

Public engagement with the justice system: an evidence review

Policy brief

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Introduction and scope

This briefing presents the key findings of an evidence review on public engagement with the justice system. The review was commissioned by the Nuffield Foundation as part of its *Public right to justice* programme.

It examined scholarly literature, legal commentary and policy published since 2010 on the subject of public engagement with justice, with particular reference to:

1. the transparency and openness of the justice system
2. the representativeness and diversity of justice system actors
3. lay participation in the administration of justice, specifically lay adjudication

The review focused on adjudication and the courts and tribunals system (henceforth ‘the courts’) across the administrative, civil, family and criminal jurisdictions of England and Wales.

Policy context

All members of the public – not only those individuals who are directly involved in court cases – have a stake in a courts system that operates fairly and effectively. The role of the courts is to resolve legal problems and disputes; to uphold the rights of individuals; to constrain state power; and to enforce the law to maintain an orderly society. If the courts are perceived to exercise rightful authority in fulfilling their responsibilities, they are legitimate in the eyes of the public.

The relationship between the general public and the courts and wider justice system is increasingly strained. There are concerns, in particular, about barriers that impede the public’s access to justice and low levels of confidence in aspects of the justice system. The social and political context of these concerns is one of declining public trust in many of the institutions of the state.

Findings

Against this backdrop of declining confidence in state institutions, questions about how the public engage with the courts have become increasingly significant in policy and academic debate. The evidence reviewed on each dimension of engagement shows that:

- *Transparency* enables scrutiny of the courts and thereby supports their accountability. It can enhance the quality of decision-making by reducing risks of bias and arbitrariness, and it can promote public confidence in the justice system. Transparency can also support democratic participation in the justice system and access to justice, and it can contribute to better public understanding of the legal system.
- *Representativeness and diversity* is about focusing on the extent to which those responsible for delivering justice – particularly lay and professional judges – reflect the populations they serve. A common assumption is that a more representative and diverse justice system will be more trusted and therefore more legitimate in the eyes of the public. Representativeness and diversity are also considered to support fairer and more accurate decision-making.

- *Lay adjudication* – by jurors, magistrates and non-judicial members of tribunal panels – is widely argued to support the legitimacy of the justice system. It embodies the principles of judgment by one's peers and democratic participation in justice. Lay adjudication is also understood to incorporate community values into decision-making and to enhance accountability, transparency and public confidence in justice.

The literature suggests that these three dimensions of public engagement are complementary mechanisms that collectively play a vital part in supporting public confidence in, and the perceived legitimacy of, the courts and wider justice system. Together, they progressively narrow the gap between the public and the courts.

The nature of the evidence

In both scholarly and policy-oriented literature, much of the discussion of public engagement with justice – and of the positive repercussions of transparency, representativeness and diversity and lay adjudication – is founded on conceptual arguments, legal principles and normative values. As such, some of the claims made cannot necessarily be subject to empirical testing.

At the same time, existing research has generated empirical evidence lending support to arguments about the rationales for, and benefits of, the three mechanisms of public engagement. There is some qualified empirical support for the claimed associations between all three mechanisms and confidence in justice. International research also provides some evidence of an association between lay adjudication and wider civic engagement. There is more limited support for the proposition that representativeness and diversity and lay adjudication improve the quality of judicial decision-making.

Recommendations for policy and research

There is a strong case for policy action to support transparency, representativeness and diversity and lay adjudication in the courts and wider justice system. This rests not simply on the (limited) empirical evidence of the relationship of these mechanisms to public confidence, legitimacy and other claimed benefits, but also on long-established legal principles and democratic values.

On this basis, policymakers should – as far as possible within resource constraints – reinforce existing efforts to make the courts more open and accessible to public scrutiny, to increase the diversity and representativeness of those who administer justice, and to sustain opportunities for lay participation in justice. There may also be scope to explore new forms of public engagement with justice. This might include the establishment of formal roles for public oversight of the courts, of the kind found in other areas of public policy, though such measures must take account of judicial independence. Equally, policymakers should be alert to the ways in which policy measures with other ends – such as increasing the efficiency and cost-effectiveness of the courts system – can have the unintended consequence of undermining mechanisms of public engagement.

The findings of this review point to the need to make the relationship between the public and the justice system a central consideration in the development of justice policy across the administrative, civil, family and criminal jurisdictions. This is all the more important at a time of low or declining confidence in many state institutions and authorities.

There is also a clear need to extend the evidence base on public engagement with justice. Policy reforms seeking to enhance engagement would benefit from more robust, systematic and detailed examination of the processes involved. A new programme of research could address the overarching question: how, and under what conditions, do contrasting institutional mechanisms shape the relationship between the public and the justice system, particularly the courts?

As pressures on the justice system continue to evolve, understanding how these mechanisms operate, and how they can best be supported, is likely to remain a central challenge for policymakers, practitioners and researchers.

This report was commissioned by the Nuffield Foundation as part of its [Public right to justice](#) programme. The views expressed are those of the author and not necessarily the Foundation. The report forms part of a series of evidence reviews and briefing papers critically examining different dimensions of the justice system and access to justice in England and Wales. The programme aims to develop an interconnected body of research, providing policymakers, practitioners and the public with a better understanding of how the justice system operates, where it falls short, and how it could better meet the needs of those it serves.

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