal courts. Most participants, when asked in interview, expressed the view that juries and magistrates play an important role in the administration of justice. More than two thirds of interviewees stated that it is important for the courts in England and Wales to have magistrates; an even higher proportion – more than three quarters – stated that it is important for the courts to have juries. The qualitative nature of the study enables the factors that underpin such expressions to be teased out and understood in greater depth. The findings suggest that court users held a number of interlinking beliefs about the use of lay adjudicators that accord with longstanding rationales for lay adjudication, such as those outlined in Chapter 2. This is indicative of the presence of ‘shared beliefs’ between the State (as power-holder) and court users (as the audience) with respect to the use of lay adjudication. These include the perceived value of group decision-making by a cross-section of lay people in contributing to impartial decision-making; the importance of lay adjudication in representing the ‘voice’ of society; and the benefits of lay decision-making in achieving summary justice.
Group decision-making

Interviews with court users suggest that one of the strongest ways in which lay adjudication helps to confer legitimacy on the criminal courts arises through group decision-making. Support for the group decision-making function of lay adjudicators was expressed by the majority of interviewees across a range of demographic backgrounds. Court users were asked whether or not they thought it was important to involve members of the public in criminal justice decision-making. The below quotations provide just a few examples of the high level of regard expressed for the group aspect of the lay adjudicatory function:

‘You’ve got 12 people all coming together to discuss their different views, if you’ve only got one person, you know, that might listen to a trial it will just be their decision. But I think with 12 people you get a good overview, people have different ideas of things and I think that’s better’. (Sandrine, prosecution witness)

‘It’s not one person’s view. 12 people have to agree on the information that’s presented and if they can’t all agree then I guess there’s reasonable doubt.’

(Dominic, prosecution witness)

‘Hopefully you would get a better outcome because more people are involved in it. You know, more people, sort of pitching in and trying to understand something and coming from differing viewpoints’. (Sian, prosecution witness)

The above quotations point to the importance that court users place on the deliberative function of lay adjudication in reaching a just decision. Court users were very supportive of
the role of a group of lay people deciding the outcome of trials. When asked to answer a hypothetical question as to their preferred decision-maker in trials, only three respondents (two female complainants and one male prosecution witness) stated that they would like trials to be heard by a judge sitting alone. The use of jury decision-making in Crown Court trials, specifically, was very widely supported by the majority of interviewees. With regard to decision-making by a smaller group of individuals, as in the case of magistrates, court users were generally supportive. However, in line with the arguments put forward by scholars such as Mazzone (2006), some questioned whether decision-making by a smaller group of people is as valuable as decision-making by a panel of twelve people. This is indicated in the comments of supporter Frank:

‘I believe that you have to have at least 12 people’s point of view on that particular instance. If one person decides whether they are guilty or not, I don’t think that’s fair at all. Some people have different ideas, some people can relay them ideas to others so they may change their mind and stuff like that. If you just have two or three people then the chances are that they could come up with the wrong decision’.

Interestingly, the following quotation from Connor, a defendant who was found guilty of dangerous driving by a jury, illustrates how his strong degree of support for the group decision-making function of the jury withstood the experience of a negative outcome. When

---

71 This is the first of several occasions in this Chapter in which an interviewee refers to an aspect of criminal justice decision-making as being ‘fair’ or otherwise. It was often difficult to disentangle the meaning behind interviewees’ references to ‘fairness’. However, natural justice scholars such as Binmore (2005) would argue that this is because, as members of society, our ‘fairness program (sic.) is almost innate and runs well below the level of consciousness’ (p. 16).
given the hypothetical choice in interview of his preferred decision-maker in a future criminal trial, Connor continued to state a preference for the jury, despite having experienced a negative outcome. He also expressed support for the lay function of the magistracy. However, the most important factor in Connor’s choice of decision-maker was the number of people involved in the decision-making process, rather than the specific type of adjudicator:

‘I think I would prefer] a jury because 12 people are better than up to three independent people. So I still think I would have gone to Crown Court’.

Nevertheless, although interviewees tended to be less emphatic about the group decision-making function of the magistracy in comparison to juries, decision-making by a smaller group of magistrates was still preferable to some than having the outcome (at trial or in sentencing) decided by a lone decision-maker. As prosecution witness, Dominic, commented: ‘It’s good that there are three [magistrates], because then it’s not just one person – it’s fairer.’

However, it should be stressed that comments such as these did not mean that court users were unsupportive of decision-making by a single professional judge. In fact, court users were often very supportive of the role of judges at the point of sentencing, particularly at the Crown Court. Notwithstanding this, the above discussion is indicative of the wide level of support for decisions that require a determination of guilt being carried out by a group of lay people.
Decision-making by a cross-section of the public

A second aspect of lay adjudication that was highly regarded by court users is the ‘lay’ function of the decision-making role. Court users were very supportive of the notion of involving ‘normal people’ (Connor), ‘Joe public’ (Dominic) and ‘everyday people’ (Belle) in criminal justice decision-making:

‘[It’s] what the British legal system is based on: being judged by your fellow members of the community ... it’s just fairer.’ (Alex, defendant)

The perception that lay adjudicators come from diverse backgrounds and a cross-section of society, served as a strong legitimising factor to the function of lay adjudicators. This is illustrated in the following quotation from defendant Jon:

‘There are 12 people, so you have 12 different point of views, 12 different backgrounds. As it was in [my] case, different cultures, as well was involved – so [people from] different parts of the world. And it’s easier when you have 12 people in charge of discussing the case ... [they are in] one place so everybody can say their point of view from a different language, in the light.’

These findings are very similar to those produced by Matthews et al. (2004: 46) who found that ‘justice through diversity’ was the most influential factor upon juror levels of confidence in the system. Generally speaking, juries were regarded by court users as being representative of society, particularly due to the ‘random’ nature of the selection process, which was very important to perceptions of legitimacy among court users:
‘A random jury, stops any illegal findings. ... I mean, you couldn’t really have a court case without a jury, I don’t think. It’s important to get 12 individual people’s opinions of another person.’ (Theresa, supporter)

The ‘random’ nature of jury selection was on occasion contrasted with the way in which magistrates are selected. Interestingly, though responses from court users pointed to a (correct) assumption that magistrates were less likely to be from diverse demographic backgrounds than jurors, levels of representativeness alone did not appear to negatively impact on perceptions of the magistracy. Moreover, magistrates were perceived by some, particularly those with experience of this type of lay adjudicator, as likely to be more diverse than members of the paid judiciary. Broadly speaking, this appears to be a fairly accurate perception. Recent figures indicate that magistrates are more diverse than members of the paid judiciary in terms of gender (55 per cent of magistrates are female compared to 29 per cent of judges) and ethnicity (12 per cent of magistrates are recorded as being from BAME backgrounds in comparison to 7 per cent of judges); however, the picture in relation to age is more complex, with those aged 50 and over being overrepresented among both magistrates and judges (see Judicial Office, 2018).

Impartiality and independence

The above beliefs – group decision-making by a cross-section of members of the public – tie in with established justifications for the role of lay adjudicators, particularly ‘participatory democracy’. Proponents of participatory democracy advocate the importance of citizen participation and representative decision-making in everyday matters in society; that is,
those which extend beyond the remit of voting in elections (Pateman, 1970). However, none of the court users in this sample – unlike jurors in Matthews et al’s (2004) study – directly referred to the democratic benefits of lay adjudication. This is quite striking considering that the value of participatory democracy in criminal justice decision-making has been subject to much theoretical consideration but little empirical analysis. Instead, the three above factors – i) group decision-making; ii) by a cross section; iii) of ‘normal people’ – together serve to confer legitimacy on the criminal courts by helping to promote the impartial and independent nature of the justice system. The importance of impartiality in the lay adjudicator role was expressed by court users from a range of demographic backgrounds and was evident in court users’ descriptions of the fact-finding role of the jury. This is illustrated in the quotations from prosecution witnesses Candice and Sandrine:

‘They are there to give a completely non – what’s the word – judging opinion ... they are there with literally no opinion of the person or the person who’s bringing the crime against them. ... They are not there for anybody.’ (Candice)

‘They have to discuss it all and decide on the outcome. Discuss it all and not be judgemental and just really try and come out with the right outcome.’ (Sandrine)

The notion of impartiality acts as a fundamental way in which lay adjudication is able to confer legitimacy on the criminal justice system, particularly because lay adjudicators could be regarded as independent from the parties involved in the case, from the courts and, at a wider level, from the State. This benefit was described by a substantial proportion of interviewees, for example:
‘They need a system of some sort that’s of a neutral kind of view because judges and what not, they come across people every day and they pass decisions which may not be just and which may be on prejudices that they have themselves. They have seen people in and out of the system every day, and how they may come across and what not. So I think it is good to have an independent view of things from normal people.’ (Connor, defendant)

‘You get a kind of fair division, no one knows each party and, you know, it’s just a number of people who are literally just going there and making up a group choice about the situation. Kind of like a third eye to the case, I think it’s quite good, quite important.’ (Zara, complainant)

These comments lend support to some of the theoretical justifications of lay adjudication; namely that lay adjudications can play a role in acting as a check on institutions and the government (Blake, 1988; Diamond, 1990; Mazzone, 2006; Redmayne, 2006) and that their role acts as a counter-balance to those of criminal justice professionals or judges who can be regarded as ‘routinised’ or ‘case-hardened’ (Diamond, 1990; Morgan and Russell, 2000; Sanders, 2002).

*Lay adjudicators as ‘in touch’ with society*

The role that lay adjudicators play in acting as a ‘democratic bridge’ (Sanders, 2002: 326-327) between the government and the community was evident in the comments of a number of court users. This was both in terms of lay adjudicators being perceived as less
jaded than legal professionals but also as being more ‘in touch’ or ‘in tune’ with the concerns of wider society. This is reflected in supporter Theresa’s assertion that ‘most crimes are committed towards members of the public so they should therefore have their say [about] somebody being caught and tried for it.’

In this regard, lay adjudicators are arguably more able to represent the interests of society and ‘inject community values’ (Vidmar, 2000: 19) or ‘community norms’ (Diamond, 1990: 194) into decision-making. They may also be less bound by the need to demonstrate an unwavering commitment to the rule of law than are legal actors. The potential value of this role is well-described in the following quotations:

‘I think it’s a fairer approach to have involvement from your peers and from people in your community… it plays a massive, massive part in justice really and in a lot of the legal world it is not about justice if we are all really honest with each other. And actually I think [by] involving members of the public, and people of the community … there is much more focus then on the justice of the situation rather than the legality – I think that’s an important role.’ (Suzie, complainant)

‘Sometimes what’s legally wrong may not be seen as wrong in the eyes of the public. … The public could have a very different opinion as to what’s legal, what’s right, what’s not right and, you know, [that] may not correspond with what’s actually right in the law.’ (Iumi, prosecution witness)
Comments such as these, though relatively infrequent, indicate an alignment with the perceived benefits of ‘jury nullification’; that is, when jurors choose not to apply the law in cases (see, Lloyd-Bostock and Thomas, 2000; Redmayne, 2006).

The reciprocal nature of the relationship between lay adjudicators injecting social norms or community input into the criminal courts and lay adjudicators themselves benefitting from the educational aspects of the role, or aspects of the role that promote citizenship, was recognised by a small number of court users. This included complainant, Belle, who voiced her enthusiasm about potentially being asked to serve on a jury in the future:

‘I would definitely take it on. Because I feel like it’s a bit like serving our – I know it sounds really weird – but it’s like serving our country because you are going to court and making sure like the right people get convicted.’

However, despite the plethora of commentary documenting the educative and citizenry value of acting as a lay adjudicator (Tocqueville, 1895; Blake, 1988; Diamond, 1990; Redmayne, 2006; Gastil et al. 2008), the educative role of lay adjudication was not something that emerged strongly from the interviews with court users.

**Summary Justice**

Court users’ comments about the societal, or community, input that magistrates can bring to low-level decision-making tie in with a core way in which magistrates, in particular, were thought to confer legitimacy in the justice system. It was clear from the responses of a substantial proportion of court users, particularly women and those from White British
backgrounds, that magistrates were regarded as occupying a legitimate place in the criminal courts because of the perceived cost-effective nature of having magistrates deal with low-level cases:

‘I like the split between Crown and magistrates’. We don’t need a juror for everything; for every Tom, Dick and Harry who’s stolen a pen from Woolworths.’

(Suzie, complainant)

‘It would take pressure off the Crown Court for more minor crimes. … You can’t have people going to court for using a mobile phone in a car at the Crown Court. I mean the courts would be full up, you wouldn’t be able to get all the people through the system would you?’ (Anita, prosecution witness)

Magistrates, therefore, could be regarded as a ‘first port of call’ (Viv) for dealing with cases at the lower end of the spectrum in terms of seriousness, which has the effect of relieving the strain upon the Crown Court.

The extent to which the perceived cost-saving benefits of the magistracy are evident in practice is unclear (Morgan and Russell, 2000; Crawford, 2004; Ipsos MORI, 2011). Similarly, comments on the benefits of the magistracy in dealing with less serious or minor cases require a note of caution in view of McBarnet’s (1981) concern about the fallacy of presenting magistrates’ justice as ‘trivial’. It is of note that responses of this nature were voiced more frequently by those who had attended the Crown Court in comparison to those who had attended the magistrates’ court. Nevertheless, what is significant here is the extent
to which court users frequently presented this pragmatic justification for the value of the magistracy. Court users often strongly favoured decision-making by a large group, however several felt that this was not feasible in every circumstance, and in this vein, magistrates were regarded by court users as ‘jury-substitutes’ (Sanders, 2002: 331) whose role could be justified by the perceived economic benefits that it brought about.

4.2.2 Barriers to conferring legitimacy on the justice system

Though lay adjudication can help to confer legitimacy on the justice system, for example by providing a mechanism by which independent and impartial criminal justice decision-making can be carried out by a group of ‘normal people’ who represent a cross-section of society, there were a number of factors which limited the extent that lay adjudication was regarded as legitimate by court users. Interestingly, respondents did not tend to fall into groups of those who were exclusively in support of lay adjudication, or a type of lay adjudicator, and those who were against it. Instead, often participants’ responses were peppered with elements of the two. Some, who were generally supportive of lay adjudication or aspects of lay adjudication, often qualified their responses with the perceived limits to it and those who expressed less support for lay adjudication, or a type of lay adjudicator, were also often able to refer to some of the potential advantages. This points to the particular strength of carrying out qualitative research on this topic because the process of conducting in-depth interviews enabled the nuanced nature of participants’ perceptions of lay adjudication to be brought into view.
These findings chime with other pieces of socio-legal research which have examined public perceptions of the law or aspects of the criminal justice process. For example, in their study of perceptions of the jury system among serving jurors Matthews et al. (2004: 52) found that:

‘Jurors responses were complex, often combining the factors that both promoted and undermined their confidence. … Those who expressed considerable support for the jury system did so with qualifications and those whose confidence was diminished because of jury service (considerably fewer), recognised the qualities and the strengths of jury trials. There were many instances where tensions and ambivalence were evident.’

In a similar vein, Ewick and Sibley’s (1998) qualitative study of how members of the public construct ‘meaning’ of and from the law found that their participants’ conceptions of legality contained inherent contradictions. Paying close attention to instances of contradiction, they argued, is important because rather than being a reflection of a ‘methodological problem’ or of ‘cognitive deficiencies of individual speakers’ (p. 51), they instead help to illustrate that legal consciousness is a process which involves a number of ‘common’ or ‘collective’ features (p. 247). This reasoning can be applied to the findings of this study: though interviewees sometimes displayed contradictory or ambivalent accounts, a number of common themes emerged with regard to the perceived benefits of and limits to lay adjudication. These themes help to guide the discussion below; however, close

---

72 Moreover, court users’ accounts resonated with wider theoretical debates on the topic.
attention is also drawn to the areas of nuance, ambivalence and contradiction which shaped interviewees’ accounts.

**Juror levels of understanding**

A central area of concern, which could limit the extent to which court users regarded the role of lay adjudicators as a legitimate source of authority, was perceived deficiencies in the levels of knowledge, expertise and understanding of lay adjudicators and how this may impact upon their decision-making abilities. Court users, though generally very supportive of the use of jurors due to their lay status, sometimes questioned whether or not jurors have the ability to understand some of the legal or evidential complexities presented in trials. This is highlighted in the following quotation from prosecution witness Geoff:

‘I think [in] some of these more complex cases I think there should be a reconsideration of whether juries are the most suitable. Because they struggle to keep up with the detail, you know, [as a former police officer] I’ve been into trials and we’ve sort of had, you know, 45 boxes of paperwork, you know, and during the trial you are going to weed through all those papers. And the jury, of course, you see them glazing over, you know. So yeah, I think certainly some cases you should consider whether jurors are the most suited to the task.’

The following response from Alex, a former defendant, provides an example of the nuanced views participants could have about the value of lay adjudicators. Alex was positive about the diverse groups from which jurors are drawn, but questioned the extent to which lay people are equipped to comprehend the complexities that can be involved:
'It’s double-edged because you need to have a fair kind of balance and representatives of society but most people haven’t got any legal knowledge ... the language and the detail and some of the complexities of what is going on, most of the general public haven’t got a clue what the hell is going on. Especially with forensics and DNA and even the judges and the legal people may not understand fully. ... So it’s good and bad. I think you need to have a representation of a community. You need to have different people, different backgrounds; classes, ages, stuff like that. But I just think most people won’t understand fully what’s going on, the ins and outs of the cases.’

Concerns about juror understanding led some court users to suggest means by which levels of understanding among jurors could be increased. Alex, for example, suggested that juries could be assisted, like magistrates, by a legal adviser. Prosecution witness Dominic, who expressed similar reservations, suggested that juror selection could be tailored depending on the type of case to ensure that those with technological or financial expertise were included in the jury pool. Others, such as prosecution witness Evelyn, suggested that jurors may benefit from training in order to carry out their adjudicatory role:

‘[Juries] are not a bad idea as long as I think there should be some training to undertake to fill that post. You are making a big decision about somebody’s life. You know whatever the decision is made that decision is going to affect that person’s life, whether it would be short term or long term. It would be good that, you know, you
are going in to have an insight of what it is you’re expected to do … some training I think would be helpful.’

These comments indicate a degree of affinity between concerns identified by the literature in relation to levels of juror understanding, particularly in complex cases (Ma, 1998; Auld, 2001; Findlay, 2001; Lloyd-Bostock and Thomas, 2000; Redmayne, 2006), and those of court users. Court users’ concerns about levels of understanding of juries in complex cases, which were raised by court users from varied demographic backgrounds, suggests that there may be a degree of support for policy developments which have sought to restrict the right to trial by jury, particularly in complex cases (such as Auld, 2001). These findings also indicate that court users are supportive of the lay role of juries but that perceptions of legitimacy could be enhanced if jurors were to be supported in their role. Meanwhile court users, though often surprised that magistrates are not required to undergo formal legal training, did not tend to express concern about the extent to which magistrates were able to understand the legal proceedings. Much more disconcerting for court users, as is discussed further below, is that magistrates are not required to undergo formal legal training; particularly given the amount of power the adjudicatory role brings.

**Limits to representativeness**

As highlighted in the section above, the representativeness of lay adjudicators was one of the strongest factors which contributed to enhanced perceptions of legitimacy in the adjudicatory role. However, some court users thought that there may be limitations to the extent to which lay adjudicators reflect a cross-section on the population. The notion of ‘random selection’ from the electoral register was central to court users’ sense that jurors
represent a cross-section of society. However, a small number of court users questioned the extent to which selection from the electoral register is truly representative. Prosecution witness Suzie reflected upon the fact that not all members, or sections, of society may be equally likely to register to vote:

‘I’m not saying this is anybody’s fault, it’s not a complaint against jury service but I don’t think it’s a real representation of society. I think there are a pool of people that are more likely to turn up for jury service, that are more likely to be on the electoral roll … So you do end up with a cross-section of slightly more, well not necessarily middle-class but certainly you end up with more employed people and people that care about certain things. There’s a lot of society that aren’t on the electoral roll – for one reason or another or they just don’t care about stuff like that. They don’t want to vote or they don’t think it’s important or whatever it is, and then they are not actually in that pool. ... I mean if you are struggling to put food on the table are you really going to care about filling in a piece of paper to put you on the electoral roll? No you are not.’

This discussion ties in with existing research findings in relation to juror composition which has found that the highest rates of jury service are by those from middle to high-incomes while unemployed and retired people are underrepresented (Thomas with Balmer, 2007).

With regard to diversity within the magistracy, a number of court users were of the view that magistrates may be likely to be of white ethnicity and from older, more affluent and better educated sections of society:
'It brings up so many like assumptions about people and stereotypes but you tend to think that people that can maybe afford to do that kind of job for no money or can get through the application process might have been slightly better educated, more wealthy members of society. I mean, that could be totally wrong, but that would be, you know, my stereotype.' (Sian, prosecution witness)

‘I can’t imagine that there’s a huge amount of diversity, [that] would be my kind of perception and obviously the whole of the magistrates in my case were mostly White British. I would imagine that somebody from a different ethnic background that was giving evidence, or even was a defendant, would possibly find it more difficult not being judged by their peers – [that] would be my kind of perception of it.’ (Gemma, prosecution witness)

Gemma’s response points to the difficulties that arise in the ability of the magistracy, in its current composition, to fulfil one of the most frequently cited theoretical justifications of its role, that of participatory democracy, and is something which has been levelled as a critique of the magistracy on a number of occasions (Dignan and Wynne, 1997; Sanders, 2002; Gibbs, 2014a). Comments about the composition of the magistracy should be considered in the context of the lack of public visibility of the magistracy (Sanders, 2001), evident in the overall poor levels of knowledge about the magistracy, discussed above.

Achieving a representative composition among both the magistracy and jury has important implications for the legitimacy of the justice process and was important to interviewees
across a range of demographic backgrounds. Importantly, when discussing issues of representativeness, court users sometimes referred to limitations in the extent to which juries and magistrates comprised individuals from their own demographic backgrounds. For example, defendant Connor, a young Black British man, described the jury in his trial as ‘How do you say it? Probably of a background that is not the same as mine.’ He went on to outline the importance of ensuring a representative composition of juries in terms of age and ethnicity. However, Connor was most passionate about ensuring that juries comprise individuals from a range of socio-economic backgrounds:

‘I think a jury should, may be not have a set number, but have guidelines that it should be mixed to a certain degree. Not only ethnicity, I mean age group, I mean social background – people of a wealthy background and people from a poorer background – so it is fair, you know. Because people from a richer background or from a certain background might not have the same experiences and same life lessons as someone from a different background who may be able to relate and get their point across so I think it is good to have a varied jury. Whether if they are all black or all white, it doesn’t matter, I think social background is more important than ethnicity, in my opinion because, you know, you go through different things in life and you see different things.’

73 From Connor’s perspective there were an insufficient number of jurors in his trial from younger age groups. In contrast, several other interviewees – from a range of age groups – expressed ambivalence about the lay adjudicator role, particularly the role of magistrate, being occupied by young adults. Reservations tended to centre upon concerns about whether or not young adults had the necessary, in the words of defendant Jon, ‘life experience’ to fulfil the role.
In a similar vein, complainant Aylin alluded to her own experience when describing the need for magistrates to be from a range of backgrounds in order to have an adequate grasp of the needs and experiences of court users within their community:

‘I think because we are in such a diverse society ... I would think yeah, it would be a diverse background of people that would come in [to the magistracy]. You know, different cultured people. ... [Because] some cultures can explain harassment to their families more easily because of their culture and the way they, you know, interact ... So maybe the insight that you get from different diverse backgrounds in such a service would kind of give a more insight on how that person’s been affected. You know, it’s easier to go and ask for help [in some communities] but if you can’t ask for help that’s worse, and someone who is Muslim, for example, would understand that – “Oh yeah it’s difficult to bring out these discussions and stuff” – but if you don’t know about the religion then it’s a bit harder to understand how much the struggle is.’

Alyin’s comments highlight the significance of achieving a representative composition of juries and magistrates in terms of culture and religion, as well as the commonly cited demographic characteristics of age, gender, ethnicity and socio-economic status.

*Scope for bias and partiality*

While some court users spoke of the potential ways in which representativeness among lay adjudicators could be limited, this did not tend to be regarded as a strong source of concern. More concerning to court users was the extent to which threats to partiality or bias
could occur among individual lay adjudicators. Given that one of the most strongly legitimising features of the lay adjudicatory role is the perceived impartiality and independence that the role brings, it follows that potential for bias or partiality could limit the extent to which court users perceived the role as legitimising. In relation to jurors, there were some concerns that individuals could bring wider prejudices and stereotypes from society to the role. This was described by complainant Belle and defendant Connor:

‘I think [juries are] good, it’s a good idea but you never know who you are going to pick. So you could pick someone who’s like racist or sexist and that could influence.’ (Belle)

‘What the legal system wants the jury to be… is an independent panel of people, or peers as it was, who listen to the evidence that’s put forward and make a decision on the defendant’s guilt or not. But I think obviously, in realistic terms, it’s people from different backgrounds, social classes and what not, who come into the courtroom with their prejudices – some with and some without – and that’s it, innit? … I think there is, the system tries to be unbiased but everyone has their own prejudices or what not. I think it is a good thing where, you know, it is normal people who are making a decision. But people, at the end of the day, are people – I’m a human being, I try not to [but] you have your own prejudices – it is just one of them things.’ (Connor)

In addition to bias being brought into the role through prejudice or stereotyping among individual jurors, three court users – all of whom had experience of being a defendant – voiced concerns about bias in the form of persuasive individual jurors shaping the eventual
decision of the group. Defendants in Fielding’s (2006) study of offences against the person cases in the Crown Court expressed similar views.

Court users’ reservations about individual bias or prejudice impacting on the decision-making role are also reflected by the fact that very few participants (three out of the 28 interviewees) expressed a preference for decision-making by a lone professional judge at the point of trial. With regard to potential for bias in the magistracy, several court users expressed suspicion about the factors which may influence magistrates to apply for the position and the impact this could have on impartial decision-making:

‘I think a jury is fairer because there is a larger number of people and because they are selected at random from the electoral register. And I think perhaps volunteers isn’t necessarily the fairest way – I’m talking about magistrates … the nature of it being voluntary strikes me as being odd’ (Peter, complainant)

‘[Jurors] are people that are from a varied background and, you know, if they are being asked to come as well, they are not choosing themselves to be in that situation which is very important because if you want to be involved in something like that you have an agenda. You are interested maybe because you are very passionate about convicting people, or something, or having justice, which you know, that’s not really the place I think you should be coming from. I think [a jury] is just more of an innocence. … Whereas if I’m putting myself forward for it, I’d question the motive behind that and then how I’m selected.’ (Candice, prosecution witness)
Concerns around partiality in the magistracy, thus, tended to centre on court users questioning the voluntary nature of the role and the motivations of those who apply for the position. However, the opposite was true for other interviewees, some of whom thought that the voluntary nature of the magistrate role might ensure that lay adjudicators were enthusiastic about, and engaged in the role, and thus increase the validity of the decision-making. This was contrasted with concerns about apathy among jurors, whose degree of choice about serving as a lay adjudicator is much more constrained, and the perceived negative impact this could have on their engagement in the decision-making task. This is illustrated in the following quotation from defendant, Martin:

’If I had my choice [of decision-maker in a trial], mine would be magistrates. ... I consider a trial by jury a lottery in the sense that I might get 12 people [who] you know just don’t really want to be there, they’ve been called to something that might be an inconvenience to their lives. ... So I would prefer somebody like a magistrate who’s chosen to be there rather than someone in a jury who’s forced to be there. ... I’d hate someone sitting in a jury playing on their mobile phone, Candy Crush, or whatever and not paying attention.’

Regardless of the specific source of bias or partiality, the preceding discussion draws attention to court users’ sensitivity to instances of bias occurring within the role of lay adjudicator; the presence of which could undermine their support for lay adjudication.
Responsibility and power

Concerns about bias or partiality leads on to a final factor that could limit the extent to which lay adjudication was perceived as legitimate by court users. This is in relation to the level of responsibility, and power, afforded to lay adjudicators. Interviewees frequently commented upon the degree of power that lay decision-makers have and of the perceived gravity of the decision-making task upon the lives of court users. This is illustrated in the following quotation from complainant, Aylin:

‘It has negative sides and positive sides: having a whole group of people that live in the same society, speak the same language and want the good for their community, want to make decisions, sounds good but then on the other side, are they fit enough to make those decisions? ... I agree that the public do get involved making decisions but maybe in terms of legal sense it’s different because it is a higher level, you know, you are affecting someone’s life and making decisions [that] change the way their life goes. Maybe it’s a bit more harder to say “Well, they should be involved”; maybe there are more negative aspects that can affect decision-making.’

Comments imbued with an ambivalence about the degree of responsibility and power held by lay adjudicators were present among interviewees from a range of demographic backgrounds and included those who had attended the Crown and magistrates’ courts in relation to a variety of offence types, such as violent offences, fraud and harassment. Unease or ambivalence with regard to the level of responsibility of the role was often particularly evident in court users’ responses when asked how they would feel about occupying the role of juror or magistrate. Levels of interest in performing the lay adjudicator
role were relatively low; just over one third of interviewees expressed an interest in being a juror and less than one fifth of interviewees expressed an interest in being a magistrate. Interestingly, all interviewees who expressed an interest in becoming a magistrate were recruited via the magistrates’ court; that is, none of the interviewees recruited via the Crown Court expressed an interest in being a magistrate. The responsibility involved in the decision-making task was not something that many court users relished:

‘You’d be frightened of making a wrong decision ... I think now I’d probably be frightened [for] whoever’s in the dock – you’re the one that’s deciding about his future’ (Meg, supporter)

‘No, I think it would be too much, it’s too much pressure for someone like me to have to decide someone’s fate and stuff like that, I wouldn’t like that responsibility.’ (Holly, defendant)

‘I don’t know – I just feel like I don’t want to be responsible for someone’s life or have the authority to affect someone in such a serious way, it’s not my personality, I just don’t feel comfortable being that responsible over someone, having that power.’ (Alex, defendant)

Court users expressed discomfort about the potential emotional impact not only in the decision-making task but also in the process of hearing cases. A number of interviewees spoke of how they would struggle to leave their feelings behind in the courtroom. It was not
uncommon when asked how they would feel if called for jury service, for court users to raise particular concerns about the type of case they may be required to hear:

‘I work in a job [midwifery] that’s bringing life into the world, so generally I have quite a happy life and as awful as it sounds, you know, hearing the awful things that go on day in and day out is just not my personality really. I don’t think it would do me very well.’ (Gemma, prosecution witness)

‘I’m the kind of person that would take on everyone’s problems very seriously. I would just keep thinking of it all day. I don’t think I could separate it from my private life; some people can do, I know I can’t.’ (Irenka, defendant)

In contrast with their own relative powerlessness in proceedings, court user interviewees thus tended to be particularly attuned to, and to some degree ambivalent about, the levels of power bestowed upon lay adjudicators.

Court users were sometimes most ambivalent about the level of power, or responsibility, conferred upon lay adjudicators because they do not receive formal legal training. The above discussion illustrated a degree of unease felt by court users regarding the extent to which jurors are able to understand and comprehend legal proceedings. Interviewees often also expressed a note of caution about the decision-making function of lay magistrates in this regard. This is illustrated in the following quotation from complainant, Suzie:
‘Do you want to know my thoughts on [magistrates]? I think it is a very bizarre way
that our criminal justice system works that we have lay people being advised on law.
I get the reasoning behind it, maybe it’s more of a community act, like kind of
grasping the social norms of those communities but I find it very odd and I’m not
convinced that somebody without legal training should really be sat in such a
position of power in the criminal court. … If you are going to sit in a position of
power in a legal scenario, I think you should be a judge and have gone through legal
training and have been a lawyer and have that background. And I understand that
they are advised on points of law and all that kind of stuff but sometimes it’s not
about points of law, it’s about more than that.’

This provides a further example of court users’ conflicting views about the role of lay
adjudication: Suzie was supportive of the lay role in the sense that it brings ‘social norms’ or
community input into decision-making – this is also illustrated in her comments about the
role of lay people in bringing a sense of ‘justice’ to the situation on page 129 – but she was
very uneasy about the level of responsibility given to those who are not required to hold a
formal legal qualification. Similar comments were also made by several court users in
respect to juries. Natalie, a complainant in a case involving sexual violence, made the
following comments:

‘I think [jurors] are people that may not necessarily have experience in that
situation; the lawyers and people that work in the law they study and have
qualifications, you know, and they’ve studied for a long time. And in my personal
experience I feel that [jurors, who] might not necessarily understand the situation,
or may make a judgement or what not, are making a decision that affects my life as well as the other people that are involved and I just don’t know if that is quite right.’

These comments suggest that court users, as those with the most at stake and least power in criminal proceedings (Benesh and Howell, 2001), can feel uneasy or ambivalent about the level of power given to those without formal legal standing and that, conversely, legal qualifications and professional expertise equate to a legitimate source of authority. This is reflected in the level of support articulated for the paid judiciary. Judges were often regarded as a legitimate source of authority in sentencing decisions. When asked about their preferred choice of sentencer, over two thirds of court users expressed a preference for judges to oversee sentencing decisions:

‘Oh it would be a judge all day long wouldn’t it? ... If I was being sentenced by somebody I’d want them to have a very extensive law background. ... Yeah, I don’t really like the idea of Joe Blogs sending me to prison.’ (Jake, prosecution witness)

‘You just feel a bit more secure when you know it’s a judge because they’ve got the legal knowledge, they’ve got the criminal knowledge, they know exactly what harassment is ... you feel a bit safer, I think, ... than just people from the community. I just think in my point of view, the judge will end up being a bit more in my positives, because as I said because of the legal status really’. (Aylin, complainant)

Furthermore, while court users were often very supportive of lay adjudication at the point of trial, a small number of interviewees voiced unprompted support for the inclusion of a
judge – alongside lay adjudicators – at all stages of criminal proceedings. This is described by defendant Holly:

‘I think that the jury is a good idea. The magistrates, obviously my experience was good; I just think with the jury they obviously entitle the guilty or the non-guilty and then it’s down to the judge to give his final word which would be the sentencing – and I do feel that that should be the same sort of thing in the magistrates’. ... I just think it’s people’s lives. Do you know what I mean? It’s people’s livelihoods that are in the hands of people that although ... they’ve had training and stuff like that it’s not the right amount of training to a judge or even a solicitor or lawyer, do you know what I mean?’

The level of support for judges ties in with the findings of existing research. Matthew’s et al. (2004) found that judges elicited high levels of confidence among serving jurors; while Jacobson et al. (2015) found that Crown Court judges were largely perceived to be impartial, polite and respectful by victims, witnesses and defendants. Comments from court users, such as Holly, are indicative of support for hybrid decision-making between legal professionals and lay adjudicators. This study did not set out to specifically examine court users views of hybrid decision-making involving a panel of lay adjudicators and a professional judge, akin to those offered in civil law jurisdictions, such as Germany. However, the above comments point to the potential for support for hybrid decision-making among members of the public. The scope for hybrid decision-making in the criminal courts in England and Wales was raised mostly recently by the Auld Review (2001). It has also attracted some support from scholars such as Sanders (2002) who advocated panels
comprising a district judge and two lay magistrates in the magistrates’ courts in contested
trials, bail hearings and sentencing hearings at the more serious end of the spectrum.

4.2.3 Lay adjudication, legitimacy and the wider criminal justice process

Findings from interviews with court users suggest that overall, despite the aforementioned
challenges, lay adjudication serves to confer legitimacy in the criminal courts. Having
outlined the main factors that can support and undermine the use of lay adjudicators in the
criminal courts, this is perhaps a useful juncture to tease out some of the main similarities
and differences regarding perceptions of lay adjudication based upon the demographic
characteristics of the sample and other salient factors, such as the type of court attended by
the interviewee and the type of alleged offence under consideration by the courts. ¹⁷⁴

Lay adjudication was regarded as an important feature of the criminal justice system by
most interviewees. Juries were held in a slightly higher esteem than magistrates. As
highlighted above, more than three quarters of interviewees stated that the role of juries
was important; this proportion was slightly lower with regard to lay magistrates (at just over
two thirds). Interestingly, however, support for the magistracy was stronger among those
who were recruited via the magistrates’ court; the vast majority of interviewees (more than
three quarters) recruited via the magistrates’ court thought that it is important for the
courts to have magistrates – this proportion fell to just over half for those who were
recruited via the Crown Court. While it is difficult to draw clear conclusions about
perceptions of lay adjudicators based upon the type of court attended by individual court

¹⁷⁴ However, it is necessary to acknowledge the limitations of doing so due to the small sample size under
examination, comprising twenty-eight interviews with court users.
users – because around a third of interviewees had attended the Crown or magistrates’ court on a previous occasion – these findings suggest that direct experience of the magistrates’ court enhances perceptions of the magistracy.

No clear differences emerged in relation to perceptions of lay adjudication based upon the offence type for which individual court users appeared at court. However, several broad themes emerged on the theme of offence type in court users’ discussions. For example, those who voiced concerns about juror levels of understanding in cases often referred specifically to jurors encountering difficulties in understanding fraud cases. Meanwhile, magistrates were spoken of positively for dealing with offences described as ‘minor’ or ‘petty’, such as driving offences or shoplifting; while several interviewees spoke of the importance of reserving juries for more serious offence types such as, sexual violence and murder.

In terms of variation in perceptions of lay adjudicators based upon the demographic characteristics of the sample, there were no clear differences in overall perceptions of lay adjudicators based upon gender or age. However, in relation to the latter a higher proportion of those aged thirty-five and over regarded magistrates as important compared to those aged under thirty-five. Conversely, a higher proportion of those aged under thirty-five regarded juries as important compared to those aged over thirty-five. The most salient finding based upon the demographic characteristics of the sample concerns ethnicity. There was a very high degree of support for the use of both types of lay adjudicator among those from BAME and White Other backgrounds. All except one of the interviewees from BAME and White Other backgrounds regarded juries as important; all interviewees from BAME and
White Other backgrounds regarded magistrates’ as important. Higher degrees of ambivalence about the magistracy emerged among White British interviewees. This finding is interesting considering that levels of understanding of the magistracy were slightly higher among White British interviewees in comparison to those from BAME and White Other backgrounds. The implications of this are explored further in the conclusion to this Chapter.

However, before concluding this Chapter two final themes are worthy of consideration. The first involves further examination of how perceptions of lay adjudication can be linked to existing theorisations on the concept of legitimacy. As highlighted in Chapter 2, perceptions of legitimacy are regarded as being reliant upon a number of ‘drivers’ or ‘antecedents’. In particular, existing theorists have sought to ascertain the extent to which perceptions of legitimacy are driven by factors relating to process, such as procedural justice, and/or outcome, such as distributive justice and effectiveness.

Perceptions that can be framed within the procedural justice tradition were discernible at a number of points in the above discussion. For example, court users’ concerns about the extent to which lay adjudication offers an independent and impartial form of justice are clearly situated within Tyler’s (2007) framing of the role of ‘neutrality’ in achieving procedurally fair decisions. In relation to the impact of outcome upon perceptions, the discussion of court users’ responses regarding the value of the magistracy in achieving ‘summary justice’ is related to concerns surrounding effectiveness; while the perceived benefits of group decision-making in helping to achieve the fairest outcome are situated within the distributive justice tradition. However, the complexity of the above responses is illustrative of the difficulties of separating notions of process and outcome. Decision-making
by an impartial group of lay people was regarded as both being a procedurally fair form of decision-making and one which was likely to contribute to achieving distributive justice. That is, not only did both process and outcome ‘matter’ (Jacobson et al. 2015: 172) but, in the minds of court users, fair processes were perceived to enhance the likelihood of fair outcomes. These findings extend the tentative conclusions drawn by MacCoun and Tyler (1988) who found that procedural fairness of jurors was valued among citizens, in part, because it was perceived to enhance the accuracy of decision-making.

Moreover, the nuanced nature of responses suggest that it is important to focus not simply upon the factors that can ‘drive’ or inhibit perceptions of legitimacy but on the degree to which certain aspects of lay adjudication confer legitimacy in the criminal courts. A number of court users who expressed support for the use of lay adjudicators – or perhaps more accurately, aspects of the lay adjudicatory process – did so in relatively emphatic terms. Complainant Peter stated that juries are ‘the fairest way to get justice’; while supporter Frank commented ‘I didn’t know [about magistrates] before but now I know that I think it’s a great idea’. On the other hand, also discernible in the accounts of several court users was the presence of a relatively benign acceptance of lay adjudication – particularly in relation to aspects of lay adjudication that interviewees’ did not necessarily agree with. This is evident in the following quotations:

‘The jury system for me is the one that, I don’t know if you’d say it’s old hat, but it definitely needs reviewing ... and I’m sure if you went to court and changed it everyone would be up in arms. Before you say “get rid of it”, you’ve got to have an
alternative, and until someone’s got an alternative, that’s what you’ve got to live with.’ (Martin, defendant)

‘Hmmm I don’t know [about the magistracy]. Because it is functioning, there must be a reason that they exist.’ (Peter, complainant)

Thus among these respondents lay adjudication was accepted for one of two reasons: i) because it was regarded as better than the ‘alternative’ (Sanders, 2002: 329), or ii) due to an implicit acceptance that the courts must ‘be this way for a reason’. Such responses indicate a degree of fatalism (cf. Blumberg, 1969; Jacobson et al. 2015) as to the role of lay adjudicators and are associated with an ‘implicit legitimacy’ (Fielding, 2006: 7) being afforded to the courts rather than a strong, or ‘true’, sense of legitimacy (cf. Bottoms and Tankebe, 2012). This points to the value of regarding legitimacy as fundamentally ‘dialogic’ in nature rather than simply as a concept with antecedents that require isolation and measurement (Bottoms and Tankebe, 2012).

The acceptance that the courts operate in the manner that they do ‘for a reason’ is closely connected with Jacobson et al.’s (2015: 191) observation that court users perceive the courts as ‘a vast criminal justice machine that operates by its own unstoppable and inevitable logic’ and leads on to a final factor of note in this Chapter. This is of the potential limits to the extent that lay adjudication can, in isolation, promote perceptions of legitimacy in the criminal justice process. Assessing the extent to which lay adjudication could confer legitimacy on the courts was, from the outset, a primary aim of this study. This Chapter has highlighted the multiple ways in which lay adjudication does, in fact, confer legitimacy on
the criminal courts, however findings from interviews with court users suggest that other aspects of the court process can impact upon the extent to which the criminal courts are perceived as legitimate. In interview, it was not uncommon for court users to respond to a question about lay adjudication with a comment about another aspect of their experience of the court process. For example, when asked for her perspective about whether the jury in her case were able to understand, prosecution witness Sian responded:

‘Did they understand what was said? Yes. Obviously, there’s a lot that you are not allowed to say, which is frustrating. Because, I don’t know if this is of any use, but the CPS [had] ruled that a lot of the evidence was going to be heard. And then it turned out that the paperwork hadn’t been handed over to the defence so only one count was allowed to be heard.’

As the above quotation illustrates, Sian responded with a one-word answer of ‘Yes’ to the question posed but proceeded to discuss a further point that had a bearing upon her perceived legitimacy of the process, her frustrations that the jury were only able to hear evidence about the singular charge under consideration. The role of the court user as a ‘tiny part’ (Jacobson et al. 2015: 191) in an unfamiliar and powerful social system was also apparent in the response of complainant Aylin. When asked about her level of understanding of the magistracy, she described the way in which she struggled to absorb the information provided to her about this by the Witness Service because of the nervousness she was feeling in the lead up to giving evidence:
‘I mean when you say “magistrates’ court”, you know you just think “OK - ‘court’”, you know, you get a judge, you get a jury ... When you are going through the process people explain it to you [but] because you are so anxious you don’t really listen as much as you normally would. So I think that might be the reason why I couldn’t quite catch it.’

In sum, court users’ levels of understanding and perceptions of lay adjudication cannot be considered in silo from their overall experience of the criminal courts. That is, perceptions of lay adjudication act as just one constituent, or group of constituents, in court users’ interaction with the ‘vast machine’ of criminal justice. It is therefore important to pay close attention to the other factors which can shape perceptions of legitimacy among court users. This is addressed in the Chapters that follow primarily by focusing upon the ways in which lay participants engage with the criminal courts. It is argued that the ways in which lay participants engage with the criminal courts acts as an important indicator of their perceptions of the overall legitimacy of the criminal courts. This is because examining how individuals engage with the process provides a means by which two of the core components of legitimacy, ‘shared values’ and ‘expressed consent’, can be considered.

4.3 Concluding thoughts

This Chapter has examined levels of understanding and perceptions of lay adjudication among court users. The findings suggest that despite mixed levels of understanding of the
roles of lay adjudicators, generally speaking, the use of juries and magistrates enhances perceptions of legitimacy in the criminal courts.

Levels of understanding were stronger in relation to the function of the jury than the magistracy. This reflects the ‘symbolic’ value of the jury and the presence it holds within public consciousness. This is in stark contrast to the less ‘visible’ role of the magistracy, despite the fact that over 90 per cent of criminal cases are heard in the magistrates’ court (Ministry of Justice, 2016a). The lack of visibility of the magistracy has a number of implications. Firstly, if members of the public are unaware of the lay nature of the magistracy they are perhaps less likely to consider applying for the position because they are not aware that they are eligible to do so. This point is particularly salient given that levels of understanding of the magistracy were slightly weaker among those from BAME and White Other backgrounds and has implications for the representativeness of the magistracy. Secondly, a lack of awareness of the role of magistrates has the potential to undermine some of the core justifications for the system. For example, if court users are not aware of the lay nature of the magistrate role, this could in turn impact upon the extent to which lay adjudication performed by magistrates is perceived as a form of ‘trial by peers’. A further implication concerns the role that formal education might play in both improving levels of understanding, and correspondingly increasing the representativeness, of the magistracy and the jury. The findings from this study suggest that, at present, formal education appears to play a very limited role within this.

Nevertheless, the findings suggest that in the main both forms of lay adjudication function to enhance perceptions of legitimacy in the criminal courts. At an overarching level this was
indicated by the fact that more than two thirds of interviewees were of the view that magistrates play an important role in the administration of justice; this proportion increased to more than three quarters with respect to juries. In-depth analysis of interviewees’ views indicated that support was grounded in the perceived value of group decision-making by a cross-section of lay people in contributing to impartial decision-making; the importance of lay adjudication in representing the ‘voice’ of society; and benefits of lay decision-making in achieving summary justice.

The notions of ‘community’ or ‘local’ justice were largely absent from, or incidental to, court users’ discussions as to the perceived benefits of lay adjudication; as were specific discussions of the potential ‘democratic’ benefits of lay adjudication. This is in contrast to much of the literature which points to the perceived benefits of lay adjudication in this regard (Pateman, 1970; Dignan and Wynne, 1997; Morgan and Russell, 2000; Vidmar, 2000; Matthews et al., 2004). It may reflect the relative powerlessness of court users in criminal proceedings, or wider issues regarding levels of engagement and fragmentation in society (see, for example, Putman, 1995, Young, 1999), which will be returned to further in the following Chapters. It was very uncommon for court users to expressly challenge the overall premise of lay adjudication, and those that did usually challenged an aspect of it – such as the absence of legal qualifications among magistrates or questions of understanding among jurors – rather than lay adjudication as a whole. None of the court users interviewed wholly rejected the current administration of criminal justice; that is, that which involves both lay and professional adjudicators.
Factors which served to undermine the legitimacy of lay adjudication, in correspondence with the literature, tended to centre upon the extent to which the perceived benefits of lay adjudication are achievable in practice. For example, court users valued the notion of decisions being carried out by members of the public from a cross-section of society but sometimes questioned the extent to which this could be achieved. In a similar vein, court users were of the view that lay adjudication could bring a higher degree of impartiality and independence into the system but were sensitive to arenas in which, in practice, scope for bias could occur. This suggests that in order to enhance perceptions of legitimacy, effort is required to ensure that the benefits of lay adjudication, such as decision-making by a group of lay individuals who represent society at large, can be maximised in reality. This includes by ensuring that lay adjudicators represent a cross-section of society based upon a variety of demographic characteristics including age, gender, socio-economic status, ethnicity, sexuality, religion and culture.

The status quo of decision-making in the Crown Court was largely accepted, which may in part reflect higher levels of understanding about the nature of decision-making in this jurisdiction; however, concerns were raised about the extent to which jurors are able to understand complex proceedings. There may, thus, be scope for consideration about the most suitable approach when levels of understanding are at their weakest, for example, in very complex cases. Acceptance for the status quo with regard to decision-making in the magistrates’ court was less clear; this may in part be due to the opacity surrounding magistrates’ court proceedings and the more limited levels of understanding of the
The use of a group of lay magistrates to decide upon the outcome of cases, particularly trials, was valued by the majority of participants; however, arguments were raised about the need to include legal professionals in the decision-making process, particularly at the sentencing stage. This is illustrative of a disjuncture between the perceptions of court users and current practice, not only in relation to the sentencing powers of magistrates but also with regard to the role of the district judge, who can at present hear both trials and sentencing hearings while sitting alone. While these findings suggest support for the latter, they raise questions about the potential level of support for the former among court users. These are important questions to consider given the level of respect court users afforded to the gravity of the decision-making task. It is, nevertheless, notable that the findings of this study indicate that perceptions about the type of decision-maker in the criminal courts are not a zero-sum game between lay adjudication on the one hand and professional adjudication on the other.

Finally, although these findings indicate that lay adjudication does confer legitimacy on the criminal courts, lay adjudication often appeared to be just one factor, in a myriad of others, that shape perceptions of legitimacy. Court users’ broader perceptions of legitimacy are examined through the lens of ‘engagement’ in the Chapters that follow.

---

75 It is, however, noteworthy that experience of attending the magistrates’ courts – which arguably has the effect of increasing its ‘visibility’ in the eyes of individual court users – appeared to have a positive impact on interviewees’ perceptions of the magistracy.
Chapter 5: A continuum of engagement for lay participation in the criminal courts

In the previous Chapter it was argued that the use of lay adjudicators can help to confer legitimacy on the criminal courts. Notwithstanding this, findings from interviews with lay participants and observations of court proceedings suggest that there are a number of wider factors at play when examining the extent to which the criminal courts are perceived as legitimate. In this Chapter, in examining Research Question 3, I argue that the ways in which people engage with the court process acts as a lens through which to understand perceptions of legitimacy. Specifically, it is claimed that the extent to which a lay participant engages with the court process illustrates the degree to which the individual perceives the courts as legitimate.

The main aim of this Chapter, therefore, is to specify how engagement can be construed and characterised empirically by focusing upon the engagement of the two main groups of lay participant under study: court users (specifically, complainants, prosecution witnesses and defendants) and lay adjudicators. I argue that engagement in the criminal courts takes place along a continuum which consists of two axes: alignment and participation. Based upon this continuum, engagement is characterised in one of five ways: ‘active alignment’, ‘passive alignment’, ‘dull compulsion’, ‘resistance’ and ‘withdrawal’. ‘Active aligned’ engagement represents the strongest form of engagement while ‘withdrawal’ represents the weakest form of engagement. High degrees of engagement are indicative of strong

---

76 As will be described below, the discussion of ‘lay adjudicators’ largely pertains to lay magistrates due to the absence of empirical data collected on the engagement of jurors.
perceptions of legitimacy; conversely, low degrees of engagement are indicative of weak perceptions of legitimacy. Conceptualising engagement in this manner enables Bottoms and Tankebe’s (2012) influential concept of ‘dialogic’ legitimacy to be elaborated upon within the under-researched setting of the criminal courts. This is because it allows us to distinguish ‘true’ legitimacy from ‘weak’ legitimacy (Bottoms and Tankebe, 2012: 149) and to further understand what sits in between these two extremes. The study’s qualitative approach is of particular importance here because it enabled a focus on the minutia of interactions between lay participants and the courts in the context in which they occurred. Examining such relations ‘in situ’ is regarded as a particularly valuable tool for furthering knowledge on the concept of legitimacy (Loader and Sparks, 2013:109; Skinns et al. 2017).

5.1 Defining ‘engagement’ and the place of legitimacy

It is first important to explain what is meant by the term ‘engagement’. The consideration of engagement is situated in the broader sociological tradition of symbolic interactionism (Becker, 1963), and focuses primarily upon how individual lay participants interact with, and respond to, legal authorities and the court system. For the purposes of this study, engagement is defined as comprising two main dimensions: alignment and participation. An individual’s level of alignment with the courts is based on the degree to which the individual’s involvement in the process is based upon normative cooperation. An individual with a high degree of alignment is likely to cooperate with the courts on a voluntary basis; an individual with a low degree of alignment is unlikely to cooperate with the courts on a voluntary basis. The response of the latter is likely to be one of either i) a refusal to
cooperate or ii) compliance that is borne out of instrumental motivations, such as fear of
the imposition of a sanction for non-cooperation.

An individual’s level of participation in the court process consists of two main features:
understanding and expression. Understanding is defined in terms of the degree to which lay
participants are able to understand the specific aspects of the court process, such as the
language used and procedural features, and at a broader level how the individual ‘makes
sense of’ (cf. Ewick and Silbey, 1998: 226) their own role within the process. Expression is
defined in terms of the extent to which individuals can and do communicate with those in
the courtroom and with the wider criminal justice system. Expression can be both verbal,
for example in the asking or answering of questions, and non-verbal, for example by passing
a note to an advocate or refusing to respond to an order or request.

<table>
<thead>
<tr>
<th>Figure 5.1.1 Defining ‘engagement’ in the criminal courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engagement = Alignment + Participation</td>
</tr>
<tr>
<td>(understanding + expression)</td>
</tr>
</tbody>
</table>

Defining engagement in this manner provides a lens through which to understand the
extent to which the courts are perceived as legitimate. This is because a focus on alignment
represents the extent to which ‘shared values’ exist between the courts and lay participants;
while an examination of participation represents the extent to which individuals accord the
courts ‘expressed consent’ to govern. The concepts of ‘shared values’ and ‘expressed
consent’ comprise two of the core features of legitimacy, as agreed upon by prominent
thinkers in the field of legitimacy across disciplines, such as criminology, political science
and psychology (see, for example, Tyler, 2011; Bottoms and Tankebe, 2012; Beetham, 2013; Jackson et al; 2015). Moreover, an examination of engagement serves to illustrate the ‘dialogic character’ of legitimacy that exists between the power-holder (the courts) and its audience (court users) (cf. Bottoms and Tankebe, 2012: 159) by providing a means by which to distinguish strong perceptions of legitimacy from weak perceptions of legitimacy.

5.2 A continuum of engagement

Findings from the empirical research conducted for this study suggest that levels of engagement among individual lay participants takes place along a continuum that is made up of two axes: alignment and participation. Based upon this continuum, engagement can be characterised in one of five ways: ‘active alignment’, ‘passive alignment’, ‘dull compulsion’, ‘resistance’ and ‘withdrawal’. Each of the five types of engagement is described below; a graphical representation of this continuum is provided in Figure 5.2.1. It should be noted that an individual’s level of engagement is characterised by a degree of fluidity: engagement does not necessarily remain constant and can vary at different points in time. However, broadly speaking the engagement of some groups of lay participant, such as magistrates, is fairly static: that is, engagement remains fairly constant in one quadrant of the continuum. In order to frame the discussion, the typology underlying the quadrants is

---

77 Jackson et al’s (2015:137) assertion that legitimacy comprises the ‘two connected beliefs’ of ‘consent’ and ‘moral validity’ is of particular note to this argument. However, in contrast to Jackson et al. (2015), the term ‘moral’ has been eschewed in the discussion of alignment in favour of a broader consideration of ‘shared values’. This is because, as illustrated as the Chapter progresses, an individual’s level of alignment with the court process can depend upon shared ‘morals’ between the individual and the courts but this was not always the case. An individual’s degree of alignment with the process was often also dependent upon the presence of other shared beliefs which extend beyond the realm of morality. With regard to the third component of legitimacy outlined by Beetham (2013), that of ‘legality’, in line with the discussion in Chapter 2 surrounding the anticipated difficulties in measuring perceptions of ‘legality’ within the legal setting of the criminal courts, it is perhaps useful to note that none of the lay participants under study explicitly questioned the legality of proceedings. This perhaps best represents a sense of ‘implicit legitimacy’ (Fielding, 2006: 7) by lay participants that the criminal courts act in a lawful manner.
discussed and some relevant methodological observations are noted; after this the Chapter moves on to considering how and where different lay participants can be placed along the continuum. The reason for presenting the continuum of engagement at the outset of the Chapter before describing the spread of data along the continuum is to ensure that the conceptualisation is presented in as coherent a manner as possible.\textsuperscript{78}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{continuum.png}
\caption{A continuum of engagement in the criminal courts}
\end{figure}

\textsuperscript{78} Further detail of the process of analysis is provided on pages 90-97 of Chapter 3.
5.2.1 Types of engagement

**Active aligned:** This represents the strongest form of engagement because it denotes a willingness to be involved which is based on voluntary, or normative, cooperation with the courts. The individual lay participant is able to fully understand and make sense of their role in the process, holds a good degree of understanding about aspects of the court process and can express him or herself where necessary.

**Passive aligned:** This pertains to lay people who participate in the process in a passive way, but one which is aligned with the overall authority of the courts. This means that the operation and function of the courts corresponds with the shared values of the lay participant and their participation is based on normative cooperation. Expression among ‘passive aligned’ lay participants is likely to be limited and such participants may understand some but not all aspects of the criminal justice process. **Passive acceptance** (cf. Jacobson et al. 2015) is the weakest form of passive alignment. Passive acceptance occurs when an individual lay participant displays a basic level of alignment with the courts and their function. This means that there is a degree of acceptance of the courts and their function but one which only just passes into the top half of the ‘aligned’ axis. Consequently, interactions with the court lack meaning; that is, the individual may have a limited ability, or desire, to understand proceedings or express him or herself.

**Dull compulsion:** Lay people whose engagement in the court process is characterised by ‘dull compulsion’ (cf. Bottoms and Tankebe, 2012) are those for whom co-operation with the court process is solely for instrumental reasons. This means that the function of the
courts does not accord with the shared values of the lay participant, yet the individual does ultimately participate due to the threat, or imposition, of a sanction. Interactions with the court are constrained; expression is likely to be limited, absent or coerced and the individual may have a minimal ability, or desire, to understand.

**Resistance:** Engagement that is characterised by resistance occurs when an individual’s degree of alignment with the courts is weak: the courts and their function do not correspond with the shared values of the individual. In addition, the individual’s participation in the process is expressed in terms of active resistance to the function of the courts; this may be a feature of a lack of understanding, but this is not necessarily the case. Examples of resistance, for instance, include a lay participant who participates by being present but refuses to ‘follow the rules’ (cf. Beetham, 1991; Jacobson et al. 2015) of the court or who does not act as an ‘information-provider’ (Edwards, 2004) to the court in the manner requested.

**Withdrawal:** The final form of engagement identified is, in fact, the absence of engagement. Withdrawal represents the failure of individual lay participants to attend court when asked or ordered. This means that there is both a lack of normative cooperation and a lack of cooperation that is instrumentally motivated, namely to avoid a potential sanction. The understanding of specific aspects of the court process is negated due to the lay participant’s absence; here expression is either missing or the lay participant’s withdrawal takes the form of expressed rejection of the function of the courts.
5.2.2 Methodological note

Before moving on to describe the types of engagement displayed by lay participants, it is first necessary to make a small number of methodological observations regarding the development of the continuum of engagement. This is with reference to the relative role of interview data and observational data in devising the continuum. Conducting interviews with lay participants enabled a discussion of interviewees’ understanding, perceptions and experiences of lay adjudication and the wider criminal justice process. This makes it possible to examine the extent to which individual interviewees were aligned with, and participated in, the court process. The vast majority of interviewees engaged in the court process in a manner which displayed an alignment with the courts and their function. Magistrates, as will be discussed in detail below, engaged in a predominantly ‘active aligned’ manner; meanwhile the dominant form of engagement among court user interviewees – that is, complainants, prosecution witnesses and defendants – was ‘passive alignment’ (this includes ‘passive acceptance’). A handful of court user interviewees engaged in an ‘active aligned’ manner; only a minority of court user interviewees exhibited ‘dull compulsion’ or ‘resistance’. High levels of alignment may in part be a feature of the self-selecting nature of the sample (cf. Bryman, 2012) because those with some degree of alignment with the court process were arguably more likely to volunteer to participate in an interview in comparison to those with weak levels of alignment.

The engagement of court users in observed cases can also be mapped on the continuum. Analysis of the observational data generated more frequent instances of ‘dull compulsion’ and ‘resistance’ than the interviewee sample and thus facilitated a stronger
conceptualisation of these categories in the ‘unaligned’ half of the axis. Importantly, observations also elicited instances of ‘withdrawal’, which would not have been visible had the interviews been the only method of data collection. This is because only court users who participated in the court process by at least being present, could be approached for interview. Nevertheless, analysis of the observational data comes with the notable caveat that levels of alignment could be difficult to ascertain using observations alone, particularly if the individual concerned only displayed a limited degree of interaction with the court process.

Despite these methodological constraints, this brief discussion has sought to highlight the complementary way in which using different types of data, in the form of interviews and observations, facilitated a deeper understanding of the process by which lay participants engage with the court process. As Fielding (2009: 435) argued:

‘By using research designs that employ different methods to capture different aspects of the phenomenon, drawing samples purposively so as to contrast the perspectives of different groups and so on, multiple method research can act as a corrective to analytic tunnel vision. It is a way to achieve “analytic density.”’

The data presented in the remainder of the Chapter provides examples from both interviews and observations in order to illustrate the types of engagement displayed by lay participants. This is with the exception of the discussion of engagement of lay magistrates, which is largely derived from interview data. In addition to the use of interview quotations and short descriptions of observations, provided to describe the varying levels of
engagement among court users, four observed cases are described in detail (see Boxes 5.1-5.4) in order to highlight the nuance of interactions under focus.

5.3 Types and levels of engagement among lay participants in the criminal courts

The remainder of this Chapter examines engagement both within and between each group of lay participant in order to assess where individuals can be placed along the continuum. It begins by looking at levels of engagement among those with the highest degree of control in proceedings and least at stake – that is, lay magistrates, and concludes by examining levels of engagement with the lowest degree of control and most at stake, that is court users.

5.3.1 Lay adjudicators

The main type of lay adjudicator under focus in this section is lay magistrates. This is because, as highlighted in the introduction, magistrates are the main lay adjudicator under study. Examining levels of engagement of lay magistrates is important because it enables a consideration of power-holder perceptions of legitimacy from the perspective of members of the public who volunteer their time to carry out such a role. A consideration of this nature is largely absent from both existing studies of the magistracy and existing studies on the topic of legitimacy.

The role of lay magistrates can, generally speaking, be characterised by a strong degree of ‘active alignment’ with the criminal courts. The role is entirely voluntary; lay magistrates are under no obligation to carry out the role. Magistrates choose to apply for the position and
then undergo an appointment and selection procedure which can take up to two years (Gibbs, 2014a). Once appointed magistrates are required to undertake training and sit for a minimum of 26 half day sittings per year. Exploring the reasons behind an individual’s decision to join the magistracy helps to enable a better understanding of the degree of alignment between magistrates and the courts.

The eight magistrates interviewed for this study became aware of, and subsequently entered, the role in a variety of ways. Several had become aware of the magistracy from a young age, either through having a family member or friend who was a serving magistrate or through visiting a magistrates’ court on a school trip. Two interviewees had experience of a parent who had served as a magistrate which contributed to their own decision to join magistracy; for one becoming a magistrate acted in part as a ‘tribute’ to the interviewee’s mother and was akin to following a ‘family tradition’ for the second interviewee. Others became aware of the role, and then applied, after seeing an advertisement about the magistracy. One interviewee had attended the local magistrates’ court to obtain a license to serve alcohol at a community event and applied after seeing the position advertised in the court waiting area. Two magistrates became aware of the role after being approached by a friend who suggested they think about applying for the position. (In one instance, this was a friend who was a serving magistrate; in the other it was a friend who was a member of the legal profession.) One magistrate had first become aware of the role after appearing in the

---

For further detail of the training available to magistrates see: https://www.magistrates-association.org.uk/training-magistrates [accessed 01.12.17]. Magistrates’ training has been subject to debate among commentators, Davies (2005: 113) argued that the level of training provided has contributed to a ‘professionalisation’ of the magistracy; Gibbs (2014b), on the other hand, argued that there is insufficient training provided to the magistracy. Morgan and Russell (2000: 74) asserted that it is a ‘moot point’ as to whether lay magistrates have ‘some training’ or are ‘highly trained’ but note that magistrates are in receipt of more training in the twenty-first century than at previous times.
Youth Court as a young defendant (the individual was subsequently acquitted), however, this individual was motivated to apply for the position after witnessing a crime in the local area.

Occupying the role of lay magistrate is, in many ways, an embodiment of ‘voluntary cooperation’ (Tyler, 2011) with the criminal justice system and the findings from this study indicate that magistrates were motivated by a strong sense of alignment with the courts and their function. As magistrate interviewee David described:

‘I spent my life travelling the world [for work] and the more countries I visited, the more I became aware just how privileged we are to be here and to live here. And how much the rest of the world would say “actually, we’d quite like that as well”. With that came a feeling about wanting to put something back and this was just something that interested me … and something which was worth preserving.’

A sense of alignment with the courts is also denoted by the relatively high retention rates associated with the role. Davies (2005) estimated that many magistrates were likely to spend at least 10-20 years in the post. Among the serving magistrates interviewed for this study, the minimum length of service was four years; the longest serving magistrate had more than twenty years’ service. Six of the eight interviewees had been in the role for more than 10 years and half had been in the role for more than 15 years. It is possible that the self-selecting nature of the sample meant that those interviewed comprised individuals who
were likely to be highly committed and thus long-serving. However similar findings are also present in existing studies. Ward (2017) noted that the majority of the 33 magistrates who participated in her study had served for between 10 and 20 years; while the average (mean) length of service in Gibbs’ (2014a) study of 56 magistrates was 11 years. High levels of commitment to the role were also evident in the extent to which those interviewed contributed time and effort beyond the required 26 half-day sittings. The majority of interviewees either: had experience of sitting in a number of jurisdictions, such as, in addition to the adult magistrates’ court, the youth court or the family court; held, or had held, senior positions in the magistracy, such as serving as Chair of the panel in one of the above three jurisdictions; or were involved in wider activities for the magistracy such as training activities or community engagement events.

In a similar vein, the findings from interviews suggest that motivations for carrying out the role were also rooted in magistrates’ connections to wider society. Several interviewees spoke of the importance of ‘giving something back’ to society by carrying out the volunteer role. This is described in the following quotation from magistrate Lewis:

‘I wanted to give back something to the community because my children had just finished university, I had just changed jobs because up until then, I was working ... hundred-hour weeks, 90-hour weeks, and all of a sudden I had time. As I started to look around, things like with various charities but also I was looking at a magistrate

---

80 It may also reflect issues arising from recent falls in the recruitment of magistrates. (See Gibbs, 2014a, for more detail.)

81 Sitting in the youth or family court requires a commitment of sitting for a minimum of 35 half day sittings per year. See: https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/ [accessed 01.12.17].
and I thought I could bring my experience to this and I think it would be a good way of paying back the community with all the things I’ve had from it over the years.’

In this sense, as well as displaying a strong degree of alignment with the criminal justice system, magistrates also tended to demonstrate a high level of engagement and investment in wider society. Similar findings are also present in existing studies of the magistracy. Gibbs (2014a: 17-8) found that magistrates were motivated to join the magistracy in order to ‘give back to society’ and were part of the ‘civic core’ of society who, in addition to the magistracy, carried out other voluntary activities. Ward’s (2017: 77) description of magistrates interviewed for her study closely chimes both with findings from Gibbs’ (2014a) study and with several of the above quotations:

‘There was an implicit sense that they were lucky enough to be in this position, and along with the privilege of having time to spare, replies came within the general theme of wanting to contribute to society.’

The notion of ‘giving something back’ as a motivation for a volunteer role is commonly cited in existing volunteering literature, which includes volunteering in the wider criminal justice system and beyond (see, for example, Jacobson, Skrine, Kirby and Hunter, 2014a; Narushima, 2005). Indeed in this study, several Witness Service volunteers interviewed spoke of the ways in which the role enabled them to contribute to society or their local community. As interviewee Rita commented: ‘I think we as a group are doing some good in the community in an area which I think is very neglected.’
It seems that the idea of ‘giving back’ was a reciprocal relationship. That is, carrying out the voluntary role of magistrate (or Witness Service volunteer) promoted engagement in wider society by enhancing existing levels of social capital among individual volunteers, such as by bringing them into contact with diverse sections of the community and engaging in wider society at a point at which their level of inclusion in society was at a point of transition. For example, two interviewees had joined the magistracy when they were undertaking full-time care of their young children. Meanwhile, magistrate George reflected upon how his engagement with the role, and connection to wider society, had shifted over the course of his time as a magistrate:

‘When I was working and first became a magistrate it was all about making a contribution and all that sort of stuff. Then it became very much ... a relief to get away from the corporate world [I worked in] ... and do something completely different: you felt like you were making a contribution and [had] a new set of people to engage with. Now I have retired in many ways it has replaced that camaraderie and that sense of belonging that I would have had in employment – even though I’m not employed – with a new set of co-workers and all that sort of thing.’

In a similar vein, several of the retired Witness Service volunteer interviewees spoke of the benefits that the volunteer role brought to their individual sense of continued engagement in society. For example, volunteer Billy stated: ‘I didn’t want to be sitting down at home and doing nothing, so I just applied ... I enjoy doing it since I can communicate with the witnesses.’
Moving on from the perceived value of ‘giving back’ as a motivation for joining the magistracy, interviewees often also spoke of being particularly motivated by the challenging nature of the role. This is well-illustrated by the following quotation from magistrate Josh:

‘At the time [of applying] I thought about what I could do from a volunteering perspective but what I wanted to do was something that would utilise the skills that I have as a [business] professional. But, also something that would be a more challenging use of my time and my skills, so that’s why I felt it was a good option for me; as opposed to doing something like working in a soup kitchen [or] working down at the Red Cross shop on a Saturday. I wanted something that was very complementary and more challenging and not something that was everyone’s first idea of a volunteer option.’

The perceived value of carrying out a challenging, yet rewarding, role was further described by David and Lewis:

‘You actually ma[k]e a difference. So that is why I do it. ... You are trying to do the right thing, and on the information you have, you make your decision. So, the appeal process we are quite happy with as well: so if you have made a decision and that is wrong for whatever reason, you can learn from that.’ (David)

‘When I go home, and I feel that the person has had a fair trial, we’ve listened, I feel good. And it is very difficult ... to send someone to prison, that is very difficult, you are taking the liberty away, that’s only rare, that doesn’t happen very often. But if it
is the right thing to do because of the evidence you have heard then that is also OK. But it is not very nice for the person to have their liberty taken away. But, you know, you shouldn’t have done whatever you did in the first place.’ (Lewis)

A perception of the challenging nature of the magistrate role is perhaps what distinguishes the role of magistrates from that of other voluntary positions in the criminal justice system. Witness Service volunteers’ sense of reward was often centred upon feeling able to provide help or support to individuals during what could be a distressing or upsetting experience. Witness Service volunteer Stan, for instance, when discussing what motivated him to carry out the role stated: ‘Purely and simply turning up and feeling that if you weren’t there, these people would have a more difficult experience – simple as that’.

Much like participants in Ward’s (2017) study of the magistracy, all of the magistrates interviewed either held or had held professional positions in their working lives. Interestingly several interviewees, such as Josh (above), noted that they had deliberately selected the magistrate role above other volunteering activities due to the perceived challenging nature of the decision-making role and it being one which allowed them to apply the expertise and skills gained in their careers to a voluntary role. However, the above responses from magistrates David and Lewis, also indicate that interviewees were able to take satisfaction from making what they considered to be the ‘right’ decision, or as the below quotation from Josh outlines, the ‘best’ decision:

‘What I always say to people is that I don’t believe that we make the right decision every day. ... I am not naïve enough to think that the decision that we have made is
the right one, I think we do the absolute very best we can with the information. We do genuinely work hard to make sure that we make the right decision and when you can have a positive impact, either on a defendant by giving them the opportunity to try and change their lives or improve, and or potential for complainants and victims in cases, that’s rewarding in itself because you are trying to help society more widely.’

These comments are particularly important in helping to elaborate upon the under-researched terrain of power-holder legitimacy (Bottoms and Tankebe, 2012). This is because they allow us to glean valuable insight as to the ways in which perceptions of doing the ‘right thing’ (David and Lewis), or the ‘very best we can’ (Josh), contributes to an individual’s ‘self-belief … [in] the moral rightness of their own claims to exercise power’ (Bottoms and Tankebe, 2012: 162). Not only do these responses point to the high degree of alignment interviewees afforded to the courts, they are also imbued with a concern for reaching the best outcome for those with the most at stake and lowest degree of control over the outcome; that is, court users (cf. Benesh and Howell, 2001). This was further reflected upon by magistrate Sarah, who spoke of the emotional costs and benefits of such decision-making:

‘It is very rare you take stuff home with you; there are times – and actually I think it is good, I think it is good – there are things that do profoundly affect you and then you have the odd sleepless night. I don’t think that’s a bad thing; I think it shows you are a decent person, that it can and does affect you.’
This quotation can be situated in the literature surrounding ‘emotional labour’ (Hochschild, 1983), the performance of which requires ‘the management of feeling to create a publicly observable facial and bodily display’ (Hochschild, 1983: 7). Emotional labour is usually applied to the workplace in the fulfilment of paid employment and is termed as such because it is ‘sold for a wage and therefore has an exchange value’ (Hochschild, 1983: 7, emphasis in original). It seems that for lay magistrates, such as Sarah, the rewarding nature of occupying such a challenging role, rather than financial gain, is represented by the ‘exchange value’ required in the performance of emotional labour. Ward (2017: 90) noted that magistrates in her study performed emotional labour by ‘rationalising’ difficult decisions, such as imposing a custodial sentence, through regarding the decision as ‘the right thing to do’. A similar process can be observed in several of the above quotations from magistrates in this study.

Moving on from a discussion of the high levels of alignment displayed by interviewees, in order to fully examine magistrates’ engagement, it is also important to explore their levels of participation. Generally speaking, magistrates can be said to participate ‘actively’ in courtroom interaction, albeit within the confines of their role. Magistrates’ understanding of the matters at hand is aided by the assistance of a legally qualified adviser who provides assistance to lay magistrates with matters of law. Magistrates, like paid judges, are able to refer to guidance provided in the ‘bench book’ relevant to the court at which they are sitting, for example the ‘adult court bench book’ (see Judicial College, 2017) when sitting in the adult court, and Sentencing Guidelines relevant to the offence on which they are
passing sentence. Understanding is also likely to be aided by the training received and the educational background of magistrates. Unfortunately, there is an absence of official data on the educational background of magistrates; however, findings from existing research suggest that magistrates are likely to be drawn from relatively well-educated backgrounds (Dignan and Wynne, 1997; Ward, 2017).

In terms of formal ‘expression’, magistrates’ levels of expression in the courtroom are constrained in order to allow ‘court users to experience the legal process as fair, impartial, and legitimate’ (Roach-Anleu and Mack, 2005: 593). Magistrates in Roach-Anleu and Mack’s study of emotional labour in the magistracy in Australia, where the role is paid and is one which requires individuals to have acquired formal legal qualifications, spoke of the importance of balancing the need to engage with individual court users while also ‘maintaining social distance and avoiding over-identification with them’ (p. 608). This is also necessary for lay magistrates and members of the paid judiciary in England and Wales.

Formal expression by magistrates in the courtroom is limited to announcing the decisions they have made and the reasons for such decisions (known as ‘pronouncements’) on applications, trial verdicts and sentencing decisions, and asking questions of court users, court staff and legal professionals at various points in proceedings. However, the quality of expression plays an important role within this. Several magistrate interviewees outlined the ways in which they felt able to actively engage with courtroom participants within the constraints of their role. As Sarah explained:

---

82 Available at: https://www.sentencingcouncil.org.uk/the-magistrates-court-sentencing-guidelines/ [accessed 01.12.17]
83 Participants in this study were not expressly asked for details of their educational background.
84 For further details see Judicial College (2016).
‘We have court users who have needs ... I had someone in court, a defendant, who [had] real problems, even though the person was deemed fit to plead and everything else. [I] treated the person with kid gloves – very careful – because, you know, it’s a difficult, emotional, traumatic situation for them. You try and make it as comfortable as possible, bearing in mind it is not a comfortable place, you treat people with as much dignity as possible.’

Such considerations can be located within the literature on procedural justice (such as Tyler, 2007) and highlight a recognition among interviewees of the importance of treating court users with respect and consideration. Though their role is constrained, lay magistrates are arguably the lay participant most able to express themselves in court proceedings. The reasons for this will become more evident as the Chapter progresses.

Notwithstanding the relatively high levels of engagement among magistrates, interviews with magistrates highlighted several ways in which the ‘active aligned’ engagement of magistrates could be challenged. This is particularly in relation to aspects of the role that were deemed to be ‘frustrating’, a term which was used by five of the eight interviewees. This, arguably, signifies a degree of ‘passive acceptance’, or in some instances ‘resistance’, to certain aspects of the court process. For example, when asked about ‘dissatisfying’ aspects of their role several interviewees commented upon operational constraints within the court process, such as perceived failures of administrative staff or legal professionals to adequately prepare and present cases or to prevent instances of (avoidable) delay. Others

85 The role that procedural justice can play in fostering engagement in the criminal courts is discussed in more depth in Chapter 6.
described the way in which they perceived that their role had changed over time. This included undertaking work beyond the immediate courtroom environment, such as responding to emails. Within such responses was a sense – or in some instances an explicit statement – that magistrates could feel that their engagement in the criminal courts was undervalued. This was by both those responsible for administering justice and by wider society. This is well-illustrated in the following quotation from Mag:

‘I think that there’s quite a large portion of the public who don’t have a particularly good opinion of magistrates. When I first joined ... I was really proud to say I was a magistrate, I don’t tell people now. ... I think we are seen in the same bracket as tax inspectors and police officers who are “just out to give us points when we drive”.’

This sense of an ‘undervaluing’ of the participation of lay magistrates echoes findings from the House of Commons Justice Committee (2016) who reported on the presence of ‘low morale’ within the magistracy. Indeed, several interviewees made reference to what could be described as instances of ‘withdrawal’ among magistrates; that is, of individuals leaving the role because they had become unhappy or dissatisfied with it. As Josh explained:

‘I do think that what’s happened over the last few years is that magistrates are treated more like a resource that can be turned on and off and I think there is a danger that they are going to start to attract either the wrong types of people or, as I know within my own court is true, we have lost some very experienced magistrates because there is a whole body of research around how you motivate volunteers and how you capitalise on their skills and experience and I think the judiciary sometimes
forgets that. And magistrates can be left feeling unvalued. And that has, certainly in my court, led to resignations. I think that that can be a loss to the system.’

It is not possible to comment further on reasons for withdrawal in the magistracy because only serving magistrates were interviewed for this study; none of whom expressed an overt desire to withdraw from the role. However, in the context of a magistracy which has shrunk by almost fifty per cent since 2010, it is possible that insights can be gleaned from some of the above comments that go beyond commonly cited reasons for falls in the size of the magistracy, such as falls in caseload (Judicial Office, 2018).

A note about jurors

In order to conclude the discussion of engagement among lay adjudicators, the extent to which the continuum of engagement could be applied to jurors is briefly examined. The limitations of applying this conceptualisation to jurors are acknowledged due to the absence of an empirical investigation of juror levels of engagement. However, this section considers the ways in which the findings of the scant existing empirical studies of juror perceptions – namely, Matthews et al. (2004) – along with statistical data regarding jury service, can be applied in order to help extend the theoretical development on the subject of engagement among lay adjudicators in the criminal courts.

It is likely that the engagement of individual jurors can be situated within each quadrant of the continuum. Individual jurors can be described as ‘active aligned’ in instances in which there is a good degree of normative cooperation with the role. This is likely to be the case for jurors who express positive motivations upon receiving a jury summons, despite the
involuntary nature of the role. For example, approximately half of the jurors in Matthews’ et al. (2004) study described feeling ‘enthusiastic’ or ‘very enthusiastic’ about being called for jury service. During a trial, active participation is indicated by jurors who take notes, ask questions or nominate themselves as jury ‘foreman’. Passive alignment is likely to be present among jurors who attend court out of a sense of normative cooperation towards the role, but who do not participate actively in the manner described above. Matthews et al. (2004: 26) found that jurors participating in their study reported normative motivations for participating in jury service, such as ‘moral duty’. Interestingly twenty per cent of respondents expressed indifference about carrying out the role – evident in responses such as ‘it didn’t bother them’ or ‘it had to be done’ (Matthews et al. 2004: 26). This is indicative of a degree of ‘passive acceptance’ among some jurors.

However, due to the relatively involuntary nature of the jury role, it is also likely that participation among some jurors is characterized by ‘dull compulsion’, or even ‘resistance’, particularly if the main motivation for participation is borne out of a desire to avoid sanction. Motivations for participation are likely to vary depending upon the circumstances of the individual juror. Just under one third of the serving jurors who participated in Matthews’ et al. (2004: 25) study expressed reluctance about carrying out the role. Finally, withdrawal by jurors is arguably represented by the failure to respond to a jury summons. In 2017, approximately 12 per cent of individuals issued with a jury summons failed to respond (see Ministry of Justice, 2018c).86

86 A further 29 per cent were excused from jury service (Ministry of Justice, 2018b).
5.3.2 Complainants and prosecution witnesses

As highlighted in the Literature Review, there has been much policy development in the last thirty years which has sought to challenge the ‘walk-on’ (Jacobson et al. 2015: 92) or ‘bit player’ (Shapland and Hall, 2010: 163) role of complainants and prosecution witnesses in the court process. Efforts have focused upon promoting participation by enhancing an individual’s ability to ‘give best evidence’. This is most evident in the introduction of the Youth Justice and Criminal Evidence Act 1999 which implemented provision for vulnerable or intimidated witnesses to give evidence through the assistance of ‘special measures’. Notwithstanding such shifts, arguments persist that complainants and prosecution witnesses find it difficult to fully participate in court proceedings due to difficulties in levels of understanding and limits to the extent to which they are able to express themselves (Fielding, 2006; Jacobson et al. 2015; Kirby, 2017a). Existing research has seldom directly examined levels of alignment among complainants and prosecution witnesses. In this study, levels of engagement, comprising alignment and participation, among prosecution witnesses and complainants varied across different points on the continuum, ranging from ‘active alignment’ to ‘withdrawal’. As will be illustrated below, only a small proportion of complainants and prosecution witnesses, either in interview or in the observed cases, displayed ‘active aligned’ engagement with the court process. ‘Passive alignment’ was the dominant form of engagement among interviewees; however, weak levels of engagement

87 For recent overviews of the available provisions see Jacobson and Harlow (2017); Marchant (2017) and Wurtzel and Marchant (2017).
were common among complainants and prosecution witnesses in observed cases with just under two thirds of witnesses exhibiting ‘dull compulsion’, ‘resistance’ or ‘withdrawal’. 88

Active alignment

‘Active alignment’ with the court process was evident in the responses of a handful of complainants and prosecution witnesses interviewed. For example, Iumi described how he was motivated to give evidence in a case of drink driving by a sense of ‘civic duty ... just a normal thing anybody is expected to do’. This denotes a degree of alignment with the function of the courts. Interestingly, Iumi spoke of how his contact with the volunteers at the Witness Service reinforced both his normative motivations for attending court as a witness and the degree to which he felt able to participate in the process:

‘[It] was a bit of a surprise that they were so welcoming and such nice people being so helpful ... The way they, in a very welcoming way, explained to me how everything is going to happen and how it works, I felt really kind of, you know, humbled. That these people who are so old are being so useful to the court, shall I say, to get the baddies off the street, or just from the good side of being senior citizens. And, yeah, I felt great. When I went into the court I felt great to be part of it and to participate in it.’

A high degree of alignment was also displayed by the prosecution witness Dominic, who gave evidence in a case of fraud against a former colleague:

88 It should be noted that the proportions provided in this section exclude observed cases in which it was not possible to determine the individual’s level of engagement; this accounted for around one sixth of cases involving complainants and prosecution witnesses.
'When we caught the guy and had him arrested I put my name down because I was dead keen to make sure he was nailed because – one what he had done to us – but also the amount of pain he caused [me] internally. ... So when the courts wrote to me [saying] “Would you be happy being a witness?” – I said “Yes, definitely.”’

As the above quotation shows, Dominic felt aligned to the prosecution process; this was in part due to the impact that that offence had upon his own life and on the company for which he worked. Once at court, he felt able to participate actively, despite being required to present what, in his view, was quite ‘complex’ information:

‘I guess that was my job to try and present [the evidence] in a simple way ... The judge was very clear. And if I explained something, I guess for his understanding, he would clarify – “so that means this, this and this” and I’d go “yes” or “no, actually it means this”. ... Which is good because it made me think about how to rephrase or to make it even clearer and obviously that’s what he’d do for the jury, and for himself, I guess.’

Other prosecution witnesses and complainants attended court as a result of incidents that had a much more personal impact upon them. Belle, for example, was a complainant in a sexual assault case at the magistrates’ court. Her engagement with the court process could be described as strong, both in her alignment with the court process – ‘I just wanted to see that person be prosecuted for what he did’, she explained – and because she felt able to actively participate in proceedings. The latter is illustrated by the fact that, after giving
evidence from behind a screen, Belle opted to sit in the public gallery to hear the remainder of the case. She described this as:

‘quite nerve-wracking because obviously I had to hear his side. I just sat there, listened to what he said, and he was just ridiculous. It was quite empowering being there ... It wasn’t like I was like scared of him, I felt like I was strong, and I could face him and ... I was in control.’

‘Active alignment’ was also discernible among complainants and prosecution witnesses in a handful of observed cases. For example, the notion of alignment as an expression of civic duty was evident in the response of a prosecution witness in the observation CCPT12; her participation could also be described as ‘active’. In this case, the witness had reported her long-term neighbour to the authorities for fraudulently claiming disability benefits. The witness had travelled some distance from her home town to give evidence at court. She was smartly dressed and clearly spoken when giving evidence and responded to several of the assertions put forward by the defence advocate in a firm tone. Importantly, when asked about her reasons for reporting the alleged offence she stated that she was an ‘avid supporter’ of Help the Heroes – a charity which provides support to those experiencing injuries and illnesses in the aftermath of serving in the armed forces – and that she didn’t want to see people ‘taking advantage of the system’ by falsely claiming benefits.

Meanwhile, observation MCFT01 involved an alleged assault against a police officer outside a club. One of the prosecution witnesses, a doorman at the club where the incident occurred, displayed ‘active aligned’ engagement with the court process. The witness’s active
participation was displayed by instances of unbroken speech when giving evidence – in response to this the prosecutor, on occasion, asked the witness to ‘pause’ or provide further clarity. He also guided the court through his interpretation of the CCTV footage of the incident. The witness’s level of understanding of the court process may have been aided by the fact that the prosecutor asked for a few minutes to speak to the witness both before he gave evidence, in order to explain the process to him, and at the end of his evidence, in order to thank him for coming to court. During his evidence, the witness exhibited a strong degree of alignment with the criminal justice process. This was arguably shaped by the witness’s own profession and evident in his repeated assertion that the defendant had thrown a ‘cheap shot’ at the police officer by hitting him when the officer’s back was turned. The witness reiterated this at the end of his evidence-in-chief when the prosecutor asked him if there was anything further he would like to say. He stated that doormen have ‘quite a strong code’: ‘cheap-shotting’ a police officer goes against this.

The presence of ‘active alignment’, as highlighted in the above quotations from interviewees and descriptions of observed cases, is indicative of a high degree of perceived legitimacy for the courts. This is because the individual’s strong degree of engagement with the court process represents the presence of i) ‘shared values’, in the form of a strong level of alignment between the individual and the court, and ii) the presence of ‘expressed consent’, in the form of voluntary and active participation in the court process.
Passive alignment

The engagement of complainants and prosecution witness interviewees, however, more often took the form of ‘passive alignment’. Interestingly, this response was particularly prevalent among prosecution witnesses who did not have a personal connection to, or stake in, the case at hand. This includes interviewees who had witnessed an offence, or alleged offence, occurring in a public place (such as the street) or as part of their occupational role. ‘Passive aligned’ witnesses tended to demonstrate an overall sense of alignment with the authority of the courts yet often described their feelings about their participation in the court process as ‘nerve-wracking’ (such as Anita and Evelyn) or ‘scary’ (such as Zara). This was often because giving evidence meant entering an environment, or social world, that was unknown to them (cf. Jacobson et al. 2015). Levels of expression among such witnesses could be limited due to the nature of their role as ‘information-provider’ (Edwards, 2004) and in some instances levels of understanding were partial or incomplete. Prosecution witness Anita provided a stark example of this. Anita explained that though she ‘didn’t mind’ giving evidence at court, when initially asked to attend court by the police, she had not understood that she would be required to give evidence:

‘The phone call from the police was very brief – “Could I attend the next day?” and I didn’t fully understand what I was going for. ... Being a bit naïve, I didn’t really think it was for the actual trial. So, I just thought I was going along, go through my statement with the police and check any like any questions or anything that the police or the prosecution would have. So, when I went the next day ... I went to go straight into the courtroom, thinking there’d be some people to have a chat with
about my statement, and realised it was the actual trial going on! ... I wasn’t entirely aware that I was actually going to be giving evidence at the trial.’

For others this lack of understanding was at a broader level and represented a lack of familiarity with the court process and environment. Evelyn, for example, had never attended a court prior to being called as a prosecution witness in a magistrates’ court case of theft. She described her experience of entering the courtroom as follows:

‘I suppose for me as well, not ever going into a courtroom [before], it was not so daunting: I imagine[d], a big [court] like you know like what you see on telly. But it wasn’t, it was like a really smallish, intimate room, so it wasn’t too overwhelming once I got in there; [I] could see what the layout was. Even though the [Witness Service] show you on this picture, you know, in reality it didn’t look so daunting to be honest. ... I’d never been in the room before so I went in and sat down, they were like “no”; I should have stood up until they told me to sit down.’

Though passive alignment was the dominant form of engagement displayed by complainant and prosecution witness interviewees, exhibited by more than half of the interviewee sample, passive alignment was only discernible among a small number of prosecution witnesses in observed cases. One example of this arose in case MCFT16 in which a woman had witnessed an assault committed by one of her neighbours against his partner. The trial took place almost one year after the alleged incident and the witness was the only person to give evidence in the case. The alleged victim had refused to become involved in legal proceedings from the outset. The defendant was absent from the trial; the district judge
overseeing the case had ruled to try the case in his absence after the prison in which he was being held on remand for other matters had failed to produce him to the court. (The issue of ‘withdrawal’ among court users is further described below.)

When giving evidence, the witness giggled nervously at points and seemed to find it difficult to understand some of the legal conventions involved in the trial process. For example, though she had been given permission to refer to her statement to aid her memory, the witness struggled to understand that she was not supposed to read out passages directly from the statement and was reminded about this by the prosecutor on various occasions. Therefore, though the witness displayed a good level of alignment with the court process, evident in her voluntary cooperation with the court process despite the length of time the case had taken to come before the court, her participation – due to her limited degree of understanding and expression – is best described as passive. Interestingly, the witness’s overall alignment with the court process was seemingly acknowledged by the judge who, at the end of her evidence, stated: ‘We thank all witnesses for coming because we can’t perform our function if people don’t come’.

Engagement among other witnesses, however, could more aptly described in terms of ‘passive acceptance’. This is because, generally speaking, a level of alignment with the court process was manifested in their voluntary cooperation with the court process, however, there was some reticence, or ‘fatalism’ (Jacobson et al. 2015: 194) about doing so. This is illustrated in the below quotation from prosecution witness interviewee Sandrine:
‘I was quite nervous about it. Didn’t really like to have to do it but I did. I’d rather have not have done it but I had to do it. At the time I was quite surprised that I had to give evidence, but you know I did – it was nerve-wracking. ... I didn’t like it; but it was what I expected.’

Other witnesses demonstrated a ‘passive acceptance’ about certain, though not all, aspects of proceedings. For example, the below quotation from Aylin, a complainant in a case of harassment, illustrates how her high degree of alignment regarding being required to attend court, and her wish to actively participate, did not lead to her then feeling able to fully engage with proceedings. This is because the structural aspects of the court process, such as the legal constraints imposed on ‘story-telling’ (cf. Fielding, 2006), limited the extent to which Aylin felt able to express herself. This resulted in her displaying a degree of ‘passive acceptance’ of her overall role within the court process:

‘I mean generally, in terms of my case, I found the answer that I wanted, so you know he was found guilty so for me that’s like you know, proving my case and getting a release for the last [several] years of my life. ... But in terms of my evidence, ... I think I could have maybe been listened to a bit more, in terms of witnessing. I felt like when I came out of the [court] I felt like I couldn’t explain myself, like I felt like I didn’t get to explain anything where everything was so general. ...When I did get to hear the end verdict I was relieved, you know, I did thank the [magistrates] to myself and I was completely happy but I was scared before all that happened because I was like “Well, I didn’t get to explain myself and how much it affects me and how paranoid I’m getting in my own life. Or how I’m not being able to move on”. Maybe
it is because I was just witnessing my own case … I don’t really know the court service, but I was there as a witness and not the actual person which kind of felt a bit weird anyway.’

Alyin’s description of acting as a ‘witness’ rather than ‘the actual person’ in a case in which she had been the subject of victimisation provides a vivid depiction of what Shapland and Hall (2010: 166) describe as victims being ‘reincarnated’ as witnesses by the court process. Instances of fatalism or reticence that characterise ‘passive acceptance’ suggest that the individual affords the courts an ‘implicit’ (Fielding: 2006: 6) rather than ‘true’ (Bottoms and Tankebe, 2012) sense of legitimacy.

*Dull compulsion*

In other instances, prosecution witnesses and complainants demonstrated an overt reluctance to attend court. This is illustrated by the following quotations from interviewees Gemma and Jake:

‘I’d spoken to the Witness Team. [They] called me and I’d said to them at that point, “Is there any way I can not have to do this?” … [They] just kind of said that because I’d given a statement, that obviously it was important to attend court because I’d be summoned … [So] because I’d given a statement, obviously I’d signed that statement with my name on it and everything, I was under the impression that I couldn’t then not attend.’ (Gemma)

Moreover, Fielding (2006) found that the limits to expression can have a particularly profound impact upon complainants giving evidence in cases of alleged domestic or sexual violence.
‘At first, well when I was asked to make a statement about the offence, I was told that I wouldn’t need to attend court. And then all of a sudden it was “If you don’t attend court, there’ll be a summons out for your arrest and you will be forced to.” And I was like “Well that’s not what was explained to me at all”. So right from the word go, I was a little bit annoyed. ... I actually had an argument with the [Witness Care Officer] and he no longer wanted to speak to me. ... I think it would be a lot better if [witnesses] didn’t feel guilt tripped into coming by being threatened with summons.’ (Jake)

Both Gemma and Jake attributed their reasons for attending court as not being borne out of their own normative choice but due to a threat of sanction by the courts. In this vein their engagement with the courts was based upon a very weak level of alignment with the courts.

For engagement to be characterised by ‘dull compulsion’, weak levels of alignment combine with participation that is passive. The latter was manifested in instances in which once at court, the witness’s participation was limited to solely acting as ‘information-provider’ (Edwards, 2004) in response to questions asked during the course of evidence giving. This is indicative of weak perceptions of legitimacy because ‘shared values’ are largely absent and ‘expressed consent’ is constrained because the individual’s participation is borne out of the threat of sanction. Engagement of this nature was discernible among witnesses in around one sixth of the cases observed and was also evident during my time spent with the Witness Service at each court for the purposes of recruiting witnesses for interview. For example, observation CCOH02, which began as a trial but was ultimately aborted after the defendant
entered a guilty plea during the prosecution case, involved a prosecution witness who had attended court but did not want to give evidence. The witness, who worked in the area in which the defendant had lived and had seen the alleged incident (involving the possession of a firearm) had written a statement to say that he did not wish to give evidence. The judge, upon reading the statement, commented ‘he clearly doesn’t want to give evidence at all.’ Nevertheless, the witness did reluctantly give evidence and was thanked by the judge for doing so. A further example of a prosecution witness displaying ‘dull compulsion’ towards the court process is outlined in Box 5.2 (pp. 199-200).

In some instances prosecution witnesses only gave evidence after being summonsed to attend.\(^9\) Examples of reluctance were common in cases where the defendant and prosecution witness were known to each other and, particularly, where the allegation was set in the context of domestic abuse. It had not been the aim of this study to include a focus upon a specific offence type or category. However, the prevalence of cases involving domestic abuse in which the complainant or prosecution witnesses’ engagement was characterised by ‘dull compulsion’, or as will be outlined below, ‘resistance’ or ‘withdrawal’, means that offending, or alleged offending, that involved domestic abuse requires further attention.

Cases involving alleged domestic abuse form approximately 16 per cent of cases brought before criminal courts; 88 per cent of these cases are completed in the magistrates’ court.

\(^9\) Prosecution witnesses can be summonsed to attend court under the Section 169 of the Serious Organised Crime and Police Act 2005 if the following conditions are met: i) if the individual is due to give evidence that is likely to be ‘material evidence’ and ii) if the court is satisfied that it is in the interests of justice for the witness to give evidence. See also: [https://www.cps.gov.uk/legal-guidance/warning-and-phasing-witnesses](https://www.cps.gov.uk/legal-guidance/warning-and-phasing-witnesses) [accessed 15.01.18].
The most recent data available at the time of writing show that the conviction rate for prosecutions involving domestic abuse is 76 per cent; 91 per cent of these were the result of the defendant entering a guilty plea. Of the 31 per cent of cases that involved a contested plea the conviction rate was 53 per cent. In cases which did not result in a conviction, ‘victim issues’ – defined by the CPS as to include ‘victim retractions, victim non-attendance and where the “evidence of the victim does not support the case”’ – were cited in more than half (54 per cent) of cases (CPS, 2017; A11). The difficulties involved in bringing cases before the courts are reflected in the extensive legal guidance produced by the CPS with respect to the prosecution of cases involving domestic abuse. This includes guidance on how to proceed in cases in which the complainant fails to cooperate with, or disengages from, the prosecution process. Six of the eight magistrate interviewees referred, without being prompted, to the difficulties associated with the prosecution of cases involving domestic abuse. This is described in the following quotation from Mag:

‘There are things that can be done [if a prosecution witness does not want to give evidence]; the prosecution can, and in fact and often it is fairly regularly given automatically before the trial even starts so the previous hearing, you can issue a witness summons. But realistically if the witness fails to turn up, the witness nearly always will be the alleged victim: are you actually going to send the police to arrest somebody who is the alleged victim of some form of abuse? Of course you are not. So there is very little we, by the time that it gets to our courts, can do. … Often you

---

find that they have rekindled their relationship. And the whole nature of domestic abuse is a bullying one.’

Mag’s comments about the difficulties in compelling complainants in cases involving alleged domestic abuse points to the ways in which a reluctance to attend court can extend beyond one of ‘dull compulsion’ and have a bearing upon how, and even if, the individual engages with the court process. This will become apparent in the following discussion of ‘resistance’ and ‘withdrawal’.

**Resistance**

In just under one quarter of observed cases involving prosecution witnesses, the witness’s weak level of alignment with the court process manifested itself in engagement that took the form of active resistance to the court process. Resistance could take several forms and was particularly evident during court observations. Observation MCPT04 involved an allegation of assault between a female complainant and her male partner. The complainant gave evidence in open court – after having declined to enter a special measures application – while her partner sat in the secure dock opposite her. When giving evidence, the complainant stated that she was drunk at the time of making the allegation and that the allegation was untrue. She continued to state this after the prosecution had successfully entered an application that allowed the complainant to be cross-examined by the Crown about the sections of her statement that did not correspond with her evidence in court; this is known as a ‘hostile witness’ application. A similar sequence of events took place in observation MCFT18, a detailed description of which is provided in Box 5.1. Both cases

---

92 Applications of this nature can be made under the Criminal Procedure Act 1865.
ultimately resulted in the case against the defendant being dropped at the close of the prosecution case.

**Box 5.1: A ‘resistant’ complainant in a domestic abuse case (MCFT18)**

The defendant (D) was alleged to have assaulted his wife, the complainant (C), in their home during an argument. C attended court after being summoned. When giving evidence she initially stated that ‘something did happen’ but said that she did not wish to proceed with the prosecution. When questioned by the prosecutor, C became increasingly vague, stating that the incident was a ‘blur’, and often said that she couldn’t remember certain events. The prosecutor entered a hostile witness application to allow her to cross-examine C about the parts of her evidence that did not correspond with her statement. This was rejected by the magistrates; however they approved an application to allow C to read her statement to the court. The statement had been hand-written by a police officer and signed by C. When asked to read out her statement, C first said that she had retracted it and then stated that she could not read the officer’s handwriting. The court agreed that the police officer in the case could take C outside and read the statement to her. When C returned to the witness box after having had the statement read to her, she continued to state that she ‘could not remember’ certain aspects of her statement. A second hostile witness application was entered by P; this was again rejected. However, P successfully entered an application that allowed C’s statement to be admitted as evidence; the magistrates were given this to read.

D was unrepresented, however an advocate had been appointed by the court to cross-examine C. In cross-examination the defence suggested that C was the aggressor and that
she had, in fact, punched D. C stated that she ‘couldn’t remember’. At the end of her
evidence, C opted to listen to the remainder of the case from the public gallery. She sat in
the small public gallery with her mother, who had attended court with her, and with D’s
family members.

At the end of the prosecution case, D – with the assistance of the legal adviser – entered a
half-time (Galbraith) submission of ‘no case to answer’. This was accepted by the
magistrates who stated that they were of the view that C was ‘vague, inconsistent and quite
unsure’ in her evidence and therefore a jury, if properly directed, would not be able to
convict D. Upon being told he could leave the dock, D approached C in the public gallery and
they shared a long hug. D, C and their families left the courtroom together.

If a witness does not attend court after being issued with a summons, it is possible for the
court to issue a warrant under S97(3) of the Magistrates Court Act 1980. However, CPS
guidance states that a warrant should only be issued as a ‘last resort’ in order ‘to assist
attendance at court and not to penalise or criminalise complainants’, there were no
dexamples in this study of a warrant being issued in relation to witness participation.
Nevertheless, the threat of sanction – arising from either warning a witness that a summons
may be issued, the issuing of a summons or the threat of arrest arising from the power to
issue a warrant – arguably served to have a negative impact on the extent to which some
witnesses engaged with the process. The operation of a system which encourages
instrumental compliance rather than voluntary forms of cooperation is, thus, illustrative of a

---

93 Under S97(2) of this legislation it is also possible to issue a warrant without a summons having first been
issued.
94 CPS (undated) Domestic Abuse Guidelines for Prosecutors: https://www.cps.gov.uk/legal-
guidance/domestic-abuse-guidelines-prosecutors [accessed 15.01.18].
degree of friction or strain in the legitimacy dialogue that exists between the State and members of the public. This point is particularly salient in the Case Study presented in Box 5.2, where a prosecution witness’s seeming reluctance to give evidence stood in stark contrast to the trial judge’s view that giving evidence is a ‘public duty’ rather than a ‘lifestyle choice’.

In other instances, the ‘complainant’ demonstrated resistance by refusing to occupy the role assigned to them by the court. For example, in two instances the alleged victim acted as a defence witness. The first instance was a case (MCPT02) in which a woman had observed a dispute between her neighbours, a married couple, that had resulted in the male partner allegedly assaulting his wife. The witness reported the incident to the police and gave evidence for the prosecution, however when approached by the police the complainant denied that she had been assaulted. She did not cooperate with the prosecution at any stage in the process and ultimately gave evidence as a defence witness. The other case in which the alleged victim refused to play this role was not set in the context of domestic abuse and is described in Box 5.2.
Box 5.2: A ‘resistant’ complainant and a prosecution witness displaying ‘dull compulsion’
in a Crown Court trial (CCFT01)

The defendant (D) was charged with assault occasioning actual bodily harm (ABH), after having allegedly punched and kicked his friend, the alleged complainant (C), several times. The offence was alleged to have occurred in the street and was witnessed by two passers-by (W1 and W2) who called the police.

W1 gave evidence on the second morning of the trial. W2 was also due to give evidence that morning, however, when he had not attended court by the late morning, the prosecutor stated that she would no longer be calling him. The trial judge responded sternly:

‘Are you serious? ...If you want a witness summons you can have one ... If he made a statement he is required to give evidence ... Being a witness is not a lifestyle choice ... it is a public duty and that is an end to it’.

W2 was contacted over the lunch period and informed that a summons would be issued. W2 subsequently attended court and gave evidence that afternoon.

D opted to give evidence. He stated that he and C had spent the afternoon drinking and that he had been trying to help an intoxicated C get home. He denied assaulting C. C did not make a statement to the police at the time of the incident and appeared in court to give evidence for the defence. He stated that the injuries he sustained were the result of falling over when he returned home and not as the result of the actions of D.
When summing up to the jury, the judge stated that this was an ‘unusual case’ because the alleged victim had given evidence for the defence. However, she directed the jury that the decision to bring a case is that of the prosecution not of the alleged victim – ‘the prosecution is brought in the name of the Queen ... in order to keep public order on our streets’— and informed them that it is possible for a prosecution to be proved even if the alleged victim provides a ‘contradictory account’.

The jury spent approximately two hours deliberating and returned a unanimous verdict of ‘not guilty’.

**Withdrawal**

A final form of engagement embodied by prosecution witnesses is, in fact, a form of non-participation: it is that of ‘withdrawal’. This type of engagement was displayed by just under a quarter of complainants and prosecution witnesses in observed cases. The generation of data of relating to withdrawal was facilitated, in part, by the methodological approach adopted. Being present in the Witness Service offices in order to recruit witnesses, and opting to observe the range of hearings coming before the courts on selected fieldwork days, meant that in addition to being aware of when witnesses (and defendants) did attend court as scheduled, I also became aware of instances in which individuals did not attend as anticipated. This type of response from court users has rarely been a focus of existing empirical research. Existing studies of court user participation (such as Fielding, 2006; Jacobson et al. 2015) have focused primarily upon observing ‘effective’ cases; that is, those in which the trial proceeded in full.
Withdrawal by complainants and prosecution witnesses was commented upon by several of the Witness Service volunteers and magistrates interviewed. ‘It’s very common’ for a witness not to turn up said Witness Service volunteer, Mary, ‘it happens most days that I come in’; while Witness Service volunteer Joe noted ‘we get quite a lot of people not turning up’. Withdrawal – as with dull compulsion and resistance – was particularly common when the alleged offence was one relating to domestic abuse. In all of the observed cases in which there was withdrawal by complainants and prosecution witnesses, the alleged offence(s) involved domestic abuse. Moreover, magistrate interviewees who commented upon disengagement or withdrawal among prosecution witnesses, tended to speak of this in relation to cases involving domestic abuse. As Josh described:

‘Every day that we sit, unfortunately now you are likely to come across cases that are either flagged as domestic abuse or domestic violence and one of the powers that we have as a magistrate is that we can either issue witness summons or witness warrants or we can simply ask for the witnesses to attend. And oftentimes in cases of domestic abuse or violence you will hear that the complainant is unwilling to attend, he or she is likely to make a withdrawal statement, or you find that on the day of the trial that they are absent from the trial. ... It is not uncommon for those cases to either get adjourned off to another date or the case collapses and simply falls away because of a lack of evidence.’

Withdrawal by witnesses took a number of forms. In some cases, the alleged victim – as with complainants in observations MCPT02 and CCFT01 – had not cooperated with the
authorities from the outset. This occurred in cases in which the alleged offence had been reported by a member of the public who had witnessed an incident which concerned them and called the police. As highlighted above, in observation MCFT16, the sole prosecution witness was a neighbour of the defendant who had called the police after seeing him push his partner; the alleged victim had told the investigating police officers that she had been pushed over but declined to make a statement about the incident. However, more frequently instances of withdrawal occurred after the complainant had, at least initially by contacting the police, shown a degree of cooperation with, or sought some recourse from, the authorities.

Without having conducted interviews with such witnesses it is not possible to determine the precise reasoning for the withdrawal. In some instances, the alleged complainant provided a reason for non-attendance which was ultimately accepted by the courts, such as an illness. Nevertheless, on occasion, the presentation of a valid reason for non-attendance included an undertone of reticence or reluctance about the forthcoming appearance. In observation MCOH04, a case involving the alleged sending of ‘revenge porn’, the complainant, who had been in a relationship with the defendant, had told the prosecution that she was ill and would not be able to attend. However, when applying for an adjournment the prosecutor noted that she had previously indicated a reluctance to attend court. Meanwhile, in the period between being charged and the scheduled trial, the defendant had been remanded to custody after having broken the terms of his bail conditions by communicating with the complainant on a number of occasions; this included contacting her about the forthcoming court appearance. In making his application to adjourn the prosecutor stated that the
complainant ‘is living on the edge of this defendant and has disobeyed court orders because they aren’t working for her’.

On other occasions the complainant’s desire to withdraw from the court process was stated plainly, for example, through the completion of a ‘withdrawal statement.’ Complainants and prosecution witnesses are able to state their desire to withdraw from the case by entering a ‘withdrawal’ or ‘retraction’ statement to the police. However, because the case is brought by the Crown rather than the individual, a declaration of intent to withdraw by the complainant does not necessarily mean that the charges will be dropped.95 In observation MCOH03 it was noted that the complainants and prosecution witnesses (all of whom were members of the same family) had stated at an early stage in proceedings that they did not wish to continue. However, the case proceeded to trial and was only abandoned when the complainant and another prosecution witnesses failed to attend despite having been sent a summons. Two further prosecution witnesses had attended court but their engagement was characterised by such ‘resistance’ that the prosecutor had come to the view that he could not compel them to give evidence. The prosecutor informed the court that the witnesses had told him that ‘they do not want to give evidence and will refuse to give evidence’ and that he had even observed them leave the Witness Service in order to speak to the defendant. Magistrate interviewee, Jennifer, reflected upon the difficulties that authorities, namely the CPS, face when coming to decisions about whether to ‘compel’ a witness to attend court or to follow the witness’s desire to withdraw from the process:

95 When considering how to proceed in cases in which a witness has entered a withdrawal statement the prosecution is required to consider: the nature of the allegation, the complainant’s reason for wanting to withdraw; details of whom the complainant has discussed the case with; and whether any civil or family proceedings are, or are likely to be, in progress. See: https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors [accessed 15.01.18].
‘Historically what would happen was that if someone put in a withdrawal statement the Crown would withdraw, but then there’s been such a level of criticism about the severity or the psychological [impact that] the Crown Prosecution Service flipped a little bit. And now they do a risk assessment. So, if someone does a withdrawal statement, they do a risk assessment and they decide whether they will continue or not. … I would say in the domestic setting it is actually not that uncommon to have people who are compelled to come to court. But it must be very difficult.’

This was a consideration clearly in the mind of the trial judge in observation CCOH01 who decided to adjourn a trial involving domestic abuse after the complainant – a woman who was more than eight months pregnant and who was said to have mental health difficulties – had failed to attend court on the day of trial. In doing so he noted his concerns about the court asking a heavily pregnant woman, or potentially a woman who had recently given birth, to give evidence and stated that consideration should be given to the complainant’s perspective about whether or not the case should proceed.

What is particularly evident from these instances of withdrawal – regardless of the stage in the process – is that participation could not be encouraged for either normative or instrumental reasons. Complainants in criminal cases, and perhaps particularly those which involved domestic abuse, are likely to have much at stake in engaging with the court process yet very little control over the outcome (cf. Benesh and Howell, 2001). The above findings indicate that one of the few opportunities that complainants in such cases have to gain control over proceedings is by refusing to engage at all. ‘Withdrawal’ thus represents a very
weak level of perceived legitimacy in the courts because it denotes the absence of both ‘shared values’ and ‘expressed consent’.

5.3.3 Defendants

At the outset of this discussion it is important to acknowledge that the extent to which defendants are able to engage in proceedings is limited because their participation is, necessarily ‘obligatory’ (Owusu-Bempah, 2017: 74). This is because once arrested and charged, it is not within the power of a defendant to stop the case against them progressing through the criminal justice system, although – unless they are on remand – they might withdraw by not attending court. In the vast majority of cases the defendant is required to ‘participate’ by being present (either in person or via video-link) and, usually at the very least, by providing their name and other relevant personal details and entering a plea. Though a defendant’s engagement in the process necessarily involves instrumental or enforced compliance, this does not mean that a defendant’s engagement in the criminal courts necessarily occurs without elements of normative cooperation.

Among each of the defendants interviewed for this study, a degree of alignment could be discerned. However, as outlined above, this may in part reflect the self-selecting nature of the sample in that those who had some alignment with the process may have been more likely to want to take part in the study. It is also of relevance that all of the defendants interviewed had few, or no, previous convictions. The differences in participation between seasoned defendants and those for whom it is their first appearance have been well-documented in previous studies (Carlen, 1976; Bottoms and McClean, 1976; Jacobson et al. 2015). Due to the small sample of defendants interviewed for this study (7), examples have
also been drawn from the observational data when characterising defendants’ levels of engagement in the criminal courts.

*Active aligned*

Engagement by defendants in this study could rarely be characterised as ‘active aligned’. The reasons for this are set out below. Firstly, however, it is essential to highlight the small number of instances in which defendants displayed a degree of active alignment. Martin, who stood trial in the magistrates’ court, was the only defendant interviewee who engaged in the court process in a manner that could be clearly identified as active aligned. He had little experience of attending court as a defendant other than a small number of appearances for low-level matters in his youth. Though he stated that he found the experience of attending court ‘nerve-wracking’ and ‘daunting’, Martin described how giving evidence, and feeling as though he was listened to, helped him to participate fully in his trial:

‘I was just so relieved to be there, to be able to talk, I felt like I was talking a million miles an hour. Because I didn’t want to forget anything. ... that’s why they kept telling me to slow down a bit. The first time [the magistrate] slowed me down it gave me time to breathe ... I felt that she was putting me at ease.’

Being told to ‘slow down’ or ‘pause’ is a common instruction to witnesses and defendants when giving evidence and was used regularly in the cases observed. Some court users found it difficult to follow this instruction; however Martin’s comments suggest that he found this useful. Moreover, though acknowledging that his view may reflect the fact that he was
subsequently acquitted, Martin’s comments are indicative of a strong degree of alignment with the courts. They also show how his direct experience of the court process strengthened his alignment with the courts:

‘I didn’t feel like the judicial system was on my side when I went in there and I felt it was very much on my side when I left so it felt kind of good ... You know when they say it all comes out in the wash or whatever, I felt this did all come out in the wash and it’s all OK now. But going in I was, you know when you think “Oh it’s a fix up here” or “someone’s not going to say something, they are not going to listen to me.” But I have to say I was shocked how much they did listen to me and how much they did understand what went on. You just wonder sometimes [that magistrates think] “Oh come on get on with it I want to go and have my tea”, you know what I mean? There was a little bit of that but they did let me have my say and put their tea on the back burner, which was really nice for me.’

In only a very small proportion of observed cases, four in total, was active alignment discernible among defendants. One example of this came in the form of sentencing hearing MCSH06 (see Box 5.3), which involved direct communication between the defendant and the district judge overseeing the case. During the hearing the judge and the defendant spoke about the defendant’s problems with alcohol and the recent steps he had taken to address this, including engaging with treatment services and re-establishing contact with his adult children. Though the hearing was relatively short, the likely benefit that the defendant gleaned from being able to directly engage with the judge and participate in his hearing was indicated when the defendant thanked the judge for ‘remembering’ him. A similar style of
interaction was observed in a small number of other hearings (such as, observation MCOH07), particularly those which involved a defendant who had problems with alcohol or substance misuse. Such interactions provide illustrations of the ways in dialogue between power-holder and audience, in this case the judge and the defendant, respectively, can enhance an individual’s level of engagement in the court process.

<table>
<thead>
<tr>
<th>Box 5.3 Power-holder and audience dialogue in a magistrates’ court sentencing hearing (MCSH06)</th>
</tr>
</thead>
<tbody>
<tr>
<td>This was a sentencing hearing for a case of theft in which the defendant (D), a man with problems with alcohol, had pleaded guilty to stealing a small number of clothing items from a retail store. D was on licence for a previous offence at the time of the theft. The case had appeared before the court the previous month, however, the district judge (J) had deferred the sentencing hearing because the treatment service that D had been due to engage with had not been able to see him by the date of the hearing. The defence provided submissions during which it was stated that D had now accessed treatment services, had registered for a place on a carpentry course and was residing in a hostel. Before sentencing the defendant, J communicated directly with D about his progress. For example:</td>
</tr>
<tr>
<td>J: First of all, well done. Secondly, how do you feel coming to court today [compared to] last time</td>
</tr>
<tr>
<td>D: Much better</td>
</tr>
</tbody>
</table>

96 Such styles of communication are associated with the body of work surrounding ‘therapeutic jurisprudence’. Proponents of these theories argue that therapeutic interactions can help to enhance the rehabilitative potential of penal interventions (see, for example, Wexler, 2000).
J also asked D if he’d been able to make contact with his adult children, to which D replied that he had. Upon sentencing D to a community order with a rehabilitation activity requirement, the following exchange ensued:

J: Well done, you’ve shown willing, I’m not going to lock you up. ... If you lapse again and come back we can look at the reasons for it ... But, ultimately we need to give shop owners protection.

D: ‘Thank you very much for remembering me’.

Moreover, both of the above examples of defendants’ ‘active aligned’ engagement arguably highlight the ways in which perceptions of legitimacy can be enhanced by an individual’s direct interaction with those responsible for exerting authority. This is discussed in more depth in Chapter 6.

Passivity: alignment, acceptance and dull compulsion

The notion that defendants occupy a ‘passive’ role in the criminal justice process is well-documented (Carlen, 1976; Bottoms and McClean, 1976; Baldwin and McConville, 1977; McBarnet, 1981; Jacobson et al. 2015) and has led to the role of the defendant being variously described as that of ‘ever-present extra’ (Jacobson et al. 2015: 83), ‘dummy player’ (Carlen, 1976: 69) or ‘non-participa[nt]’ (Baldwin and McConville, 1977: 83). Passivity was the dominant form of participation among defendants in this study, displayed by more than

---

97 However, it is important to note Bottoms and McLean’s (1976: 59) observation that sometimes displays of passivity among defendants, such as the adoption of a conforming or unassuming stance within the courtroom, can be borne out of a ‘strategic’ decision by a defendant who takes the view that their representative will ‘put [the case] across better’.
three quarters of defendants in observed cases. Three forms of passivity have been identified for the purposes of this study. These are: passive alignment, passive acceptance and dull compulsion. All represent a form of passive participation; however an examination of an individual defendant’s alignment with the courts allows a distinction to be drawn about the way in which individuals can be said to engage with the process.

Most defendants who participated in an interview displayed engagement characterised by ‘passive alignment’. This type of engagement was also displayed by a small proportion of defendants in the observed cases. That is, the individual defendant, though being relatively passive in their participation of the court process, for example by having limited levels of understanding or means by which to express themselves, displayed an alignment with the overall authority of the courts. Defendant interviewee Holly had been convicted via a private prosecution that was brought due to an offence committed in the course of her employment. Due to the fact that the legal documentation surrounding the case was sent to her former work address rather than to her home address, Holly was not aware of the charge against her until she read about the conviction when it was reported in the local press. Upon reading of the conviction Holly contacted a solicitor and the court and requested that her case be re-heard. She pleaded guilty to the offence, though it was stated in mitigation that she had been very surprised to find out that her actions had been illegal, and received a fine. Holly described feeling ‘nervous’ and ‘embarrassed’ about her court appearance. She did not actively participate in the proceedings against her – though she stated during interview that her advocate had explained various aspects of the process – however her strong degree of alignment with the courts was illustrated by the pro-active
steps she had taken to resolve the case once she found out it had been heard in her absence:

‘I just think the [magistrates] could see it for what it was, I think they could obviously see that it was misjustice – with them dealing with it in my absence. I think they could see that I done the right thing obviously after seeing my name in the newspaper ... At the end of the day, they didn’t have my address, I walked into the court and I gave my name, I gave my date of birth, I gave my address. There could have been a point where this would never have caught up with me and I could have just sat there. They took it all into account that I am a genuine person that I’m not someone that’s trying to scam some sort of system or, you know what I mean, I’m not in there for a burglary or something that’s awful.’

Holly’s latter comments also indicate a very strong degree of alignment with one of the overarching functions of the courts: that is, to convict those guilty of committing offences. Jacobson et al. (2015: 171) observed similar accounts from defendants interviewed in their study and argued that such responses ‘imply, at the very least, some belief that the courts are justified in setting out the punishments for those who break society’s laws, even when they themselves are the recipients of punishment.’ Moreover, Holly’s engagement provides a good example of the way in which engagement occurs along a continuum. This is because she, arguably, hovers at the border between ‘passive alignment’ and ‘active alignment’. Though presenting a high degree of alignment in the process, her degree of participation was mixed; she displayed a good degree of understanding in the court process, however, ultimately her degree of expression during her sentencing hearing was very limited.
The engagement of defendant Jon could more clearly be described as ‘passive aligned’. Though he demonstrated a degree of alignment with the authority of the courts, aspects of his participation were limited. This was particularly so in relation to the ways in which Jon felt that he was not provided with sufficient opportunity to express himself:

‘The justice system works quite good – I wouldn’t change anything. Maybe just if there is a case as there was in my situation that the person would have a bit more time to prove his innocence. Maybe that would help him or help the jury to understand him. Or know him better. ... Say 10 minutes where you can see how the person speaks and behaves, and gives evidence, it may help for them to decide’.

English was not Jon’s first language, nor did he appear in court with the assistance of an interpreter, however he did not attribute his difficulties in expression as being borne out of language difficulties.98

The common response of defendants in the sentencing hearings observed was one of passivity. Without interviewing a larger number of defendants appearing in such cases it is not possible to explore in detail whether this response was one of ‘passive alignment’, ‘passive acceptance’, or ‘dull compulsion’, however all three responses were discernible in observations conducted during this study. In a small number of cases it was possible to detect an element of ‘passive alignment’ in the way in which defendants responded to the

98 For a recent examination of defendant participation in cases which a defendant is assisted by an interpreter, see Aliverti and Seoighe (2017).
sentencing process. A defendant in a theft case, who had appeared before the court on numerous occasions, responded ‘yeah, fair enough’ when a sentence of six months custody was imposed (case MCSH43). In other instances, the defendant apologised to the court for committing the offence; ‘I know I done wrong and I’m going to get a [driving] ban and I accept that and I am sorry’ said the defendant in case MCSH24. Such responses indicate an ‘implicit legitimacy’ (cf. Fielding, 2006: 7) afforded to the courts among ‘passive aligned’ defendants.

Responses of this nature however, were relatively infrequent and ultimately engagement characterised by ‘passive acceptance’, or even ‘dull compulsion’, occurred more frequently. This may, in part, reflect the nature of sentencing hearings. At the point of sentencing, defendants have either pleaded, or been found, guilty. They are simply required to provide the court with their name and date of birth and, for those who have decided to plead guilty, to enter or confirm their plea. Sentencing hearings, particularly in the magistrates’ court, are relatively short and those observed tended to last within the region of fifteen to thirty minutes. Several days’ fieldwork were spent at magistrates’ courts in courtrooms that were primarily hearing ‘guilty anticipated pleas’ – known colloquially as ‘GAP courts’ – during which much of the court’s time was spent presiding over sentencing hearings. The court waiting areas on these days were very busy, particularly in the morning, and cases were often dealt with in relatively quick succession.

‘Passive acceptance’ at the point of sentencing was manifest in instances in which a defendant had accepted their guilt – or their decision to plead guilty – and attended court to simply ‘get it over’ with (Carlen, 1976: 29; Bottoms and McClean, 1976: 67; Jacobson et
This kind of response was reflected in the comments of the defendant Martin, when comparing his recent appearance at the magistrates’ court for a trial with a previous occasion in which he had attended the court for sentencing:

‘[The earlier sentencing hearing] seemed less daunting, I think because you knew you’d done it and you knew you were just going in there to find out what your fine was … This [time] was different for me in the sense that I never done anything so I found that really, a bit nerve-wracking’.

Darbyshire (2011: 199) described the accepting, or resigned, way in which defendants turn up to court at their allotted time ‘often with their bags packed in readiness to be sent to prison’, as being akin to ‘Turkeys voting for Christmas’. A response similar to this was illustrated in observation CCSH09. The defendant in the case, a man who had been found guilty of historic sexual offences, arrived at court on the morning of the hearing smartly dressed and carrying a packed suitcase. He remained silent as the hearing progressed and did not react when the judge imposed a sentence of several years’ custody. In another case (MCOH06), heard in the magistrates’ court, the defendant had decided to enter a late guilty plea to offences relating to harassment. Before entering the dock to enter his plea the defendant hugged his girlfriend, who had attended court with him, and told her that he loved her. He said he was doing so ‘just in case’ he was sent to custody. (The case was subsequently adjourned for a pre-sentence report.)

That a defendant’s resignation or fatalism about their appearance before the courts is manifest in comments such as ‘wanting to get it over with’ or ‘forget about’ is common within the existing courts literature (Carlen, 1976; Bottoms and McClean, 1976; Jacobson et al. 2015). This notion was further encapsulated in this study by the fact that several defendants, when declining the opportunity to take part in a research interview about their experiences, stated that the reason they did not wish to take part was because they ‘just wanted to forget about’ (or a variant thereof) their court appearance.
Participation grounded in passive acceptance was also indicative of a defendant’s struggle to understand, or express themselves adequately, during proceedings. In case MCFT02 the defendant (D) was found guilty at trial of breaching a non-molestation order that prohibited him from contacting his former partner (offence 1). He was subject to a conditional discharge at the time at which offence 1 was committed. Therefore, being found guilty of offence 1 meant that D was also in breach of the conditional discharge (offence 2). Upon being convicted of offence 1, D – who was unrepresented – was charged with offence 2. When the legal adviser (LA) asked D how he would like to plead to the breach of conditional discharge the following exchange ensued:

LA: Do you admit it?
D: OK

LA: Do you understand?
D: OK

LA: Do you admit or deny it?
D: I deny it

LA: You need to explain it to me [why you deny it], I don’t understand

At this point the legal adviser explained to D that although he denied breaching the non-molestation order, he had now been found guilty of this offence, and she was asking if he accepted that the date of the breach of non-molestation order took place within the period that the conditional discharge was active. He eventually responded:
D: I understand ... I accept it

LA: Does [the date of the breach of non-molestation order] fall within the 12 month period from [the date of the conditional discharge]?

D: OK

Participation of this nature this echoes the findings of Carlen (1976: 24) who described the ‘paralysing effect’ that a lack of familiarity with court environment and a lack of understanding of legal proceedings can have on the extent to which defendants engage with proceedings:

‘Most defendants cause no trouble ... After a long wait in the corridors or waiting room, many of them make an initial attempt to hear and follow the proceedings and then visibly give up the pretence of understanding or stare restlessly around the courtroom until ... the formalities are over.’ (p. 32)

It could be difficult to draw a distinction between ‘passive acceptance’ and ‘dull compulsion’ during observations because, in the absence of conducting an interview with the defendant, it was not always possible to ascertain their degree of alignment with the court process. However, generally speaking, ‘passive acceptance’ was characterised by a minimal degree of alignment, associated with a defendant’s acceptance of ‘their fate’ (Jacobson et al. 2015) and a resulting ‘submission to the court process’ (Bottoms and McClean, 1976:66). A response of ‘dull compulsion’, in comparison, was motivated solely by instrumental compliance arising from the threat – or imposition – of a sanction. For example, case CCOH02 involved a defendant who had failed to attend court on the morning of his trial; he
arrived at the court later on in the day after being brought to court by the police. This is indicative of a weaker level of perceived legitimacy than the defendants who exhibited a ‘passive acceptance’ of their predicament. A response of ‘dull compulsion’ was also indicated by a defendant in a trial of conspiracy to supply Class A drugs (CCPT11) who, though participating by being present throughout the trial, did not visibly interact with other actors in the courtroom during the observed period. No evidence was presented in his defence; the defendant’s decision not to give evidence was communicated to the court via his advocate. The defendant’s lack of ‘voluntary participation’ (Owusu-Bempah, 2017: 45) in the court process was alluded to by his advocate, who stated to the jury during his closing speech that ‘all you know about him’ is his age. In other instances, defendants displayed their lack of alignment with the court process in a much more active, and often less compliant, manner.

Resistant

Defendants in around one fifth of observed cases participated in the court process in an ‘active’ way; most of whom did so in an unaligned manner which often took the form of overt resistance to the court process. One example of this was a Crown Court trial in which the defendant was alleged to have assaulted the complainant with a weapon (CCPT09). The defendant entered the courtroom at the beginning of his hearing and said ‘good afternoon’ to the room at large. He received no response. The first afternoon of the trial was taken up with legal argument; at various points during this the defendant – from his position in the secure glass dock – attempted to interject. At one point he stood up in the dock and was told to ‘sit down’ by the judge who said that he found this behaviour ‘distracting’. The defendant responded, ‘I’m offering assistance’; to which the judge replied ‘well don’t’. Later
in the afternoon when the court was in the process of finalising his bail conditions, the defendant’s continual interruptions led the judge to decide to place him on remand. As he was about to be taken to the cells the following exchanged ensued:

D: ‘I stand before the court, innocent until proven guilty, why should I be punished?’

J: ‘You’ve got a defence advocate – he speaks on your behalf’

Interactions of this nature reflect Carlen’s (1976: 29) argument that ‘[defendants] who do not know or accept their place have, physically, to be put in it’ and McBarnet’s (1981: 63) assertion that ‘the accused is often not so much silent in court – inarticulate, afraid or outside the game – but silenced in court for not obeying the rules of legal procedure’.

In a similar vein, a defendant in a Crown Court rape trial (CCPT05) appeared agitated at various points during the observed period of proceedings. This was particularly pronounced when he was giving evidence, to the point which his own advocate appeared frustrated with him. The defendant and his advocate interrupted each other at various points during his evidence in-chief; he struggled to find the points of his statement that the advocate was referring to – holding the document very close to his face when trying to find the relevant points – and leaned over the witness box, gesticulating frequently. In her closing statement the advocate directly referred to this, telling the jury that ‘I know it’s difficult to understand what he says a lot of the time because he’s not listening and interrupting [but it is] because he’s anxious to get his point across’. Before beginning to sum up, the judge stated that the defendant ‘seem[ed] to be getting a better hang of that he needs to sit quietly and listen’
but suggested – in the absence of the jury – that the advocate remind him that the case is summed up ‘on both sides’. The judge went on to pointedly note that there was an ‘easy solution’ available to the court should there be any ‘outbursts’ from the defendant.

The above discussion illustrates how a defendant’s response to the court process can be perceived as resistant. Instances of resistance were also manifested at the point at which decisions were made upon the outcome of cases. One example of this occurred during a burglary trial (CCPT03) in which the defendant was alleged to have taken items from the property of his former partner. The defendant, whose engagement in earlier parts of proceedings observed could best be described as ‘passive acceptance’ or ‘dull compulsion’, displayed increasing signs of ‘resistance’ in the lead up to the verdict. This began on the morning of the final day of the trial while the jury were deliberating, when the prosecution and defence advocates – in the courtroom in the presence of the defendant – entered into a discussion of possible sentencing options should the defendant be found guilty. The defendant, from the dock, shouted to his advocate ‘I’m not doing community service’. Shortly afterwards, when the jury foreman announced a verdict of guilty, the defendant started muttering to the dock officer before loudly saying ‘f*** the jury, f*** this court’. The judge adjourned sentencing for an ‘all options’ pre-sentence report. The defendant exited the courtroom and kicked the door on his way out. A less pronounced form of resistance was displayed by the defendant in case MCSH03 who, upon being informed by the judge that he was to be sentenced to custody, argued against the decision, stating that he was ‘trying really hard’ to address his substance misuse problems and that he would lose his accommodation if sentenced to custody.
Many of the above examples of resistance could perhaps be described as, at best, attempts to be heard (during the court process), or at worst as futile displays of hostility (at the point of outcome). This reflects the limited extent to which defendants are able to participate in proceedings, the relative ‘powerlessness’ (Baldwin and McConville, 1977: 87; Jacobson et al. 2015:197) defendants have over decisions which are likely to have a significant impact upon their lives, and, in some instances, perhaps a ‘wider disaffection or alienation from the social order, which … may be intimately bound up with their offending’ (Jacobson et al. 2015: 195-6). However, in one instance (case CCSH11), a defendant’s overt resistance to the process resulted in a further charge of contempt of court being added to the indictment against him. During an intermission in proceedings the defendant was overheard by an advocate making, what the judge described as, ‘very disparaging’ remarks about the court and admitting to taking photographs inside the courtroom. The defendant pleaded guilty to this offence.

Importantly, as this Chapter has sought to illustrate, levels of engagement by an individual lay person do not necessarily remain constant throughout the court process. It was often the case among defendants who displayed resistance that efforts made by the court to limit this led to the defendant’s engagement becoming one of ‘dull compulsion’. The defendant who was remanded after frequently interrupting proceedings in CCPT09, displayed a very different demeanour in court the following day. He sat silently in the dock for most of the day – visible signs of participation were, in the main, limited to his writing notes that were subsequently passed to his advocate and sighing at several points during the evidence of the complainant. Likewise the defendant in the burglary trial (CCPT03), who kicked the door

---

100 The latter is discussed further in Chapter 6.
upon exiting, returned to the courtroom ten minutes later – seemingly after the intervention of a probation officer – and asked the court usher to ‘please tell the judge that I apologise for my actions when I left the courtroom’. In these instances, the shift in the defendant’s type of engagement occurred due, in the case of the former, to the imposition of a sanction and, in the latter, due to an apparent fear of sanction. Both cases highlight the way in which the courts’ reliance upon instrumental forms of securing compliance does not enhance the individual’s engagement in the process.

Withdrawal

A final form of participation among defendants is that of withdrawal. Defendants, due to the enforced nature of their engagement in the court process, are the lay person with the least ability to withdraw from proceedings and subsequently withdrawal among defendants was relatively uncommon, occurring in only a minority of observed cases. Nevertheless, it is important to bear in mind Baldwin and McConville’s (1977: 85) assertion that a defendant’s ‘refusal to comply’ is their ‘only weapon’ and to briefly draw attention to instances in which withdrawal did occur. Withdrawal by defendants arose in a number of contexts and, as outlined in the below discussion, it was not always possible to discern whether a defendant’s absence from court proceedings was due to an explicit decision to withdraw or whether other factors were at play. However, ‘withdrawal’ that is motivated by the former is indicative of the weakest degree of perceived legitimacy in the criminal courts.

There were several occasions in which a defendant placed on remand was not ‘produced’ to the court from prison, such as the defendant in MCFT16, described above. In one instance, the court was informed that defendants had not been produced because the prison van had
been delayed in leaving the prison; however in another it was stated that the defendant had refused to get into the van and had subsequently not been brought to the court. In the latter case the defence advocate explained that the reason for his client’s refusal to get in the van was, in his understanding, because the defendant did not want to be transferred from the remand prison in which he was residing to the prison local to the Crown Court upon being sentenced. ‘I’m afraid it isn’t a hotel system’, responded the judge, drily. The case was adjourned, and the judge requested that the defendant be informed that the case would be heard in his absence if he did not attend on the next occurrence.

On several occasions a defendant on bail did not attend court at the time of his or her scheduled hearing; the courts were not always able to ascertain the reason for a defendant’s absence. In some instances, the case was adjourned to a later date and/or a warrant was issued for the defendant’s arrest. An example of the former occurred in MCOH05, in which one of the defendants failed to attend court on the morning of the trial. His advocate informed the court that this was because he now lived outside the area in which the court was located and could not afford to travel to the court until he received his next benefits payment. In others the case took place in the defendant’s absence. One example was a case in which the defence advocate informed the court that the defendant had been receiving treatment for a condition relating to alcoholism that was ‘practically terminal’. It was noted by the court that defendant had also been absent during a previous hearing and had been informed that the case could go ahead in her absence. In a small number of contested cases involving allegations of speeding, the trials went ahead in the absence of the defendant. (Defendants in such matters are unlikely to be subject to bail and are thus not legally required to attend court.) In most of these cases the defendant was in a
high-income bracket, and court staff on occasion informally commented that the
defendants were represented by solicitors’ firms known for dealing with ‘loop-hole’ cases.

5.3.4 Characterising court user engagement: commonalities and differences across the
sample

The engagement of court users was examined separately in the preceding two sections to
enable a focus upon the distinct ways in which engagement can be characterised between
the different groups of court user; that is, complainants, prosecution witnesses and
defendants. To bring this discussion to a close, this section draws attention to some of the
main commonalities and differences across the court user sample as a whole. Before doing
so it is necessary to note the limitations of making comparisons due to the qualitative
approach adopted. The emphasis of this type of approach primarily rests on achieving depth
rather than breadth and thus limits the extent to which making generalisations across
variable type can be achieved (cf. Bryman, 2012). That is, it is very difficult to isolate the
impact of a single variable upon a court user’s engagement in proceedings. This is
particularly because multiple – and sometimes overlapping – factors are often at play. It is
thus perhaps unsurprising that Turner (1981: 264) noted the difficulty in attempting to ‘pin
down’ comparisons between variables in qualitative research; a task for which, as he
argued, quantitative research is better equipped.101 Nevertheless, a number of broad
comparisons can be discerned from the data.

101 In contrast, the element of grounded theory that necessitates ‘constant comparison’ concerns the process
of saturating and refining categories – in this instance, the five types of engagement – until they become
The main demographic characteristic that appears to have a bearing on a court user’s engagement in the process is socio-economic status. Due to the interplay between this and other factors relating to both the individual and the court process, this is examined in detail in Chapter 6 as part of a discussion about barriers to engagement in the criminal courts. It was not possible to detect any clear differences in how court users engaged with the court process based upon age or ethnicity. However with regard to the latter, it is necessary to note that, corresponding with national trends regarding the overrepresentation of individuals from BAME backgrounds in the criminal justice system (Lammy, 2017), defendants from BAME backgrounds were overrepresented in the observation sample.\(^{102}\) Had a greater number of interviews been conducted with defendants, it may have been more possible to detect differences in engagement based upon ethnicity.

Likewise, the small proportion of female defendants in the observed sample (less than one sixth of all cases), makes it difficult to draw comparisons based upon gender.\(^{103}\) Passivity was displayed by a higher proportion of female defendants than males; however this is set in the context of the high degree of passivity visible across the observed sample. With regard to complainants and prosecution witnesses, it is possible to discern slightly weaker levels of engagement among women in comparison to men in the observed sample. This variation perhaps better reflects differing levels of engagement based upon offence type. As highlighted above, the majority of cases of alleged domestic abuse involved complainants

\(^{102}\) It is estimated that just under one third of defendants in the 126 observed cases were from BAME backgrounds. However, exact proportions cannot be provided because classifications based upon demographic characteristics, including ethnicity, were often observed by the researcher rather than explicitly specified to the court.

\(^{103}\) This broadly reflects the national context in which, in 2017, females accounted for 26% of those prosecuted against and 5% of the prison population. This is in comparison to males who accounted for 74% of those prosecuted against and 95% of the prison population (Ministry of Justice, 2018d).
and/or prosecution witnesses whose engagement was characterised by ‘dull compulsion’, ‘resistance’ or ‘withdrawal’; in all but one of these instances the complainant was female (and the defendant was male). This broadly corresponds with existing research which has pointed to the presence of ‘gender asymmetry’ in cases of domestic abuse (Hoyle, 2007: 150).

A further observed difference based upon offence type is that those appearing before the courts for driving offences displayed slightly higher levels of passivity than the overall sample. This is also likely to be bound up in type of hearing attended by the defendant. Passivity, in one form or another – ranging from ‘passive alignment’ to ‘dull compulsion’ – was visible among all defendants who attended a sentencing hearing for a driving offence. However, it would be a mistake to conclude from this that defendants in driving matters are indifferent to proceedings against them. Defendants in the cases observed often had a significant amount at stake in proceedings, even in those in which their overall response was one of passivity. This is because a conviction for a driving offence often led to a disqualification from driving and, for defendants without previous convictions, a potential loss of ‘good character’. Either or both of these factors could negatively impact on the defendant’s current or future employment prospects.

There were no clear differences in court user engagement based upon court type; that is, between the Crown and magistrates’ courts. Neither were clear differences visible in relation to types of engagement displayed by court users in Amber City in comparison to

---

104 This corresponds with the broader observation that passivity was the dominant form of response by defendants attending court for a sentencing hearing.
Indigo Town. That is, *the five different types of engagement emerged in each of the courts under study*. This finding is significant for two reasons. This first is because it suggests that it may be possible, at least to some degree, to generalise the study findings beyond the four courts under study. The second is because it points to a degree of commonality between the Crown and magistrates’ court in terms of how court users engage with proceedings. This is perhaps useful given the absence of existing research with court users, particularly complainants and prosecution witnesses, in the magistrates’ court. For example, that court users find it difficult to express themselves – or ‘tell their story’ (Fielding, 2006) – during proceedings, fear the ‘unknown environment’ (Jacobson et al. 2015) of the courtroom, or find the legal conventions inherent in the court process bewildering, is well-established in empirical research of the Crown Court (cf. Rock, 1993; Fielding, 2006; Jacobson et al. 2015). However, as examples presented throughout this Chapter illustrate, similar experiences were also commonplace in the magistrates’ court, despite the arguably less formal nature of the setting. Court users’ engagement in proceedings can be influenced by a variety of operational constraints that exist in the Crown and magistrates’ courts alike, as will be explored further in the following Chapter.

In a similar vein, no strong differences emerged in relation to levels of engagement based upon the type of adjudicator overseeing the case. Each of the different forms of engagement were visible in cases presided over by Crown Court judges, district judges and lay magistrates. District judges often appeared to be more interventionist in manner than lay magistrates – and thus tended to have more direct interaction with court users – however, this was by no means always the case. An arguably more prominent influence upon engagement concerns not the *type of adjudicator*, but the *quality of interaction*
between the adjudicator and individual court user. Box 5.4 provides an example of the steps taken by the chairing magistrate, and also the legal adviser, to facilitate the defendant’s engagement with proceedings. (It also highlights the degree of stake the defendant had in proceedings, despite the ‘low-level’ nature of the charge.) The impact of ‘procedurally just’ forms of communication upon the engagement of court users is discussed in further detail in Chapter 6.

In sum, it is difficult to isolate the impact of specific demographic characteristics, such as age, gender and ethnicity, upon a court user’s engagement with the court process. Importantly, the presence of each form of engagement in each of the courts under study and across different types of adjudicator, points to the applicability of the continuum across the criminal courts. It also enables commonalities to be teased out as to the factors that can promote and inhibit engagement across the criminal courts; this is the focus of Chapter 6. A small number of distinctions can be drawn out of the above analysis. Firstly, engagement in the court process was found to be particularly weak among complainants and prosecution witnesses in cases involving domestic abuse, the majority of whom were female, and secondly that passivity is the archetypal response of defendants at the point of sentencing.
This was a case of speeding in which the prosecution alleged that two police officers, while on patrol, had witnessed a vehicle speeding past their car. The officers followed the car and stopped the defendant’s (D) vehicle. When stopped, D, an off-duty taxi driver, stated that he did not think he had been speeding – he believed the police had stopped the wrong vehicle.

D arrived in court, with a supporter, on the morning of his hearing. The legal adviser introduced herself to D, explained her role – ‘I’m neutral’, she stated – and described the roles and positions of different parties in the courtroom. The legal adviser directed D to the advocate’s bench and asked him if he would like a pen and paper to make notes. She also asked him to let her know if there were parts of proceedings that he did not understand. The defendant had brought various pieces of information with him, including highlighted copies of police statements and the CCTV of the incident.

Shortly after the magistrates entered and the prosecutor had provided opening submissions, the defendant asked if ‘there was any chance to elaborate’. He outlined his account of the incident, including stating that he thought that the officers had stopped the wrong vehicle, before saying: ‘I’m not a barrister and I don’t know the nicest way of putting it but [the officer has] made it up ... it is completely inaccurate’.
The two police officers involved in the incident gave evidence for the prosecution. The defendant cross-examined each witness but struggled to ask questions of the witnesses and instead made a number of statements. On a number of occasions he was informed by the legal adviser and the magistrate who was chairing the bench that he needed to ask the witnesses questions, rather than make statements or give evidence. For example, while cross-examining the first witness the magistrate stated: ‘As far as giving the rest of your story, you have the opportunity on oath, importantly, to say your story.’ Likewise, before the defendant began to cross-examine the second witness, the magistrate informed him that this was his opportunity to ask questions of the officer and stressed that ‘the format must be questions’. The defendant described finding this as ‘difficult’ – ‘I’m not a professional’, he said.

The defendant later did give evidence. Upon doing so he was asked by the magistrate if he had anything further to add. The defendant stated that he had not been able to afford legal representation and apologised to the court – ‘I’m sorry if I’ve interrupted and done things wrong ... I’ve done as much as he could ... There’s nothing much more I can say other than I didn’t do it; I wasn’t guilty’. The defendant was subsequently found not guilty.

5.4 Concluding thoughts

This Chapter has argued that examining the extent to which lay participants engage with the court process represents the degree to which the individual regards the criminal courts as legitimate. To do so it has presented a continuum of engagement that consists of two axes:
alignment and participation. Defining engagement in this manner enables engagement to act as a lens through which to view perceptions of legitimacy. This is because ‘alignment’ represents the extent to which ‘shared values’ exist between the courts and lay participants and ‘participation’ represents the extent to which individuals accord the courts ‘expressed consent’ to exert authority. In turn, shared values and expressed consent comprise two of the core features of legitimacy (see, for example, Tyler, 2011; Bottoms and Tankebe, 2012; Beetham, 2013; Jackson et al.; 2015).

Five types of engagement have been outlined: ‘active alignment’, ‘passive alignment’, ‘dull compulsion’, ‘resistance’ and ‘withdrawal’. Engagement characterised by ‘active alignment’, represents the highest degree of engagement in the court process, while ‘withdrawal’ represents the lowest degree of engagement. It follows, therefore, that ‘active alignment’ is indicative of ‘true’ legitimacy whereas low degrees of engagement, such as ‘dull compulsion’, ‘resistance’ and ‘withdrawal’, are indicative of weaker forms of legitimacy.

Engagement among lay magistrates can be largely described as ‘active aligned’. This is due to the high degree of voluntary cooperation afforded to the courts by magistrates, the presence of a degree of self-belief in the ‘moral rightness’ (Bottoms and Tankebe, 2012: 162) of their adjudicatory role and their ability to actively participate in courtroom interaction. The engagement of court users is more dispersed throughout the continuum, with ‘active aligned’ being one of the least common forms of engagement.

Only a small number of court users (both among interviewees and those in observed cases) engaged with the court process in a manner that could be described as ‘active aligned’. The
vast majority of interviewees – complainants, prosecution witnesses and defendants alike – engaged in a ‘passive aligned’ manner; this included instances of ‘passive acceptance’.

Engagement that is characterised by ‘passive alignment’ represents the presence of an ‘implicit’ degree of legitimacy (Fielding, 2006: 7). However, nearly two thirds of complainants and prosecution witnesses in the observed sample exhibited weak levels of engagement; that is ‘dull compulsion’, ‘resistance’ or ‘withdrawal’. Meanwhile, three quarters of defendants in the observed cases participated in a ‘passive’ manner. Without having also conducted interviews with these defendants, it was not always possible to discern whether or not their engagement was based upon ‘passive alignment’, ‘passive acceptance’ or ‘dull compulsion’, however, the latter two forms of engagement seemed to appear more frequently. Furthermore, defendants who participated in an ‘active’ manner tended to display a weak degree of alignment with the court process; this was often manifested as overt ‘resistance’. Therefore, engagement characterised by either ‘resistance’, ‘dull compulsion’ or ‘withdrawal’ was in no shortage of supply among court users. This requires further attention because the regularity of such forms of engagement suggests that weak forms of legitimacy pervade the criminal courts. It also points to areas of friction, strain or deficit within the ‘legitimacy dialogue’ (Bottoms and Tanekebe, 2012) between the courts (as power-holders) and court users (as the audience) that need to be addressed in order for the courts to continue to claim to hold legitimate authority.

Elements of ‘resistance’, ‘dull compulsion’ and ‘withdrawal’ are – to a degree – likely to be inevitable when an authority is responsible for wielding power over individual citizens. However, the closer levels of engagement can be said to be characterised by ‘active alignment’, the stronger the claim that power-holders can make as to holding ‘truly’
legitimate authority (cf. Bottoms and Tankebe, 2012: 168). In this vein, the final empirical
Chapter aims to further disentangle the factors which are likely to contribute to weak levels
of engagement. The second part of the Chapter considers how stronger levels of
engagement can be cultivated and, in doing so, seeks to elaborate upon existing theoretical
discussions of legitimacy.
Chapter 6: Fostering engagement in the criminal courts: from procedural justice to ‘unfinished’ legitimacy

The previous Chapter outlined the ways in which the engagement of lay participants in the criminal courts can be characterised, with levels of engagement ranging from an ‘active alignment’ with the courts and their function to one of ‘withdrawal’. A lay participant’s degree of engagement, I argued, served to illustrate the extent to which the individual perceives the courts as legitimate. This is because the two dimensions which comprise engagement – alignment and participation – correspond with two of the central components of legitimacy: shared values and expressed consent, respectively. Further to this it was argued that weak levels of engagement, namely ‘resistance’, ‘dull compulsion’ and ‘withdrawal’, are indicative of areas of ‘legitimacy deficit’ that need to be addressed in order for the courts to be perceived as ‘truly’ legitimate in the eyes of those they serve (cf. Bottoms and Tankebe, 2012).

The aim of this Chapter therefore, in consideration of Research Question 4, is to examine in detail the existing barriers to promoting strong – that is, ‘active aligned’ – engagement and to think about how enhanced levels of engagement might best be cultivated. The main barriers to engagement comprise both operational constraints within the criminal courts and those which relate to the needs and circumstances of individual court users. Levels of engagement are often at their weakest when operational constraints coalesce with high levels of individual and social need among court users. Consistent with literature on the topic of procedural justice, I argue that the presence of considerate and inclusive
interactions can help to cultivate engagement in the criminal courts. However the strength of such claims, this Chapter concludes, should not be overstated because they form just one aspect of the ‘tissue of relations’ (Loader and Sparks, 2013) that shape perceptions of legitimacy.

This Chapter focuses upon fostering engagement primarily among court users rather than all groups of lay participant, such as magistrates, jurors and Witness Service volunteers. This is because, as previously illustrated, the engagement of court users tends to be weaker than that of other lay participants. Nonetheless, the views of the magistrates and Witness Service Volunteers interviewed are drawn upon, where relevant.

6.1 Barriers to engagement in the criminal courts

In order to examine the ways in which court users’ engagement in the court process can be cultivated, it is first necessary to gain an understanding of the existing barriers to engagement. In this section it is argued that two interconnecting groups of barriers exist and coalesce to inhibit ‘active aligned’ engagement. These are operational constraints which are borne out of intersecting issues relating to structural, cultural and contextual issues within the courts and those relating to the personal and social circumstances of individual court users.
6.1.1 Operational constraints: structure, culture and context

Paul Rock (1993) described in detail the ‘social world’ that characterises the operation and interactions of daily life in the Crown Court. This section seeks to illustrate how assorted operational constraints, borne out of structural, cultural and contextual dynamics within the ‘social world’ of the criminal courts can inhibit engagement.

It is first important to acknowledge and understand the ways in which the very nature of the criminal justice system can place legal limits on the extent to which the engagement of court users is possible. The development of the adversarial system, particularly the introduction of a system of public prosecutions – which led to the decreased role of the ‘private victim’ (Rock, 2004) – and the introduction of legislation that afforded defendants the right to counsel, saw the previously more prominent role of court users fade and the role of the criminal advocate rise to an elevated position in criminal proceedings (Landsman, 1990; Langbein, 2003; Hostettler, 2006; cf. Kirby, 2017a). The formal role of court users in adversarial proceedings is, therefore, largely limited to that of ‘information-provider’ (cf. Edwards, 2004). For complainants and witnesses this in the main pertains to giving evidence during a trial; the same applies to defendants in contested cases who elect to give evidence. Defendants are also required to provide the court with personal information, such as an address and date of birth, and to enter a plea. A court user’s role is further constrained by the strict rules that govern criminal proceedings. In England and

105 The other option, for complainants only, is to provide a Victim Personal Statement to the court (cf. Edwards, 2004). The impact of Victim Personal Statements on complainants’ engagement with the court process has not been focused upon during this study due to the presence of existing research of a similar nature (such as Roberts and Manikis, 2011).

106 As has been previously described, unrepresented defendants have an enhanced role in proceedings and may, for example, provide submissions or cross-examine witnesses in instances where this is legally permitted.
Wales this is largely regulated by the Criminal Procedure Rules. At the evidential stage individuals are required to give evidence in a manner prescribed by the courts that can limit the extent to which court users are able to ‘tell their story’ (Jacobson et al. 2015: 83) or to ‘say what really happened’ (Rock, 1993: 69). Moreover, a ‘careful distance’ (Rock, 1993: 153) or ‘delicate separateness’ (Fielding, 2006: 53) is required between parties in proceedings in order to prevent potential contamination of evidence, or give rise to concerns about the impartiality of the decision-maker. The presence of such legal limits contributes to the ‘artificiality’ (Fielding, 2006: 53) of the legal setting within which court users are required to engage.

The difficulties that these structural issues present to court users, particularly in terms of understanding and expression, have been outlined at length in existing research (such as, Rock, 1993; Fielding, 2006; Shapland and Hall, 2010; Jacobson et al. 2015) and, as indicated by several of the court user quotations presented in the previous Chapter, were clearly discernible during this study. Meanwhile others, including myself, have examined the barriers to engagement in criminal proceedings that are borne out of overarching cultural aspects of the court process, such as the ritual and formality inherent in proceedings or the ‘them and us’ nature of the relationship between professionals and court users (Kirby, 2017a). In a similar vein, contextual developments with the courts that have a bearing upon court users, such as the introduction of policy initiatives focused on efficiency, have been the subject of much academic interest (see, for example, McEwan, 2013; Ward, 2015). This

108 This includes, for example, only allowing individuals to discuss the specific alleged offences under consideration and preventing individuals from discussing any matters relayed to the court user by a third party.
section expands upon the above debates by arguing that issues of structure, culture and context intersect to act as a barrier to engagement. It does so by outlining four specific examples of operational constraints that emerged strongly in the findings of this study.\textsuperscript{109} These are: i) the ways in which the ‘outer zones’ of the courts could act as sites of disengagement; ii) conundrums surrounding how to reduce delays and achieve ‘efficiency’; iii) issues relating to inter-professional dynamics between professional actors and sources of occupational strain; and iv) issues relating to the presence or absence of legal representation.

*Court ‘outer zones’ as sites of disengagement*

The findings of this study chime with existing research that has documented the negative impact of some aspects of court architecture upon court users’ engagement (see, for example, Carlen, 1976; Mulcahy, 2011, 2013; Jacobson et al. 2015). For instance, observations of court proceedings gave rise to a number of examples in which the dock appeared to exacerbate the passive role of the defendant.\textsuperscript{110}

However, some of the most striking findings are those which go beyond the courtroom walls and point to the ways in which the spatial-cultural dynamics of the wider court building contribute to engagement characterised by ‘dull compulsion’ or ‘resistance’. These ‘outer zones’, which include entrances and exits, waiting areas, staircases and canteens, are often spaces within which court users, who are prevented from access to the ‘inner circles’ of the courts, are largely confined (Rock, 1993).

\textsuperscript{109} It should be stressed that these are by no means the only operational barriers to engagement in the criminal courts; they are merely examples of those that emerged prominently in this research.

\textsuperscript{110} The way in which the dock can serve to isolate defendants from proceedings is perhaps best illustrated in supporter Theresa’s description of the dock as being ‘the little room off the courtroom ... with windows’.
The public waiting areas in each of the courts under study, to greater or lesser degrees from court to court, betrayed a lack of care. For instance, by the end of the fieldwork period none of the courts under study had a canteen that served hot food. This meant that those wishing to purchase refreshments – during, as will be described below, what could often be lengthy periods of waiting – were largely limited to using vending machines selling hot drinks and snacks, or were required to leave the court premises in order to purchase food and drink items. Meanwhile, conversations in the consultation rooms adjoining the courtrooms between advocates, defendants and supporters, could on occasion be clearly heard from waiting areas during quiet periods. The air of lack of investment, and in some instances, unkempt and decrepit, atmosphere of the courts – evident, for example, in broken down lifts or the hazard tape that marked broken seating in the less frequently used courts – was described by Zara and Irenka:

‘Courts are always dirty ...They are secured well and everything but they are just always really dirty.’ (Zara, complainant)

‘I was absolutely freezing on the corridor; it was very, very, very cold ... it was below a good temperature – I was freezing there for three hours.’ (Irenka, defendant)

This should perhaps be viewed in the context of wider austerity measures affecting public services\(^{111}\) and ongoing court closures. Nevertheless, such spatial constraints are arguably

\(^{111}\) Figures from the National Audit Office (2016) show that central government spending on the courts has reduced by 26% since 2010/11.
unconducive to cultivating a sense of investment, or ‘active aligned’ engagement, in proceedings. For example, in what is arguably a visible sign of disengagement from the court process, several defendants were observed lying down on the floor or across seats in waiting areas.

The physical aspects of the ‘outer zones’ of the courts could also engender feelings of ‘outsider’ status among court users (cf. Rock, 1993: 181). This was particularly acute when it occurred in tandem with perceived exclusionary treatment from professional actors. For example, several defendants described a lack of information or ‘customer service’ available to them upon entering the court building which could give rise to a perception that they were, in the words of defendant Holly, ‘looked down upon’ by court actors. In a similar vein, the defendant Martin and his supporter Meg described how they perceived their treatment by security staff which, alongside the ‘daunting’ atmosphere of the court building, led to them feeling as though they were being treated with suspicion, or even hostility:

**Martin:** It was very, very unwelcoming, the actual building was very unwelcoming ... the security staff and whatever, I think they think everyone who comes in one side is a criminal and that’s how they treated us

**Meg:** That’s how I felt, and I was only there supporting him. I know it’s security ... but it’s just daunting
Martin: ... I’m not saying they should be warm and friendly, cuddly, fluffy places with a play-centre, but it should be a bit more welcoming ...
suitable for purpose.

These quotations tie in with critical commentary surrounding what has been described as a preoccupation with a risk-management or managerialist ethos within the courts (see Mulcahy 2011; Mulcahy, 2013; Ward, 2017) and how the ‘them and us’ relationship between professionals and court users can serve to marginalise court users (Jacobson et al. 2015; Kirby, 2017a). Taken together, they point to the ways in which issues of physical structure, culture and policy context can coalesce to inhibit ‘active aligned’ engagement and undermine the legitimacy of the courts.

_The conundrum of efficiency: A waiting game?_

Issues surrounding waiting and delay have permeated the courts in this jurisdiction and others for decades and have been subject to countless pieces of academic research and commentary (see, for example, Church, 1982; Rock, 1993; Duff and Leverick, 2002; Jacobson et al. 2015). The ‘organised yet chaotic’ (Jacobson et al. 2015: 111) way in which cases progress through the system has been described as one of the defining features of ‘court culture’ (Kirby, 2017a). However, efforts have been made by policy-makers over the years in order to minimise the impact of waiting and delays. The last decade, in particular, has witnessed concerted attempts by policy-makers to make court processes more ‘efficient’, particularly through court closures and the introduction of a number of technological reforms (Ministry of Justice, 2012; Ministry of Justice, 2013c; Ministry of Justice, 2018a). Such efforts have laudable aims in terms of seeking to reduce the impact of waiting and
delays on court users but have attracted criticism from scholars and practitioners who have questioned the impact that a focus on ‘efficient’ or ‘speedy’ justice, particularly when set in the context of austerity, can have upon procedural safeguards such as due process (McEwan, 2013; Ward, 2015; Ward, 2017; Soubise, 2017; The Secret Barrister, 2018).

Findings from this study help to shed light upon the impact of recent efficiency-driven policy initiatives on longstanding issues regarding waiting and delay. Despite the plethora of reforms, issues of waiting and delay continue to impact on court users’ engagement with proceedings. Fruistrations regarding waiting and delay were one of the most common issues referred to by all groups of lay participant under study across both types of criminal court.

The below quotation from prosecution witness Jake illustrates how the protracted court process, alongside not feeling adequately reimbursed for the time he had involuntarily given up, contributed to the ‘dull compulsion’ that characterised his engagement:

‘I was in there for the first day and waited from half nine in the morning until half three in the afternoon, then I was told that the main witness and the victim had so much evidence that no other witnesses would be able to give their evidence that day so we had to come back the next day. ... I was annoyed because I was losing money for being there. ... The expenses side of it should be improved. Judging by the [expense] form I can only claim back £60 per day for loss of income but ... £60 is not even half a day’s wages to me ... So, I’ve had to sack off the expenses and just take two days holiday so I get paid. I think they put the expenses at such a low rate so people do that, which is a joke ... If you’ve lost a day’s wages due to being forced to come to court then they should expect to pay your full day’s wages no matter how
much you earn.’

In fact, the findings indicate that in some instances the efforts aimed at promoting efficiency could have the paradoxical impact of adding to the experience of waiting and delay for court users. For example, time estimates for hearings were often used as a means by which to limit delay and were referred to regularly by members of the judiciary and court staff during observations. However, a perhaps unintended consequence is that it was not uncommon for delays to other cases to occur if cases listed at an early point in the day were not concluded in the time allocated to the hearing. In such instances court users, often to their bemusement, were asked to go home and return to court at a later date. (This could also happen in instances in which more than one case was listed to appear before the court in a given period.) This could increase the likelihood of engagement characterised by ‘resistance’ or even ‘withdrawal’. For example, there were a small number of instances in which, upon being told that the case would not proceed at the allotted time, a witness stated that they would not be willing to return to the court for the rescheduled hearing. As Witness Service volunteer, Rita, surmised when asked to describe the least satisfying aspects of her role:

‘Having to try and reassure people who’ve sat here for the whole morning waiting for their case to come. ... Explaining to people why the case is being adjourned for the third or fourth time, those are the things that are really frustrating. The whole system is so bad at that: the number of cases that get adjourned here every single

---

112 However, efficiency is not the only reason for which time estimates are used. For example, in cases involving vulnerable witnesses time estimates can form part of ‘ground rules hearings’, which take place in advance of the trial, in order to contain the amount of time for which a witness is cross-examined (see Cooper and Farrugia, 2017). An example of the ways in which time estimates were used for this purpose is described in the case study of observation MCPT03 on pages 282-284.
time I volunteer. ... People pysch themselves up to come, you’ve spent all that time reassuring them and then they are told to go away again and come back in three months’ time. And then you wonder why some of them don’t turn up.’

The interlocking issues of waiting, delay and efficiency imperatives highlight the ways in which cultural aspects of the court process, such as the ‘organised chaos’ (Jacobson et al. 2015) in criminal proceedings, can coincide with shifts in policy context and act as a barrier to court user engagement in proceedings. This is because they impact upon both an individual’s participation in proceedings and their degree of alignment with the courts.

Inter-professional dynamics and occupational strain

A third example of how constraints within the operation of the courts could impact upon engagement specifically relates to the dynamics that exist between professional court actors and associated tensions within the occupational climate of the criminal courts. The exclusionary impact of the ‘them and us’ relationship between legal actors and court users has been described in detail by Jacobson et al. (2015) and is regarded as one of the defining features of ‘court culture’ (Kirby, 2017a). While examples of this emerged in the Crown Courts during this study, it is perhaps more pertinent to pay close attention to the occupational cultures in the magistrates’ court which have been subject to considerably less, recent, academic focus and which this study helps to expand upon.

Social interaction in the magistrates’ court was of an arguably different character than in the Crown Court. Life in the magistrates’ court, particularly in courts dealing with a long list of relatively short hearings, could be described as sharing some commonalities with a local
government office – albeit one with a very public face. Professional courtroom actors, such as district judges and legal advisers, tended to dominate or stage manage proceedings with a main imperative appearing to be to get through the daily list in a collegiate manner. Nevertheless, tensions between court staff and advocates, and between individual advocates, did occur.¹¹³ This often seemed to be borne out of contextual factors relating to time pressures and competing inter-agency imperatives. A stark example of this occurred during a busy day in a trial court in one of the magistrates’ courts. On this occasion, which is described in detail in Box 6.1, a defence advocate in a burglary case argued with the prosecution advocate, legal adviser and magistrates overseeing the court at various points throughout the day and apologised, on more than one occasion, to the court for behaviour that in his words amounted to ‘getting excited’ and ‘carried away’.

<table>
<thead>
<tr>
<th>Box 6.1 Inter-agency working and competing priorities in a busy magistrates’ court (MCFT03)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The court had two trials listed for the morning session with additional trials and other matters due to be heard in the afternoon. The two trials listed in the morning were for incidents involving alleged domestic abuse and burglary, respectively. At the beginning of the day, the defence advocate in the burglary case was informed that that domestic abuse case would be heard first because, in cases with multiple listings, the courts are required to prioritise cases with a ‘DV flag’. The domestic abuse-related case had a time-estimate of one and a half hours but ultimately lasted approximately</td>
</tr>
</tbody>
</table>

¹¹³ See Ward (2017: 53) for a description of the ‘congested’ and ‘hectic’ nature of the magistrates’ courts and The Secret Barrister (2018: 76), who described the magistrates’ courts as ‘the accident and emergency department of criminal justice’.
two and a half hours. Due to proximity to the lunch period, the court dealt with a
shorter hearing for the remainder of the morning. At the beginning of the afternoon,
the court dealt with a second case involving domestic abuse; this case was listed for
trial, however, the prosecution offered no evidence because the complainant did not
attend.

The defence advocate in the burglary case had entered and exited the court at
various points during the morning and early afternoon in a harried fashion to check
on the progress of his case. The trial eventually began at around 2.30pm, shortly after
the defence advocate entered an unsuccessful application to adjourn because the
defendant had not attended court. When the magistrates retired to consider their
verdict the defence advocate went straight to the Youth Court to oversee a hearing
he had been allocated to in that courtroom; ‘I understand the Youth Court are
desperate for you’, the legal adviser overseeing the burglary case told the advocate as
he released him.

Twenty minutes later, the magistrates had reached a verdict in the burglary case, but
the defence advocate was yet to return from the Youth Court. He eventually
returned, however before the magistrates had entered the courtroom to deliver the
verdict, the legal adviser in the youth case entered the courtroom and sternly
reprimanded the advocate for seemingly trying to hurry the magistrates in the youth
case along by ‘hammering on’ the door connecting the courtroom to the inner sphere
of the court. ‘I was trying to be efficient!’ the advocate exclaimed in response.
It was not uncommon for advocates, both in the magistrates’ court and Crown Court, to be involved in more than one case on any given day in court. However, the above example conveys the conflicting imperatives, and associated tensions, that can occur between the different actors and agencies in bringing a case to fruition.

As the above discussion seeks to illustrate, it became increasingly evident that the apparent strain upon the system was ingrained in the atmosphere of the courts. In the courtroom, during short breaks or adjournments in proceedings, advocates and court staff sometimes discussed economic pressures on the courts. A Crown Court advocate, during a discussion about the court being short-staffed, remarked ‘I’m sure [former Justice Secretary] Chris Grayling thinks we sit drinking port, I’m wandering around these corridors looking like Oliver Twist’ (case CCOH02). Likewise during mitigation, the defence advocate in case CCSH04 commented that the decision by the magistrates’ court to send her client’s case for trial at the Crown Court was ‘irrational’ because his co-defendant, who it was agreed was the principal defendant, had been dealt with in the magistrates’ court. The judge agreed with the advocate commenting: ‘Yes, in this climate of public cuts you would have expected it to be the other way around.’ This is set in the context of debate surrounding the pressures faced by professional courtroom actors and is illustrated, for example, in strikes recently undertaken by members of the legal profession, reported difficulties in recruiting and retaining members of the judiciary (Thomas, 2017b; House of Lords Select Committee, 2017), and in the reduction of 1,500 HMCTS staff between 2015 and 2017 (National Audit Office, 2018). This climate of occupational strain arguably has a ripple effect upon the

---

114 See: https://www.criminalbar.com/resources/news/announcement-for-cba-members/ [accessed 01.06.18].
115 For a frank description of the nature of contemporary strains on the criminal justice system from the perspective of a practising criminal barrister see The Secret Barrister (2018).
engagement of court users. For example, supporter Frank’s alignment with the court process was weakened by the fact that, in his view, the prosecutor had performed poorly because she had been given insufficient time to prepare for the case:

‘Basically, I think there should have been more care taken over the matter – I think the solicitor should have had the case handed to her a couple of days [before] so she could read into it. ... To me it just felt she was just put on the spot there and then – she read through it quickly and she wasn’t competent enough to put forward our case.’

Frank’s dissatisfaction with the role played by the prosecutor can also be viewed in the context of structural barriers faced by prosecution witnesses and their supporters, such as a lack of access to legal representation.

**Representation**

A final operational constraint that can act as a barrier to ‘active alignment’ concerns the absence of legal representation. This impacts upon the engagement of both defendants and prosecution witnesses.

Existing studies of the criminal courts have often used the ‘court as theatre’ analogy to describe the levels of participation of different actors. It has been argued that courtroom professionals – namely the judiciary and advocates – assume ‘starring roles’ in proceedings; defendants, meanwhile, take on the role of ‘ever-present extra’ due to the ways in which they can be isolated, or marginalised, from proceedings (Jacobson et al. 2015: 83). As has
been described during the course of this thesis, passivity among defendants manifests itself for a number of interconnected reasons. Findings from existing studies suggest that legal representation can even contribute to a defendant’s passivity (Baldwin and McConville, 1977; McConville et al., 1994; Jacobson et al. 2015). Due to the small number of interviews conducted with defendants, it is difficult for this study to make any substantive assertions about the extent to which legal representation impacts upon a defendant’s engagement with the process. However, some of the observational data collected in this study – particularly that which was collected in the magistrates’ courts – provides useful insight as to the ways in which the absence of legal representation can impact upon engagement. This has the potential to be of particular value at a time in which, as a result of changes to legal aid provision (see Ministry of Justice, 2013b), the number of defendants in receipt of representation in the magistrates’ court is likely to have decreased (Gibbs, 2016; Owusu-Bempah, 2018).

Eighteen cases involving unrepresented defendants were observed as part of this study; all of which were in the magistrates’ court. This accounts for just under one fifth of all cases observed in the magistrates’ court and more than one quarter of trials observed in the magistrates’ court. Of these, six defendants were unrepresented at trial, six were unrepresented at the point of sentence and six were unrepresented during ‘other hearings’, such as, case management hearings.

To continue with the ‘court as theatre’ analogy, the study findings suggest that unrepresented defendants move from the position of ‘ever-present extra’ (Jacobson et al. 2015) to that which I shall term a ‘protagonist without a script’. That is, the defendant is

---

116 The number of defendants appearing without representation in their first hearing in the Crown Court in 2017 was 5 per cent (Ministry of Justice, 2018b); however, there is no data available regarding the number of defendants without representation at the magistrates’ court.
promoted to the position of lead actor but is not equipped with the necessary means to carry out the performance. Unrepresented defendants in this study often struggled to fulfil their ‘starring role’. They thereby displayed engagement characterised by a lack of alignment with the court process; that is, ‘resistance’, ‘dull compulsion’ or, in some instances, a combination of the two. There are a number of reasons for this. Firstly, it was not uncommon for unrepresented defendants to display a lack of familiarity with the court process. For example, Irenka, a defendant who represented herself in a trial in which she was alleged to have driven while using her mobile phone, described how she felt unused to the environment, and lacked understanding of the different parties in proceedings, when she arrived at court:

‘[I was] nervous, terrified, vulnerable, I didn’t even know how to address the judge, where to sit, what evidence should I bring with me. How did I give evidence, what to say. So I had approaching zero information of what’s going to happen inside the courtroom so I was absolutely petrified. …They asked me to stand up and tell the story from my point of view, to defend my side. Then I was cross-examined (sic.) by someone, who I don’t even know who that person is because I thought maybe she was the prosecutor, or is she just there to help me? I have no idea. I know who the judge is but I have no idea who the other people were in the courtroom. Was it just a clerk? Was it just a prosecutor? I have no idea.’

In addition to a lack of familiarity of courtroom actors, unrepresented defendants often displayed difficulties in understanding when and how they were required to communicate with the court. In several of the observed cases, defendants struggled to differentiate
between different aspects of the legal process such as entering a plea, cross-examining witnesses, giving evidence and making closing submissions. Examples of such difficulties in understanding and expression were provided in Box 5.4 in Chapter 5 (pp.231-232) with regard to the engagement of an unrepresented defendant in a speeding trial (case MCFT10). For example, the defendant struggled to asked questions of the witnesses and instead made a number of statements. Furthermore, several unrepresented defendants encountered difficulties in understanding the meaning of specific legal concepts. The most striking example of this was in a trial of ‘taxi-touting’ (MCPT01). Upon the completion of the prosecution case, the district judge overseeing the trial explained to the defendant that it was now his opportunity to give evidence. She informed him that giving evidence was not a legal requirement but that it would be possible for her to draw ‘adverse inference’ if he chose not to. The defendant responded to this with the question – via the interpreter appointed to assist him – ‘I don’t understand, what does give evidence mean?’\footnote{An examination of the role of interpreters and their impact upon courtroom interaction is outside the remit of this study. However, a detailed discussion of this can be found in Aliverti and Seoighe (2017).}

A more complex example of this occurred in a case of domestic abuse (case MCOH14) in which the defendant seemingly failed to grasp the gravity of the legal argument regarding whether or not a witness’s evidence could be admitted as a statement rather than provided as live testimony the court. The case appeared before the courts for a case management hearing after the defendant, and one of the complainants, had failed to attend court on the original trial date. The defendant stated that he had not received a notification of the original hearing date – ‘there’s no reason why I wouldn't have come’, he told the court – and was informed by the legal adviser that if he entered a not guilty plea to breaching his bail

\footnote{An examination of the role of interpreters and their impact upon courtroom interaction is outside the remit of this study. However, a detailed discussion of this can be found in Aliverti and Seoighe (2017).}
conditions by failing to attend court, he would be required to stand trial for this alongside trial for the original offence of using violence to obtain entry. During the hearing, the prosecutor entered an application to admit the evidence of one of the complainants as a statement because she would not be able to attend the trial on grounds of ill-health. The legal adviser informed the defendant that because he was unrepresented she would provide assistance by asking the prosecutor questions about the application. She also asked the defendant if he thought it would harm his defence if the magistrates granted the application to admit the complainant’s statement as evidence; explaining that this would mean that the complainant didn’t have to come to court. The defendant – who seemed more preoccupied by the breach of bail charge – replied ‘not really’. (The magistrates subsequently rejected the application.)

These findings add contemporary weight to existing academic research into the participation of unrepresented defendants in the criminal courts, much of which was conducted around forty years ago (Carlen, 1976; Baldwin and McConville, 1977; McBarnett, 1981). It also provides support to a small piece of recent research carried out by the charity Transform Justice, which found that unrepresented defendants could have a limited understanding of rules of evidence and experienced difficulties in conducting cross-examination (Gibbs, 2016).

118 It was common for the legal adviser to provide assistance to unrepresented defendants. This could take several forms, including helping the defendant to formulate questions during the cross-examination of a witness; informing defendants about aspects of the court process, such as the role of the legal adviser, prosecutor and magistrates; and providing assistance upon applications. The degree to which such assistance was provided tended to be dependent upon the individual legal adviser and the circumstances of the case.
Overall, the findings suggest that being unrepresented acts as a barrier to ‘active aligned’ engagement in criminal proceedings. This is in contrast to academic research conducted in the civil arena, which is known for its comparatively greater recourse to inquisitorial methods than the criminal courts. Adler (2008: 9-10) found that litigants who received pre-hearing advice ‘fare[d] almost as well as those who are represented’, in part due to the ‘active’, ‘enabling’ and ‘interventionist’ methods of tribunal proceedings (see also, Adler 2009). This suggests that enhancing the engagement of unrepresented defendants may be more difficult to achieve within the confines of the criminal justice system, which arguably imposes tighter controls on the use of such methods.

A different, yet related, set of issues arises with regard to representation among those who appear for the prosecution. The prosecution of alleged offending by the State means that complainants and prosecution witnesses are not considered as ‘parties’ (cf. Spencer, 2010; Fairclough and Jones, 2018); thus, they do not have access to legal representation and are not afforded formal decision-making roles in criminal proceedings (Edwards, 2004). Existing studies have drawn particular attention to how the absence of legal representation can contribute to complainants’ and prosecution witnesses’ ‘bit-part player’ or ‘walk-on’ role in proceedings (such as Shapland and Hall, 2010; Jacobson et al. 2015). Meanwhile there has been much discussion of the implications of the alleged victim being largely denied decision-making roles in proceedings (Rock, 2004; Edwards, 2004; Doak, 2008; Spencer, 2010). A commonly cited line of argument in opposition to affording complainants such a role centres upon the view that, if given such power, complainants would use it in a retributive manner (see, for example, Rock, 2004; Roberts and Erez, 2010). However, the findings of this study shed some light on how alleged victims respond when their choice, and
subsequent level of engagement, is constrained for an alternative reason; that is in instances in which complainants do not support the prosecution.

Examples of ‘resistance’ or ‘withdrawal’ among complainants presented in Chapter 5 indicated a degree of ambivalence on the part of some as to the role of the State in the prosecution of cases. A central source of disengagement that arose on a number of occasions was when it became apparent that the interests of the State, as deemed by the CPS, were not aligned with those of the ‘private victim’ (Rock, 2004). This was particularly common in cases that involved bringing private offending into public view, such as those involving domestic abuse. This was not just in cases involving intimate partner violence but also those between family members such as parents and children, or siblings.

The absence of shared values, or alignment, between the State and the individual does not necessarily mean that prosecutions should not occur in instances in which the individual complainant does not support, or no longer supports, the prosecution; particularly because there can be a multitude of reasons for this including fear of, and coercion by, the defendant (Kuennen, 2007; Shapland and Hall, 2010; Douglas, 2018). However, the apparent absence of ‘shared values’ highlights a source of ‘legitimacy deficit’ (Beetham, 1991, 2013) between the State (as power-holder) and the individual (as the audience) and suggests that further ‘dialogue’ (Bottoms and Tankebe, 2012) is required in order for the State to be regarded as holding legitimate authority. This is specifically in relation to perceptions of the courts’ effectiveness in dealing with such cases, which includes ensuring
that the ‘interests’ of complainants and their families are adequately met.\textsuperscript{119} For example, it has been argued that the transfer of ‘conflict’ (Christie, 1977) from the individual to the State in the prosecution of cases simply perpetuates the problem of coercion because ‘instead of the batterer compelling the victim to do something she does not want, the court does’ (Kuennen, 2007: 6). An instance similar to this arose in case MCPT02 described in Chapter 5 in which the alleged victim, upon choosing to give evidence for the defence rather than the prosecution, stated that she had felt ‘badgered’ to give a statement by the police officer investigating the incident and described the experience of being interviewed by the officer as ‘coercive’.

These arguments are in the context of extensive and long-standing assertions that the legal system is structured in such a manner that it can fail to meet the needs or interests of victims in cases of domestic abuse and sexual violence.\textsuperscript{120} This is well illustrated in Case MCOH29 (see Box 6.2), which shows that, despite being in support of the prosecution and seemingly making a number of attempts to engage with the process, the complainant’s role was extremely marginal. Moreover, it resonates with Shapland and Hall’s (2010: 169) critical assertion that the lack of clear and identifiable provisions for victims who attend court solely for the purpose of observing proceedings, rather than to give evidence, means that they ‘lack the essential umbilical cord connecting them with the internal world of the court.’

\textsuperscript{119} Holder and Daly (2018: 789) use the term ‘interests’ when discussing complainants in cases of domestic abuse because it ‘assumes that victims not only have a relationship with a violent person, but are also in a relation to state authorities’.

\textsuperscript{120} This includes recent debate which highlights the ways in which some perpetrators of domestic abuse can use the court process as a means by which to continue to engage in abusive behaviour (Walklate, 2018; Douglas, 2018). This has been described by Douglas (2018: 84) as ‘legal systems abuse’.
Box 6.2 A view from the gallery in a magistrates’ court bail hearing (MCOH29)

The defendant (D) was initially charged with assaulting his partner (C). D was released on police bail; one of the conditions of bail was that he was not allowed to attend C’s address. Shortly after his release, D attended C’s home, shouted at her and caused damage to her property. D was subsequently re-arrested and placed on remand to appear before the court when it next sat.

On the morning of the hearing, C, who was pregnant, attended court along with her and D’s baby. The public gallery was separated from the main courtroom by a glass partition. She entered the gallery but struggled to get the baby’s pram through the doorway. Within minutes, a security guard entered and informed her that she must move the pram from the doorway because it was blocking access to the court. C moved the pram and returned to the courtroom with the baby in her arms. When the court began she was informed by the district judge overseeing the case that she could not remain in the public gallery with the baby. C left the public gallery but popped her head into and out of the gallery at numerous points over the course of the morning to check on the progress of the case.

D’s case was heard shortly before the lunchtime adjournment, at which point he entered a guilty plea to criminal damage. The case was adjourned pending a pre-sentence report and D’s advocate successfully entered a bail application. During the hearing C returned to the courtroom and tried to attract D’s attention. D did not respond and C subsequently left the public gallery in tears. In granting bail to D, the judge firmly stated that he was being released on the condition that he did not contact C directly or indirectly until after...
the sentencing hearing. Moreover, if she contacted him, the defendant was told that he must not respond. A restraining order was not imposed: the prosecutor informed the judge that C did not want one, however it was noted that C had a ‘DV officer’. When the court adjourned for lunch, C was waiting outside the courtroom to speak to the probation officer who had been tasked with writing D’s pre-sentence report.

The study findings therefore suggest that the absence of legal representation for complainants and prosecution witnesses can contribute to engagement characterised by ‘resistance’, ‘dull compulsion’ and even ‘withdrawal’. Moreover, it points to an absence of alignment between the complainant and the prosecution as a specific source of legitimacy deficit.

Overall, this sub-section has set out four ways in which operational constraints inherent in the criminal courts limit the court users’ alignment with, and participation in, proceedings. Such operational constraints are borne out of an interplay between structural, cultural and contextual dynamics within the court process.

6.1.2 Court users: Individual needs and social context

Operational constraints are, however, not the only barrier to engagement. The second half of this section focuses upon the ways in which factors relating to the individual and social needs of court users can also limit the extent to which ‘active aligned’ engagement can be achieved. Taken together it is argued that operational constraints can coincide with factors relating to the personal and social circumstances of individual court users in order to
produce weak forms of engagement in criminal proceedings. The needs of complainants and witnesses in comparison to those of defendants have been separated in the below discussion for simplicity. However, the level of need and vulnerability both within and between each group are overlapping, and in some instances, both the defendant(s) and prosecution witness(s) in the same case appeared to have a number of needs or vulnerabilities. This discussion should be situated within the context of broader debates surrounding the blurred or overlapping nature of offending and victimisation (see, for example, Fagan and Mears, 2008; Bottoms and Costello, 2010; Croall, 2017).

Complainants and witnesses

When thinking about how the individual needs of complainants and witnesses has a bearing upon their engagement, it is first necessary to consider the broader social context of offending and victimisation. Changing patterns of offending, and shifts in responses to offending and alleged offending, have contributed to a change to the caseload of the courts. National statistics show that there are now fewer cases coming before the courts. There are a multitude of possible reasons for this; including declining recorded crime rates over an extended period (see ONS, 2018a). However at the same time, statistical evidence and research data show that the cases now being brought before the courts are often of a more complex and serious nature, and include offences that involve 'higher-harm' (ONS, 2018a:3) than at previous times. In particular, there is an increased prominence of cases involving sexual and/or domestic abuse. Such offending often occurs in a private setting and was

---

121 For example, between 2014 and 2017 the number of cases coming before the magistrates’ courts fell by 6 per cent and the number of cases coming before the Crown Court fell by 17 per cent. In 2017 114, 347 cases came before the Crown Court; this is the lowest number since 2000 (see Ministry of Justice, 2018b, 2018c).
122 For example, police recorded crime figures show that recorded sexual offences increased by 23% in the year from September 2016 to 2017 and are currently at its highest rate since the National Crime Recording
thus excluded from the more public offending traditionally brought before the courts. For example, Rock (1993) in his study of a single Crown Court noted that the majority of offences committed were of a public nature, such as burglary, robbery and public order; meanwhile Bottoms and McClean (1976: 18) excluded sexual offences from their interview sample, in part because there were only a ‘small number’ of these cases coming before the courts under study. This is in stark contrast with the findings of this study and those of the Crime Survey for England and Wales which show that incidents of violence committed by ‘strangers’ have decreased by 53% since 1995 (ONS, 2017c: 12). This shift highlights the ways in which offending that was previously regarded as ‘hidden’ (Maguire and McVie, 2017; ONS, 2017a:3), as was often the case with domestic abuse and sexual violence, is now becoming increasingly prominent in the courts. Changes in patterns of recorded offending also reflect shifts in societal attitudes towards this type of offending (Jacobson and Hough, 2018). For example, the ONS cites changes in police responses to historical sexual abuse – including high profile responses, such as Operation Yewtree – as a factor which may have contributed to an increased willingness of complainants to report this kind of offending (ONS, 2017c).

While there is often discussion about the impact of changes in caseload upon the Crown Court (see Hunter, Jacobson and Kirby, 2018; The Secret Barrister, 2018), there has been

---

Standard was introduced in 2002 (ONS, 2018a). It is difficult to assess the extent of domestic abuse because cases have only been recorded as involving domestic abuse since 2015 (see ONS, 2017a), however, the most recent data available suggests that approximately one third of violent offences are related to domestic abuse (ONS, 2017a: 12; see also Walby, Towers and Francis, 2016). Moreover, recent data from the CPS (2017) charts a 63 percent increase in convictions for offences involving allegations of sexual or domestic violence within a 10-year period.

This is not to state that the prevalence of victimisation in crimes involving sexual and/or domestic abuse has stopped being ‘hidden’. It has long been argued that police recorded crime and the CSEW do not adequately capture the prevalence of such crimes (Maguire and McVie, 2017; ONS, 2017a). Moreover, Westmarland, Johnson and McGlynn (2018) recently documented the ‘widespread’ use of out of court resolutions by police forces in England and Wales in response to reported incidents of domestic abuse.
less focus on how this has shaped the caseload of the magistrates’ courts. The cases observed in the magistrates’ court in this study ranged from low level offences, such as speeding or cases brought by local councils, to much more serious ones including sexual assault, malicious communications and stalking (see Appendix xii for more detail). The changing profile of cases coming before the magistrates’ court was commented upon by legal professionals during court observations and by magistrates in interview. For example, during a break in proceedings in case MCFT04, a sexual assault trial involving allegations made by a woman against her former husband, the prosecutor remarked to the officer in the case: ‘it’s all sex [cases] at the moment … Don’t anyone commit burglary anymore?’ Meanwhile magistrate interviewee David spoke of noticing a change in caseload during the time in which he had served as a magistrate:

‘When I first started there was quite a lot of routine completely non-CPS, non-criminal work so it could be railways coming along, so non-payment of fares, or local government looking for liability orders or the education officer wanting to prosecute people for not sending their children to school … There is a lot of routine stuff that we are now seeing less of. So, the actual nature of the work we are doing is changing and therefore we are dealing with more difficult cases; we are getting a greater proportion of the more serious cases.’

In line with such shifts, the study findings suggest that complainants and prosecution witnesses appeared in court in the context of a number of, and often overlapping, ‘needs’, ‘vulnerabilities’ or ‘interests’ which could impact upon the extent to which they engaged
with proceedings. In some instances the experience of victimisation itself, it was deemed by the court at the point of sentencing, had in part stemmed from an offender taking advantage of a pre-existing vulnerability of the complainant, such as a physical disability; young or old age; mental health problem; or communication difficulty. In other instances, or even within the same case, complainants had needs and vulnerabilities arising from the offence being committed. This could be specifically in relation to fear or anxiety about the prospect of attending court or due to the impact of the (alleged) offence on the individual’s physical or mental well-being. This was often most evident among complainants giving evidence in cases involving sexual violence, domestic abuse or other violent offences.

In such instances this vulnerability, and/or associated intimidation, was formally recognised by the courts in the granting of special measures applications. In many instances, prosecution witnesses gave evidence with the use of special measures such as via video-recorded evidence-in-chief, via video-link, with the use of a screen or with the assistance of an intermediary. Other adjustments included entering and exiting the courtroom via a separate entrance, having a supporter – usually in the form of a Witness Service volunteer – sit with the individual in court and the use of a court-appointed advocate to cross-examine vulnerable witnesses in cases where the defendant was unrepresented.

Debates surrounding the definition of, and most suitable terms to use to describe the individual and social issues faced by court users, span a number of disciplines including law, health, social work and psychology; a detailed examination of this is unfortunately outside the scope of this study. A comprehensive overview of vulnerability in the criminal justice system is provided in the edited collection by Cooper and Norton (2017). (See also, Jacobson, 2018.) The terms ‘needs’, ‘vulnerabilities’ and ‘interests’ are, however, used in the below discussion in a broad sense to describe the ways in which engagement of court users may be impacted upon by personal circumstances and social context.

Under Sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999.
Indeed, there are lots of ways in which adjustments can enhance engagement. For example, existing studies have highlighted the beneficial impact of special measures on the engagement of complainants and witnesses (see, for example, Hamlyn, Phelps, Turtle and Sattar, 2004; Hunter, Jacobson and Kirby, 2013; Baverstock, 2016). However, findings from this study also suggest that there remain some issues in relation to how levels of need and vulnerability among complainants and witnesses are identified and responded to by the courts. This provides a clear illustration of how operational aspects of the court process can intersect with the needs of court users in order to limit engagement in proceedings. Problems sometimes emerged with the implementation of special measures. This included practical issues that could mean that special measures applications were only granted on the day a witness was due to give evidence. For example, complainant Aylin described the impact of only finding out that her application for a screen had been successful half an hour before she was due to give evidence:

‘I don’t know who was supposed to let me know but they could have let me know that I had the blind; that would have really helped me, even if it was the day before ... I was relieved that I had it but I thought I wasn’t going to have it. I was getting anxiety attacks thinking “I’m not going to get the blind”.

126 Burton et al. (2006) also found that special measures applications were often entered at a late stage, including on the day of trial. (See also, Hunter et al. 2013.) This appears to be contrary to the guidance provided in the Criminal Procedure Rules (2015) which state that special measures applications should be made no more than 28 days after the defendant enters a not guilty plea in the magistrates’ court, or, no more than 14 days after the defendant enters a not guilty plea in the Crown Court.

127 Witness anonymity requires a separate order, a Witness Anonymity Order, to be granted by the courts under Sections 86-97 of the Coroners and Justice Act 2009. However, in addition to this, CPS legal guidance outlines the ways in which a court can exercise either formal powers, such as those outlined in the Contempt of Court Act 1981, or common law powers to prevent the name and address of a witness being disclosed in open court. See: https://www.cps.gov.uk/legal-guidance/witness-protection-and-anonymity [accessed 06.04.18].
Issues also emerged when the apparent benefits of special measures, as perceived by court users, did not correspond with the ways in which measures were applied by the courts in practice. Prosecution witnesses Gemma and Jake – who gave evidence in separate cases at different courts – had both been granted the use of a screen when giving evidence. Both were of the understanding that the use of a screen would mean that they would be giving evidence ‘anonymously’ – that is, they would not be identifiable to the defendant – and were left feeling ‘pretty displeased’ (Jake) and ‘massively affected’ (Gemma) when they were required to provide identifiable details, such as their name or address, to the court. This is elaborated upon by Jake in the below quotation:

‘I asked for the special measures to be put in place, because I knew the defendant in the case as well as the victim. ... I asked for a screen to be put up, I asked for the defendant to leave the courtroom while I entered and exited, and then I also asked for my full name not to be read out. Now, the defendant did leave the courtroom and I did get a screen put up, but it felt extremely pointless because the first thing they asked me when I got in there was “what was my full name”. So, I was like all [the defendant has] got to do is go on Facebook, type in that name and then boom – there’s my picture and he knows exactly what I look like so the rest of it was pointless.’

This points to a gap between perception and reality in relation to the use of screens which, as outlined in the YJCEA 1999 are designed to limit the impact of fear or distress upon the quality of a witness’s evidence, and do not necessarily come with the guarantee of
anonymity, and may reflect shortcomings in the way in which the use of special measures are communicated to court users.\textsuperscript{127}

Secondly, issues could arise in which the needs of individual court users could be under- acknowledged, due to the fact that the individual was not formally recognised as ‘vulnerable’ or ‘intimidated’ in the eyes of the law, or by those tasked with applying it.\textsuperscript{128}

Iumi a prosecution witness in a drink driving trial, who was not in receipt of special measures, described having had a sleepless night the day before he was due to give evidence due to feeling nervous. Moreover, when giving evidence in open court he described feeling intimidated by being under the defendant’s gaze:

‘The most awkward part of the whole experience by a mile [was] the guy who I was talking against … was eyeballing me with the biggest eyeballs from the other side of the court. ... He wasn’t blinking virtually.’

In a similar vein, Suzie spoke of the contrast in the support she received when attending the same court as a prosecution witness in two separate cases. In the first instance, she described being in receipt of ‘so many measures’ as a complainant in a case of domestic abuse which included giving evidence behind a screen, being escorted through the court building and given access to a separate smoking area. On the second occasion she attended

\textsuperscript{127} Witness anonymity requires a separate order, a Witness Anonymity Order, to be granted by the courts under Sections 86-97 of the Coroners and Justice Act 2009. However, in addition to this, CPS legal guidance outlines the ways in which a court can exercise either formal powers, such as those outlined in the Contempt of Court Act 1981, or common law powers to prevent the name and address of a witness being disclosed in open court. See: \url{https://www.cps.gov.uk/legal-guidance/witness-protection-and-anonymity} [accessed 06.04.18].

\textsuperscript{128} This may, in part, reflect the fact that there is at present no standard definition of ‘vulnerability’ in policy and practice guidance in relation to court users (Jacobson, 2018).
court to give evidence in an assault trial in which she had witnessed the incident but was not personally involved.\textsuperscript{129} She described finding this experience ‘dramatically different’ due to the more limited support available:

‘[The first time] the way that it was run, all the special measures I had, the whole way the court system worked around, you know me and being a victim, I think it was very fair ... at the time it was just this big world of scariness but yeah I think I was treated fairly and I was updated very quickly when the case was over... [The second] time when I went out to have a vape ... the defendant spoke to me! And I was like “this is awkward, and probably not right”. So, I just kind of went “Mmmhmm” and then walked off. Whereas obviously last time, I was allowed to smoke somewhere different and it was all a little bit more closed off. But I did feel a bit [like] it just wasn’t ... protecting the public.’

These examples highlight the ways in which the mere experience of attending court, even in cases in which the offence is regarded as relatively low-level or involves prosecution witnesses who do not overtly display specific needs or vulnerabilities, can induce ‘vulnerable moments’ (Jacobson, 2018) among court users. They also provide support for Jacobson’s (2018: 224) assertion that:

‘Drawing a line between individual court users who are “vulnerable” and those who are “not vulnerable” [is] an increasingly difficult and arbitrary process. A further

\textsuperscript{129} Despite attending court on the morning of the hearing, she was not ultimately required to give evidence because the defendant entered a late guilty plea.
question that arises is whether, to the extent that any such line is drawn, those who are deemed “not vulnerable” might be disadvantaged by the fact that special provision is made available to those deemed “vulnerable”.

Defence witnesses are one group whose needs may be particularly overlooked. They are not legally bound to attend court, unlike prosecution witnesses, and therefore do so in a voluntary capacity. Interviews with Witness Service volunteers highlighted the ways in which the needs of defence witnesses could be under-appreciated. This is described by volunteer, Daphne:

‘They don’t know what is happening, more so than the prosecution witnesses ... [they] are just absolutely clueless because the lawyers aren’t really focusing on them; they are focusing on the defendant. [Defence witnesses] don’t know what is going on ... So, I think a lot for them is the not knowing and obviously natural anxiousness [about appearing at court] and things like that.’

The remit of the Witness Service includes provision for both prosecution witnesses and defence witnesses\textsuperscript{130} and the volunteers interviewed tended to be of the view that the needs of defence witnesses were ‘the same’ as prosecution witnesses. However, several volunteers spoke of the difficulties they had experienced in identifying defence witnesses to whom to provide support.\textsuperscript{131} This is perhaps due to the absence of a formal mechanism for

\textsuperscript{130} However, in 2015-16, 97% of those supported by the Witness Service were prosecution witnesses (Wood, 2016).

\textsuperscript{131} The potential difficulties involved in identifying defence witnesses was one of the reasons why defence witnesses were not included in the sample for this study. This is not withstanding the interview with supporter Gloria, who also gave evidence as a defence witness.
informing the Witness Service of the presence of defence witnesses and, conversely, for informing defence witnesses about the support available from the Witness Service.132

Defendants

Though data on the demographic characteristics of court users is largely absent (Jacobson, 2018), existing research suggests that defendants are likely to have a number of needs (see, for example, Jacobson with Talbot, 2009; McEwan, 2013; Carlile, 2014; Ward, 2017). The findings from this study add weight to such claims because they indicate that much offending, and alleged offending, brought before the courts occurs in the context of pre-existing, and often multiple, needs and vulnerabilities. This includes, but is not limited to, learning difficulties or disabilities; mental health difficulties; experience of victimisation; physical disabilities or illness; substance misuse; homelessness or recent bereavement.

Magistrates’ courts dealing with relatively short hearings such as sentencing hearings, bail hearings and case management hearings often acted as a site within which the various needs and vulnerabilities of defendants involved in lower-level offending, or alleged offending, were manifest. The high level of need displayed can be illustrated by summarising the cases heard before one of the courtrooms in Amber City magistrates’ court during a day’s observation. The court heard fifteen133 cases (see MCSH39-47; MCOH20-25) among which needs or vulnerabilities of the defendant were identified in seven cases,

132 However, while the study was underway Citizens Advice launched an initiative aimed at raising awareness of the role of the Witness Service in providing support to defence witnesses (see Wood, 2016; Leptos, 2017).

133 In addition to this a further case was heard in chambers (closed court) and therefore not observed, and a second case was adjourned because the defendant had not been produced from the local prison.
usually by the defence. Four of the defendants were identified as having problems with substance misuse, and three of the four were identified as having interrelated mental health difficulties. This included a defendant who was sentenced for assaulting a police officer whilst under the influence of alcohol. She was homeless at the time of the offence and suffering from severe anxiety and depression, which had since been diagnosed by a GP. In two further cases, the defendant’s mental health was subject to additional investigation. The first case involved a defendant who was alleged to have committed assault and threatened to harm himself in a take-away restaurant less than a week after having been released from a mental health hospital; in the second, a defendant with schizophrenia was alleged to have committed criminal damage in the property that he rented. Both cases were adjourned pending psychiatric reports. A final defendant, who was sentenced for driving while under the influence of alcohol, had crashed his vehicle at the time of the offence and spent several months in hospital due to the injuries sustained, which included a brain injury.

Caseloads such as this were commonplace, rather than unusual, in the daily life of the magistrates’ court and are arguably part of the social fabric of cases coming before the court. Crucially, they help to illustrate why engagement among defendants can be weak. This is because they highlight the ways in which individual needs or circumstances may impact upon a court user’s ability to engage with proceedings. None of the defendants described in the observation above could have been said to have engaged in an ‘active aligned’ manner; for the majority their engagement was characterised by ‘passive aligned’ at best or ‘dull compulsion’ at worst.

Furthermore, one defendant who had been remanded in police custody overnight for the non-payment of fines was unrepresented and appeared to find it difficult to answer the questions posed by the magistrates. The Chair spoke slowly and clearly to the defendant who was pale and dishevelled in appearance.
A final, related, factor to consider is that of social disadvantage. In addition to the multiple and overlapping individual needs described above, were signs of high levels of socio-economic deprivation among court users under study.\textsuperscript{135} Again, this was often most evident among defendants appearing in the magistrates’ courts. For example, common among observed cases were applications for reduced court costs due to the defendant’s low income, or income that was reliant upon employment or disability benefit, and there were a number of occasions in which defendants were brought back before the courts to account for failing to keep up with the payment of fines. The socio-economic difficulties encountered by court users, defendants and prosecution witnesses alike, was commented upon by several of the magistrates interviewed:

‘People say “he’s done that terrible thing and he’s only been fined £300” … [But] what we have to do is look to the ability to pay. So, £300 to somebody who is on benefits is an astronomical amount of money.’ (David)

‘There are a lot of people who struggle. When you look at the demographics and you look at poverty, I don’t know how much support people get. So, if [a witness] say[s], “I haven’t got any money” is there anything that allows Witness Support – have they got a kitty?’\textsuperscript{136} When we were local justice we used to have a fund, all of us

\textsuperscript{135} This is in line with the plethora of existing research which highlights that those appearing before the courts, particularly defendants, are likely to come from socially disadvantaged backgrounds (see, for example, Carlen, 1976; McBarnet, 1981; Jacobson, Bhardwa, Gyateng et al. 2010; Tonry, 2010; Ward, 2017; Lammy, 2017).

\textsuperscript{136} The Witness Service manager at one of the Crown Courts under study had taken to collecting promotional food vouchers offered by the local McDonalds in order to give to witnesses who hadn’t brought, or weren’t able to afford, lunch while they were waiting at court. This is because, although prosecution witnesses were
would put in £10 every six months or whatever, and then if we had somebody that evidently hadn’t eaten, we had a fund were we could say “Go and get yourself a sandwich”, or whatever. Or if you had someone that had been in the cells overnight, and had no money, we could give them the bus fare home in essence.’ (Jennifer)

Socio-economic deprivation or disadvantage among court users is an important factor to consider when thinking about engagement because it is associated with debates regarding levels of exclusion from wider society (see Young, 1999; Croall, 2017). It is necessary to consider what role low levels of engagement in wider society, such as those described by Putnam (1995), are reflected in an individual’s level of engagement with the court process. Court performance can act as a site in which the myriad of issues experienced by court users, and the wider social context within which these are situated, are brought into striking view. The ways exclusion from wider society could come under the bright spotlight of the courtroom stage is highlighted in Case Study CCPT05, below. This included allusions by professional courtroom actors to the ways in which the lives of the complainant and defendant (‘them’), were fundamentally different to that of their own, the jury and society at large (‘us’) (cf. Jacobson et al. 2015).

able to enter expense claims to cover the cost of refreshments and transport incurred due to their court appearance, this could only be done on an ad hoc basis.
The defendant (D) was a self-admitted drug dealer; the complainant (C) was a self-admitted drug user. On the night of the incident, C went to a flat with D to use crack cocaine upon which it was alleged that D raped her. Shortly after the incident, C reported the alleged offences to the police, at which point she was arrested for an offence that she had previously committed and spent several months in custody. The defence alleged that C had consented to sex in exchange for drugs. C had no previous convictions for sex work.

The trial took place after C’s release from custody. C gave evidence behind a screen. D was on bail and appeared in court in casual dress. He was accompanied to court by his partner who observed the case from the public gallery. At various points during breaks in proceedings, D and his supporter could be seen lying on the floor hugging in a conference room adjacent to the courtroom.

C’s longstanding drug use, alongside D’s previous convictions and troubled childhood, were referred to on a number of occasions. During the trial both the prosecution and defence appeared to develop a narrative that drew upon the ‘otherness’ of the lives of C and D. For example the prosecutor, during her closing speech, told the jury that despite C ‘perhaps living on the edge of society’, it did not mean that she should not be believed. She also stated that C had reported the alleged offences despite the fact that she may have feared that the police response...
Weak levels of engagement in the court process were arguably most pronounced among court users who appeared to have least connection to, or stake in, wider society. In the above Case Study, for example, the defendant’s level of engagement was characterised as ‘resistant’. This was, in part, as described in Chapter 5 (pp. 221-2) due to his tendency to interrupt proceedings. Moreover, the Case Study helps to further illustrate the ways in which factors relating to the individual court user, in this case social exclusion, could coalesce with operational constraints, such as exclusionary practices inherent within the structure and culture of the courts, to limit the engagement of court users. It also raises questions about the extent to which macro factors, such as social deprivation, have a bearing upon perceptions of legitimacy (cf. Loader and Sparks, 2013). Such questions are perhaps particularly relevant in view of Ewick and Silbey’s (1998: 234) assertion that ‘social marginality’ is strongly associated with the ‘counterhegemonic consciousness’ displayed by those who resist legal power.
6.1.3 Summary: the interplay between operational constraints and individual circumstances

Overall, this section has sought to outline the various existing barriers to engagement in the criminal courts. These barriers, it has been argued, are of two main types. Firstly, a core set of barriers are borne out of operational aspects of the court process which reflect structural, cultural and contextual constraints in the criminal courts. The second part of this section sought to convey how factors relating to the circumstances of individual court users, such as personal needs arising from the experience of victimisation or the impact of social deprivation, could contribute to weak forms of engagement in proceedings. Crucially, it has been argued that both sets of barriers can coalesce to limit the extent to which an individual is able to engage in an ‘active aligned’ manner. Levels of engagement, it would appear, are often at their weakest when operational constraints coincide with high levels of individual and social need among court users. The implications of this with regard to perceptions of legitimacy are examined in the following section.

6.2 Cultivating engagement in the criminal courts: procedural justice and ‘beyond’

This section moves from examining the barriers to engagement to considering the factors which can be said to cultivate engagement in the criminal courts. In doing so, it takes forward the discussion of legitimacy provided in the previous Chapter. This is possible because, as outlined, the extent to which an individual engages in the court reflects the degree to which the individual perceives the courts as legitimate. The two dimensions which comprise engagement – alignment and participation – correspond with two of the central components of legitimacy: ‘shared values’ and ‘expressed consent’, respectively. In line with
existing theorisations, I argue that the presence of procedurally just treatment, in the form of considerate and inclusive interactions, can promote engagement and enhance overall perceptions of legitimacy in the criminal courts. However, procedural justice forms just one aspect of the rich ‘tissue of relations’ (Loader and Sparks, 2013) that contribute to audience legitimacy. Examining legitimacy from a dialogic perspective, thus, facilitates a more ‘intricate’ (Harkin, 2015) consideration of the myriad of factors which shape perceptions of legitimacy.

6.2.1 Considerate and inclusive interactions in cultivating engagement: the role of procedural justice

Theorists have sought to emphasise the role of procedural justice in shaping perceptions of legitimacy. Specifically, it has been argued that the experience of fair and respectful treatment can enhance perceptions of legitimacy in institutions (see, for example, Tyler, 2006; Hough et al. 2013). The findings of this study do indeed provide some support for this view. Being treated with consideration and respect by court actors who were in a position of authority (such as, the judiciary, legal professionals and court staff) emerged as an important means of promoting engagement among court users. This is because the experience of such treatment could enhance both an individual’s ability to participate in proceedings, for example by aiding understanding and expression, and the individual’s alignment with the courts. This is illustrated in the following quotations from defendant Irenka, when describing her interaction with the judge in her case, and prosecution witness Dominic, when discussing his communication with the Witness Service and court staff:
'The judge was asking, you know, very straightforward questions ... [such as] “Can you tell me precisely how it happened?” So, it was very brief, you know a good speed; I was very satisfied with it.’ (Irenka)

’[When] I went to reception, [a Witness Service volunteer] came to greet me – really friendly – asked “Is this your first time?”, and because I was there quite early they actually had a map of the court and showed me round. So, I had an idea, I guess, of where people would be sitting. You don’t really get the idea of the content and the size and the dimensions of the size or how small it is and that type of stuff [otherwise]... The staff were amazing ... The usher [who] came and fetched me was lovely – she was really, really friendly.’ (Dominic)

Efforts by courtroom practitioners, such as members of the judiciary, court staff and – to varying degrees, advocates – to foster supportive and respectful interactions with court users were evident in observed cases in both of the Crown Courts and magistrates’ courts under study. Judges and magistrates often spoke directly to court users, for example by greeting individuals and explaining aspects of the decision-making process. In interview, magistrate Jennifer described the steps that she takes to explain the process to court users:

‘Say for instance I’m doing a trial ... I would say “We are the magistrates and we are listening to all of the evidence and we will be making a decision. This person is our legal adviser who makes sure we don’t go off doing something that we shouldn’t. This person is our list caller. You’ve met your lawyer but this person from the Crown, they bring the case and they will ask you some questions” ... I think we as
magistrates can make the court experience better by explaining who we are and what we are doing. And I feel quite passionate about that ... it only takes 3 minutes - it’s no big deal.’

There were also signs of efforts by advocates, court staff and members of the judiciary both to modify styles of questioning and to communicate with court users in an understandable manner. This ties in with recent research which has noted signs of ‘cultural shift’ in how courtroom actors conduct cross-examination, particularly that which involves vulnerable court users (Henderson, 2015; Henderson, 2016; Kirby, 2017a; Hunter et al. 2018). However, the study findings suggest that these shifts extend beyond cross-examination towards more day-to-day court-based interactions and are being applied– to greater or lesser degrees from case to case – to the full range of court users; that is, not only to those who have been classified as ‘vulnerable’.

Importantly, such treatment can promote ‘active aligned’ engagement with the court process. This could be by improving the engagement of a court user who had previously displayed weak levels of engagement or by bolstering the engagement of a court user who could already by described as ‘active aligned’. Moreover the comments of a small number of interviewees suggest, in line with arguments presented by Tyler et al. (2013), that inclusive interactions can also strengthen individual-level engagement in wider society. For example, prosecution witness Iumi described how being thanked for attending court by the officer in the case challenged an ingrained perception he had regarding contact between members of his local community and the police:
‘I mean in the ‘hood, in [my local area], it’s like “it’s the police and us”, that’s the kind of vibe that is there. But when Officer [X] came and was just saying “Oh thank you for coming”, I felt really like it wasn’t “them and us”. It’s a them and us kind of vibe that flies around, you know, in deprived [areas]. At that point it disappeared completely. …. So that felt really nice that he came, it meant a lot to me, basically.’

Efforts to interact with court users in a considerate and inclusive manner thus point to the role that procedural justice can play in enhancing perceptions of legitimacy. Experience of procedurally fair forms of treatment, such as being treated with consideration and respect, can contribute to enhanced levels of engagement among court users. The findings of this study, therefore, support the existing research in the field of policing which has illustrated the role that the experience of procedurally fair treatment can play in promoting perceptions of legitimacy in criminal justice institutions (see, for example, Sunshine and Tyler, 2003; Hough et al, 2013; Jackson et al., 2012; Tankebe, 2013).

6.2.2 The ‘intricate’ and ‘unfinished’ character of legitimacy

Though procedural justice can play an important role in enhancing perceptions of legitimacy in the criminal courts, the strength of this role is open to debate. In this section it is argued that although procedural justice plays its part, it is only one aspect – along with others such as the use of lay adjudicators in criminal proceedings – of the ‘tissue of relations’ (Loader and Sparks, 2013) that shape perceptions of legitimacy. The benefits of being treated in a ‘procedurally just’ manner do not necessarily outweigh the myriad of other factors that can weaken engagement, and associated perceptions of legitimacy, in the court process.
Thinking about procedural justice in tandem with the previously discussed barriers to engagement helps to illustrate this. Considerate and inclusive interactions are likely to mediate some of the operational constraints described in Section 6.1.1, particularly by helping to foster normative cooperation with the courts. This is also likely to reduce the courts’ need to rely upon instrumental forms of securing compliance which, as highlighted in the previous Chapter, can be a specific source of legitimacy deficit. For example, increased efforts of security staff to treat court users with neutrality and respect may help to reduce some of the feelings of exclusion court users can experience when occupying the ‘outer zones’ of the court; likewise, the provision of regular, clear and up-to-date information may help to lessen the negative impact of waiting and delay (cf. Jacobson, Hunter and Kirby, 2014b; Kirby, 2017a). However, the presence of procedurally just styles of communication is likely to have much less impact upon several of the other operational constraints identified, particularly those which pertain to systemic issues within the criminal courts, such as limits to the availability and provision of legal representation and funding constraints. Moreover, there were instances in which the experience of polite and respectful treatment appeared to have little, or negligible, impact upon court users’ feelings about the process. For example, when asked whether she felt she was treated politely and respectfully by the magistrates overseeing the case, prosecution witness Gemma responded:

‘Yeah, yeah ... Well, I think they were just there to do their job. ...Their behaviour wasn’t anything other than I would have expected so that’s why I think they were
fine … they did their job and they weren’t impolite at all or anything like that so…

[trails off].’

Her affirmative, yet arguably nonplussed, response highlights the limited role that procedural justice can play in promoting perceptions of legitimacy. Feeling as though she was listened to and treated politely was regarded by Gemma as being simply part of the ‘job’ of a magistrate and was not enough to mitigate against other aspects of her experience, such as being legally compelled to give evidence, which contributed to the ‘dull compulsion’ that characterised her overall engagement with the court process.

Following on from this, as illustrated in Section 6.1.2, there were instances in which the individual needs of court users were so acute that procedurally just forms of interaction could only go so far. The Case Study in Box 6.4, below, provides an example in which the courts took a number of steps to accommodate the needs of a vulnerable defendant, which included the use of an intermediary throughout the trial; regular breaks in proceedings; time-estimates in relation to the evidence and cross-examination of the defendant; and the use of an interpreter because English was not his first language. In addition to this, throughout the hearing the district judge overseeing the case communicated with the defendant in a manner that could be described as polite, respectful and inclusive. However, the case arguably highlights that, despite these efforts, the defendant’s level of need was such that he struggled to engage with proceedings. This is indicated by several of the comments made by the defendant as the case progressed, which are described below.\footnote{\textsuperscript{137} It is outside the scope of this study to examine whether or not the needs and vulnerabilities of court users are being adequately met by the courts, however an examination of this and other aspects relating to the}

\footnotetext[137]{\textsuperscript{137} It is outside the scope of this study to examine whether or not the needs and vulnerabilities of court users are being adequately met by the courts, however an examination of this and other aspects relating to the}
Box 6.4: Steps taken to assist a vulnerable defendant in a magistrates’ court trial (MCPT03)

This case involved a defendant (D) who was alleged to have assaulted his former partner and caused criminal damage to an item of furniture in their living room. D was represented and appeared in court with the assistance of an intermediary, who had prepared a report of the hearing, and an interpreter. It was stated by the defence advocate that D had a physical disability and associated mental health problems. D was seated in the open-dock in the courtroom; the intermediary and interpreter sat next to him in the dock.

The prosecution witnesses gave evidence in the morning and the defence case began in the afternoon. During a discussion between the defence advocate, D and the intermediary about whether or not D wanted to give evidence, D stated ‘I want to go to sleep’. He ultimately decided to give evidence. D moved from the dock to the witness box. There was only room for two people in the witness box, so the intermediary stood next to D in the witness box and the interpreter stood just outside it. The intermediary informed the judge that D was taking medication and was feeling ‘quite fatigued’. The judge informed D that he could sit down if he wished (he did so) and asked the intermediary to let him know if D required a break. Moreover, the judge reminded the defence advocate that there was a time-limit of 25 minutes for D’s evidence-in-chief.

participation of court users in the courts and tribunals is currently being undertaken by Cooper and colleagues. See: http://www.nuffieldfoundation.org/vulnerability-courts-research-and-policy-project [accessed 13.04.18].
When giving evidence, D’s speech was slurred, he appeared to struggle with some of the questioning and often replied, or interrupted, with a raised voice. On several occasions the intermediary asked D to listen to the question before responding.

During one instance in which D interrupted, the judge said to him: ‘I appreciate you may have a number of things to say ... I know it’s difficult for you in your particular position, but do your best to listen.’ The interpreter did not frequently respond on behalf of D but sometimes translated the advocates’ questions. At one point during evidence-in-chief, D stated ‘I’m getting a panic attack, give me a punch’; the judge offered D a break, which he declined. A few minutes later he said that he had taken extra medication to come to court: ‘That’s why I don’t know what to do, what to say’. The judge, with 10 minutes of evidence-in-chief remaining, again suggested a break; D said he wanted to continue – ‘No, no, I want to finish and go ... I don’t want to come back again ... I [would] prefer to go to jail’. The judge and the intermediary agreed that there should be a short break.

When D resumed his evidence approximately 45 minutes later, the defence advocate asked a small number of questions. D was then cross-examined by the prosecutor. D responded to cross-examination in a similar manner to his evidence-in-chief; his voice remained raised throughout. The intermediary interrupted at an early point during cross-examination to state that, in contrary to guidance provided by the Advocate’s Gateway, D had been asked a number of tagged questions and statements. The prosecutor rephrased his most recent question and proceeded to
ask D questions. Cross-examination lasted approximately 25 minutes.

D was acquitted of assault but found guilty of criminal damage. Upon sentencing D to a conditional discharge and issuing costs and a compensation order, the judge said to D: ‘I’m sorry if that seems complicated but I have no doubt that your lawyer will go over that with you.’ The judge also thanked D for ‘sitting through a lengthy day’s trial’.

In sum, while procedural justice may help to soften the impact of some of the operational constraints that can contribute to ‘resistance’, ‘dull compulsion’ and ‘withdrawal’, the degree to which it can do so is limited and highly dependent upon the response, and circumstances, of individual court users.

A final point of note is the impact that limited engagement in wider society has upon perceptions of legitimacy. The discussion in Section 6.1.2 provided a small window into the complex social context that surrounds offending and victimisation and illustrates how levels of engagement among court users are difficult to separate from wider social problems. This is indicative of the limits to procedural justice in cultivating perceptions of legitimacy.

Emergent criticism of the concept of legitimacy has focused upon the ways in which existing theoretical and empirical discussions have failed to connect with the ‘intricate’ (Harkin, 2015) and complex social terrains in which relationships between power-holders and audiences are set (Loader and Sparks, 2013). It is of little doubt, as highlighted in Section 6.2.1, that procedural justice has much to offer in terms of addressing debates about how
perceptions of legitimacy can be enhanced within the court process and of the impact that such interactions can have upon an individual’s engagement, and inclusion, in wider society. However, it has also been argued that a focus on ‘micro’ legitimacy theorisations have largely failed to connect with ‘macro’ discourses, such as that of crime control, and vice versa. That is, while procedural justice theorists have been preoccupied with the minutia of interactions within criminal justice settings, crime control theorists – for example, Garland (2001) and Wacquant (2009) – have been more concerned with the broader discourses about societal shifts, such as the reduced role of the ‘supporting’ arm of the social State and associated expansion of the ‘penal’ arm of the State and the advent of penal populism (cf. Loader and Sparks, 2013). As Loader and Sparks (2013: 113) neatly surmise:

‘Perspectives that focus too exclusively on the … procedural/micro side of this division stand at risk of treating legitimacy as a self-contained, even self-explanatory product: legitimacy is sustained by legitimacy-sustaining behaviour. On the other hand, there is a risk of evacuating the question of legitimacy properly so-called in some of the more sweeping interpretations of penal/criminological transformations: legitimacy is sustained by legitimacy-sustaining ideological work.’

Instead, scholars have sought to move ‘beyond’ procedural justice (Bottoms and Tankebe, 2012) and focus upon the ‘social and cultural dynamics’ (Loader and Sparks, 2013: 111) surrounding the ‘dialogic’ (Bottoms and Tankebe, 2012) or ‘conversational’ nature of legitimacy (cf. Loader and Sparks, 2013). Drawing on the work of political theorist Rosanvalon (2011) Loader and Sparks (2013), contend that examining the ‘tissue of relations’ (p. 119) between power-holders and audiences provides a means by which the
‘missing middle’ (p. 106) of debates on legitimacy and crime control can be properly addressed. Importantly, they have argued that this extends the remit of legitimacy outside the boundaries of the criminal justice system, and criminal justice actors, and point to the ways in which viewing legitimacy as ‘unfinished’\(^\text{138}\) (p. 105) allows criminal justice issues to connect with those in society at large. This is a ‘conversation’ that will be returned to in the concluding Chapter.

6.3 Concluding thoughts

Overall, this Chapter has examined how court users’ engagement with the criminal courts can be fostered. This has necessitated an exploration of the barriers to engagement. A number of these arise in the operation of the courts, particularly in relation to the structural, cultural and contextual aspects of the court process that can limit engagement. Alongside this, factors relating to the needs and circumstances of individual court users act as a further barrier to engagement in proceedings. It has been argued that these operational constraints and individual factors can intersect and contribute to weak forms of engagement, such as that which is characterised by ‘dull compulsion’, ‘resistance’ and ‘withdrawal’.

After examining these barriers, this Chapter focused upon how engagement within the criminal courts might be cultivated. In doing so it aimed to further develop the discussion of legitimacy which began in the preceding Chapters. Considerate and inclusive interactions, it was argued, could help to enhance engagement in criminal proceedings. This corresponds

\(^{138}\) Loader and Sparks (2013) borrowed the term ‘the unfinished’ from Mathiesen (1974) who coined this during his research into the Norwegian prison system.
with existing research which has pointed to the role that procedural justice can play in strengthening perceptions of legitimacy. However, it was asserted that procedural justice is only one factor at stake in the ‘tissue of relations’ (Loader and Sparks, 2013) that shape perceptions of legitimacy. Situating this discussion within theoretical debates regarding the importance of bridging the ‘missing middle’ (Loader and Sparks, 2013) of the discourses of legitimacy and crime control provides a clear imperative for the courts and wider branches of the State, including those comprising its ‘supporting hand’, to focus on both enhancing court users’ levels of engagement in the courts and also in wider society. Moreover, the study findings elaborate upon the growing body of research surrounding the ‘dialogic’ or ‘conversational’ elements of legitimacy – particularly in the lesser researched terrain of the criminal courts – and point to the value of examining perceptions of legitimacy in the broader social context in which power relations are set.
Chapter 7: Conclusion

This study explored the under-researched terrain of the criminal courts (Rock, 1993); firstly by examining court users’ levels of understanding and perceptions of the use of lay adjudicators and secondly by examining how lay participants engaged with the court process. The concept of ‘legitimacy’ provided a useful framework for this examination because its proponents (such as, Tyler, 2006; Jackson et al. 2012) have argued that in order for institutions to operate effectively, they need to hold legitimate authority in the eyes of the citizens that they serve. Underpinning these theorisations is the assertion that the presence of legitimacy enhances normative forms of cooperation with institutions, rather than those that seek to secure compliance through instrumental means, such as incentive, threat or sanction (Tyler, 2011; Tyler et al. 2013; Hough and Sato, 2011; Hough et al. 2013; Beetham, 2013). Exploring perceptions of the criminal courts from the perspective of lay people who come into direct contact with the courts thus permitted an examination of the degree to which the courts can claim to hold legitimate authority. This was thought to be of value because, although the study of legitimacy in other criminal justice institutions, particularly the police, is common (Harkin, 2015), few scholars have examined perceptions of legitimacy in the criminal courts – with the magistrates’ courts being especially under-researched (cf. Darbyshire, 1997).

The study adopted a qualitative approach, involving interviews with 43 lay participants and observations of 126 hearings at four courts (two Crown Courts and two magistrates’ courts) in England. The use of such an approach, though limited in terms of generalisability due to its small-scale nature, was regarded as the most valuable means of generating
understanding of the subjective realties of those engaging with the court process. This approach was befitting of the ethnographic tradition adopted by a number of established studies of the criminal courts, while at the same time being a more novel approach to adopt for a study of legitimacy. This means that the findings of this study offer a potentially unique contribution to theorisations on legitimacy. This is because the focus on the minutiae of interactions between lay participants and the courts, facilitated by the use of a qualitative approach, enabled Bottoms and Tankebe’s (2012) influential concept of ‘dialogic legitimacy’ to be elaborated upon. This coincides with an emerging body of research in the field of policing which has pointed to the value of examining perceptions of legitimacy ‘in situ’ (Loader and Sparks, 2013); that is, in the context in which interactions take place (Skinns et al. 2017; see also Harkin, 2015).

7.1 Main findings

This study set out to examine court users’ levels of understanding and perceptions of lay adjudication in the criminal courts. Of principal interest was the extent to which lay adjudication, in the form of juries and lay magistrates, could contribute to court users’ perceptions of the legitimacy of the criminal courts. Despite the historic and widespread use of lay adjudicators in the administration of justice in England and Wales, there remained an absence of existing research which had sought to examine perspectives of lay adjudication from the viewpoint of those with the least power and most at stake in the criminal justice process; that is, court users (cf. Benesh and Howell, 2001).

139 The study of legitimacy is almost synonymous with the use of quantitative methods; a useful critique of this is provided by Bottoms and Tankebe (2012) and Harkin (2015). Some exceptions to this include Liebling’s (2004) study of prisons and their moral performance, Jacobson et al.’s (2015) study of the public’s experiences of the Crown Court and Skinns et al.’s (2017) study of ‘soft power’ in police custody suites.
In order to fully examine court users’ perceptions of legitimacy regarding the use of lay adjudicators it was first important to examine the extent to which court users were aware of, and understood, the roles of juries and magistrates, respectively (Research Question 1). The findings from interviews with court users, presented in Chapter 4, suggested that levels of understanding of the two types of lay adjudicator varied. Court users were, in the main, well-aware of the basic role, function and composition of juries. A strong degree of understanding of the function of the jury was displayed by court users across a range of demographic characteristics and between both types of criminal court. This suggests that the role of the jury is well within the public consciousness and holds a ‘symbolic’ value (Darbyshire, 1997; Lloyd-Bostock and Thomas, 2000; Roberts and Hough, 2011) in the eyes of court users. In contrast, but nonetheless in line with existing research carried out with the general public (such as Roberts et al. 2012), knowledge and awareness of the magistracy was much weaker. Court users often struggled to describe the magistrate role and were often not aware of some of the core aspects of the role, such as that it is carried out on a voluntary basis and that a legal qualification is not required in order to perform the role. The findings indicate low levels of understanding of the magistracy even among citizens with direct experience of attending the criminal courts; this includes those who have attended the magistrates’ court, specifically. Therefore, in contrast to the symbolic value held by the jury, it would seem that magistrates’ justice is much less ‘visible’ to the public (Sanders, 2001).
With regard to the degree to which lay adjudication can confer legitimacy on the criminal courts (Research Question 2), interviews with court users suggest that there are a number of interlinking factors at play that mean that the use of lay adjudicators accords with the ‘shared values’ of court users and the courts, and thus enhances the legitimacy of the criminal courts. Lay adjudication was regarded as an important feature of the criminal justice system by court users: more than two thirds of interviewees stated that it is important for the courts in England and Wales to have magistrates; an even higher proportion (more than three quarters) held this view about juries. Court users were particularly supportive of the perceived value of group decision-making by a cross section of society due to the view that it could contribute to impartial and independent decision-making. Lay adjudication was also regarded as an important means by which the ‘voice’ of society could be represented in criminal justice decision-making and thus provide a ‘democratic bridge’ (Sanders, 2002: 326-327) between the State and wider society. The role of lay magistrate was regarded to be of specific value in achieving ‘summary justice’ due to the perceived cost-effectiveness of having magistrates deal with lower-level cases.

However, the findings also suggest that there are several factors that limited the extent to which lay adjudication could confer legitimacy upon the courts; particularly with regard to the degree to which the stated benefits of lay adjudication are visible in practice. Concerns were raised about whether or not lay adjudicators possessed the required level of knowledge or expertise to carry out the role; particularly regarding juror levels of understanding in complex cases. Interviewees were sensitive to scope for bias in the lay adjudicator role. With respect to juries, this concerned the ways in which prejudices of
individual jurors could impact upon decision-making; with regard to magistrates this pertained to suspicions about the motivations underlying the decision to undertake the role. In line with this, interviewees displayed an awareness of limits to achieving a representative composition of juries and magistrates. This was in relation to commonly cited areas of under-representation among juries and magistrates, such as socio-economic status and ethnicity, but also less commented upon characteristics such as religion and culture. Lastly, court users’ were particularly ambivalent about the degree of power afforded to lay people in criminal justice decision-making. This is reflected in the low levels of interest expressed by court users with regard to performing the role of lay adjudicator themselves. Overall, however, the findings suggest that despite challenges arising from the visibility of the perceived benefits of lay decision-making in practice, the use of both types of lay adjudicator could largely be said to confer legitimacy on the criminal courts.

Crucially, as the study progressed it became clear that the perceived legitimacy of lay adjudication could not be considered in isolation from the perceived legitimacy of the wider court process. That is, perceptions of lay adjudication are just one of a number of factors that impact on overall perceptions of the legitimacy of the criminal courts. This led to a broadening of the aims of the research towards a focus upon ‘engagement’ and specifically involved the introduction of Research Question 3, which concerned an examination of how lay participants’ levels and types of engagement in the court process could be characterised. In view of this, I argued that audience legitimacy was best illustrated by examining how lay participants engaged with the court process. This is because audience legitimacy – also known as ‘empirical legitimacy’ – is widely regarded to require both the presence of ‘shared values’ between a power-holder (such as the courts) and their audience (such as lay
participants) and the ‘specific actions’ that an individual takes to express their acceptance of the authority, known as ‘expressed consent’ (cf. Beetham, 2013: 91; Bottoms and Tankebe, 2012; Jackson et al. 2015). The concept of engagement, therefore, enabled an examination of ‘shared values’ and ‘expressed consent’, which together form two of the core components of legitimacy.

Chapter 5 outlined a two-dimensional continuum of engagement based upon lay participants’ levels of alignment with, and participation in, the criminal justice process. A focus on alignment, it was argued, served to provide an indication of the extent to which ‘shared values’ existed between the courts and lay participants; while an examination of participation provided an indication of the extent to which individuals afford the courts ‘expressed consent’ to govern. Defining engagement in this manner provided a lens through which to examine perceptions of legitimacy. Further to this, an examination of the degree to which individuals engaged with the courts illustrated the ‘dialogic character’ of legitimacy and enabled further distinction to be made between ‘true’ and ‘weak’ forms of legitimacy (cf. Bottoms and Tankebe, 2012). Five types of engagement were identified: active alignment, passive alignment, dull compulsion, resistance and withdrawal. ‘Active alignment’ represents a high degree of engagement in the court process and is indicative of a strong degree of perceived legitimacy; ‘passive alignment’ is best associated with the notion of ‘implicit legitimacy’, which has been described as an overall ‘accept[ance] [of] the authority of the courts’ (Fielding, 2006: 6-7). ‘Dull compulsion’, ‘resistance’ and ‘withdrawal’ denote lower degrees of engagement that are indicative of weak degrees of perceived legitimacy, or ‘legitimacy deficits’.
Generally speaking, engagement among magistrate interviewees, who tended to display a degree of ‘self-belief’ (Bottoms and Tankebe, 2012) in the legitimacy of their own power-holder role and the wider power of the courts, was largely characterised as ‘active aligned’. Court users’ engagement, however, was spread across the five categories outlined in the continuum; only a small proportion of court users could be described as engaging in an ‘active aligned’ manner. The vast majority of interviewees engaged in a ‘passive aligned’ manner – this included instances of ‘passive acceptance’ – which represents the presence of an ‘implicit’ degree of legitimacy (Fielding, 2006: 7). However, nearly two thirds of complainants and prosecution witnesses in the observed sample exhibited weak levels of engagement; that is ‘dull compulsion’, ‘resistance’ or ‘withdrawal’. Meanwhile, three quarters of defendants in the observed sample participated in a ‘passive’ manner; this included engagement based upon ‘passive acceptance’ and ‘dull compulsion’. Most defendants who participated in an ‘active’ manner displayed a weak degree of alignment with the court process, which often manifested itself as ‘resistance’. Therefore engagement characterised by either ‘resistance’, ‘dull compulsion’ or ‘withdrawal’ was not uncommon across the different groups of court users. It was suggested, that this points to areas of friction, strain or deficit within the ‘legitimacy dialogue’ (Bottoms and Tankebe, 2012). These deficits need to be understood, and where possible, addressed in order for the courts to continue to claim to hold legitimate authority.

In view of this, Chapter 6 sought to elaborate upon the factors most likely to act as a barrier to engagement and those which might enhance it, with a view to gaining a better understanding of the factors that support and undermine court users’ perceptions of legitimacy (Research Question 4). An individual’s engagement with the court process could
be inhibited in various interlocking ways. There are a number of ways in which operational constraints within the court process could act as a barrier to engagement. Four examples were outlined, these included: the ways in which the ‘outer zones’ of the courts could act as sites of visible disengagement; conundrums surrounding how to reduce delays and achieve ‘efficiency’; issues relating to inter-professional dynamics between professional actors and sources of occupational strain; and issues borne out of the absence of legal representation. Moreover the specific needs of court users, and the associated social context in which victimisation and offending occurs, also had a bearing on the extent to which individuals engaged with the process. It was thus argued that factors relating to the ‘social world’ (Rock, 1993) or ‘machinery’ (Jacobson et al. 2015) of the criminal courts, and those concerning the individual and social needs of court users, can intersect and impact upon the degree to which court users engage with the process.

Nevertheless, the study findings suggested that engagement, and associated perceptions of legitimacy, could be cultivated in several ways. In addition to the ways in which the use of lay adjudicators could confer legitimacy on the criminal courts, the study findings indicate that the experience of procedurally just forms of treatment from court-based actors could enhance perceptions of legitimacy in the court process. This is because stronger degrees of engagement were often associated with higher degrees of inclusion within the court process. This was manifested in the presence of considerate and respectful interactions between lay participants and courtroom actors. Procedural justice is also likely to help overcome some of the specific ‘legitimacy deficits’ which concern the courts’ reliance upon instrumental means of seeking compliance from court users. This is because ‘procedurally
just’ methods of communication promote normative cooperation among citizens (Tyler, 2011; Hough and Sato, 2011).

However, the findings of this study, along with others set in a qualitative tradition, highlight the difficulty in separating factors relating to the experience of procedurally just interactions from other factors which impact upon perceptions of legitimacy. For example, in their study of the public’s experience of the Crown Court, Jacobson et al. (2015) outlined a number of factors that contributed to court users’ perceptions of legitimacy. These included those set in the procedural justice framework, such as ‘fair decision-making’ and ‘respectful treatment’, and those set in the distributive justice framework, namely ‘positive outcomes’. However, they concluded that ‘respondents’ overarching sense of the legitimacy of the court process tended to reside in differing combinations of the[se]… factors .... but very rarely, if ever, in all of them simultaneously’ (p. 168).

Therefore, when examining factors that enhance engagement, in line with the stance outlined by Loader and Sparks’ (2013), this study stressed the value of seeking to understand the ‘tissue of relations’ that exists between court users, criminal justice agencies and wider society and which shape perceptions of legitimacy, rather than seeking to distinguish issues of ‘process’ from those of ‘outcome’. In order to fully examine perceptions of legitimacy, there is a need to look not only at the specific institution that an individual is required to interact with but beyond it towards some of the ‘macro’ issues in society. As Loader and Sparks (2013: 112-114) asserted:
‘We need to analyse and imagine the kinds of inclusive dialogue that democratic legitimacy might conceivably require across different crime and justice sites. ... This orients inquiry not only to the police and prisons but to the range of social and political institutions that act upon (or may act upon) crime.’

Overall, the examination of court users’ understanding and perceptions of a specific aspect of the criminal justice process – that is, the use of lay adjudicators – alongside an exploration of the ways in which lay participants engaged with the criminal courts has provided a means of understanding the ‘dialogic’ and ‘in-situ’ nature of legitimacy. The study has also illustrated the value of seeking to cultivate perceptions of legitimacy by moving beyond the confines of the courtroom walls and towards thinking about the ways in which issues in wider society shape the experiences of court users. Moreover, the findings highlight the vital role that qualitative research can play in enhancing the ‘analytic density’ (Fielding, 2009) of the legitimacy ‘conversation’ (Loader and Sparks, 2013) and give weight to Flood’s (2005) assertion that ethnographic methods, in particular, are of prime value to the advancement of socio-legal research.

**7.2 Implications**

A number of implications arise from this study. They can be grouped under the two headings that reflect the principal aims of the study. These are those which regard the use of lay adjudication in the criminal courts and those which concern the broader focus upon engagement.
7.2.1 Lay adjudication in the criminal courts

The study findings indicate that the overriding premise of lay adjudication, in the form of juries and magistrates, is accepted by court users and can help to confer legitimacy on the criminal courts. This is particularly so at trials, when group decision-making by a cross-section of society was, generally speaking, held in high regard by court user interviewees. This underlying support for lay adjudication provides fertile ground for the further ‘cultivation’ by the State, and those tasked with its operation, regarding the aspects of lay adjudication that can undermine perceptions of legitimacy. This is discussed below with particular reference to instances in which some of the theoretical justifications for lay adjudication are less visible in practice.

A primary issue worth further consideration concerns public awareness of juries and lay magistrates. Levels of understanding of the role of juries is relatively strong, however this is heavily shaped by media depictions of jury trials. This contributes to inaccuracies and misconceptions of the function and operation of the jury; for example, in relation to the limits of the preemptory challenge in this jurisdiction. As with previous research, levels of awareness of the magistracy appear to be weak. Importantly, the study findings suggest this to be the case even among those with direct experience of the criminal courts.

Cumulatively, these findings point to an ‘invisibility’ (cf. Sanders, 2001) or opacity in magistrates’ justice. This has the potential to juxtapose the ‘open justice’ principle of the criminal courts and suggests that the magistracy may encounter difficulties in meeting several of its purported aims in practice. For example, if members of the public are not aware that magistrates are volunteers drawn from the communities they serve, this raises
questions about the extent to which they are likely to perceive that magistrates’ justice embodies the principles of ‘trial by peers’ or the bringing of ‘community norms’ into the decision-making process. Moreover, the apparent juxtaposition between societal perceptions surrounding the ‘summary’ nature of magistrates’ justice and apparent shifts in caseload towards more complex or serious matters, suggests that now might be a particularly prudent time to address the longstanding concern raised by McBarnet (1981: 189) about the ‘ideology of the triviality’ that inheres magistrates’ justice (see also, Ward, 2017). Increased efforts to heighten the visibility of magistrates’ justice may be particularly valuable in light of the finding that experience of attending the magistrates’ courts seemed to have a positive impact upon court users’ perceptions of the magistracy.

Efforts made to promote awareness of the jury and lay magistracy, particularly through the medium of formal education, are required in order to ensure that members of the public are fully informed about the nature of lay adjudication. Increased levels of education about the function of the criminal justice system are also likely to encourage critical debate and may contribute to the fostering of dialogic legitimacy between the State and the public. Nevertheless, more targeted efforts are required by the various criminal justice agencies responsible for the operation of the criminal courts in order to ensure that the nature, and prominence, of the role carried out by lay adjudicators is ‘visible’ to members of the public.140

---

140 It would appear that there is some appetite for this. For example, the Ministry of Justice (2018e: 1) recently published research findings which noted the potential benefits of increasing the ‘visibility’ of criminal justice processes to court users.
Closely related to the role of education in fostering awareness of lay adjudication are implications arising from the composition of juries and the magistracy. The high level of support afforded to group decision-making conducted by a cross-section of society suggests that efforts should be made to ensure that the composition of juries and the magistracy are truly representative of the populations that they serve along a range of demographic dimensions such as: gender, age, ethnicity, socio-economic status, sexuality, religion and culture. Levels of awareness of the process for jury selection – that is via the electoral register – were low among court users; this suggests that efforts are required to promote awareness of the mechanisms used to select jurors, in order to contribute to enhanced levels of representation. This is notwithstanding the potential difficulties in ensuring a fully representative composition, particularly due to concerns highlighted both by existing research and among court user interviewees, regarding levels of representation among some sections of society, particularly those from lower socio-economic backgrounds.

Of perhaps more pressing concern, and a matter which has been subject to long-standing debate, is achieving a representative composition of the magistracy. This study adds to the growing body of research which points to public support for the use of lay magistrates in the administration of justice (see Morgan and Russell, 2000; Roberts et al. 2012). This suggests that the time is ripe for concerted recruitment efforts aimed at achieving a representative bench. However, at present the magistracy is shrinking and undergoing a crisis in morale (House of Commons Justice Committee, 2016); this is something which is likely to make it increasingly difficult to build representative benches. Before meaningful efforts to increase the representativeness of the magistracy can be made, more understanding is required of the reasons why the magistracy has fallen so sharply. A number of arguments have been put
forward for this which include: recruitment freezes (Gibbs, 2014a); the lack of support that prospective magistrates receive from employers in joining the magistracy (Gibbs, 2014a); falling caseloads (Judicial Office, 2018); an aging magistrate population (Gibbs, 2014a); and problems with morale (House of Commons Justice Committee, 2016). This has, as yet, received surprisingly little detailed consideration from the government, the media and academia alike.

A final set of implications arise in relation to the role of lay adjudicators and that of the paid judiciary. Findings from this study suggest that both lay and ‘professional’ forms of adjudication are highly valued by court users, which is indicative of an overriding perception of legitimacy of the decision-making processes adopted by the criminal courts. However, the implications of the complex interplay between the use of lay and professional decision-making from the perspective of court users is worthy of scrutiny. Firstly, although group decision-making by a cross-section of lay people can contribute to perceptions of legitimacy, this study also found that such perceptions were at their weakest when concerns arose about the lack of ‘expertise’ of lay decision-makers. For juries, this was in relation to concerns around individual jurors being able to adequately understand proceedings, particularly in complex fraud trials; for magistrates this tended to be about the level of responsibility afforded to those without legal expertise. At the same time, the decision-making capacity of the ‘professional’ judiciary was spoken of highly by court users, particularly at the point of sentencing.\textsuperscript{141} The positive regard with which members of the public hold the paid judiciary is supported by existing empirical research (such as Fielding, 141 The use of a single decision-maker at the point of trial was not generally supported by court user interviewees.
2006; Jacobson et al. 2015) and is salient in a climate in which populist media portrayals have depicted public mistrust of experts, including members of the judiciary.\footnote{142 The most striking example of this is arguably depicted in the Daily Mail’s front page headline in November 2016 which branded three members of the senior judiciary ‘Enemies of the People’ (Slack, 2016) in response to their ruling that the government would require the consent of parliament to give notice to Brexit.}

Taken together these findings suggest potential support for hybrid decision-making in the criminal justice process that involves both lay and professional adjudication. This has received attention at various points in time, most notably in the Auld Review (2001), but is yet to be firmly established in policy or practice and has been subject to little empirical attention.\footnote{143 See also Sanders (2002).} The findings of the present research suggest that now may be a fruitful time for renewed attention of this among policy-makers and academics alike.

7.2.2 Bringing engagement from the ‘shadows’ to the ‘centre-stage’

One of the main claims put forward by this thesis is that, although the use of lay adjudicators can help to promote perceptions of legitimacy in the criminal courts, this is just one of a number of factors associated with court users’ perceptions of legitimacy. It has been argued that a court user’s engagement in the court process acts as a representation of the extent to which the individual regards the courts as legitimate. Higher levels of engagement are indicative of stronger degrees of legitimacy afforded to the courts; while lower levels of engagement are indicative of weak levels of legitimacy, or even, ‘legitimacy deficits’ (cf. Beetham, 1991). While magistrate interviewees’ levels of engagement were strong, only a small number of court users displayed a level of engagement that could be
described as ‘active aligned’. Aside from the obvious benefits that efforts to promote engagement can bring to court users, the central implication arising from existing theorisations on legitimacy is that the courts and the government are also likely to benefit from putting increased efforts into cultivating ‘active aligned’ engagement among court users.

Due to the adversarial nature of the criminal justice system in England and Wales, it is perhaps understandable that the issue of engagement has not previously been given high priority, particularly due to the likelihood of concerns arising that enhanced levels of engagement may compromise the ‘delicate separateness’ (Fielding, 2006: 53) required to maintain the sanctity of the judicial process. However, eliciting higher degrees of engagement among court users, for example by making increased efforts to foster levels of voluntary cooperation and enhanced levels of participation, does not have to come at the expense of due process and ensuring the interests of opposing parties are protected: if anything, eliciting high degrees of engagement among court users is likely to strengthen both of these principles (cf. Doak, 2008; Owusu-Bempah, 2017).

The present climate in which the criminal courts operate suggests that now is an optimum time for the engagement of lay participants to become a central imperative of the courts. This is because the courts are currently undergoing changes that may fundamentally ‘transform’ (cf. Ministry of Justice, 2013b; 2016c; 2018a) the ways individuals engage with the court process. Falling levels of recorded crime and increased use of out-of-court disposals in recent years have contributed to a decline in the use of the courts (see ONS, 2018a; Ward, 2017; Judicial Office, 2018). This, set in the policy context of national fiscal
austerity, has culminated in a wide-scale court closure plan that has resulted in the closure of 121 courts and tribunal centres across the court estate (Ministry of Justice, 2018a) and coincides with changes to the provision of legal aid (Ministry of Justice 2013b). Closely tied to this are reforms which are likely to create sustained shifts in the operation of the courts and the very nature of court-based interaction. These are centred around programmes focused on promoting ‘efficiency’ in criminal proceedings and those aimed at making greater use of digital technology. This includes technological innovations such as the use of digital case management systems, routine use of video-enabled technology – such as that which allows court users to appear before the courts from a remote location – and plans to allow defendants to enter pleas online (Ministry of Justice, 2016c; Ministry of Justice, 2018a). The latter set of proposals come with an overall aim of reducing the number of cases heard in ‘physical courtrooms’ by 2.4 million cases per year by 2023 (National Audit Office, 2018). These changes may bring about the laudable aim of reducing unnecessary waiting and delay and enhancing access to justice for court users who may have not otherwise been able to participate in the court process. Nevertheless, careful consideration is required to ensure that such programmes avoid the unintended effect of making the courts metaphorically, as well as physically, remote from the populations that they serve (see JUSTICE, 2016).

Broader societal shifts that are manifest in the cases appearing before the courts provide further impetus for promoting engagement among court users. This includes the ways in which changing patterns of offending and alleged offending have contributed to a shift in the nature of offences coming before the courts. There are now fewer cases coming before the courts (Ministry of Justice, 2018b, 2018c), but those that do appear before the courts
appear to be more complex (Hunter et al. 2018; The Secret Barrister 2018) and comprise cases involving ‘higher-harm’ (ONS, 2018a:3) than at previous times. Specifically, the previous dominance of ‘public’ or ‘stranger’ related-offending has altered due to increasing volumes of ‘private’ or ‘hidden’ offending, including historic offending, being brought into view (see, for example, ONS, 2018a; CPS, 2017).\textsuperscript{144} At a wider level are the shifts in context associated with greater levels of fragmentation and exclusion in wider society (see, for example, Putnam, 1995; Young, 1999). This provides further imperative for cultivating engagement in criminal proceedings because, as Tyler et al. (2013) have argued, promoting inclusive practices in criminal justice institutions has associated benefits for enhancing inclusion in wider society.

Overall, enhancing levels of engagement in the criminal courts is likely to be of immediate benefit to court users and the courts, and to the government and wider society. The way in which the courts deal with allegations of domestic abuse, in particular those which involve a complainant whose engagement is characterised by ‘dull compulsion’, ‘resistance’ or ‘withdrawal’, acts as a strong case in point. If people, especially those who are likely to be in most need of support, are not using or turning away from the courts as an arbiter of justice, the legitimacy of the courts is called into question. This is because it is symbolic of the absence of ‘expressed consent’ (cf. Beetham, 1991) for the authority of the courts. It also has crucial implications for social justice, especially in terms of the level of harm that can potentially be caused to victims, perpetrators and their families by deficiencies in the State’s ability to effectively administer justice in these circumstances. These are issues which

\textsuperscript{144} Jacobson and Hough (2018: 183) have argued that such shifts reflect ‘a decline in levels of social tolerance’ of such behaviour.
extend far beyond the remit of the criminal justice system and suggest the need for more coordination between the ‘supporting’ arm and the ‘penal’ arm of the State in addressing these legitimacy deficits (cf. Wacquant, 2009; Loader and Sparks, 2013).

In this vein, the remainder of this section considers potential ways in which the engagement of lay participants can be cultivated. This includes by considering those which involve procedural justice principles and those which extend ‘beyond’ it (cf. Bottoms and Tankebe, 2012). Firstly, the engagement of court users might be promoted by a greater consideration of how the courts could create, or make better use of, accessible spaces within the court building. There is a growing body of interdisciplinary research involving legal scholars, human geographers, architects and campaigners which argues that reforms are necessary to ensure that the courts are accessible to the communities they serve (see Mulcahy, 2011; JUSTICE, 2016, Jeffrey, 2017). Building upon existing studies which have highlighted the ‘marginalising’ effect of the physical environment of the courts (such as Carlen, 1976; Mulcahy, 2011; Jacobson et al. 2015), this study has highlighted particular issues regarding how the conditions of waiting areas within court buildings impacts upon engagement. In light of the shrinking court estate and technological reforms, it might be useful for the government to ensure that the court buildings that do remain are as accessible and inclusive as possible to members of the public.\textsuperscript{145} This could be done, for example, by ensuring that \textit{all} court users have access to necessary refreshment facilities and functional waiting spaces. This includes ones which provide suitable protection from encountering members of the public.

\textsuperscript{145} Encouragingly, this is reflected the HMCTS’ recent commitment to ‘hav[e] fewer, better buildings, that are well-located … welcoming, easy to use and in good condition’ (Ministry of Justice, 2018a: 3).
opposing party\textsuperscript{146} and which facilitate the provision of information about the court process, including the progress of their case.\textsuperscript{147}

Existing research has highlighted the ways in which ‘court culture’ can adversely impact on court users’ engagement with the court process (Kirby, 2017a). In particular it has been argued that the often complex and antiquated language adopted by courtroom actors alongside overt displays of camaraderie between legal professionals and the presence of aggressive cross-examination techniques can generate a sense of exclusion among court users (Jacobson et al. 2015; Kirby, 2017a). This study contributes to the growing body of research that suggests that the presence of considerate and inclusive interactions between courtroom actors and lay participants can enhance engagement in the court process. This includes a piece of recent research conducted on behalf of HMCTS (Ministry of Justice 2018e) which found that ‘being listened to’ was the most influential factor impacting on court users’ experience of the court process. This suggests that continued efforts to adopt ‘procedurally just’ styles of communication should be promoted by the courts and related agencies. This includes approaches which involve the use of straightforward language; allowing court users to express their views within the confines of the adversarial system; and ensuring that all court users are treated in a polite and respectful manner, including while under cross-examination (see Gold Lagratta, and Bowen, 2014; Jacobson et al. 2014b; Jacobson et al. 2015; Kirby, 2017a).

\textsuperscript{146} This has also been cited as an issue in previous research (such as Fielding, 2006; Jacobson et al. 2015).
\textsuperscript{147} This includes, for example, individuals who do not fall into the neat categorisation of ‘defendant’ or ‘prosecution witness’, such as defence witnesses or defendant ‘supporters’ who are also the alleged victim.
Great strides have been made in the last thirty years with regard to increasing engagement among vulnerable court users, particularly vulnerable complainants and prosecution witnesses. However, the findings from this study suggest that there are still areas of unmet need with regard to the ways in which levels of need and vulnerability are defined, identified and responded to. Notably, this study has highlighted the limitations of decision-making about vulnerability and need being primarily done through the lens of whether or not the individual is entitled to legislative provision, such as special measures.

It may be worth taking heed of the principles put forward by scholars in the field of therapeutic jurisprudence and desistance who advocate the use of ‘person-centred’ approaches meeting the needs of individuals (Copps-Hartley, 2003; McNeill, 2006; Ward, 2014). Such approaches often include a focus upon the physical, psychological and social needs of individuals and may help to enhance engagement in the court process. This may include ensuring that the plethora of agencies involved in the administration of justice are able to develop forms of communication to ensure that the needs of court users are met and further consideration at the national level of the extent to which the principles applied in specialist ‘problem-solving’ courts (see Ward, 2014; Bowen and Whitehead, 2016), such as those which deal with domestic abuse or substance misuse, can be applied to the mainstream court estate.

Finally, this study has sought to highlight that the courts act as an arena in which pressing issues in wider society are brought into sharp focus and, crucially, that we must recognise that those coming before the courts can comprise those most excluded from society at large.

---

148 See Cooper and Norton’s (2017) edited collection on vulnerability in the criminal justice system.
(see, for example, Jacobson et al. 2010; Tonry, 2010; Ward, 2017; Lammy, 2017). Efforts to enhance engagement in the court process, therefore, go beyond the remit of the immediate court environment and require greater efforts to ensure that public services such as health, education, social care and criminal justice agencies are able to adequately work together to promote inclusion and ultimately strengthen the quality of lives of the members of the public that they serve. Considering the potential for the discussion of engagement to extend beyond the penal arm of the State and into the remit of wider society creates scope to bridge the ‘missing middle’ between the discourses of legitimacy and crime control (cf. Loader and Sparks, 2013). This is because it highlights the benefits that may be brought about by a concerted focus upon strengthening perceptions of legitimacy between power-holders and audiences across institutions, rather than at the individual, and perhaps insular, organisational-level.

7.3 Future research

The findings from the study point to a number of areas in which further research is likely to be beneficial; some of which include small scale research aimed at helping to fill specific gaps highlighted by this research, while others are of a more long-term and large-scale nature.

Firstly, as has been outlined on a number of occasions, one of the main limitations to this study was that only a small number of defendants were interviewed. Moreover, the study did not include any interviews with members of the prison population. Future research on perceptions of lay adjudication carried out with members of the custodial population would
help to address this gap and generate insight into how those who have experienced a deprivation of liberty perceive lay decision-making. Theorisation of the continuum of engagement could further be strengthened by conducting interviews with a larger volume of defendants, including those with experience of custody, in order to assess the extent to which the continuum holds when a greater proportion of defendants are included in the sample. This is likely to generate further insight as to the degree to which an individual’s engagement is influenced by demographic characteristics, such as gender, age, ethnicity and socio-economic status and across a greater range of offence types.

In a similar vein, though this study contributed to the growing body of research on power-holder perceptions of legitimacy by conducting interviews with lay magistrates, the sample size was relatively small. Conducting research with a larger sample of lay magistrates to see if similar findings occur on a broader scale would be beneficial. Research which examines juror perceptions of ‘self-legitimacy’ would help to further understanding of power-holder perceptions of legitimacy among lay adjudicators. Unfortunately, the aforementioned restrictions outlined in the Contempt of Court Act 1981 mean that the scope for conducting research of this nature is slim. However, the research carried out by scholars such as Matthews et al. (2004) and Thomas (2010) shows that, under the right circumstances, jury research is possible. Research into juror perceptions of self-legitimacy may be worth particular consideration given that court user interviewees in this study, though generally very supportive of the use of juries, indicated a degree of ambivalence about undertaking jury service themselves.
I have argued that this study contributes to theorisations on legitimacy in the under-researched terrain of the criminal courts and specifically helps to address gaps in research on the magistrates’ courts. In addition to the plethora of studies on police legitimacy there is now an emerging body of research which has examined legitimacy in other criminal justice institutions, such as the courts (such as, Jacobson et al. 2015) and prisons (such as Liebling, 2004). However, as yet, there appears to be an absence of research that has examined perceptions of legitimacy across the criminal justice system as a whole; for example, across a range of institutions including the police, the courts, prisons and probation. A programme of future research in this arena might help to generate further understanding of the ‘tissue of relations’ that exists between the State and the public and help to bridge the ‘missing middle’ between theorisations surrounding legitimacy and crime control (cf. Loader and Sparks, 2013).¹⁴⁹ Such a programme might benefit from the use of a mixed methods approach which involves both quantitative and qualitative methods – these are, generally speaking, conspicuously absent from existing studies of legitimacy – particularly since existing research has illustrated the value of both types of approaches in generating understanding of legitimacy. The bringing together of the competing philosophical positions which underlie quantitative and qualitative methods, to the extent that this is possible, may indeed help to generate a ‘richer account’ (Fielding, 2009: 443) of the study of legitimacy.

¹⁴⁹ This may be particularly valuable due to the increasingly limited availability of Office for National Statistics data on public perceptions of criminal justice agencies (see ONS, 2018b).
References


Birkett, G. (2016) “‘We have no awareness of what they actually do’: Magistrates’ knowledge of and confidence in community sentences for women offenders in England and Wales”, *Criminology & Criminal Justice*, 16(4): 497-512.


Devlin, P. (1956) Trial by Jury, London: Stevens and Sons Ltd.


Hough, M. and Sato, M. (2011) *Trust in justice: why it is important for criminal policy, and how it can be measured – Final report of the Euro-Justis project*, Helsinki: HEUNI.


JUSTICE (2016) *What is a Court?* London: JUSTICE.


Leptos, M. (2017) ‘We’re supporting more defence witnesses’, *Citizens Advice blog*, 14th March 2017: [https://blogs.citizensadvice.org.uk/blog/were-supporting-more-defence-witnesses/](https://blogs.citizensadvice.org.uk/blog/were-supporting-more-defence-witnesses/) [accessed 09.04.18].


York: Simon and Schuster.


Victim Impact Statements’ in A. Bottoms and J. Roberts (eds.) *Hearing the Victim: 


magistracy and the Sentencing Council guidelines’, *British Journal of Criminology*, 52: 1072- 
1091.


of Psychology, 57: 375–400.


APPENDIX I

Research on people’s understanding and perceptions of juries and magistrates:

WITNESS INFORMATION SHEET

Introduction
My name is Amy Kirby and I am a PhD student at the University of Surrey. I would like to invite you to take part in a study that is exploring people’s understanding and views of juries and magistrates. Before you decide whether or not to take part you should understand why the research is being done and what it will involve. Please take the time to read the following information carefully and ask questions about anything you do not understand.

What is the purpose of the study?
The research wants to find out what people who attend court know about juries and magistrates and what they think about the use of juries and magistrates in court proceedings. As part of the study I am carrying out interviews with witnesses, defendants and with those who have accompanied others to court in order to hear their views. I will also be observing court proceedings in some cases. The study is being carried out in order to gain a better understanding of people’s thoughts, understanding and views on this topic.

Who is organising and funding the research?
This study has been organised by the University of Surrey and is funded by the Economic and Social Research Council (ESRC). The ESRC is an organisation which provides research funding and training on economic and social issues. This is an independent study; however the Ministry of Justice has given the researcher permission to visit a number of courts and invite individuals to take part in the study.

Why have I been invited to take part in the study?
You are being asked to take part in an interview because you have attended court as a witness and I would like to hear your views. If you would like to participate, you will be interviewed at a time and place convenient to you (it is possible for interviews to be carried out over the telephone). If you would prefer to be interviewed today, please let the researcher know and this can be arranged.

What will I have to do?
If you agree to take part, you will be asked to read and sign a consent form. During the interview you will be asked about your experience of juries and/or magistrates; what you understand about the role of juries and magistrates; and what you think about the use of juries and magistrates within the court process. The interview will last around 45 minutes. With your consent, the interview will be digitally recorded and then transcribed. A copy of the transcript will be provided to you, if you wish.

If you would like to take part please complete the attached reply slip and give it to the researcher. Alternatively, you can return the reply slip at a later time using the enclosed pre-paid envelope.
Do I have to take part?
Your participation in this study is entirely voluntary. You should only take part if you want to, and you are free to withdraw at any time and without giving a reason. You do not have to answer all the questions that you are asked. If you decide to withdraw from the study all identifiable data, such as the interview recording and transcript, along with any personal data you have provided, will be withdrawn from the study.

Will anyone know that I have taken part?
The interview is confidential. The researcher will not tell anyone that you have taken part in this study. However, if you disclose that you or someone else is at risk of harm then the researcher may need to report this to an appropriate authority. This would be discussed with you first.

The results of the study will be published, but nothing that could identify you will be included in any publication. Your name, or any other details that could be used to directly identify you, will not be included in any report on the study. Personal data will be handled in accordance with the Data Protection Act 1998. Research data will be securely retained for a minimum of 10 years in line with University of Surrey policy.

What if there is a problem?
Any concern about any aspect of the way you have been dealt with during the course of the study will be addressed; please contact the researcher's supervisor, Professor Nigel Fielding using the contact details listed below. If your concern cannot be dealt with by the research team, please contact Dr Rachel Brooks, Head of the Department of Sociology, at r.brooks@surrey.ac.uk or 01483 686987.

Contact details of the research team
If you have any questions or would like to know more about this study, please contact Amy Kirby at a.l.kirby@surrey.ac.uk or on 07920 761369. If you have any concerns about the research, you may also contact the researcher’s supervisor, Professor Nigel Fielding at n.fielding@surrey.ac.uk or 01483 68 6967.

Contact details for external organisations
If you would like any further information or support about your experience at court, please contact Citizens Advice https://www.citizensadvice.org.uk/

Who has reviewed the project?
This study has been reviewed and received a Favourable Ethical Opinion (FEO) from the University of Surrey Ethics Committee.

Thank you for taking the time to read this Information Sheet.
APPENDIX II

Research on people’s understanding and perceptions of juries and magistrates:
Participant Consent Form

I the undersigned voluntarily agree to take part in the study on people’s understanding and views of juries and magistrates.

I have read and understood the Information Sheet (v.3, 02/11/15) provided.

I have been given a full explanation by the researcher of the nature, purpose, location and likely duration of the study, and of what I will be expected to do. I have been given the opportunity to ask questions on all aspects of the study and have understood the advice and information given as a result.

I understand that my participation in the study is completely voluntary. I understand that I am free to end the interview at any time without needing to justify my decision, and that I do not need to answer all the questions.

I am happy for the interview to be conducted in the proposed location. (NB This is not applicable for interviews being conducted over the telephone.)

I understand that the interview is confidential.* The researcher will not include anything that could directly identify me in any study publication.

I give consent for the interview to be audio recorded.

I understand that my name, or any other details that could directly identify me, will not be included in the interview transcript.

I consent to my personal data, as outlined in the accompanying information sheet (v.3, 02/11/15), being used for this study. I understand that all personal data relating to volunteers is held and processed in the strictest confidence, and in accordance with the Data Protection Act (1998).

*I understand that the researcher is required to report:

- Any stated intention to harm myself or others
- Any information about serious crimes unknown to the police.

I confirm that I have read and understood the above and freely consent to participating in this study. I have been given adequate time to consider my participation.

Name of volunteer (BLOCK CAPITALS) ……………………………………………………….

Signed ………………………………………… Date ………………………………………

Researcher’s Statement:

I confirm that I have carefully explained the nature, demands and foreseeable risks (where applicable) of the proposed study to the interviewee.

Name of researcher (BLOCK CAPITALS) ………………………………………………

Signed ………………………………………… Date ………………………………………
APPENDIX III

INTERVIEW SCHEDULE - COURT USERS

Introduction:
- Reiterate the main points from the Information Sheet, including the voluntary and confidential nature of the study.
- Check that participant is happy for the interview to be recorded.
- Ask if participant has any questions.
- If telephone interview, let participant know that it is OK to pause so that they have sufficient time to reflect upon their answer.
- Switch recorder on.

Background

- Please can I ask for some background details about you?
  - How old are you?
  - How would you describe your ethnicity?
  - Are you currently working? [Prompt about nature of employment]

- What type of hearing have you been at court for today?
  Prompt: - Trial/sentencing hearing/other hearing.

- Have you ever been to court previously?
  - In what role? [Witness/defendant/observer/juror/magistrate]
  - How many times have you been to court before?
  - Which courts have you been to previously? [Crown Court/magistrates’ court/civil courts]

Direct experience

I’m now going to ask you a few questions about your recent experience of court and about your experience of the jury/magistrates. [Tailor accordingly based on previous experience e.g. ask participants about magistrates only if they only have experience of the magistrates’ court.]

- How did you feel about attending court?

- Please can you talk me through what happened when you arrived at court?
  Prompt: - What happened when you arrived at court?
  - Roughly, how long were you waiting before you entered the courtroom?
  - How did you feel during the waiting period?

- Can you tell me who was in the courtroom?
Prompt: - Judge, lawyers, court staff, jury/magistrates, any others?
- Who did you speak to?
- Was there anyone who you didn’t recognise/know why they were in the courtroom?
- What happened when you went into the courtroom?
- [Witnesses]: Roughly how long were you in the courtroom for?
- [Defendants]: Roughly how long did your hearing last?
- [Supporters]: Roughly how long did the hearing last?

- What did you think of the jury/magistrates who heard the case?
  - Do you think that the jury/magistrates did a good job? (Why/why not?)

- For magistrates’ court cases: How do you think you were treated by the magistrates? [For supporters tailor these questions accordingly e.g. Do you think that your friend/family member was listened to?]
  - Do you think that you were listened to? (Why/why not)
  - Do you think that you were treated politely/with respect? (Why/why not)
  - Do you think that you were treated fairly? (Why/why not)

- For Crown Court cases: Did you feel as though the jury listened to you/the evidence?
  - Why/why not
  - Do you think that the jury were able to understand everything? (Why/why not)
  - Do you have any other thoughts about the jurors in your case?

- Was there a mix in terms of age, gender, ethnicity, class of the jury members/magistrates?

- How does this experience compare with any previous experience of juries or magistrates?
  - What was better/worse about it?

- Before we move on, do you have any other comments about your experience of being at court?

I’d now like to move on from talking about your most recent experience of court and ask you about your thoughts about juries and magistrates more generally.

Understanding and perceptions of juries

- Can you tell me what you understand a jury to be? [Please be aware that this is not a ‘test’; I’d just like to know a bit more about what people are aware of and what they aren’t in relation to juries and magistrates.]
  - What is the role of a jury?
- What does a jury do?
- Who sits on a jury?
- How many people sit on a jury?
- How are jurors selected?
- Is there anyone that can’t sit on a jury?

[Show/read out Information Card A]

- Is there anything on the information card that comes as a surprise to you?
  - Is there anything on the card that you weren’t already aware of?
  - Is there anything on the card that you think most people would or wouldn’t already know?
  - How does the description on the card compare with your experience of the jury today/recently?
  - If the information did not come as a surprise to you, where do you think your knowledge about the jury comes from?

Generally speaking:

- Do you think that it is important for courts in England and Wales to have juries?
  - Why/why not?

- How do you think you would feel if you were asked to do jury service?
  - Is it something that you would want to do? (Why/why not)
  - [To those who have been jurors:] how did you feel when you were asked to be a juror?

- Do you think that juries are made up of people from a variety of backgrounds?
  - Why/why not
  - In terms of age, gender, ethnicity, class
  - Refer back to present experience

Understanding and perceptions of magistrates

- Can you tell me what you understand a magistrate to be? [Please be aware that this is not a ‘test’; I’d just like to know a bit more about what people are aware of and what they aren’t in relation to juries and magistrates.]
  - What do magistrates do?
  - Who can be a magistrate?
  - How many people sit on a panel of magistrates?
  - How are they selected?
  - Is there anyone who can’t be a magistrate?
  - Could you be a magistrate?
  - Do you know anyone that is a magistrate?
[Show/read out Information Card B]

- Is there anything on the information card that comes as a surprise to you?
  - Is there anything on the card that you weren’t already aware of?
  - Is there anything on the card that you think most people would or wouldn’t already know?
  - How does the description on the card compare with your experience of the magistrates today/recently?
  - If the information did not come as a surprise to you, where do you think your knowledge about magistrates comes from?

Generally speaking:

- Do you think that it is important for courts in England and Wales to have magistrates?
  - Why/why not

- Would you ever think about applying to be a magistrate? (Why/why not)

- Do you think that magistrates come from a variety of backgrounds?
  - Why/why not
  - In terms of age, gender, ethnicity, class
  - Refer back to present experience

Overall perceptions

- Overall, what do you think about the idea of involving members of the public in the criminal justice system?
  - Is it a good idea/bad idea? (Why/why not?)
  - As jurors?
  - As magistrates?

- If you had the choice, who would you prefer trials to be heard by?
  - Juries
  - Magistrates
  - A judge sitting alone
  - It depends
  - Refer back to present experience
  - Is there anything that you have learned during the interview that makes a difference to your thoughts about this?

- If you had the choice, who would you prefer sentencing to be decided by? [If necessary, explain what is meant by sentencing i.e. decisions about whether the defendant receives a prison sentence, a community sentence or another penalty and the length/conditions attached to this.]
  - A panel of three magistrates
  - A judge sitting alone
- Anyone else
- It depends
- Refer back to previous experience
- Is there anything that you have learned during the interview that makes a difference to your thoughts about this?

- Overall, if you could make one change to the way that the courts work, what would you suggest?

- Do you have any other comments?

*Thank you for taking part. Ask participant if they would like to choose their own pseudonym and if they would like to receive a summary of findings.*
APPENDIX IV
INFORMATION CARDS – COURT USERS

Information Card A – the jury

☆ There are two levels of criminal court: the Crown Court and magistrates’ court.

☆ In Crown Court trials 12 jurors are selected to hear the case.

☆ Jurors are members of the public who are selected completely at random from the electoral register to ensure that a jury represents a cross-section of society.

☆ Anyone on the electoral register who is between 18 and 69 is liable for jury service and could be called at any time.\[150\]

☆ Some people are disqualified from serving on a jury; for example those who have recently been to prison or served a community sentence.

☆ Jurors are asked to consider all the evidence presented during the trial and then decide whether the defendant is guilty or not guilty of the offence they have been charged with.

☆ If the jury finds the defendant guilty, the judge is responsible for passing the sentence.

Derived from: ‘Your role as a juror’ (Ministry of Justice, 2012) and ‘Guide to Jury Summons’; both available at: https://www.gov.uk/jury-service/overview [accessed 24/05/15].\[151\]

\[150\] Note, the upper age limit of jurors has since changed to 75 years. See: https://www.gov.uk/government/news/jury-age-limit-to-be-raised-to-75-in-england-and-wales [accessed 26.09.18].

\[151\] Note, this guidance has since been revised, see HMCTS (2017) or https://www.gov.uk/jury-service [accessed 27.09.18].
Information Card B - the magistracy

☆ There are two levels of criminal court: the Crown Court and magistrates’ court.

☆ Most criminal cases are dealt with at the magistrates’ courts.

☆ In magistrates’ courts many decisions are made by members of the public who have been appointed as magistrates.

☆ Magistrates sit in court in panels of three, and are helped by a legally qualified advisor.

☆ Magistrates are unpaid members of the public who receive regular training to sit in court.

☆ Magistrates can come from all walks of life, and include young people, employed people and retired people.

☆ Magistrates make decisions about whether defendants are guilty or not guilty, and about what sentences should be passed.

APPENDIX V

Research on lay participation in the criminal courts

MAGISTRATE INFORMATION SHEET

Introduction
My name is Amy Kirby and I am a PhD student at the University of Surrey. I would like to invite you to take part in a study that is exploring lay participation in the criminal courts. Before you decide whether or not to take part you should understand why the research is being done and what it will involve. Please take the time to read the following information carefully and ask questions about anything you do not understand.

What is the purpose of this study?
The research wants to generate understanding about lay participation within the criminal courts. There are several types of lay participants within the criminal courts including lay magistrates, witnesses, defendants and volunteers from charitable organisations.

As part of the study I am carrying out interviews with witnesses, defendants and with those who have accompanied others to court in order to hear their views. I will also be observing court proceedings and conducting interviews with lay magistrates. The study is being carried out in order to gain a better understanding of people’s thoughts, understanding and views on this topic. Interviews with magistrates are designed to elicit views on a variety of topics including: motivations for joining the magistracy, the benefits and challenges of the role and how the role of magistrates is understood and perceived by witnesses and defendants. Interviews are designed to give voice to the views of magistrates and enable the perspectives of magistrates to be compared and contrasted with those of witnesses and defendants.

Who is organising and funding the research?
This is an independent study organised by the University of Surrey and funded by the Economic and Social Research Council (ESRC). The ESRC is an organisation which provides research funding and training on economic and social issues.

Why have I been invited to take part in the study?
You are being asked to take part in an interview because you are a lay magistrate and I would like to hear your views. If you would like to participate, you will be interviewed at a time and place convenient to you. (It is also possible for interviews to be carried out over the telephone.)

What will I have to do?
If you agree to take part, you will be asked to read and sign a consent form. During the interview you will be asked to reflect upon the benefits that you feel your role brings to the justice system and the associated challenges. You will also be asked for your thoughts on how witnesses and defendants perceive and understand your work; however you will not be asked to identify any specific cases. The interview will last around 45 minutes. With your consent, the interview will be recorded and the
recording will be transcribed. A copy of the transcript will be provided to you, if you wish.

Do I have to take part?
Your participation in this study is entirely voluntary. You should only take part if you want to, and you are free to withdraw at any time and without giving a reason up until the point at which the study is published. You do not have to answer all the questions that you are asked. If you decide to withdraw from the study all identifiable data, such as the interview recording and transcript, along with any personal data you have provided, will be withdrawn from the study.

Will anyone know that I have taken part?
The interview is confidential. The researcher will not tell anyone that you have taken part in this study. The results of the study will be published, but nothing that could identify you will be included in any publication. Your name, or any other details that could be used to directly identify you, will not be included in any report on the study. All interview audio-recordings and transcripts will be held securely on a password-protected computer or laptop. Interviewee consent forms will be stored in a locked filing cabinet at the University of Surrey. Personal data will be handled in accordance with the Data Protection Act 1998. Research data will be securely retained for a minimum of 10 years in line with University of Surrey policy.

What if there is a problem?
Any concern about any aspect of the way you have been dealt with during the course of the study will be addressed; please contact the researcher’s supervisor, Professor Nigel Fielding using the contact details listed below. If your concern cannot be dealt with by the research team, please contact Professor Jon Garland, Head of the Department of Sociology, at j.garland@surrey.ac.uk or 01483 682829.

Contact details of the research team
If you have any questions or would like to know more about this study, please contact Amy Kirby at a.l.kirby@surrey.ac.uk or on 07920 761369. If you have any concerns about the research, you may also contact the researcher’s supervisor, Professor Nigel Fielding at n.fielding@surrey.ac.uk or 01483 68 6967.

Who has reviewed the project?
This study has been reviewed and received a Favourable Ethical Opinion (FEO) from the University of Surrey Ethics Committee.

Thank you for taking the time to read this Information Sheet.
APPENDIX VI

Research on lay participation in the criminal courts
Lay Magistrate Consent Form

I the undersigned voluntarily agree to take part in the study on lay participation in the criminal courts.

I have read and understood the Information Sheet (v.5, 30/03/17) provided.

I have been given a full explanation by the researcher of the nature, purpose, location and likely duration of the study, and of what I will be expected to do. I have been given the opportunity to ask questions on all aspects of the study and have understood the advice and information given as a result.

I understand that my participation in the study is completely voluntary. I understand that I am free to end the interview at any time without needing to justify my decision, and that I do not need to answer all the questions.

I am happy for the interview to be conducted in the proposed location. (NB This is not applicable for interviews being conducted over the telephone.)

I understand that the interview is confidential. The researcher will not include anything that could directly identify me in any study publication.

I give consent for the interview to be audio recorded.

I consent to my personal data, as outlined in the accompanying information sheet (v.5 30/03/17), being used for this study. I understand that all personal data relating to volunteers is held and processed in the strictest confidence, and in accordance with the Data Protection Act (1998).

I confirm that I have read and understood the above and freely consent to participating in this study. I have been given adequate time to consider my participation.

Name of volunteer (BLOCK CAPITALS) .................................................................

Signed ........................................................ Date ...............................................

Researcher’s Statement:
I confirm that I have carefully explained the nature, demands and foreseeable risks (where applicable) of the proposed study to the interviewee.

Name of researcher (BLOCK CAPITALS) .............................................................

Signed ........................................................ Date ............................................
APPENDIX VII

Interview schedule - Lay magistrates

<table>
<thead>
<tr>
<th>Introduction:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Reiterate the main points from the Information Sheet, including the voluntary and confidential nature of the study.</td>
</tr>
<tr>
<td>• Check that participant is happy for the interview to be recorded.</td>
</tr>
<tr>
<td>• Ask if participant has any questions.</td>
</tr>
<tr>
<td>• If telephone interview, let participant know that it is OK to pause, so that they have sufficient time to reflect upon their answer.</td>
</tr>
</tbody>
</table>

1. Can you remember how you first became aware of the role of the lay magistrate?

2. When you were thinking about applying to be a magistrate, what motivated you to apply for the position?

3. Have you ever held, or thought about applying for, any other voluntary positions, in the criminal justice system or elsewhere? If so, please describe these.

4. What would you say are the main benefits to having a lay magistracy?

5. What, if any, would you say are the drawbacks to having a lay magistracy?

6. To what extent do you think that members of the public are aware of and understand the role of the lay magistracy?

7. How do you think the role of the magistracy is perceived by members of the public in the community?

8. To what extent do you think court users (that is, witnesses and defendants), specifically, are aware of and understand the role of the lay magistracy?

9. What, if anything, do you think court users tend to find most difficult about appearing in the magistrates’ court?
   • Why are these things difficult?
   • What, if anything, can be done to address these difficulties?

10. What, in your view, are the most satisfying aspects of being a magistrate?

11. What, in your view, what are the least satisfying aspects of being a magistrate?
12. Please can I ask for some background details about you? 
   • How old are you? 
   • How would you describe your ethnicity? 
   • Are you currently working? 
     o Prompt about nature of employment: full-time/part-time, nature of role/length of time in role. If retired, ask for occupation prior to retirement. 
   • When did you join the magistracy? 

Thank you very much for taking part. Ask participant if they would like to choose their own pseudonym and if they would like to receive a summary of findings.
APPENDIX VIII

Research on lay participation in the criminal courts

WITNESS SERVICE VOLUNTEER INFORMATION SHEET

Introduction
My name is Amy Kirby and I am a PhD student at the University of Surrey. I would like to invite you to take part in a study that is exploring lay participation in the criminal courts. Before you decide whether or not to take part you should understand why the research is being done and what it will involve. Please take the time to read the following information carefully and ask questions about anything you do not understand.

What is the purpose of this study?
The research wants to generate understanding about lay participation within the criminal courts. There are several types of lay participants within the criminal courts including witnesses, defendants, lay magistrates and volunteers from charitable organisations.

As part of the study I am carrying out interviews with witnesses, defendants and with those who have accompanied others to court in order to hear their views. I will also be observing court proceedings and conducting interviews with Witness Service volunteers and lay magistrates. The study is being carried out in order to gain a better understanding of people’s thoughts, understanding and views on this topic.

Who is organising and funding the research?
This is an independent study organised by the University of Surrey and funded by the Economic and Social Research Council (ESRC). The ESRC is an organisation which provides research funding and training on economic and social issues.

Why have I been invited to take part in the study?
You are being asked to take part in an interview because you are a Witness Service volunteer and I would like to hear your views. If you would like to participate, you will be interviewed at a time and place convenient to you. (It is also possible for interviews to be carried out over the telephone.)

What will I have to do?
If you agree to take part, you will be asked to read and sign a consent form. During the interview you will be asked to reflect upon your motivations for volunteering for the Witness Service and about your thoughts. You will also be asked for your thoughts on how witnesses find the criminal justice process; however, you will not be asked to identify any specific cases. The interview will last around 45 minutes. With your consent, the interview will be recorded and the recording will be transcribed. A copy of the transcript will be provided to you, if you wish.

Do I have to take part?
Your participation in this study is entirely voluntary. You should only take part if you want to, and you are free to withdraw at any time and without giving a reason up
until the point at which the study is published. You do not have to answer all the questions that you are asked. If you decide to withdraw from the study all identifiable data, such as the interview recording and transcript, along with any personal data you have provided, will be withdrawn from the study.

**Will anyone know that I have taken part?**
The interview is **confidential**. The researcher will not tell anyone that you have taken part in this study. The results of the study will be published, but nothing that could identify you will be included in any publication. Your name, or any other details that could be used to directly identify you, will **not** be included in any report on the study. Personal data will be handled in accordance with the Data Protection Act 1998. Research data will be securely retained for a minimum of 10 years in line with University of Surrey policy.

**What if there is a problem?**
Any concern about any aspect of the way you have been dealt with during the course of the study will be addressed; please contact the researcher’s supervisor, Professor Nigel Fielding using the contact details listed below. If your concern cannot be dealt with by the research team, please contact Professor Jon Garland, Head of the Department of Sociology, at j.garland@surrey.ac.uk or 01483-682829.

**Contact details of the research team**
If you have any questions or would like to know more about this study, please contact Amy Kirby at a.l.kirby@surrey.ac.uk or on 07920 761369. If you have any concerns about the research, you may also contact the researcher’s supervisor, Professor Nigel Fielding at n.fielding@surrey.ac.uk or 01483 68 6967.

**Who has reviewed the project?**
This study has been reviewed and received a Favourable Ethical Opinion (FEO) from the University of Surrey Ethics Committee.

Thank you for taking the time to read this Information Sheet.
APPENDIX IX

Research on lay participation in the criminal courts
Witness Service Volunteer Consent Form

I the undersigned voluntarily agree to take part in the study on lay participation in the criminal courts.

I have read and understood the Information Sheet (v.2, 14/11/16) provided.

I have been given a full explanation by the researcher of the nature, purpose, location and likely duration of the study, and of what I will be expected to do. I have been given the opportunity to ask questions on all aspects of the study and have understood the advice and information given as a result.

I understand that my participation in the study is completely voluntary. I understand that I am free to end the interview at any time without needing to justify my decision, and that I do not need to answer all the questions.

I am happy for the interview to be conducted in the proposed location. (NB This is not applicable for interviews being conducted over the telephone.)

I understand that the interview is confidential. The researcher will not include anything that could directly identify me in any study publication.

I give consent for the interview to be audio recorded.

I consent to my personal data, as outlined in the accompanying information sheet (v.2 14/11/16), being used for this study. I understand that all personal data relating to volunteers is held and processed in the strictest confidence, and in accordance with the Data Protection Act (1998).

I confirm that I have read and understood the above and freely consent to participating in this study. I have been given adequate time to consider my participation.

Name of volunteer (BLOCK CAPITALS) ……………………………………………………………..

Signed ...................................................... Date ......................................................

Researcher's Statement:
I confirm that I have carefully explained the nature, demands and foreseeable risks (where applicable) of the proposed study to the interviewee.

Name of researcher (BLOCK CAPITALS) ……………………………………………………..

Signed ...................................................... Date ......................................................
APPENDIX X

Interview schedule - Witness Service volunteers

Introduction:
- Reiterate the main points from the Information Sheet, including the voluntary and confidential nature of the study.
- Check that participant is happy for the interview to be recorded.
- Ask if participant has any questions.
- If telephone interview, let participant know that it is OK to pause, so that they have sufficient time to reflect upon their answer.
- Switch recorder on.

1. Please can I ask for some background details about you?
   - How old are you?
   - How would you describe your ethnicity?
   - Are you currently working?
     - Prompt about nature of employment: full-time/part-time, nature of role/length of time in role. If retired – occupation prior to retirement.
   - When did you join the Witness Service?

2. What made you first think of becoming a Witness Service volunteer, and what motivated you to apply for the position?

3. Have you ever held, or thought about applying for, any other voluntary positions, in the criminal justice system or elsewhere? If so, please describe these.

4. Have you ever thought of leaving the role?
   - If so, why – and what has made you stay?

5. If asked what it’s like to go to court, what kinds of things do you think a witness is most likely to say?

6. What, if anything, do you think prosecution witnesses tend to find most difficult about appearing in court?
   - Why are these things difficult?
   - What, if anything, is done or can be done to address these difficulties?
   - Have these difficulties changed over time? In what ways?
   - Do you think that the range of support and information offered to prosecution witnesses is adequate?
   - What, if any, further support or information could be offered to improve the court process for prosecution witnesses?
7. What, if anything, do you think defence witnesses tend to find most difficult about appearing at court?
   - Why are these things difficult?
   - What, if anything, is done or can be done to address these difficulties?
   - Have these difficulties changed over time? In what ways?
   - Do you think that the range of support and information offered to prosecution witnesses is adequate?
   - What, if any, further support or information could be offered to improve the court process for defence witnesses?

8. What, in your view, are the most satisfying aspects of being a Witness Service volunteer?

9. What, in your view, what are the least satisfying aspects of being a Witness Service volunteer?

10. Do you have any further comments you would like to make about the topics discussed during the interview?

   Thank you very much for taking part. Ask participant if they would like to choose their own pseudonym and if they would like to receive a summary of findings.
**APPENDIX XI**

**COURT USER INTERVIEW ANNEX**

List of court user interviewees; some details have been masked for the purposes of anonymity.

<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Age group</th>
<th>Ethnic group</th>
<th>Occupation</th>
<th>Role</th>
<th>Type of court</th>
<th>Type of hearing attended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peter</td>
<td>25-34</td>
<td>White British</td>
<td>Teaching assistant</td>
<td>Complainant</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Natalie</td>
<td>25-34</td>
<td>White British</td>
<td>Recruitment consultant</td>
<td>Complainant</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Suzie</td>
<td>25-34</td>
<td>White British</td>
<td>Administrator</td>
<td>Complainant</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Zara</td>
<td>25-34</td>
<td>Mixed ethnicity</td>
<td>Facilities management</td>
<td>Complainant</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Belle</td>
<td>18-24</td>
<td>White British</td>
<td>Student</td>
<td>Complainant</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Aylin</td>
<td>25-34</td>
<td>White British</td>
<td>Carer</td>
<td>Complainant</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Dominic</td>
<td>35-44</td>
<td>White British</td>
<td>Manager, large company</td>
<td>Prosecution witness</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Geoff</td>
<td>45-54</td>
<td>White British</td>
<td>Retired police officer</td>
<td>Prosecution witness</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Sian</td>
<td>35-44</td>
<td>White British</td>
<td>Housing manager</td>
<td>Prosecution witness</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Anita</td>
<td>45-54</td>
<td>White British</td>
<td>Secretary</td>
<td>Prosecution witness</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Viv</td>
<td>55-64</td>
<td>White British</td>
<td>Housekeeper</td>
<td>Prosecution witness</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Jake</td>
<td>25-34</td>
<td>White British</td>
<td>Mechanic</td>
<td>Prosecution witness</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Sandrine</td>
<td>45-54</td>
<td>White British</td>
<td>Designer</td>
<td>Prosecution witness</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Candice</td>
<td>35-44</td>
<td>White British</td>
<td>Company supervisor</td>
<td>Prosecution witness</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Evelyn</td>
<td>35-44</td>
<td>Black British</td>
<td>Secretary</td>
<td>Prosecution witness</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Gemma</td>
<td>25-34</td>
<td>White British</td>
<td>Midwife</td>
<td>Prosecution witness</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Iumi</td>
<td>35-44</td>
<td>Asian British</td>
<td>Chauffeur</td>
<td>Prosecution witness</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Jon</td>
<td>25-34</td>
<td>White Other</td>
<td>Hospitality service</td>
<td>Defendant</td>
<td>Crown Court</td>
<td>Trial &amp; sentencing hearing</td>
</tr>
<tr>
<td>Connor</td>
<td>18-24</td>
<td>Black British</td>
<td>Car dealer</td>
<td>Defendant</td>
<td>Crown Court</td>
<td>Trial &amp; sentencing hearing</td>
</tr>
<tr>
<td>Holly</td>
<td>25-34</td>
<td>White British</td>
<td>Full-time mother</td>
<td>Defendant</td>
<td>Magistrates’ Court</td>
<td>Sentencing hearing</td>
</tr>
<tr>
<td>Irenka</td>
<td>35-44</td>
<td>White Other</td>
<td>Courier</td>
<td>Defendant</td>
<td>Magistrates’ Court</td>
<td>Trial &amp; sentencing hearing</td>
</tr>
<tr>
<td>Martin</td>
<td>55-64</td>
<td>White British</td>
<td>Railway worker</td>
<td>Defendant</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Usman</td>
<td>35-44</td>
<td>Asian British</td>
<td>Company Director</td>
<td>Defendant</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Alex*</td>
<td>35-44</td>
<td>Mixed ethnicity</td>
<td>Music industry</td>
<td>Defendant</td>
<td>Both</td>
<td>Sentencing hearings</td>
</tr>
<tr>
<td>Theresa</td>
<td>65+</td>
<td>White British</td>
<td>Retired</td>
<td>Supporter</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Gloria</td>
<td>65+</td>
<td>Black Caribbean</td>
<td>Retired</td>
<td>Supporter</td>
<td>Crown Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Frank</td>
<td>45-54</td>
<td>White British</td>
<td>Maintenance engineer</td>
<td>Supporter</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
<tr>
<td>Meg</td>
<td>55-64</td>
<td>White British</td>
<td>Financial services</td>
<td>Supporter</td>
<td>Magistrates’ Court</td>
<td>Trial</td>
</tr>
</tbody>
</table>

*Pilot interview with former defendant who had appeared at the Crown and magistrates’ courts on several occasions a number of years previously.
APPENDIX XII
OBSERVATION ANNEX

List of Crown Court observations

*NB Cases involving alleged domestic abuse (DA) are indicated as such in parentheses after the alleged main offence.*

<table>
<thead>
<tr>
<th>Name</th>
<th>(Alleged) main offence(s)</th>
<th>Main outcome of hearing*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crown Court Full Trial 01 (CCFT01)</td>
<td>Assault occasioning actual bodily harm (ABH)</td>
<td>The defendant (D) was found not guilty.</td>
</tr>
<tr>
<td>Crown Court Partial Trial 01 (CCPT01)</td>
<td>Racially aggravated assault &amp; criminal damage</td>
<td>D was found guilty on both counts. He received a suspended sentence order (SSO).</td>
</tr>
<tr>
<td>CCPT02</td>
<td>Possession with intent to supply Class A drugs, assault &amp; poss. Class A drugs.</td>
<td>D was found not guilty on all counts except for possession of Class A drugs.</td>
</tr>
<tr>
<td>CCPT03</td>
<td>Burglary</td>
<td>D was found guilty; the case was adjourned for a pre-sentence report (PSR).</td>
</tr>
<tr>
<td>CCPT04</td>
<td>Burglary</td>
<td>D was found guilty and received a community order.</td>
</tr>
<tr>
<td>CCPT05</td>
<td>Rape</td>
<td>D was found not guilty.</td>
</tr>
<tr>
<td>CCPT06</td>
<td>Possession of a firearm</td>
<td>D was found guilty on both counts. He received a mandatory custodial sentence of 5 years.</td>
</tr>
<tr>
<td>CCPT07</td>
<td>Harassment (DA)</td>
<td>D was found guilty of harassment; he received a 14 month custodial sentence and a restraining order.</td>
</tr>
<tr>
<td>CCPT08</td>
<td>Grievous Bodily Harm (GBH)</td>
<td>D was found not guilty.</td>
</tr>
<tr>
<td>CCPT09</td>
<td>Poss. offensive weapon &amp; ABH</td>
<td>D was found guilty and sentenced to 18 months imprisonment.</td>
</tr>
<tr>
<td>CCPT10</td>
<td>Indecent assault (multiple counts)</td>
<td>D was found not guilty on all counts.</td>
</tr>
<tr>
<td>CCPT11</td>
<td>Conspiracy to supply Class A drugs</td>
<td>There were two defendants in this case. D1 was found guilty of conspiracy to supply Class A drugs; the jury could not reach a verdict in relation to D2 and a re-trial was ordered.</td>
</tr>
<tr>
<td>CCPT12</td>
<td>Fraud (multiple counts)</td>
<td>D was found guilty on all counts and received a 12 month custodial sentence. A confiscation order to the total value of money obtained was also issued.</td>
</tr>
<tr>
<td>Crown Court Sentencing Hearing 01 (CCSH01)</td>
<td>Robbery</td>
<td>D was sentenced to 20 months custody.</td>
</tr>
<tr>
<td>CCSH02</td>
<td>Poss. offensive weapon</td>
<td>D was sentenced to 12 months custody.</td>
</tr>
<tr>
<td>CCSH03</td>
<td>Dangerous Driving</td>
<td>D was sentenced to an SSO and was disqualified from driving for approximately 2 years.</td>
</tr>
<tr>
<td>CCSH04</td>
<td>Aggravated vehicle taking</td>
<td>D received a community order and was disqualified from driving for 12 months.</td>
</tr>
<tr>
<td>CCSH05</td>
<td>Sexual assault</td>
<td>D received an SSO.</td>
</tr>
<tr>
<td>CCSH06</td>
<td>Driving whilst disqualified; breach of SSO</td>
<td>The judge activated the SSO; D was sentenced to 6 months custody.</td>
</tr>
<tr>
<td>CCSH07</td>
<td>Handling stolen goods</td>
<td>D was given a 2 year conditional discharge.</td>
</tr>
<tr>
<td>CCSH08</td>
<td>Handling stolen goods</td>
<td>D received a community order.</td>
</tr>
<tr>
<td>CCSH09</td>
<td>Sexual assault &amp; indecent assault</td>
<td>D was sentenced to 6 years custody.</td>
</tr>
<tr>
<td>CCSH10</td>
<td>Breach of prevention of sexual harm order</td>
<td>D received an SSO.</td>
</tr>
<tr>
<td>CCSH11</td>
<td>Contempt of court &amp; dangerous driving</td>
<td>D received a short custodial sentence.</td>
</tr>
<tr>
<td>Crown Court Other Hearing 01 (CCOH01)</td>
<td>Assault (DA)</td>
<td>The case was scheduled for trial but was adjourned after the complainant (C) failed to attend.</td>
</tr>
<tr>
<td>CCOH02</td>
<td>Possession of a firearm</td>
<td>The case was listed for trial but D entered a late guilty plea shortly after the prosecution case began. D received an SSO.</td>
</tr>
</tbody>
</table>

**List of magistrates’ court observations**

<table>
<thead>
<tr>
<th>Name</th>
<th>(Alleged) main offence(s)</th>
<th>Type of adjudicator</th>
<th>Main outcome of hearing*</th>
</tr>
</thead>
<tbody>
<tr>
<td>MCFT01</td>
<td>Assault</td>
<td>Magistrates</td>
<td>D was found guilty and sentenced to 20 weeks custody; compensation was awarded to C.</td>
</tr>
<tr>
<td>MCFT02</td>
<td>Breach of non-molestation order (DA)</td>
<td>Magistrates</td>
<td>D was found guilty and was given a fine and a restraining order.</td>
</tr>
<tr>
<td>MCFT03</td>
<td>Burglary</td>
<td>Magistrates</td>
<td>D was found guilty; sentencing was adjourned for two weeks in order that D could be present.</td>
</tr>
<tr>
<td>MCFT04</td>
<td>Sexual assault (DA)</td>
<td>Magistrates</td>
<td>D was found not guilty.</td>
</tr>
<tr>
<td>MCFT05</td>
<td>Handling stolen goods</td>
<td>Magistrates</td>
<td>D was found guilty; the case was sent to the Crown Court for sentencing.</td>
</tr>
<tr>
<td>MCFT06</td>
<td>Use of threatening, abusive or insulting words or behaviour.</td>
<td>District judge (DJ)</td>
<td>D was found guilty; sentencing was adjourned for a PSR.</td>
</tr>
<tr>
<td>MCFT07</td>
<td>Assault, criminal damage &amp; using violence to gain entry (DA)</td>
<td>Magistrates</td>
<td>D was found guilty; sentencing was adjourned for a PSR.</td>
</tr>
<tr>
<td>MCFT08</td>
<td>Driving with alcohol level above limit (hereafter, ‘drink driving’)</td>
<td>Magistrates</td>
<td>D was found guilty and sentenced to a driving disqualification and a fine.</td>
</tr>
<tr>
<td>MCFT09</td>
<td>Stalking (x 2)</td>
<td>Magistrates</td>
<td>D was found guilty on both charges and was sentenced for this along with other matters. D received community order with a rehabilitation requirement and a restraining order against each C.</td>
</tr>
<tr>
<td>MCFT10</td>
<td>Speeding</td>
<td>Magistrates</td>
<td>D was found not guilty.</td>
</tr>
<tr>
<td>MCFT11</td>
<td>Assault &amp; criminal damage (DA)</td>
<td>Magistrates</td>
<td>D was found not guilty of assault but found guilty of criminal damage. D was given a fine and issued with a restraining order and a compensation order.</td>
</tr>
<tr>
<td>MCFT12</td>
<td>Assault</td>
<td>Magistrates</td>
<td>D was found not guilty.</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
<td>Court</td>
<td>Summary</td>
</tr>
<tr>
<td>--------</td>
<td>-----------------------------------------------------------------------------</td>
<td>---------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>MCFT13</td>
<td>Driving whilst disqualified</td>
<td>DJ</td>
<td>D was found guilty. D was sentenced to a community order with a rehabilitation requirement, a curfew and compensation. He was disqualified from driving for 12 months.</td>
</tr>
<tr>
<td>MCFT14</td>
<td>Driving whilst using a mobile phone</td>
<td>DJ</td>
<td>D was found guilty; she received a fine and 3 penalty points.</td>
</tr>
<tr>
<td>MCFT15</td>
<td>Failure to give information as to identify of driver after being issued with a speeding ticket</td>
<td>DJ</td>
<td>D was found guilty; he received a fine and 6 penalty points. D’s licence was already endorsed with 9 penalty points. D, therefore, received an automatic driving disqualification of six months.</td>
</tr>
<tr>
<td>MCFT16</td>
<td>Assault (DA)</td>
<td>DJ</td>
<td>D was found guilty; sentencing for this matter and a further conviction for theft was adjourned to the following week.</td>
</tr>
<tr>
<td>MCFT17</td>
<td>Handling stolen goods</td>
<td>DJ</td>
<td>D was found guilty; sentencing was adjourned pending the outcome of D’s upcoming trial for another matter.</td>
</tr>
<tr>
<td>MCFT18</td>
<td>Assault (DA)</td>
<td>Magistrates</td>
<td>A Galbraith submission (‘no case to answer’) entered by the defence, at the end of the prosecution case, was granted. The case against D was dropped.</td>
</tr>
<tr>
<td>MCPT01</td>
<td>Touting for car hire services</td>
<td>DJ</td>
<td>D was found guilty; he was sentenced to a fine and given a 12 month driving disqualification.</td>
</tr>
<tr>
<td>MCPT02</td>
<td>Assault by beating (DA)</td>
<td>Magistrates</td>
<td>D was found guilty and sentenced to a fine.</td>
</tr>
<tr>
<td>MCPT03</td>
<td>Common assault &amp; criminal damage (DA)</td>
<td>DJ</td>
<td>D was found guilty of criminal damage (only) and was sentenced to a conditional discharge. He was also issued with a compensation order.</td>
</tr>
<tr>
<td>MCPT04</td>
<td>Assault &amp; criminal damage (DA)</td>
<td>Magistrates</td>
<td>At the end of the prosecution case D successfully entered a Galbraith submission of ‘no case to answer’; this was granted by the magistrates. The charges against D were dropped.</td>
</tr>
<tr>
<td>MCSH01</td>
<td>Driving w/o due care &amp; attention</td>
<td>Magistrates</td>
<td>D entered a guilty plea and received a fine and 3 penalty points.</td>
</tr>
<tr>
<td>MCSH02</td>
<td>Poss. bladed article</td>
<td>Magistrates</td>
<td>D received a one year community order with 100 hours of unpaid work.</td>
</tr>
<tr>
<td>MCSH03</td>
<td>Theft &amp; failure to appear</td>
<td>DJ</td>
<td>D received a 20 week custodial sentence.</td>
</tr>
<tr>
<td>MCSH04</td>
<td>Assault</td>
<td>DJ</td>
<td>D received an SSO with an unpaid work requirement and was issued with a compensation order.</td>
</tr>
<tr>
<td>MCSH05</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D received a fine and a 3 year driving disqualification.</td>
</tr>
<tr>
<td>MCSH06</td>
<td>Theft</td>
<td>DJ</td>
<td>D received a community order with a rehabilitation activity requirement.</td>
</tr>
<tr>
<td>MCSH07</td>
<td>Driving with drug level above specified limit; poss. cannabis</td>
<td>Magistrates</td>
<td>D received a 12 month driving disqualification and a fine.</td>
</tr>
<tr>
<td>MCSH08</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D received an 18 month driving disqualification and a fine.</td>
</tr>
<tr>
<td>MCSH09</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D received a 12 month disqualification and a fine.</td>
</tr>
<tr>
<td>MCSH10</td>
<td>Poss. with intent to supply cannabis</td>
<td>Magistrates</td>
<td>D received a community order with a rehabilitation activity requirement and a curfew.</td>
</tr>
<tr>
<td>MCSH11</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D received a 12 month disqualification and a fine.</td>
</tr>
<tr>
<td>MCSH12</td>
<td>Drunk and disorderly</td>
<td>Magistrates</td>
<td>D received a conditional discharge.</td>
</tr>
<tr>
<td>MCSH13</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D received a 36 month driving disqualification and a fine.</td>
</tr>
<tr>
<td>MCSH14</td>
<td>Going equipped for theft</td>
<td>Magistrates</td>
<td>D received a community order with unpaid work.</td>
</tr>
<tr>
<td>MCSH15</td>
<td>Racially aggravated assault</td>
<td>Magistrates</td>
<td>D received a community order, a fine and a compensation order.</td>
</tr>
<tr>
<td>MCSH16</td>
<td>Theft &amp; breach of SSO</td>
<td>Magistrates</td>
<td>D received an SSO and unpaid work.</td>
</tr>
<tr>
<td>Case No.</td>
<td>Offence</td>
<td>Court</td>
<td>Magistrates</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>MCSH17</td>
<td>Assault</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH18</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH19</td>
<td>Drunk and disorderly</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH20</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH21</td>
<td>Use of threatening, abusive or insulting words or behaviour &amp; criminal damage.</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH22</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH23</td>
<td>Assault by beating &amp; crim. damage (DA)</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH24</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH25</td>
<td>Breach of Criminal Behaviour Order</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH26</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH27</td>
<td>Speeding</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH28</td>
<td>Breach of Criminal Behaviour Order &amp; SSO</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH29</td>
<td>Failure to notify the council of change in cir. in relation to housing benefits</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH30</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH31</td>
<td>Assault &amp; breach of community order</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH32</td>
<td>Poss. firearm w/o a licence</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH33</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH34</td>
<td>Assault</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH35</td>
<td>Assaulting a police officer; drunk &amp; disorderly</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH36</td>
<td>Theft &amp; racially aggravated disorderly behaviour</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH37</td>
<td>Assault by beating</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH38</td>
<td>Theft &amp; poss. Class A drugs</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH39</td>
<td>Theft</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH40</td>
<td>Poss. Class C drugs</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH41</td>
<td>Assaulting a police officer; drunk &amp; disorderly</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH42</td>
<td>Poss. Class B drugs</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>MCSH43</td>
<td>Theft, criminal damage &amp; breach of community order</td>
<td>Magistrates</td>
<td>D</td>
</tr>
<tr>
<td>Case Number</td>
<td>Offence Description</td>
<td>Court</td>
<td>Details</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------------</td>
<td>-------</td>
<td>---------</td>
</tr>
<tr>
<td>MCSH44</td>
<td>Poss. Class A &amp; Class B drugs</td>
<td>Magistrates</td>
<td>D received a small fine; this was remitted because he had spent the night in custody. D was released.</td>
</tr>
<tr>
<td>MCSH45</td>
<td>Breach of Criminal Behaviour Order</td>
<td>Magistrates</td>
<td>D received a fine.</td>
</tr>
<tr>
<td>MCSH46</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>D received a driving disqualification and a fine.</td>
</tr>
<tr>
<td>MCSH47</td>
<td>Poss. Class B drugs &amp; driving offences</td>
<td>Magistrates</td>
<td>D received a fine and a conditional discharge.</td>
</tr>
<tr>
<td>MCOH01</td>
<td>Assault by beating (DA)</td>
<td>Magistrates</td>
<td>The case was scheduled for trial but C failed to attend; the prosecution offered no evidence.</td>
</tr>
<tr>
<td>MCOH02</td>
<td>Outraging public decency</td>
<td>Magistrates</td>
<td>The case was scheduled for trial but D entered a late guilty plea; the case was adjourned for a PSR.</td>
</tr>
<tr>
<td>MCOH03</td>
<td>Assault and criminal damage (DA)</td>
<td>Magistrates</td>
<td>The case was scheduled for trial but C failed to attend; the remaining prosecution witnesses either did not attend or stated that they did not want to give evidence. The prosecution offered no evidence.</td>
</tr>
<tr>
<td>MCOH04</td>
<td>Malicious communications (DA)</td>
<td>Magistrates</td>
<td>The case was scheduled for trial but C failed to attend. The case was adjourned for 3 weeks in order to enable C to attend.</td>
</tr>
<tr>
<td>MCOH05</td>
<td>Aggravated vehicle taking</td>
<td>Magistrates</td>
<td>The case was scheduled for trial but one of the defendants failed to attend; the case was adjourned until the following week.</td>
</tr>
<tr>
<td>MCOH06</td>
<td>Harassment (DA)</td>
<td>Magistrates</td>
<td>The case was scheduled for trial but D entered a late guilty plea; the case was adjourned for a PSR.</td>
</tr>
<tr>
<td>MCOH07</td>
<td>Not specified</td>
<td>DJ</td>
<td>This was a review hearing seemingly arranged for the purpose of DJ checking D’s progress post-sentencing. A further review hearing was scheduled for 6 weeks’ time; DJ requested that D produce two consecutive negative drug tests for the next hearing.</td>
</tr>
<tr>
<td>MCOH08</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>This was a first hearing; D entered a not guilty plea and the case was adjourned for trial (in the magistrates’ court).</td>
</tr>
<tr>
<td>MCOH09</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>This was a first hearing; D entered a guilty plea and the case adjourned for PSR.</td>
</tr>
<tr>
<td>MCOH10</td>
<td>Non-payment of fines</td>
<td>Magistrates</td>
<td>D appeared in court in relation to a dispute in relation to the non-payment of fines. The remainder of the fines were remitted.</td>
</tr>
<tr>
<td>MCOH11</td>
<td>Att. to steal &amp; criminal damage</td>
<td>DJ</td>
<td>This was a first hearing; D entered a not guilty plea and the case was adjourned for trial at the Crown Court.</td>
</tr>
<tr>
<td>MCOH12</td>
<td>Driving w/o due care and attention</td>
<td>DJ</td>
<td>This was a first hearing; D entered a not guilty plea and the case was adjourned for trial (in the magistrates’ court).</td>
</tr>
<tr>
<td>MCOH13</td>
<td>Sexual offences against a child</td>
<td>Magistrates</td>
<td>This was a first hearing; the magistrates’ court declined jurisdiction and the case was sent to the Crown Court for a case management hearing.</td>
</tr>
<tr>
<td>MCOH14</td>
<td>Using violence to obtain entry (DA) &amp; breach of bail</td>
<td>Magistrates</td>
<td>This was a case management hearing scheduled after D and one of the complainants failed to attend court on the day of trial. D entered a not guilty plea to breaching bail. A new trial date was set.</td>
</tr>
<tr>
<td>MCOH15</td>
<td>Arson and criminal damage (DA)</td>
<td>Magistrates</td>
<td>This was a first hearing; D entered guilty pleas. The case was adjourned for a PSR and a medical report.</td>
</tr>
<tr>
<td>MCOH16</td>
<td>Breach of supervision order</td>
<td>Magistrates</td>
<td>D appeared before the court having been recalled on licence for failing to attend probation appointments and for committing a further offence. D was sentenced to 2 weeks’ custody.</td>
</tr>
<tr>
<td>Reference</td>
<td>Summary</td>
<td>Court</td>
<td>Details</td>
</tr>
<tr>
<td>-----------</td>
<td>---------</td>
<td>-------</td>
<td>---------</td>
</tr>
<tr>
<td>MCOH17</td>
<td>ABH, common assault &amp; criminal damage</td>
<td>Magistrates</td>
<td>This was a first hearing; D entered not guilty pleas to all charges. The case was adjourned for trial in the magistrates' court.</td>
</tr>
<tr>
<td>MCOH18</td>
<td>Stalking &amp; malicious communications (DA)</td>
<td>Magistrates</td>
<td>This was a first hearing; the magistrates' declined jurisdiction and the case was sent to the Crown Court for a case management hearing.</td>
</tr>
<tr>
<td>MCOH19</td>
<td>Breach of domestic violence prevention notice (DA)</td>
<td>Magistrates</td>
<td>D was remanded in custody the previous day for breaching a domestic violence protection notice. A domestic violence protection order was granted when he appeared before the court; D was released from custody.</td>
</tr>
<tr>
<td>MCOH20</td>
<td>Assault &amp; criminal damage</td>
<td>Magistrates</td>
<td>This was a first hearing; D entered a guilty plea to criminal damage and a not guilty plea to assault. The case was adjourned for trial (in the magistrates' court).</td>
</tr>
<tr>
<td>MCOH21</td>
<td>Non-payment of fines</td>
<td>Magistrates</td>
<td>D was remanded in custody the previous day for the non-payment of fines. D was sentenced to 1 day's custody; because this had been served overnight D was released.</td>
</tr>
<tr>
<td>MCOH22</td>
<td>Assault &amp; threatening behaviour</td>
<td>Magistrates</td>
<td>This was a case management hearing; the case was adjourned pending a psychiatric report regarding D's state of mind at the time of the incident.</td>
</tr>
<tr>
<td>MCOH23</td>
<td>Criminal damage x 3</td>
<td>Magistrates</td>
<td>This was a first hearing; D pleaded guilty to all charges and the case was adjourned for a PSR.</td>
</tr>
<tr>
<td>MCOH24</td>
<td>Drink driving</td>
<td>Magistrates</td>
<td>This was a first hearing; D entered a not guilty plea and the case was adjourned for trial at the magistrates' court.</td>
</tr>
<tr>
<td>MCOH25</td>
<td>Criminal damage</td>
<td>Magistrates</td>
<td>This was a case management hearing; the case was adjourned for psychiatric reports, including in relation to D's fitness to plead.</td>
</tr>
<tr>
<td>MCOH26</td>
<td>Non-payment of fines</td>
<td>DJ</td>
<td>D did not attend the hearing having contacted the court to state he could not attend due to illness. The case was adjourned on the basis that a warrant would be issued if D failed to attend the next hearing.</td>
</tr>
<tr>
<td>MCOH27</td>
<td>Speeding</td>
<td>DJ</td>
<td>This case was scheduled for trial but the matter was adjourned because the court did not have access to the relevant documents and because an interpreter had not been booked for D.</td>
</tr>
<tr>
<td>MCOH28</td>
<td>Theft</td>
<td>DJ</td>
<td>This was a first hearing; D pleaded guilty and the case was adjourned for a PSR and to enable D to undertake a drug treatment assessment.</td>
</tr>
<tr>
<td>MCOH29</td>
<td>Criminal damage (DA)</td>
<td>DJ</td>
<td>This was a first hearing; D pleaded guilty and the case was adjourned for a PSR and to enable D to undertake an alcohol treatment assessment.</td>
</tr>
<tr>
<td>MCOH30</td>
<td>Assaulting a police officer &amp; violent behaviour at a police station</td>
<td>DJ</td>
<td>This was a first hearing; D pleaded guilty to the charges but was awaiting trial for another matter in the magistrates' court. Sentencing was adjourned until the outcome of D's upcoming trial.</td>
</tr>
<tr>
<td>MCOH31</td>
<td>Failure to sign the sex offenders register &amp; violent behaviour at a police station</td>
<td>DJ</td>
<td>This was a first hearing; D pleaded guilty to the first charge but not guilty to the second charge. The case was adjourned for trial.</td>
</tr>
</tbody>
</table>

*Further outcome details are provided where known. Orders to pay court costs and the Victim Surcharge have not been included due to the regularity with which they occurred.*