

New research warns incentives to plead guilty can undermine the right to a fair trial

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New research suggests that the right to a fair trial can be undermined by benefits associated with pleading guilty, and that such benefits are putting pressure on vulnerable defendants to admit to crimes they did not commit.

Between 2016 and 2017, 76.9 per cent of defendants—78.1 per cent of defendants in the magistrates' court, and 70.1 per cent of defendants in the Crown Court—in England and Wales pleaded guilty rather than opting to go to trial.

Dr. Rebecca Helm, from the University of Exeter Law School, surveyed ninety legal professionals practicing criminal law in England or Wales.

Dr. Helm identified two incentives to plead guilty that were particularly problematic—the ability to avoid the [high time](#) and cost involved in trial, and the ability to secure immediate release from custody—and her study says these incentives are likely to be leading innocent defendants in England and Wales to plead guilty.

Those who took part in the survey suggested that defendants plead guilty due to the prohibitive time and cost involved in trial. Going to trial is significantly more expensive than pleading guilty, and involves a significantly higher time commitment. In 2016 the average time of a court case involving a not guilty plea was 13.8 hours, compared to 1.6 hours for those who pleaded guilty. This is likely to be particularly important if a defendant has insecure employment, or dependents who

require care.

Ninety percent of the surveyed legal professionals said they had experience of advising clients who they believed had pleaded guilty as a result of the significantly lower cost and time involved compared to trial. Sixty-one percent thought that this included innocent as well as guilty defendants.

A total of 83 per cent of surveyed legal professionals said that they had experience advising clients who could get out of jail by pleading guilty but would have to remain in jail awaiting trial if they pleaded not guilty. The poor conditions in remand prisons left their clients "desperate" to get out so they could resume life, employment and education and care for dependents.

Dr. Helm said: "It's not practical to get rid of procedures where people waive their trial rights. But it is also important that all those involved in the justice system appreciate the potential for [defendant](#) rights to be infringed, and work to protect defendants in [guilty plea](#) systems."

"More needs to be done to protect vulnerable defendants. The state has an obligation to ensure they have a fair trial, and the option of a full trial and pleading not-guilty should be accessible to them. This may be facilitated, for example, through the provision of financial assistance, or, monitoring devices to allow release on bail."

The study makes policy suggestions to protect vulnerable defendants, including ensuring that exercising the right to trial is not significantly costlier and more time consuming than pleading guilty, and also suggests that defendants who plead guilty when faced with problematic incentives may have the right to appeal their convictions under the European Convention on Human Rights.

More information: Rebecca K. Helm, Constrained Waiver of Trial Rights? Incentives to Plead Guilty and the Right to a Fair Trial, *Journal of Law and Society* (2019). [DOI: 10.1111/jols.12169](https://doi.org/10.1111/jols.12169)

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