

Written evidence from Dr Rebecca K Helm, Director and Clinic Solicitor, Evidence-Based Justice Lab, University of Exeter

I am the director of the University of Exeter [Evidence-Based Justice Lab](#), an interdisciplinary group specialising in behavioural and data science research, and applying this research to the legal system. I have been researching guilty pleas and the operation of guilty plea procedure in practice for almost ten years, and have published extensively in this area. My submission focuses primarily on the effect of court reform and remote hearings on open justice, and specifically impact that remote (as opposed to in-person) hearings may have on guilty plea rates and decisions, and the implications of this impact for open justice.

Guilty Pleas Can Compromise Open Justice

Defendant guilty plea decisions are complex and are not, as has traditionally been thought, voluntary admissions of guilty against one's own interest (see, for example, [Helm et al, 2021](#)). Decisions are influenced by a wide variety of factors including sentence discounts (including the ability to avoid custody), dropped charges, remand status, and the time and cost involved in trial (see [Helm, 2018](#), although note that this article focuses on the US context). In fact, of the 128 cases referred to the Court of Appeal by the Criminal Cases Review Commission as potential miscarriages of justice (for review of conviction or conviction and sentence) from 2012-2018, approximately 50 cases involved defendants who initially pleaded guilty ([Helm, 2019](#), p425).

The recent Post Office Scandal [cases](#) (the Post Office cases) highlight how innocent defendants can be pressured to plead guilty by fear of jail or more serious charges.

Importantly, when convictions occur via guilty plea, case evidence is not heard in public and is not properly tested in an open trial (see [Helm, 2021a](#), in the context of the Post Office cases). In the Post Office cases, the large number of miscarriages of justice may not have occurred had evidence been aired and tested more frequently at trial (note that in those cases some defendants were even required to forgo any criticism of their accounting systems in exchange for having charges against them dropped, further concealing the true picture from public view, see [Hamilton and Ors v Post Office Limited, 2021](#)).

Research suggests that moving justice procedures online has the potential to lead defendants who would otherwise have exercised their right to a full trial to plead guilty. Any move towards online justice should consider the harmful effects for both open justice and defendant rights when large numbers of defendants feel pressure to plead guilty, particularly where evidence against them is weak. For the reasons below, it is necessary to consider and monitor guilty pleas and representation rates in this context, to ensure that online resolution via plea does not become a "black box" in which innocent defendants are convicted unrepresented based on weak evidence, without engaging with the justice process and without scrutiny of the evidence against them.

Online Procedures Can Reduce Representation and Increase Pressure to Plead Guilty

The increase in use of online justice procedures during the Covid-19 pandemic has coincided with a significant increase in guilty pleas (the guilty plea rate in the Crown Court increased by 20 per cent from 68 per cent in Q2 of 2019 to 80% in Q2 of 2020, [Ministry of Justice, 2020](#)). Although this increase was likely caused in part by restricted ability to process jury trials during the crisis, the relationship between online procedures and guilty pleas certainly warrants more attention since there are good reasons to believe that online procedures are associated with higher rates of guilty

pleas (and in particular higher rates of guilty pleas entered as the result of pressure or lack of understanding and / or from factually innocent defendants).

Representation Rates in Virtual Courts

In a recent article, I demonstrated how virtual courts have the potential to create or exacerbate pressures to plead guilty, particularly for vulnerable defendants (see [Helm 2021b](#)). Importantly for this submission, online justice procedures can impact both levels and quality of legal representation. Research from pilot virtual courts suggests that defendants in virtual courts are more likely to opt to self-represent (see [Terry et al., 2010](#)). This relationship needs further exploration, but may occur because the online process feels easier and less formal, and defendants are less likely to recognise the need for representation. Even where defendants are represented in online procedures, research suggests that the quality of representation is lower where communications and court appearances are online (see McKay 2012; [Terry et al., 2010](#), for example).

Where defendants self-represent, there is greater potential for uninformed guilty pleas, including from innocent defendants. Defendants who are not represented frequently lack an understanding of the strengths and weaknesses of the case against them. Although defendants know what they did, they will not necessarily know whether they are legally guilty (e.g., due to a lack of understanding of the law or available defences). They may also be convinced they are not guilty but believe a case wouldn't be proceeding in the absence of strong evidence that they are powerless to contest. These problems are exacerbated in children, who are particularly vulnerable to pleading guilty when innocent (see [Helm2021c](#); [Evidence-Based Justice Lab, 2021](#)).

Thus, through reducing legal representation rates and quality, online processes have the potential to contribute to a rise in unrepresented defendants, including innocent defendants, pleading guilty without the evidence against them having ever been properly scrutinised. Where guilty pleas are entered online decisions to plead guilty themselves are also subjected to very little scrutiny, making it extremely difficult to identify cases in which defendants may have pleaded guilty due to pressure or misunderstandings.

Defendant Appearances from Custody

Where defendants appear in court virtually from custody there are also additional risks that they will feel pressure to plead guilty due to depletion of autonomy and motivation caused by the custodial environment (see [Helm, 2021b](#)). When appearing from custody, defendants cannot be physically supported by family and friends, and may not even consistently be able to see them. As a result, they may feel hopeless and not motivated to contest charges against them. This effect is likely to promote guilty pleas and to reduce the extent to which evidence is heard and scrutinised in court, even in cases where the defendant has a strong case.

Online Guilty Pleas

Any procedures that allow guilty pleas to be entered online but require defendants to go to court if they want to contest charges against them have the clear potential to create pressure to plead guilty, and for this pressure to disproportionately influence defendants with low socio-economic status (see [Helm et al., 2021](#); [Helm, 2019](#)).

In my substantial empirical research on guilty pleas, including consultations with lawyers and defendants, I have found cost and time discrepancies between plea and full trial create significant pressure to plead guilty, particularly for some defendants including single parents and those with precarious employment. For example, lawyers have told me: "There is clearly a risk that defendants plead guilty to avoid the court process and delay that involves" ([Helm, 2019](#)), and that "I've had clients that are insistent they haven't committed an offence, that have said they can't

afford to go to trial...in terms of time or money...They're looking to plead...even though they don't accept what the case is against them" ([Helm et al., 2021](#)). Again, children may be particularly vulnerable in this area ([Helm2021c](#); [Evidence-Based Justice Lab, 2021](#)).

Making pleading guilty an easy exercise online and trial and expensive and time-consuming process will prevent defendants from pleading not guilty and having their cases heard in court. While this may be beneficial from some perspectives through increasing efficiency in the justice system it will prevent cases, even strong cases, from being heard in court, and will likely exacerbate inequalities.

A move towards utilising online procedures for defendants who plead not guilty as well as defendants who plead guilty may actually mitigate the pressures described above, if such a move can make the trial process more accessible for defendants. However, this effect is only likely to be realised if defendants are informed about the strengths and weaknesses of the case against them, and empowered to challenge a case where appropriate. There is therefore a clear need for any move towards online procedures to monitor representation rates and to take necessary steps to ensure effective representation and participation in these systems.

Conclusion

When defendants plead guilty, particularly without understanding the evidence against them and their factual guilt, principles of open justice are compromised. Even weak cases come to be resolved without real scrutiny, and we lose the ability to understand convictions, which become determined by decision processes not necessarily influenced by evidence and which occur outside the public eye. These convictions are not necessarily autonomous ([Helm et al., 2021](#)) and can exacerbate inequalities ([Helm, 2019](#); [Helm, 2021b](#)).

A move towards online justice has the potential to increase pressures to plead guilty even in weak cases, however it also has the potential to reduce the time and cost discrepancies between plea and trial and thus to make trial more accessible for defendants. Therefore, in relation to plea decisions, the move towards online justice is not a bad one. However, it is necessary that (1) online procedures are used to make full trials, rather than just pleading guilty, more accessible, (2) procedure is put in place to ensure effective representation is maintained even where online processes are utilised, (3) children are provided with additional protections to recognise developmental vulnerability, and (4) defendants do not appear in court from a custodial environment.

If I can provide any further information to inform this Inquiry, please do not hesitate to contact me at r.k.helm@exeter.ac.uk.

References

(References are hyperlinked in the text and below where sources are available open access)

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