



Incentivized Legal Admissions in Children

Part 1: Cautions

About this research. This policy report presents findings and recommendations from a research project examining the pressures that children face to ‘admit’ guilt when doing so enables them to accept a caution and avoid prosecution, and the vulnerabilities of children in this system of incentivized admission.

Introductory Information

A project of:



The Evidence Based Justice Lab is an interdisciplinary research group at the University of Exeter Law School specialising in behavioural and data science research, and applying this research to the legal system and in legal arguments.

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In collaboration with:

Transform Justice

Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system. Penelope Gibbs set up the charity in 2012 to help create a better justice system in the UK. Transform Justice promotes change through generating research and evidence to show how the system could be improved, and by persuading practitioners and politicians to make those changes.

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The full report is available to download from:
evidencebasedjustice.exeter.ac.uk/current-research-data/incentivized-admission

Executive Summary

This report examines the current system of cautions specifically in the youth justice system in England and Wales. It examines how and when the requirement that children are eligible for a caution in place of prosecution only if they admit guilt incentivizes admissions in child defendants.

This report presents data collected from lawyers, appropriate adults, and those who received cautions as children.

Key findings:

- Children admit guilt in exchange for receiving a caution because this is a quick and easy way to deal with accusations against them.
- This desire to deal quickly and easily with accusations against them is often combined with a lack of appreciation for the consequences of admitting guilt and accepting a caution.
- Children feel pressure to admit guilt due to wanting to avoid court or more severe consequences.
- Children who have not committed a crime are likely to be admitting guilt and accepting cautions just to avoid prosecution.
- Children are getting insufficient support when deciding whether to admit guilt due to not requesting legal assistance at all, the lack of legal assistance at the point of formal admission and caution acceptance, insufficient delineation of the roles of the lawyer and appropriate adult, and insufficiencies in legal representation and appropriate adult support.
- Children with disorders including autism spectrum disorders and attention deficit hyperactivity disorder are particularly vulnerable due to difficulties with the criminal justice process.

Recommendations for reform:

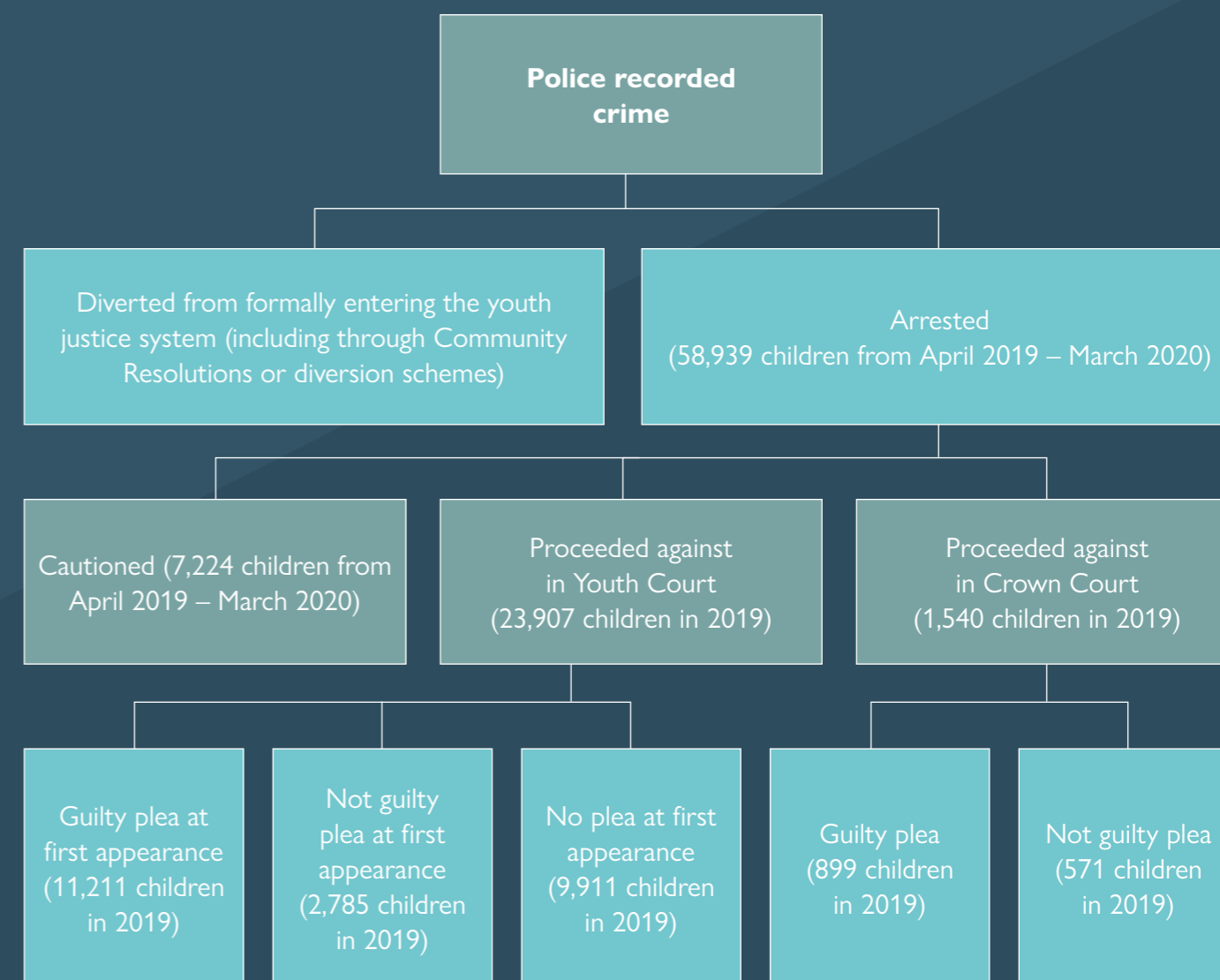
- Legal representation should be mandatory for children.
- Lawyers working with children should receive specialist training.
- Language surrounding cautions should be regulated and recorded.
- Lawyers working with children should consistently assist with caution acceptance and receive appropriate remuneration.
- Cautions should be clearly justified based on evidence.
- Cautions should not have criminal records implications.

We are grateful to the organisations who helped us recruit participants to take part in this research, including Youth Offending Teams, The Alliance for Youth Justice, and the Law Society. Views expressed do not necessarily represent the views of these organisations, or of the ESRC, UKRI, or the University of Exeter. We are particularly grateful to the individuals who shared their thoughts with us as part of our consultation process.

Contents

Introductory Information	2
Executive Summary	3
Movement of Children Through the Criminal Justice System	5
System Background and Academic Work	6
Methodology	8
Results	9
1. Why are children admitting guilt and accepting cautions?	9
2. Are children who have not committed a crime admitting guilt and accepting cautions?	12
3. Are children getting sufficient support?	14
4. Enhanced vulnerability	20
5. Accepting guilt and cautions in children: Recommendations	21
Endnotes	23

Movement of Children Through the Criminal Justice System¹



Figures presented are based on data available.

System Background and Academic Work

Our criminal justice system incentivizes children to admit guilt to the police.

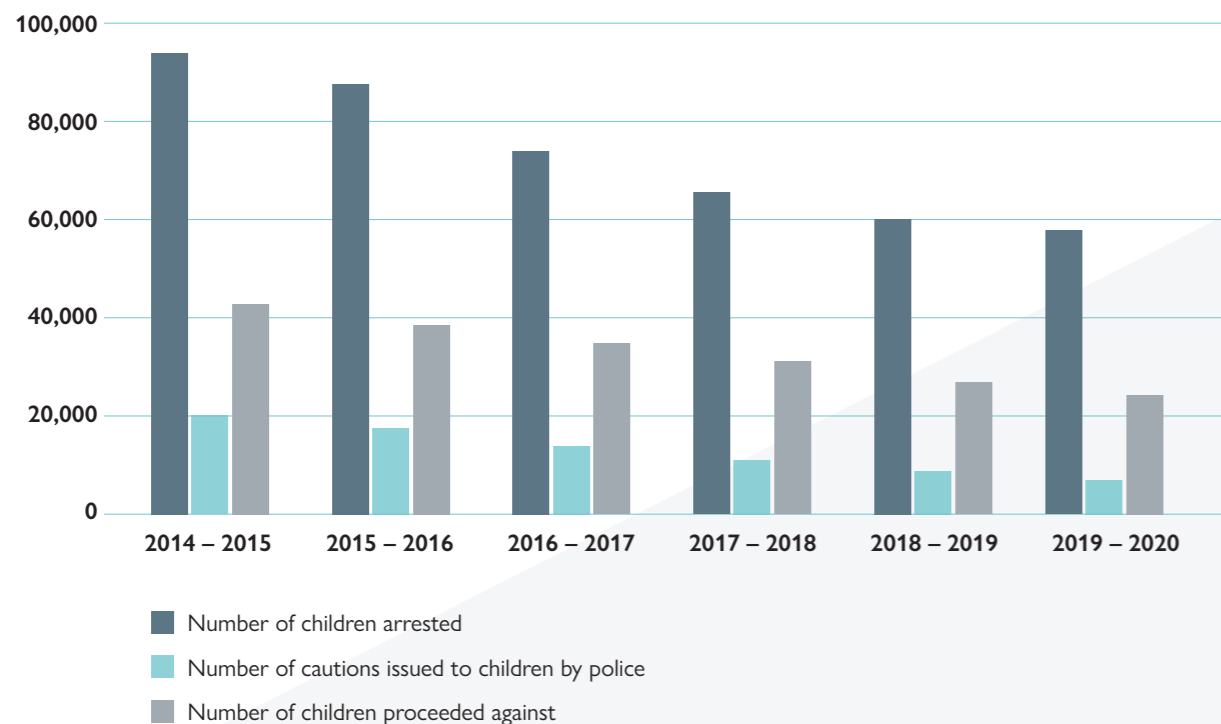
First, in order to be diverted from formally entering the youth justice system through a Community Resolution Order or entry into a diversion scheme, children have to 'accept responsibility,' or in some cases even admit guilt. A recent report found that 57% of diversion schemes require children to admit to committing an offence to be eligible for diversion from prosecution.² These processes are relatively informal and can vary by area.

Second, children can be eligible for receiving a formal warning (a caution or conditional caution) if they admit guilt, but have to face trial if they do not. The Legal Aid, Sentencing and Punishment of

Offenders Act 2012 requires that a child or young person make a formal admission before being cautioned.³ Admitting guilt and accepting a caution allows a child to avoid prosecution in court and to deal with the accusation against them quickly and easily. Admitting guilt and receiving a caution can be beneficial for children accused of crimes, however, a caution does form part of the child's criminal record and will typically show up on standard and enhanced Disclosure and Barring Service checks.⁴ Cautions can also be referred to in future legal proceedings and can have other implications, for example for travel abroad. It is therefore particularly important that children do not feel pressure to admit

guilt and accept a caution especially when they are innocent (including when they have a viable defence).

Children who may have been eligible for diversion from the youth justice system or receipt of a caution risk being proceeded against in court if they do not 'admit' guilt. This report focuses on children admitting guilt where they can receive a caution from the police as a result, due to the damaging effect that accepting a caution can have on children's futures. Although cautions are still used, their use has declined in recent years alongside falling numbers of arrests of children.⁵



How are children vulnerable?

Academic work in both the US and UK context has identified key vulnerabilities of children when facing incentives to admit guilt.⁶ This work focuses on incentives to plead guilty, but many of the underlying vulnerabilities identified apply equally to other incentivized admissions, including admissions to secure a caution instead of facing prosecution. These include:

Difficulties in comprehension and understanding⁷

Children may not understand the specifics of the offence that they are accused of and any available defences, and therefore may not really know whether they are legally guilty or not.

In addition, children may not understand the implications that admitting guilt may have for their future.

Reliance on superficial rather than meaningful considerations⁸

Children have developmentally immature decision-making systems and are susceptible to the influence of superficial incentives to admit guilt and to neglecting meaningful considerations such as factual guilt or innocence, and underlying values.

Low levels of inhibition and high responsiveness to short-term benefits⁹

Children have low levels of inhibition and are very responsive to short-term benefits.¹⁰ This short-term orientation combined with a lack of inhibition makes children susceptible to admitting guilt on the basis of short-term rewards such as getting to go home or avoiding having to go to court. This problem is exacerbated by the fact that children are likely to find being held at the police station particularly stressful and difficult.

Susceptibility to pressure¹¹

Children may be pressured by the system itself (e.g. by being told they can only go home if they admit guilt and accept a caution) and may also be pressured by lawyers, family, or friends when making their decisions.

What are the existing protections?

Children are recognised as vulnerable in the criminal justice system, and are offered protection, primarily to address difficulties in comprehension and understanding.¹²

In the case of cautions specifically, a caution given to a person under the age of 17 must be given in the presence of an appropriate adult.¹³ If a child is given a caution, the police officer giving the caution must provide them with information relating to the caution and its implications in 'ordinary language,' and where the child is under 17, the officer must also provide this explanation to their appropriate adult.¹⁴ However, the sufficiency of this protection or these 'ordinary language' explanations has not been examined empirically.

The other protection children have is the provision of a lawyer. Lawyers can provide important support for children. However, children are not required to have the support of a lawyer, and research suggests that generally many defendants do not ask for one.¹⁵ Questions have also been raised about the quality of legal representation of children,¹⁶ and the Bar Standards Board have relatively recently introduced new competencies for those working with children.¹⁷ However, these competencies do not explicitly address decision-making vulnerability and incentivized admission.

The research underlying this policy report examines the use of cautions in children, and the sufficiency of protections in the current system.

Methodology

This report draws on data from interviews conducted in 2020/2021 with lawyers and appropriate adults with experience working with children. Lawyers and other legal professionals (n=33) and appropriate adults (n=18) responded to an initial online survey and then took part in online roundtable discussions, guided by a research assistant.

Legal Professional Demographics

91% primarily defence-focused work
70% solicitors, 10% barristers, 20% other (including police station representatives)
Average of 17 years experience (SD = 9.2)
Average age 42 (SD = 9.4)
58% female, 42% male

Appropriate Adult Demographics

All trained appropriate adults
53% paid appropriate adults
Average of 3.5 years experience (SD = 3.5)
Average age 37 (SD = 16.8)
80% female, 20% male

A number of people who had made decisions relating to cautions as children responded to an online survey asking questions about their experience. Details of this population are not provided here, to avoid any risks of identification.

Full versions of each of our interview instruments are available at evidencebasedjustice.exeter.ac.uk/current-research-data/incentivized-admission

Results

1. Why are children admitting guilt and accepting cautions?

Responses from both lawyers and appropriate adults demonstrate that allowing children to receive a caution where they admit guilt but face prosecution in court if they do not, means that admissions are no longer necessarily driven by whether children are guilty or not. Instead, decisions can be driven by short-term benefits, poor understanding, and fear of more serious outcomes at trial in addition to, or even instead of, considerations relating to guilt.

Lawyers and appropriate adults believed that children admit guilt in exchange for receiving a caution because this is a quick and easy way to deal with the accusations against them.



I think the reason why they accept is just, they are given the impression it won't affect their future chances as much as a conviction and you can get it over with speedily. **Barrister**

They do just kind of think 'I'll just accept this' to get home or get back to mates or whatever. **Appropriate Adult**

I think they just want to cross it off the list and move on and a caution is the best way for them to do that. **Defence Solicitor**

The young people are frightened in police custody. They are frightened. A lot of them are not hardened criminals or anything like that as you can judge from their actions, it's their first time. They just want to get out of there as quickly as possible. **Appropriate Adult**

They accept it without thinking about the implications and I think sometimes it's quite a struggle to discuss with them you know what it actually means when they get released and what it could mean in terms of their future and their aspirations because they are just sort of thinking about the short term gratification, the short term, you know, getting released. **Appropriate Adult**

Responses suggest that this desire to deal quickly and easily with accusations is often combined with a lack of appreciation for the consequences of admitting guilt and accepting a caution.



*In my experience I think, a lot of juveniles are willing to accept the caution cause A) it's the quick way out...the quickest way to get out of the station and B) they just don't seem to have the understanding of the wider ramifications, particularly where they haven't had legal representation. **Appropriate Adult***

*I don't think generally children, or adults, really take on board the consequences of cautioning. We often get contacted by people 15, 20 years after they've been cautioned to say 'oh, I didn't know this was going to happen, I'm not going to be eligible for this job'... **Defence Solicitor***

...children rarely look at consequences of anything and trying at that time to explain to them what the consequences of an admission and caution may be is very difficult...when I've spoken to parents about the particular circumstances they said well you know, the Sergeant was really nice and he said it was a really easy way of dealing with it and if he stayed out of trouble it wouldn't have any further consequences, and in some cases that may be right, but I think the perception is a caution is not that serious and accepting it doesn't really have consequences.

Barrister

One respondent who had admitted guilt and accepted a caution as a child suggested that this lack of appreciation for consequences was a problem for them.



I think there probably wasn't any other option but at the time I did not understand the effect it could have on my employment possibilities or the fact that I would be stuck giving my DNA forever.

Some respondents linked this lack of understanding to the language used around cautions at the police station.



*People use the kind of terminology where it's just 'don't do it again'.
Police Station Representative*

*The terminology makes it sounds inconsequential when it's not the case at all. Underplayed a little bit. **Defence Solicitor***

*Yes – they are scared of being in the position so sometimes just want to accept to get out of the situation without understanding consequences... police sell cautions in certain ways. **Defence Solicitor***

Responses from those who accepted cautions as children indicate that they felt pressure to admit guilt, due to wanting to avoid court or more severe consequences.

The quotes on the right are responses from people who accepted cautions as children to the question –

What was important to you when deciding whether to accept a caution?



Not getting locked up.

I felt I had no other option and did not want to go to court.

2. Are children who have not committed a crime admitting guilt and accepting cautions?

This foregrounding of factors other than factual guilt in the decision-making process creates a clear risk that children who are innocent will admit guilt. Feedback from lawyers and appropriate adults generally confirms this risk is

important in practice, and suggests that children who have not committed a crime are admitting guilt and accepting a caution in order to avoid prosecution.¹⁸



Yes. Young people tend...to have less developed consequential thinking and so are more prone to accepting short-term solutions to their problems.

Prosecution Solicitor

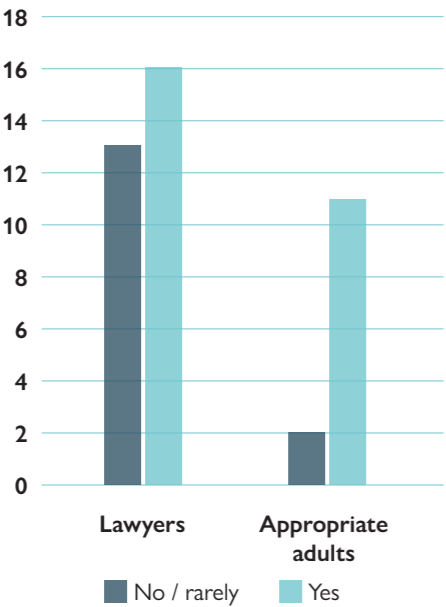
Quite common even in cases where evidence is weak. Normally young people are focused on the immediate future and getting out of the police station and don't want to risk court. **Barrister**

Case Study

(told by lawyer, details removed)

I once had a case where a child had been charged with a relatively minor offence and was offered a caution. He wanted to accept it and have a quick and easy resolution. We felt there may be more to it, asked for disclosure, and firmly advised the client not to accept the caution even though he wanted to. The client didn't accept, and the police didn't charge. We found out later that there was strong evidence that my client was not guilty and a dishonest accusation had been made against him.

Responses to **Are children who have not committed a crime admitting guilt and accepting cautions?**



I have never advised a client to accept a caution if they have not committed an offence. However, I do believe some suspects accept a caution to avoid prosecution... cautions are given more readily to youths... who may sometimes accept cautions when it is not clear they are guilty of an offence.

Defence Solicitor

This problem is likely exacerbated by children being told that they can accept guilt and receive a caution rather than face prosecution, when in fact, unknown to them, they would not have been proceeded against anyway. One respondent who had refused to admit guilt when accused of an offence as a child provided an example of this.



I refused to accept a caution and they decided not to press charges so I was released the following morning.

3. Are children getting sufficient support?

Children have two primary sources of potential support when deciding whether to admit guilt and accept a caution – a lawyer or police station representative (to give legal advice) and an appropriate adult (to support the child, ensure they are treated fairly, and assist with communication). Currently, children need to have the support of an appropriate adult, but do not need the support of a lawyer if they do not want it.

Our respondents noted the importance of support from lawyers and appropriate adults, and also important gaps in current support, and a lack of clarity over the role of each party.

Children not requesting legal assistance

Many respondents noted the key role that lawyers play in supporting children through ensuring understanding and protecting children from pressure.

However, they also explained that children do not consistently seek legal assistance, and described problems arising as a result. The finding that children do not consistently ask for legal assistance is consistent with research showing low levels of requests for assistance generally, with only around 56% of detainees asking for legal support at the police station (although note that this figure may be higher for children).¹⁹

The importance of children having a lawyer was confirmed by one of our respondents who accepted a caution as a child. They stated:

“ I felt the police pressured me and tried to use the experience to scare me. They ought to have insisted that we have a lawyer as that would have been a more just situation. They did not in any way and treated us like we knew what we were doing and were criminals.

Assistance at the point of accepting the caution

In addition, several respondents noted that even where a legal representative supports the child at interview, they are not necessarily there when the child formally admits guilt and accepts a caution.

“ One of the things I'm conscious of is the lack of availability of legal advice to young people when going to be cautioned and making police station admissions. Where I work, they are not represented there, although they are when interviewed by the police. They bring people into the office to say they are accepting things on the caution sheet and at that point the young person is not advised legally. Quite often I see young people admit to offences they would never be convicted of in court (e.g. arson to arson with intent). Quite serious admissions are made which are recorded against them... They see the caution as an incentive and admit things that don't quite accurately reflect the behaviour they've been involved with.

Youth Justice Service Professional

Lack of attendance by a solicitor at this stage of the process was linked to deficiencies in solicitor's funding by several respondents.

“ A young person may have legal advice for interviews but not for admissions... Some solicitors firms will follow up to make sure they know what's happening e.g. for a caution, but that's really them going the extra mile as there's not funding. **Barrister**

When a solicitor goes to the police station to accept a caution, this isn't covered by a fixed fee unless that is justified. There is therefore less of an incentive for solicitors to go along as it's technically quite routine, even though it can involve admissions.

Defence Solicitor

“ We know children just want everything to end as quickly as possible. They're often told by police that it's going to take a long time for a lawyer to come and are discouraged from free legal advice and for other reasons as some think lawyers work for the police or that by asking they look guilty or are accepting guilt. **Barrister**

...the sense is so often that a child just wants to get out as quickly as they possibly can, especially if held overnight or for several hours as they often are. It's difficult for them to think through how they might disadvantage themselves. **Youth Justice Service Professional**

They see the asking for legal representation is going to delay the process and also that it ratchets up the severity, so you know the thing where they feel they've not really done anything wrong or it's not particularly serious, they tend not to want legal representation.

Appropriate Adult

I think, I do come across it quite often though where often young people particularly, maybe repeat offenders, simply just don't want to wait for a lawyer and so they go into interview without representation. **Defence Solicitor**

Are under 18s typically supported when receiving information relating to a caution?

Answers from 18 appropriate adults

5% Yes by a lawyer only

17% Yes, by an appropriate adult only

67% Yes, by both a lawyer and an appropriate adult

11% No answer given

Are under 18s typically supported when formally accepting a caution?**Answers from appropriate adults (N=18)**

- 0% Yes by a lawyer only
- 39% Yes, by an appropriate adult only
- 39% Yes, by both a lawyer and an appropriate adult
- 22% No answer given

Delineating the roles of lawyers and appropriate adults

Responses of both lawyers and appropriate adults suggested a lack of clarity about the precise role of each party, and the extent to which that role was appropriate.

Some lawyers noted problems with appropriate adults giving advice outside their remit, and several respondents felt that the role of the appropriate adult was unnecessary since lawyers themselves could protect the interests of the child.



*I've also had it with the appropriate adult service with them sort of going beyond what their duty is, sort of advising people; 'oh why don't you say this'. So it's a bit of a difficult one... **Defence Solicitor***

*Then the question is then what is an appropriate adult. Because when I'm in the police station, if someone needs an appropriate adult, I would think well what are they adding to the table that I'm not. and if I can't communicate with my client I shouldn't be there. **Defence Solicitor***

*I tend to find it much easier to deal with juveniles when they have professional appropriate adults present but then again in saying that I sometimes take the view that if it was the requirement that a solicitor was always required when a juvenile was arrested then you could potentially, to a degree deal or move away from the requirement of an appropriate adult being present because in a lot of circumstances we do exactly the same job as an appropriate adult. Obviously, we're there to ensure their welfare and to ensure that they understand what is being asked of them at every stage of the proceedings. **Defence Solicitor***

However, others noted the importance of involving appropriate adults, particularly where qualified.



*Appropriate adults with either background in child care or in communication issues should be there to not be putting that added burden on solicitors when it comes to a young person or anybody's welfare in the police station. I agree whilst we all like to think we're good communicators and you know, I agree that many solicitors and barristers are, but I think sometimes the subtleties of certain disorders of certain conditions can quite often go unnoticed in the police station and sometimes people who are genuinely suggestible or very susceptible to influence, it's not always easy to identify that and I think part of the role of the appropriate adult is to look at those aspects of welfare... I think the roles are different and they should be different. **Barrister***

Appropriate adults noted problems that they experience when the child elects not to ask for legal advice and they are left knowing the child would be better off with legal advice, but unable to provide it.



*So there was one case in particular. It will always stay with me. It was pretty distressing. But basically it was a young lad. He was about 12...they charged him on the basis of something he said...had he had legal advice...it would've been fine...I should've insisted that he had a legal representative, because if he did, it would have gone nowhere. **Appropriate Adult***

Problems with legal representation

Appropriate adults consistently noted the importance of legal advice for children, and supported the idea of legal representation being compulsory or at least provided on an opt-out basis. However, they also noted that lawyers sometimes do not have the time to properly engage with or understand the children they are representing.



*Appropriate Adults are usually left while solicitors just leave...and they don't really understand, you know, they're not there listening to this poor boy or whoever crying because they're not going to get bail unless they give certain information...and it's very sad. Really sad! **Appropriate Adult***

*They're paid by the visit, not by the hour and they just want to be in and out and on to the next one. **Appropriate Adult***

Problems with support from appropriate adults

A common theme in responses was problems that arise when a child's parent acts as their appropriate adult. Respondents did note benefits of parents supporting their children, but also described significant problems that can arise when parents act as appropriate adults, including children feeling pressured to admit guilt.

“ I think they could be a double-edged sword. Sometimes you get the family members who do encourage the young person to talk and sometimes just to stop them talking rubbish when they go off on their own. But other times you can see there's definite friction between the two of them, which certainly doesn't help. **Defence Solicitor** ”

*I think parents quite often do interfere, either because they think it's best for the child or just... “I'm telling you to admit it, you've done it”, “the police are here to help”, whatever, that's quite common. **Defence Solicitor***

*Where parents act as an appropriate adult I think I would agree with the comment that there is an additional pressure on the young person to admit it, just tell the truth, you know let's get out of here, you know and just have experience rather than because that is the evidence. **Prosecution Solicitor***

*If they've not experienced the criminal justice system or court to have their parents or their relatives in with them while also speaking to their solicitor, that adds extra pressure. **Defence Solicitor***

*...the problem you often have is the appropriate adult, if they're a relative or angry with the young person, and it might pressurise the young person to make an admission that he really doesn't want to make. **Defence Solicitor***

Respondents also noted that children supported by their parents are less likely to ask for legal representation than children supported by another adult, and described parents sometimes giving poor advice or not being able to advocate for their child, due to a lack of legal knowledge.

“ I think that... I think you get quite a lot... it depends on who is... who's in custody because if you have somebody and it is a family member that is sitting in as an appropriate adult... they often don't seem to want a solicitor. But if it's somebody who they can't get a family member and they've got to get somebody from the appropriate adult service, then they insist upon a solicitor being present. **Defence Solicitor** ”

*Think there is a big difference – parent won't know the rights their children should have so aren't able to advocate with them in the same way as someone from an AA service. But can provide an important safeguard as they understand the legal advice. **Barrister***

*'well you know my dad said if I accepted it that would be it...' **Barrister***

While lawyers were generally more positive about appropriate adults from an appropriate adult scheme than about parents acting as appropriate adults, they noted some problems with consistency in the quality of support.

“ I don't actually think many people taking on the role as an appropriate adult really understand what their purpose is and what they tend to do is to think well a solicitor is present so it's fine and ask you know ask the child a couple of times if there alright or if they want a break. **Barrister** ”

4. Enhanced vulnerability

Certain children have been identified as particularly vulnerable in the criminal justice system due to difficulties coping with stress, decision-making differences, a limited capacity for understanding complex information, or a tendency towards impulsive behaviour. Two disorders with the potential to be important in understanding admissions are autism spectrum disorders (Autism) and Attention Deficit Hyperactivity Disorder (ADHD).

Autism is a developmental disability which affects how people communicate and interact with the world.²⁰ Several characteristics of Autism make those with the disorder particularly vulnerable when faced with the opportunity to admit guilt and accept a caution.

People with autism have difficulties with social imagination and may not fully appreciate the implications of their behaviour or decisions. In addition, people with autism may find the experience of being accused of a criminal offence particularly difficult. According to the National Autistic Society, the very presence of the police may cause great anxiety to an autistic person who has no comprehension of the crime they may have committed.²¹

ADHD is a condition that is characterised by a lack of attention, hyperactivity, and impulsiveness. Children with ADHD may struggle to pay attention when receiving legal information, and may find it hard to cope with criminal justice processes.²²

Although there are protections in the current system for children with Autism, ADHD, and other behavioural or developmental disorders, including the availability of intermediaries to help with communication difficulties, our respondents confirmed that they still face enhanced difficulties when deciding whether to accept guilt and receive a caution. The most frequent feedback given was that those with Autism, ADHD, or other behavioural or developmental disorders often find criminal justice processes particularly hard, and are more likely than others to plead guilty just to get out of the police station.



In my experience, especially over the lockdown period, people with Autism are suffering from the changes to their routines and a trip to custody tends to be additionally traumatic. These clients are more likely to accept a caution in order to leave custody as soon as possible. **Appropriate Adult**

Young people with Autism, ADHD or other mental health issues, can find the process extremely stressful. If they have not been arrested before, they have to meet multiple strangers, a lawyer, an appropriate adult and this adds to the stress of the arrest. It also means they would rush the process as a way of getting out of the station. Also, they cannot imagine having to go through it all at Court again. **Defence Solicitor**

Young defendants with disorders are more likely to accept a caution because they are more likely to admit to their actions because they don't understand the implications. **Defence Solicitor**

...children with autism or other difficulties wish to avoid high pressure situations. **Defence Solicitor**

Children with autism and ADHD are more likely to accept cautions as they don't understand consequences and don't understand that if they have a defence they've not done a bad thing. **Defence Solicitor**

5. Accepting guilt and cautions in children: Recommendations

■ Legal representation should be mandatory for children

Our respondents almost unanimously agreed that legal representation should be mandatory for children.²³ Currently, a significant number of children are not receiving legal advice as they have the option not to, and not having a lawyer can be seen as quicker and easier, and as less indicative of guilt. Children can make the decision not to receive legal advice without fully realizing why they need legal advice and how not having this advice can disadvantage them, for example through making admissions that don't reflect true involvement in a crime or through misunderstanding the implications of a caution. Although children typically know what they've done, they may well not know whether that behaviour matches up to the behaviour required for legal guilt, or whether there is a viable defence they may be able to rely on. In the absence of legal support, they are therefore particularly susceptible to admitting to having committed an offence without really knowing whether they have done so. Where children do not have legal representation, appropriate adults can also be put in a difficult situation, knowing a child could benefit from legal advice but not being able to provide it within their remit.

■ Lawyers working with children should receive tailored training

The current system relies on appropriate adults to assist children with communication difficulties. While appropriate adults can be very effective in this role, there are clearly cases where they can be less effective, particularly when they are parents of the child defendant. Parents may have their own agenda and opinions, or may simply not have the skills or training to identify communication problems themselves. Lawyers should receive training to ensure they can effectively communicate with young clients and can identify potential communication deficits in children, particularly where these are not obvious. This approach may also allow lawyers to utilize appropriate adults more effectively in working with their child clients. The evidence in this report suggests lawyers are already trying to support children with communication difficulties, particularly where they don't feel the child is sufficiently supported by an appropriate adult. Taking on this role can be helpful, particularly where the child is supported by their parent rather than an adult from an appropriate adult scheme, but it also has the potential to be counter-productive where sufficient training for the lawyer has not been provided.

■ Lawyers working with children should assist with caution acceptance and receive appropriate remuneration

Formally admitting guilt and accepting a caution is an important point in the criminal justice process for a child. The information relating to the caution and the paperwork that a child has to sign can also be complex. This report suggests that children are often left to make formal admissions and sign this paperwork without legal representation. This lack of representation risks children making uninformed decisions and even admitting involvement that is inconsistent with reality. Accompanying children making admissions decisions should therefore be seen as a necessary part of a lawyer's role regardless of whether the caution is accepted relatively soon after the police interview or at a later point after the child has been released on bail. Remuneration that lawyers receive should reflect this additional time at the police station, or the additional time involved in attending the police station again.

■ Language surrounding cautions should be regulated and recorded

The data in this report shows that children can lack understanding of the long-term implications of accepting a caution, and that this may partly be due to language used surrounding cautions. It suggests that the current requirements of explaining statutory provisions in 'ordinary language' are not sufficient to allow children to make informed decisions. The language used around cautions should not just be 'ordinary' but should be clear, consistent, and understandable for children. Importantly, the criminal records implications of a caution for the child should be clearly and explicitly explained, with illustrative and accessible examples. Digitally recording discussions surrounding cautions would be helpful here in order to monitor language used and to ensure that it is clear to children exactly what the caution is and what the child is accepting when they accept a caution. Providing recommended language for police officers to use may be helpful to them when discussing cautions with children.

■ Cautions should be clearly justified based on evidence

The data in this report suggests that some children accept cautions where they have not committed a criminal offence, or where their involvement in an offence is not consistent with what they admit to. There is a very real risk that innocent children admit guilt to receive a caution and avoid prosecution. In this context, it is very important that cautions are only offered to children who will be proceeded against in court if they do not admit guilt. If not, cautions risk being used to co-opt children, who may not be guilty, and who would not otherwise be convicted, into admitting guilt and living with the consequences of having done so.

Children should, wherever possible, be considered for diversion from the youth justice system. Diversion schemes in particular have been shown to be effective in reducing re-offending in children.²⁴ These schemes can also operate without admissions of guilt from children,²⁵ since they do not result in a criminal record. Where these schemes move away from requiring admissions of guilt, they can protect children from harmful incentivized admissions and minimize harmful and stressful involvement with the justice system.

■ Cautions should not have criminal records implications

Even where a child has good legal advice, it may still be preferable for them to accept a caution rather than risk conviction in court. As long as compelling incentives exist for innocent children to accept cautions, it is problematic for a caution to form part of a child's criminal record and to have the potential to significantly influence their future prospects regardless of future involvement in crime. Removing criminal records implications would open the door to allow cautions to be given based on a looser criterion than a formal admission of guilt. This loosening would create a fairer system in which children would not have to make formal legal admissions to crimes they may not even understand in order to avoid escalation of the case against them.

Endnotes

- 1 Data on guilty plea rates is from freedom of information requests, and is available on request from the author. Remaining data from Ministry of Justice, 'Youth justice statistics' (2020), assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956621/youth-justice-statistics-2019-2020.pdf accessed 24 June 2021.
- 2 Centre for Justice Innovation, 'Who should be eligible for youth diversion? Evidence and practice briefing' (2019) justiceinnovation.org/sites/default/files/media/document/2019/Eligibility%20Criteria%20Briefing.pdf accessed 9 June 2021.
- 3 Legal Aid, Sentencing and Punishment of Offenders Act 2012, s66ZA(1)(b).
- 4 See Gov.uk, 'Police warnings, cautions, and penalty notices' www.gov.uk/caution-warning-penalty accessed 9 June 2021.
- 5 Ministry of Justice, 'Youth justice statistics' (2015), assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/495708/youth-justice-statistics-2014-to-2015.pdf; Ministry of Justice, 'Youth justice statistics' (2016) assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf; Ministry of Justice, 'Youth justice statistics' (2017) assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/676072/youth_justice_statistics_2016-17.pdf; Ministry of Justice, 'Youth justice statistics' (2018) assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774866/youth_justice_statistics_bulletin_2017_2018.pdf; Ministry of Justice, 'Youth justice statistics' (2019) assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf; Ministry of Justice, 'Youth justice statistics' (2020) assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956621/youth-justice-statistics-2019-2020.pdf. All accessed 24 June 2021.
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- 8 R. K. Helm, 'Too young to plead? Risk, rationality, and plea bargaining's innocence problem in adolescents' (2018) 24(2) *Psychology, Public Policy and Law* 180.
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- 10 L. H. Somerville et al., 'Frontostriatal maturation predicts cognitive control failure to appetitive cues in adolescents' (2011) 23 *Journal of Cognitive Neuroscience* 2123; L. Steinberg, 'A social neuroscience perspective on adolescent risk taking' 28 *Developmental Review* 78.
- 11 S. M. Kassin and K. L. Kiechel, 'The social psychology of false confessions: Compliance, internalization and confabulation' (1996) 7 *Psychological Science* 125.
- 12 See, for example, Children and Young Persons Act 1933.
- 13 Legal Aid, Sentencing and Punishment of Offenders Act 2012, s135, amending s66 of the Crime and Disorder Act 1998.
- 14 Legal Aid, Sentencing and Punishment of Offenders Act 2012, s135, amending s66 of the Crime and Disorder Act 1998.
- 15 V. Kemp, 'Digital legal rights: Exploring detainees' understanding of the right to a lawyer and potential barriers to access' (2020) 2 *Criminal Law Review* 129.
- 16 A. Wigzell et al., 'The youth proceedings advocacy review' (2015) 54–55, eprints.bbk.ac.uk/13577/1/ypar_final_report_-_for_publication_19.11.2015.pdf accessed 24 June 2021.
- 17 Bar Standards Board, 'Youth proceedings competences' (2017) www.barstandardsboard.org.uk/uploads/assets/197b7604-ac56-4175-b09476ec43ef188c/bsbyouthcompetencies2017forwebsite.pdf accessed 24 June 2021.
- 18 However, it should not be noted that not all respondents agreed with this conclusion. For example: "It's rare that a young person accepts a caution when they haven't actually committed a crime. Majority of the time young people don't want to admit when they have done something wrong" (Defence Solicitor).
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- 23 Specifically, among lawyers and appropriate adults, since child respondents were not asked about suggestions for reform.
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- 25 Centre for Justice Innovation, 'Who should be eligible for youth diversion? Evidence and practice briefing' (2019) justiceinnovation.org/sites/default/files/media/document/2019/Eligibility%20Criteria%20Briefing.pdf accessed 24 June 2021.



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