

# Deciding to have a Crown Court jury trial for a theft offence: Consequences, and relationships with ethnicity

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**This Data Insight investigates the consequences of a defendant electing to have a Crown Court trial, as compared to having their case heard in the magistrates' courts, after pleading not guilty to an either-way theft offence. Either-way offences are offences that can be tried in the magistrates' courts or in the Crown Court. The Data Insight also examines this decision in relation to ethnicity.**

The analysis is based on either-way theft offences initiated (charged or summonsed) between 1 January 2018 and 31 December 2020 for which the defendant pleaded not-guilty in the magistrates' courts. It compares cases where the defendant decided on a Crown Court trial to those where the defendant elected for the case to remain in the magistrates' courts. To ensure valid comparisons, the analysis excludes cases where the magistrates decided that the case was sufficiently serious to be sent to the Crown Court (4% of not-guilty pleas for an either-way theft offence).

## Background

Either-way offences are offences that can be tried in the magistrates' courts or in the Crown Court. Cases start in the magistrates' courts. If a defendant pleads not guilty to an either-way offence, the magistrates can decide that the case is too serious for them to deal with and send the case to the Crown Court for trial. If the magistrates decide that they can hear the case, the defendant then has the choice of remaining in the magistrates' courts for trial or having a jury trial at the Crown Court instead. If a defendant is found guilty in the magistrates' courts on an either-way offence, the case can be sentenced by the magistrates' courts or sent to the Crown Court for sentencing.

Ministry of Justice (MoJ) statistics indicate that defendants from minority ethnic backgrounds, particularly Black defendants, are more likely to elect for a jury trial at the Crown Court compared to White defendants (MoJ, 2021). The Lammy Review suggests that this may be due to defendants from minority ethnic backgrounds feeling they will not receive a fair hearing from magistrates (Lammy, 2017).

Hedderman and Moxon (1992) found through interviews that the most common reason defendants and solicitors opted for a Crown Court trial was that they felt there would be a better chance of acquittal. Figures from the Crown Prosecution Service (2022), for cases prosecuted in 2021 to 2022, indicate that where cases go to an actual trial hearing:

- 71% result in a conviction when heard in the magistrates' courts
- 56% result in a conviction when heard in the Crown Court.

However, if the defendant is convicted, having the case heard at the Crown Court could potentially lead to a harsher sentence (Hedderman and Moxon, 1992).

This Data Insight, which focuses on either-way theft offences, investigates the relationship between ethnicity and electing for a Crown Court trial. It also compares the outcomes of cases where the defendant elects for a Crown Court trial to those where the case is heard in the magistrates' courts.

## What we did

I first linked the [Data First magistrates' and Crown Court datasets](#) using the case table from the criminal courts, prisons and probation linking dataset. The resultant combined magistrates' and Crown Court dataset contains all cases initiated from 1 January 2013 to 31 December 2020. The analysis included in this Data Insight is based on either-way theft offences initiated between 1 January 2018 and 31 December 2020. This period was chosen to allow previous convictions over at least a five-year period to be controlled for when making comparisons. It does however include the period impacted by Covid-19, during which the number of cases received by the courts fell (although not so much for either-way cases compared to summary cases – less serious cases which can only be heard in the magistrates' courts), but backlogs grew (Institute for Government, 2023).

Ethnicity data is collected by the police. This analysis is based on self-identified ethnicity which is collected during a custody interview. The defendant is asked to identify their own ethnicity from a list of 16 options. Responses are then placed into five broader ethnic groupings (White, Asian, Black, Mixed and Other). The group 'Other' includes people who selected 'Chinese' or 'Any other ethnic group' from the list of 16 options. This analysis is based on the broad ethnic groupings because there are too few people in some groups to break the findings down to more refined ethnic groups, although some descriptive statistics are presented for more detailed ethnic groups.

I identified:

1. Either-way theft cases where the defendant pleaded not guilty in the magistrates' courts and chose to have their case sent to the Crown Court
2. Either-way theft cases where the defendant pleaded not guilty in the magistrates' courts and the case remained in the magistrates' courts for the determination of guilt or innocence.

Group 2 above includes cases subsequently sent to the Crown Court for sentencing after determination of guilt. These were included because the defendant has no control over this decision. In instances where a defendant consents to a summary trial in the magistrates' courts, if convicted the case could subsequently be sent to the Crown Court by the magistrates' courts for sentence. This needs to be taken into account in assessing the consequences of electing to have a Crown Court trial. In order to make valid comparisons, we need to compare those who choose to have a Crown Court trial against all those who opt for a summary trial, including those subsequently sent to the Crown Court for sentence.

Regression analysis enables the relationship between two variables to be assessed while controlling for other variables. I used logistic regression analyses to investigate:

- The relationship between ethnicity and choosing to have the case sent to the Crown Court for trial, as compared to the case remaining in the magistrates' courts (controlling for age, sex, and number of previous convictions)
- The relationship between court type, ethnic group and the outcome of convicted cases in terms of whether the defendant received a sentence of immediate custody (controlling for age, sex, and number of previous convictions).

I used ordinary least squares regression to identify whether there is a difference between the two courts in the length of prison sentences (controlling for age, sex and number of previous convictions). The sample size is sufficient for the normality assumption to be met.

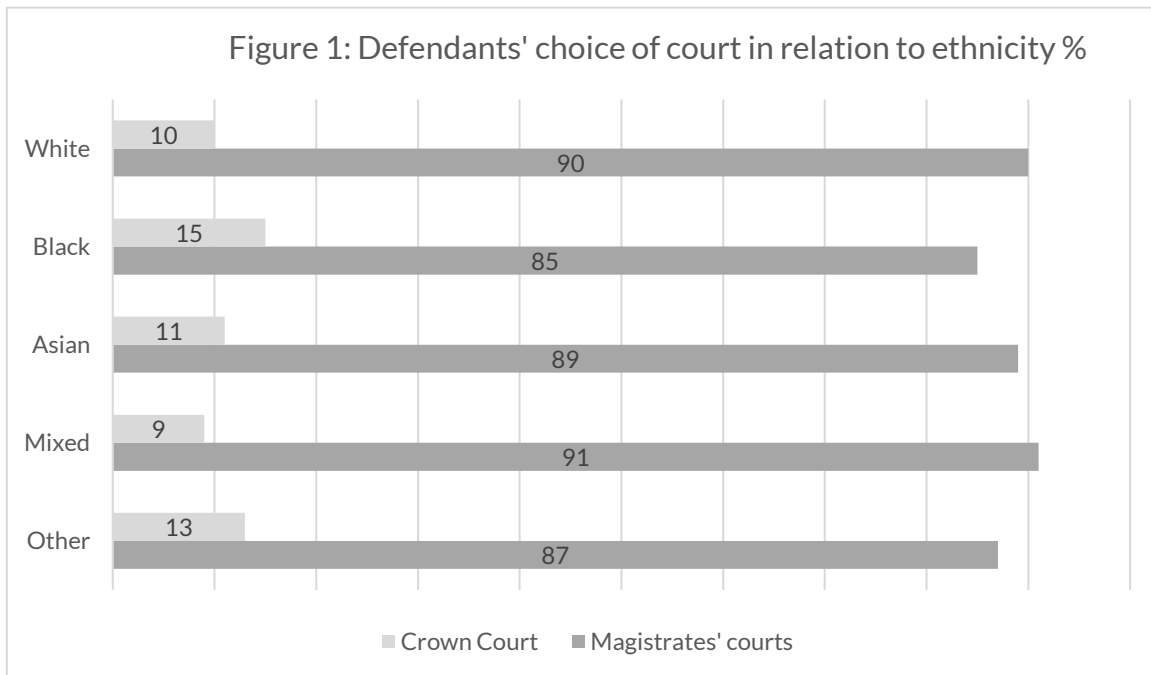
Unfortunately, it is not possible to control for different theft offence types due to the large number of different theft offence categories and therefore small numbers of cases within each category. It is also not possible to control for co-defendants, as co-defendants are not recorded for magistrates' courts data.

## What we found

### **Black defendants are significantly more likely to elect to have their case heard in the Crown Court**

The analysis is based on 7,507 defendants who had pleaded not guilty to an either-way theft offence. 6,782 of these defendants remained in the magistrates' courts for the determination of guilt or innocence; while 725 elected to have their case sent to the Crown Court. Of the total 7,507 defendants, ethnicity is not stated for 1,705 defendants (23%). Where ethnicity is stated, defendants are 81% White, 8% Black, 4% Asian, 3% Mixed, and 2% belong to another ethnic group. 82% of the defendants are male and 18% are female.

Figure 1 indicates the percentage of people who chose to remain in the magistrates' courts compared to electing to have their case sent to the Crown Court for each ethnic group.



Analysis indicates that compared to White defendants, Black defendants are significantly more likely to elect to have their case heard in the Crown Court and this remains the case after controlling for age, sex, and number of previous convictions. Black defendants are 41% more likely to choose to have their case heard in the Crown Court compared to White defendants. Compared to White defendants, defendants in all other ethnic groups were no more or less likely to elect to have their case sent to the Crown Court.

As stated above, the analysis focused on broad ethnic groups because there are too few people in some groups to analyse the more detailed ethnic groups. This does however mask some differences within groups: 17% of Black African defendants and 16% of defendants from 'Any other Black Background' elected to have their case heard in the Crown Court compared to 12% of Black Caribbean defendants.

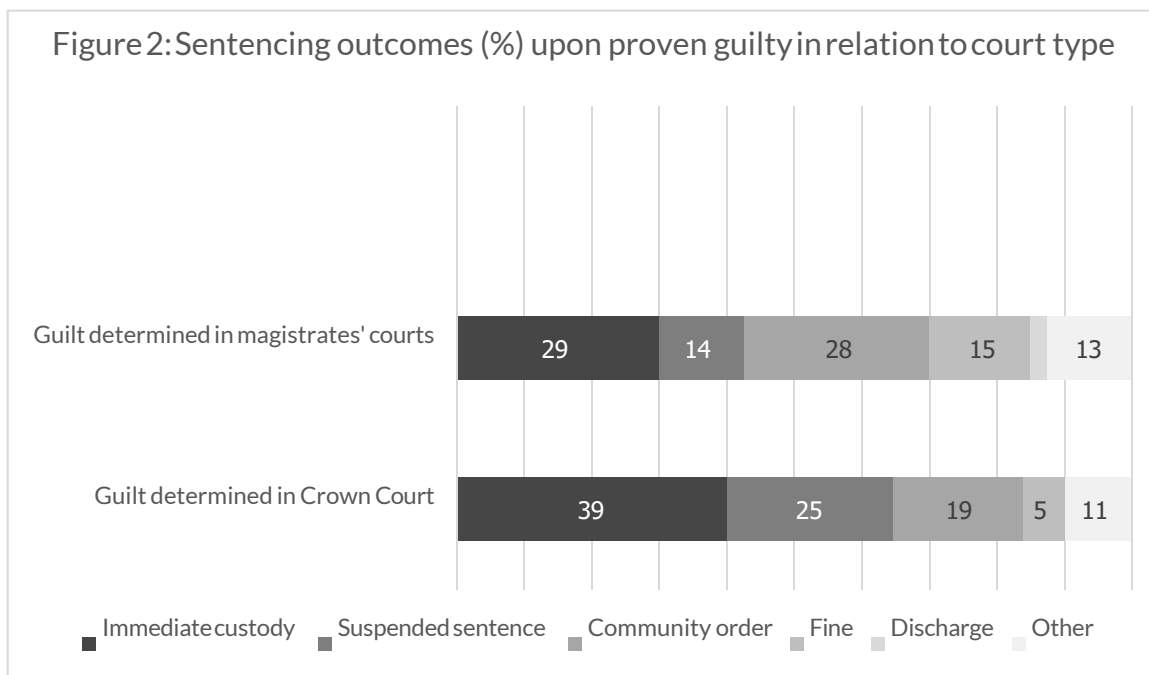
### **There is a higher proportion of convictions for cases that elect to be heard in the Crown Court**

34% of cases which remained in the magistrates' courts resulted in a conviction, compared to 55% of cases that elected to go to the Crown Court. This may appear odd because as stated above, figures from the Crown Prosecution Service indicate that for cases that go to a trial hearing, the conviction rate is higher for the magistrates' courts compared to the Crown Court (Crown Prosecution Service, 2022). The greater likelihood of conviction in the Crown Court found here is most likely because defendants change their plea to guilty before the trial. Unfortunately, the datasets used for this analysis do not allow changes of plea to be identified, but in view of the Crown Prosecution Service figures, change of plea would seem to be the most likely explanation. Hedderman and Moxon (1992) found that the majority (82%) of those who chose to be dealt with at the Crown Court ended up pleading guilty to all charges on which they were convicted.

### Sentences are more severe and more likely to result in immediate custody for cases which elect to go to the Crown Court

Figure 2 provides the sentencing outcomes as percentages for defendants that are convicted in the two courts. Cases sent by the magistrates after conviction to the Crown Court for sentence are included with magistrates' courts cases because, to make valid comparisons, we need to compare those who choose to have a Crown Court trial against all those who opt for a summary trial in the magistrates' courts. This includes those subsequently sent to the Crown Court for sentence. Sentence type decreases in severity from left to right.

It can be seen that sentences imposed for cases which elect to go to the Crown Court are more severe than for those that remain in the magistrates' courts for determination of guilt. Analysis indicates that the likelihood of immediate custody is significantly higher for defendants that elect to go to the Crown Court, and this remains the case after controlling for age, sex, ethnic group and number of previous convictions.



### The average length of sentences for immediate custody is longer for cases electing to be heard in the Crown Court

The average length of sentences of immediate custody is 284 days for defendants electing to go to the Crown Court. It is 133 days for defendants that remain in the magistrates' courts for determination of guilt, including those subsequently sent to the Crown Court for sentence. Analysis indicates that this is a significant difference, and this remains the case after controlling for age, sex, ethnic group and number of previous convictions.

## Why this matters

The above findings indicate that defendants who plead not guilty in the magistrates' courts and elect to have their case sent to the Crown Court are:

- more likely to receive a conviction
- more likely to receive a more severe, and longer sentence

compared to if they had chosen for their case to remain in the magistrates' courts for determination of guilt or innocence. The findings control for offence seriousness to the extent that the analysis is restricted to either-way theft cases where the magistrates do not consider the case to be of sufficient seriousness or complexity to send it to the Crown Court for trial. However, the analysis does have the limitation that it does not control for differences in offence types within the either-way theft offence category.

More and longer prison sentences contribute to prison numbers and we currently have a prison population crisis highlighted by the Chief Inspector of Prisons (HMIP, 2023). Black defendants are more likely than White defendants to elect for their case to be sent to the Crown Court. This may be a factor in contributing to more severe sentences for Black defendants.

Crown Prosecution Service figures indicate that for cases that go to a trial hearing, the conviction rate is higher for the magistrates' courts than the Crown Court (CPS, 2022). However, if defendants elect for their case to go to the Crown Court, and then subsequently change their plea to guilty, they will not benefit from this apparently lower conviction rate.

In addition, it is important to consider what the higher conviction rate in the magistrates' courts represents. Defendants and defence solicitors are likely to think that magistrates are 'on the side of the police' (Hedderman and Moxon, 1992). However, another explanation could be that cases with more solid prosecution evidence are filtered out before they reach a Crown Court trial because the defendant changes their plea to guilty. Magistrates may be hearing a greater proportion of cases with more solid prosecution evidence, because there has not been time for the defendant to change their plea before it is heard in the magistrates' courts. In other words, the difference may at least in part be due to differences in the weight of evidence, rather than something intrinsic to magistrates or their decision making. It is not possible to verify this using the data that was used for this analysis, but this is a topic worthy of further investigation.

## What next?

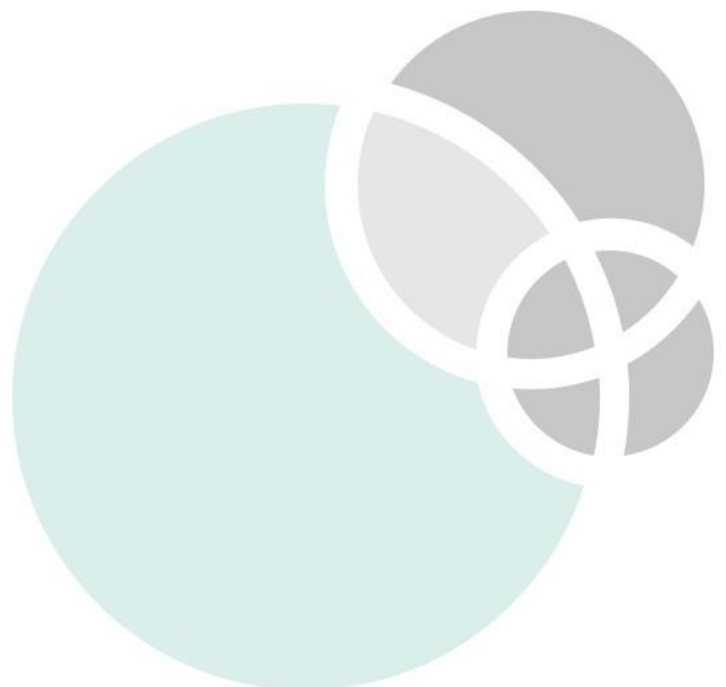
Cases going to the Crown Court increases costs for the courts, the Crown Prosecution Service, and other agencies. It also adds to delays which impact the courts, the defendant, victims and witnesses. Court backlogs in the Crown Court reached a record high of 64,709 in June 2023 (Institute for Government, 2023).

Somewhat unexpectedly, my findings indicate that defendants who choose to go to the Crown Court for a jury trial are more likely to end up with a conviction than those who choose for their case to remain in the magistrates' courts. The most likely explanation for this is that the defendant changes their plea to guilty before the case actually goes to trial. Unfortunately changes of plea cannot be identified with the datasets used for this analysis – further research into the proportion of people changing their plea and why people change their plea having elected for a Crown Court trial would be extremely useful. If the likelihood of this could be reduced, it would probably benefit both defendants and the courts.

As defendants only have a choice of venue (between the magistrates' court and Crown Court) for either-way cases where they have not pleaded guilty, and where the magistrates have not sent the case to the Crown Court, any analysis of the consequences of this decision is necessarily restricted to cases meeting these criteria. The number of cases meeting these criteria, and the number of cases falling into specific ethnic groups, therefore restricts the analysis that can be undertaken. It would be interesting to examine whether the findings vary by type of theft offence or whether the consequences of choosing to go to the Crown Court vary by ethnicity, however, such examination would require more cases.

One possibility would be to look at cases over a longer time period, but using the current Data First data, that would come at the cost of controlling for previous convictions over a shorter time period. If data on all previous convictions - for example from Police National Computer (PNC) data - were available, this type of further analysis would be possible.

Soon to be released updated versions of the Data First Crown and magistrates' courts datasets will contain information on all cases rather than on just the most serious offence, as is the case with the current datasets. This will make more analysis possible, and in more granular detail. However, in relation to the issues addressed in this Data Insight, this may not increase the pool of available cases. This is because where the either-way theft offence is not the most serious offence, it is likely to be combined with more serious indictable offences. It would therefore be sent to the Crown Court and the defendant would not have a choice of venue.



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The following Data First resources were used:

Ministry of Justice. (Released 9 November 2021). *Ministry of Justice Data First Crown Court Defendant - England and Wales*. ONS SRS Metadata Catalogue. DOI: <https://doi.org/10.57906/a5ds-fc94>

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This work uses research datasets which may not exactly reproduce National Statistics aggregates. National statistics follow consistent statistical conventions over time and cannot be compared to Data First linked datasets.

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