

ANGLIA RUSKIN UNIVERSITY

FACULTY OF ARTS, HUMANITIES AND
SOCIAL SCIENCES

EFFICIENCY & THE SUMMARY JUSTICE
PROCESS:

A COURTROOM OBSERVATION STUDY
OF AN ENGLISH MAGISTRATES' COURT

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A thesis in partial fulfilment of the
requirements of Anglia Ruskin University
for the degree of Doctor in Philosophy
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ABSTRACT

FACULTY OF ARTS, HUMANITIES AND SOCIAL SCIENCES

DOCTOR OF PHILOSOPHY

EFFICIENCY & THE SUMMARY JUSTICE PROCESS: A COURTROOM
OBSERVATION STUDY OF AN ENGLISH MAGISTRATES' COURT.

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This thesis argues that there are summary justice practices which prioritise managerial values of speediness and procedural standardisation over other quality justice values (including but not limited to verdict accuracy, defendant comprehension and sentence proportionality). The thesis also argues that court users are experiencing significant adversity during the summary justice process, rendering the process inefficient from their perspective. From these findings, the thesis develops policy reform recommendations aimed at improving the summary justice process. Some of these reform recommendations draw attention to the capacity of the summary justice process to maintain its speediness whilst upholding quality justice values.

This thesis offers a case study of a single English magistrates' courthouse. It utilises novel stenographic data that the researcher collected from 66 days of court observations, over a 6-month period. Developing from Packer's seminal 1968 work, this thesis also utilises MacDonald's (2008) theoretical framework to understand social values in multi-dimensional (pluralistic) terms. The thesis also utilises ideas of post-managerialism, procedural due process and social justice to support its critical discussions of courtroom practices (Raine and Willson, 1997; Ward, 2016). The thesis presents its findings thematically across three chapters.

This thesis makes a significant and original contribution to knowledge by using novel in-court observational data to form a unique perspective on summary justice efficiency. From this unique perspective, the thesis offers reform recommendations aimed at addressing the problem of summary justice over-efficiency.

Key words: efficiency, summary justice, courts, values, reform.

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CHAPTER 1. INTRODUCTION

1.1 INTRODUCTION

This thesis argues that there are summary justice practices that prioritise managerial values of speediness and procedural standardisation to the detriment of other quality justice values. These quality justice values relate to concepts of social justice and procedural due process. The thesis also argues that court users are experiencing significant adversity during the summary justice process, rendering the process inefficient from their perspective. To support these arguments, the thesis utilises original data from a case study of a single English magistrates' courthouse.

1.2 THE RESEARCH PROBLEM

In recent years, thinkers have argued that the summary justice process has become “too efficient” or “overly efficient” because it allegedly neglects more important values, such as fairness and democratic legitimacy (Jones, 1993: 195; Belbot and Marquart, 1998: 305; Shichor and Gilbert, 2001: 4; also see Fix-Fierro, 2003; Hungerford-Welch, 2011; Marsh, 2016). Such thinkers have argued that the costs of an overly efficient justice process include: imprisoning the innocent and exculpating the guilty (Marsh, 2016), the unequal treatment of defendants (Fowler, 2013; Gibbs, 2017), the obstruction of defendants' effective participation in proceedings (Gibbs, 2017; McKay, 2018) and human rights breaches (Owusu-Bempah, 2013; 2016). Summary justice research is therefore important because it offers insight into how the in-court process should prioritise different, competing values so that the process remains substantive.

The established criminal justice academic literature has largely criticised the pro-efficiency trend towards managerialism, which includes the repositioning of public services towards actuarial markers of success (see Raine and Willson, 1993; 1995; 1997; Welsh, 2016; further unpacked in Section 2.2.3, 2.4). Prior lower criminal court efficiency research has typically been theoretical (see Sanders, 2001; MacDonald, 2008; Marsh, 2016) or it has relied upon interview data collected outside of the courtroom (see Gibbs, 2017; McKay, 2018). Additional, in-court observational research could enhance this existing theoretical and out-of-court literature. Indeed, contributions from multiple perspectives can support policy

makers by providing them with greater insight regarding how to balance competing values in the summary justice process.

In-court, observational summary justice research is useful because it can contribute a unique perspective regarding how the process is able to balance the efficiency against other quality justice values. Indeed, such research can offer insight into the lived experience of the court setting. The present thesis aims to make such a contribution to the literature by conducting original, in-court, observational research. The thesis uses novel stenographic¹ data to facilitate an evidence-based critical discussion regarding how the summary justice process should prioritise efficiency. The objectives of the thesis are to:

1. Observe summary justice practices as they take place in an English and Welsh magistrates' courthouse.
2. Interpret the dominant values that underpin these observed practices.
3. Critically discuss these interpretations of value-laden practices and their prioritisations in view of the concerns raised in the literature.
4. Generate efficiency-focused reform recommendations aimed at improving the summary justice process.

1.3 CENTRAL FINDING OF THESIS

The central finding of this thesis is that, presently, there are summary justice practices which are for over-efficiency. Meaning, there are summary justice practices which prioritise managerial values of speediness and procedural standardisation to the detriment of other values that uphold justice quality². These quality justice values relate to the overarching concepts of social justice and procedural due process. The thesis developed this central finding by critically discussing the following observed practices: district judges' workgroup leadership, solicitors' cooperativeness, the court workgroup's collective management of defendants, the workgroups underutilisation of mental health diversion pathways

¹ The thesis collected observational, verbatim typed notes from the gallery of courtrooms in a single courthouse. This is what the thesis means by 'stenography' (a method similarly described by Short and Leight, 1972; Baldwin, 2008). Section 3.4.1 unpacks this data collection method further (also see Appendix 1).

² Specifically, these quality justice values include verdict accuracy, democratic oversight, defendant participation, defendant comprehension, sentence proportionality, institutional legitimacy, defendant safeguarding, fair sentencing, pragmatic problem-solving and accessible justice. The critical discussion sections of Chapters 4, 5 and 6 detail how the observed summary justice process undermines or 'deprioritises' these values.

and the court workgroups engagement in under-specialised processes for substance-related offending.

This thesis also argues that court users experienced significant adversity during the summary justice process, rendering the process inefficient from their perspective. This thesis supports this argument by discussing court users' involvement during in-court oral evidence giving practices and how the summary justice process placed significant externalities on them.

From these findings, the thesis develops several policy reform recommendations. Some of these reform recommendations draw attention to the capacity of the summary justice process to maintain its speediness whilst upholding quality justice values. The thesis frames this promotion of greater speediness alongside quality justice as post-managerial efficiency, developing from the seminal works of Raine and Willson (1995; 1997) and the multi-dimensional framework of MacDonald (2008).

1.4 SIGNIFICANT & ORIGINAL CONTRIBUTION TO KNOWLEDGE

This thesis makes a significant and original contribution to knowledge by using a novel, in-court, observational method (stenography) to form a unique perspective on how the summary justice process prioritises efficiency. This method allowed the researcher to gain direct insights of the court process. From this, the thesis offers policy reform recommendations designed to curtail the problem of over-efficiency.

The thesis is original because of its novel data collection method and the insights it provides regarding efficiency in the summary justice process. Presently, there are court observation studies that have focused on the English and Welsh lower criminal court process with a focus on courtroom efficiency (see for example, Welsh, 2016; Ward, 2016; Nicklas-Carter, 2019). However, these studies have typically focused on interview data, with court observation data serving a supplementary role or performing part of a multi/mixed methodology (again see Welsh, 2016; Ward, 2016; Nicklas-Carter, 2019). This thesis used an observation-only, stenographic, in-court, note-taking method. This is atypical of lower criminal

court studies³. The thesis used this underutilised method to develop a unique perspective on summary justice efficiency (further unpacked in Section 3.4.1).

The thesis contributes to the socio-legal literature by offering new insights into what can be meant by summary justice efficiency. This thesis is the first instance that MacDonald's (2008) theoretical framework has been adapted for original, lower criminal court, observational research in the English and Welsh context. This thesis applies McDonald's (2008) work by framing values as multi-dimensional, pluralistic constructs⁴. In utilising this approach, the present thesis offers a unique analysis and critical discussion of efficiency in the summary justice process, anchored in original empirical data. In this way, the thesis expands the socio-legal literature by applying an underused theoretical framework to offer novel insights into summary justice efficiency.

The thesis is significant because it explores to what extent the summary justice process is overly efficient whilst also offering reform recommendations to curtail this problem. The thesis draws attention to how, at least in one English and Welsh courthouse, the summary justice process prioritised speediness, procedural standardisation and procedural adversity to the detriment of other quality justice values. The intention of this thesis is to serve in an advisory, underlabouring capacity for policy makers. This focus on curtailing the problem of over-efficiency and its offering of policy reform recommendations renders the thesis significant.

1.5 SOCIO-LEGAL RESEARCH

This thesis is situated within the field of socio-legal studies. This thesis differs from typical criminological research because it does not centre on criminality/theories of criminal behaviour. Additionally, the thesis is not as broad as to be associated primarily within the discipline of sociology. Instead, the thesis reflects the

³ Prior English and Welsh socio-legal researchers may have avoided using this method because it involves "lengthy periods of unrelenting tedium" (Baldwin, 2008: 245). Yet, this method is also valuable because it can provide rich data that the researcher can revisit and reflect over (Baldwin, 2008). Section 3.4 further elaborates upon this stenographic method.

⁴ Whilst this theoretical framework develops from Packer's seminal 1968 work, the present thesis agrees with MacDonald (2008: 2) that: "a multi-dimensional framework is needed, and so a one-dimensional framework like Packer's is inappropriate; [...] to adopt a simple yes/no approach to the different ways in which values are held, as Packer did, is inadequate". The thesis consequently adopts MacDonald's (2008: 2), "general contours of a framework for criminal justice research". This thesis further unpacks this framework in Section 2.2.2.

comments of Banakar and Travers (2005: x), who argue that socio-legal studies primarily concern themselves with “legal processes, legal institutions and legal behaviour”. This reflects the nature of the present research because it examines the lower criminal court process (a legal process) taking place within a magistrates’ court (a legal institution), with a focus on courtroom practice (legal behaviours).

The researcher recognises that some sociologists, criminologists and socio-legal researchers argue that there is a lack of clear boundaries between their discipline, with some arguing that distinct disciplines do not exist⁵. Indeed, as argued by Iphofen (2017: xv), it is not uncommon for thinkers across these fields to “borrow from each other”. This is something that the present researcher does not dispute. Despite this, it is useful for the present thesis to situate itself within the field of socio-legal research, to accentuate its academic contributions. Indeed, it is this field that the thesis primarily draws from and contributes to.

1.6 THESIS STRUCTURE & CHAPTER OUTLINE

This thesis consists of seven chapters. Following the present introductory chapter, Chapter 2 establishes the theoretical framework, historical context and relevant literature of the thesis. Chapter 3 then describes and justifies the research design choices of the thesis. Chapters 4, 5 and 6 each offer initial data analysis, followed by critical discussion. It is here that the thesis establishes its key findings. Finally, Chapter 7 concludes the thesis, emphasising its contributions to the field of socio-legal research.

Chapter 2 begins by unpacking the theoretical and conceptual framework of the thesis. Here the thesis frames the criminal justice process as representing competing values (Packer, 1968; see Section 2.2.1) which are pluralistic and open to interpretation (MacDonald, 2008; see Section 2.2.2). This leads the thesis to

⁵ Rock (1988), Lea (1998) and Walklate (2005) have emphasised that criminology draws upon many other fields of study to continually expand its reach regarding theories of crime/criminality, diminishing its distinctiveness as a discipline. Similarly, Welch (1996: 45) comments that “Critical criminology is not so much a theory, but a theoretical perspective based on social critique”. The Socio-Legal Studies Association (2009: s1.2.1) makes comparable comments: “Socio-legal studies embraces disciplines and subjects concerned with law as a social institution, with the social effects of law, legal processes, institutions and services and with the influence of social, political and economic factors on the law and legal institutions”. To this end, the criminological and the socio-legal literature are part of a bleeding line of research that is concerned with critically investigating the criminal justice process in the context of wider social issues.

establish what it means by criminal justice quality: it is tethered to the concepts of procedural due process, social justice and post-managerialism (see Section 2.2.4). From this, Chapter 2 explores the historical context of the thesis with particular attention given to how recent government reports have pushed for greater managerial efficiency in the summary justice process, leading to the problem of over-efficiency (see Section 2.3.3). The remainder of Chapter 2 unpacks contemporary court processes undergoing radical efficiency reform and the literature which surrounds this. To conclude, this chapter formally articulates the research aim, objectives and research questions of the thesis.

Chapter 3 describes the research design of the thesis. The thesis uses a novel, stenographic, note-taking method for data collection. This chapter establishes the usefulness of this method with a focus on how it produces unique data (see Section 3.4). This chapter then explains how the researcher used thematic analysis to analyse the data (see Section 3.5). This research design chapter then discusses ethical and legal considerations (see Section 3.6, 3.7). Of note here, is the researcher's emphasis that they did not use in-court audio recording equipment (as the court does not legally permit this). To reiterate, the researcher relied on in-court, observational note-taking.

Chapters 4, 5 and 6 present the thesis findings. The titles of the chapters are thematic, representing the method of data analysis. These themes are speed-focused managerialism, standardised defendant processes and court users' procedural adversity. Each of these chapters focus on a collection of observed courtroom practices that support an overarching value that characterised the observed summary justice process (speediness, standardisation, procedural adversity). Following initial data analysis, each chapter offers a critical discussion section (see Sections 4.5, 5.5 and 6.4). Chapters 4 and 5 draw attention to how the summary justice process is currently over-efficient: focused on managerial values to the extent that the quality of the summary justice process is diminished. Meanwhile, Chapter 6 demonstrates how the process is inefficient from a court user-focused perspective. Across these chapters, the thesis argues that the summary justice process can improve.

Chapter 7 concludes the thesis. This final chapter offers specific reform recommendations aimed at improving the summary justice process, utilising the aforementioned framework of Chapter 2. Alongside this, this final chapter offers reflection on the limitations of the thesis as well as implications and directions for future research.

CHAPTER 2. SUMMARY JUSTICE EFFICIENCY FRAMEWORK, CONTEXT & LITERATURE

2.1 INTRODUCTION

This chapter provides a critical appraisal of the current literature in the field of summary justice efficiency. In doing so, this chapter establishes the theoretical and conceptual framework of the thesis, its background context and the gaps in the literature the thesis aims to address. Section 2.2 begins this chapter by arguing that the works of MacDonald (2008), Raine and Willson (1995; 1997) and Ward (2016) provide a useful theoretical and conceptual framework for understanding the criminal justice process. Following this, Section 2.3 explains the government's recent influence on the criminal courts and subsequently, why the thesis focuses on the problem of over-efficiency. Section 2.4 then details how thinkers have competing views regarding whether recent reforms are rendering the summary justice process overly efficient or not. From this, Section 2.5 offers a review of the literature, arguing that additional in-court observational research could provide unique insights into the problem of over-efficiency in the summary justice process. Building from this review, Section 2.6 formally presents the research aim, objectives and research questions of the thesis. Collectively, this chapter situates the thesis within the socio-legal study of summary justice efficiency.

2.2 THEORETICAL & CONCEPTUAL FRAMEWORK

This section argues that MacDonald's (2008), Raine and Willson's (1995; 1997) and Ward's (2016) work provides a useful theoretical and conceptual framework for understanding efficiency in the criminal justice process. This section supports this argument by first explaining and summarising Herbert Packer's (1968) seminal study, detailing how influential his work has been to socio-legal criminal justice research (see Section 2.2.1). Section 2.2.2 then explores MacDonald's (2008) revisions of Packer's (1968) work, with specific reference to how social values (including that of efficiency) are multi-dimensional⁶. Following this, Section 2.2.3

⁶ Meaning that values such as efficiency are conceptually pluralistic and can be normative / interpretative.

explains the concept of New Public Management and how Raine and Willson (1995; 1997) have been critical of justice processes that wholly subscribe to managerial values. Finally, Section 2.2.4 applies Ward's (2016) conceptual framework to argue that justice quality is tethered to ideas of post-managerialism, social justice and procedural due process. Collectively, these sections establish the lens from which the present thesis understands and critically discusses summary justice practices. Rephrased, this section establishes the theoretical and conceptual framework for the thesis.

2.2.1 PACKER'S SEMINAL WORK

This section argues that Packer's (1968) work, offers a useful starting point for the present criminal justice process research in establishing its theoretical framework. This section achieves this by summarising each of the three parts of Packer's (1968: 8, 148, 248) seminal work: "Part I. Rationale", "Part II. Process" and "Part III. Limits". Throughout, this section signposts how these parts connect with the larger theoretical and conceptual framework of the thesis, as well as the contextualising socio-legal literature. In doing so, this section establishes the theoretical bedrock of the present thesis.

Part I, "Rationale", provides a useful theoretical justification for the criminal justice sanction and relatedly, the criminal justice process. Here, Packer (1968) argues that the central mission of criminal law is to prevent crime. Tethered to this purpose, however, are other social goals. These include preserving freedoms and delivering justice. This leads Packer (1968: 62) to argue that "punishment is a necessary but lamentable form of social control". Building from this rationale, Packer (1968) argues that there is no single theory of justice that is adequate to be the sole *modus operandi* of criminal punishments. Packer (1968) makes this argument by offering now traditional critiques of theories of punishment (including retribution,

incapacitation, deterrence and rehabilitation⁷) (similarly argued in Brooks, 2021). From here, Packer (1968: 62) proposes his 'Integrated Theory of Criminal Punishments' as an adequate justification for the criminal courts to deliver sanctions / punishments. This theory:

“rejects the retributive position insofar as that position views the infliction of punishment on a blameworthy offender as a sufficient justifying condition; it rejects the behavioral branch of the utilitarian theory insofar as that position views the tendency of punishment to prevent crime by reforming or incapacitating the offender as a sufficient justifying condition; it accepts the classical utilitarian theory as the proper starting point for a justifying theory; it views utilitarianism as inadequate to serve all the purposes that ought to be served by an integrated theory of punishment” (1968: 62)

Whilst this justification is broad, it offers the orienting rationale or goal for criminal justice (outside of crime prevention). The present thesis adopts Packer's (1968) broad theoretical approach. However, the present thesis also utilises the more contemporary social justice ideas of Heffernan (2000), Barry (2005) and Ward (2016) to question the extent to which criminal justice necessitates punishment (further discussed in Section 2.2.4).

Part II, “Process”, is useful because it offers an accessible ‘heuristic device’ for understanding the criminal justice process (also argued in Henham, 1998: 584). Namely, Packer (1968) argues that the criminal justice process represents a collection of competing social values. From these competing values, Packer (1968) offers two competing models. As Packer (1968: 153) states, “I call these two

⁷ Notably however, Packer's (1968) use of the word rehabilitation may be unfamiliar to some readers. Namely, “the goal sought by the rehabilitative ideal is not reform for its own sake or even for the sake of enabling its object to live a better and a happier life. [...] In truth, the threat of punishment for future offenses as extrapolated from the experience of suffering punishment for a present offense may be the strongest rehabilitative force that we now possess. To the extent that a man is rendered more prudent about committing offenses in the future by reason of unpleasantness suffered on account of offenses past, he may be said to be rehabilitated in as meaningful a sense of the term as we can generate” (Packer, 1968: 53, 56). To this end, rehabilitation for Packer (1968) is tethered to the ideas of deterrence. Rehabilitative punishment for Packer (1968) is connected with a drive to commit oneself from committing further offences because of past unpleasant punitive sentences, it has at its heart a utilitarian objective.

models the due process model and the crime control model". To further use Packer's phraseology:

"There are people who see the criminal process as essentially devoted to values of efficiency in the suppression of crime [crime control]. There are others who see those values as subordinate to the protection of the individual in his confrontation with the state [due process]" (Packer, 1968: 4).

The crime control model is primarily for efficiency because it advocates for unfettered investigations by state authorities (such as the police) and the rapid disposal of criminal cases. Meanwhile, the due process model is primarily for civil protections which sometimes necessitates slow and methodical processes, ensuring only the factually guilty are prosecuted.

These two models are beneficial for thinkers interested in criminal justice policy reform because it offers an accessible device for comprehending the criminal justice process and the social values that underlie competing policy proposals. The crime control policy reformer sees the justice process as an "assembly line", where the efficiency (speedy case disposals) is the priority (Packer, 1968: 163). Meanwhile, the due process policy reformer sees the justice process as an "obstacle course", where the value of civil rights (protections from tyrannical state power) is the priority (Packer, 1968: 163). Part II concludes by commenting on how the justice system of the United States of America is being reformed away from a criminal control model and towards a due process model. However, as discussed in Section 2.2.2 and 2.2.3, contemporary thinkers contest this view of Packer (1968). This then leads Section 2.3 to argue that recent summary justice reforms may have undermined due process values that ensure substantiated justice, resulting in the problem of over-efficiency.

Part III, "Limits", is useful because it demonstrates how the present thesis can apply Packer's (1968) theoretical framing device of competing values to the task of generating policy reform recommendations. In this final part, Packer (1968) presents a critical analysis that argues for American criminal justice legislators to roll back the criminal sanction⁸. Underpinning this critical discussion is Packer's

⁸ In greater detail, Packer (1968) makes the following points: (1) only the most serious acts should be given the criminal label, (2) the state should rely more on non-punitive measures to tackle problematic social behaviours, (3) the criminal sanction should be primarily reserved for addressing harmful rather than immoral behaviours.

(1968) consideration of social values. Indeed, as Packer (1968) concludes following his policy reform recommendations:

“we resort to [the criminal sanction] in far too indiscriminate a way, thereby weakening some of the important bases upon which its efficacy rests and threatening social values that far transcend the prevention of crime”, (Packer, 1968: 364).

The present thesis adopts a revised version of this holistic, social value-based critical analysis approach. In greater detail, the thesis adopts a similar, broad view of what the role of the criminal process should be, given its potential to produce wider (negative and positive) social outcomes (further discussed in Sections 2.2.3, 2.2.4). This is in contrast to some government studies that have focused myopically on cost-saving or time-trimming targets alone (further discussed in Sections 2.3 and 2.5; also see Ministry of Justice, 2021).

Packer’s (1968) seminal work has had a substantial influence on the socio-legal literature. Indeed, since Packer’s (1968) original work, socio-legal researchers have produced dozens of models, similar to his due process and crime control models⁹. Each of these models adds to and/or refutes prior models. In doing so, socio-legal thinkers have generated decades of debate and new perspectives on what grouping and prioritisation of values should substantiate criminal justice (discussed in MacDonald, 2008). Additionally, thinkers have continued to tether the concept of criminal justice and its assessment to sentencing outcomes (the use of the criminal sanction) as well as the criminal justice process (which includes the policing of society, in-court procedures and the use of remand) (see for example, Griffiths, 1970; Beloof, 1999; Stickel, 2008; MacDonald, 2008). The present thesis develops from this prior body of work by continuing to use a social values-based approach to understand and critique criminal justice, with an emphasis on the in-court process. At the same time however, the present thesis also incorporates some important revisions of Packer’s (1968) original theoretical approach. Namely, this thesis uses MacDonald’s (2008) contemporary work that frames efficiency (and other social values) multi-dimensionally, whilst also questioning the usefulness of model creation and non-empirical normative work (see Section 2.2.2).

⁹ See for example, Griffiths’ (1970) family and battle models, Jareborg’s (1995) defensive model, Beloof’s (1999) victim participation model and Stickels’ (2008) victim satisfaction model.

2.2.2 MACDONALD'S REVISIONS OF PACKER

This section argues that MacDonald (2008) has usefully revised Packer's (1968) original theoretical framework, which this thesis has subsequently utilised. This section supports this argument by first drawing attention to how Packer's (1968) framework inconsistently uses the term efficiency. Second, this section explains how this inconsistent understanding of the word efficiency is present in the contemporary socio-legal literature (and how this has caused confusion amongst thinkers). Third, this section then unpacks MacDonald's (2008) revisions of Packer's (1968) framework by first defining what a social value means and then how it is a multi-dimensional (pluralistic) concept. This is something that Packer does not do in his original 1968 work. In addressing this point, this section explains how a pluralistic approach to efficiency and social values allows socio-legal researchers to more rigorously investigate and account for phenomena in the criminal justice process. Fourth and finally, this section explains how the thesis utilised MacDonald's (2008) theoretical framework to offer an observation-based, interpretivist account of what values underpin the summary justice process. Collectively, this section makes these arguments to clarify the present study's theoretical framework: it embraces MacDonald's (2008) revisions of Packer's (1968) framework that accepts a multi-dimensional, pluralistic account of efficiency and other social values.

To begin, MacDonald (2008) draws attention to how a weakness of Packer's (1968) framework is that it inconsistently uses the term efficiency. Namely, MacDonald (2008: 26-28) demonstrates how Packer's (1968) conceptualisation of efficiency takes three distinct forms: "investigative efficiency", "operational efficiency" and "deterrent efficacy"¹⁰. These connotations are a problem because when Packer (1968) uses the term 'efficiency' in his work without explicit reference to what he means, it becomes unclear as to how he is using the term. Indeed, it becomes unclear whether he is discussing police fact-finding, in-court speediness or a macro-level crime deterrent effect, or perhaps something else entirely.

¹⁰ In greater detail, MacDonald (2008) argues that at Packer (1968) sometimes uses the term efficiency in the sense that the police are reliable finders of truth (investigative efficiency). Meanwhile, in other extracts, MacDonald (2008) argues that Packer (1968) uses the term efficiency to mean that the courts operate speedily when assigning verdicts of guilt and innocence (operational efficiency). Finally, MacDonald (2008) argues that Packer (1968) sometimes uses the term efficiency to mean that a reliable criminal process can have a deterrent effect (deterrent efficacy).

This observation of MacDonald (2008) connects with other socio-legal research that has criticised Packer's (1968) original framework, specifically regarding how it inadequately theorises what social values (and particularly efficiency) should mean (argued in McBarnet, 1978; Ashworth, 1979; Rutherford, 1993; Duff, 1998). Indeed, the lower criminal court literature has historically engaged in circular semantic debates regarding what efficiency means (or should mean). For example, see McBarnet's (1978) critique of Packer (1968), followed by Smith's (1997) critique of McBarnet (1981) and Duff (1998). All of these thinkers argue that the previous thinker has inadequately understood what efficiency means (similarly observed in MacDonald, 2008). MacDonald (2008) has offered his own analytical framework in an effort to clear the semantic confusion that exists around Packer's (1968) work and specifically what efficiency means.

MacDonald (2008) usefully revises Packer's (1968) work by framing social values multi-dimensionally. As MacDonald (2008: 19) argues "a simple yes/no approach to the different ways in which values are held, as Packer did, is inadequate"¹¹. MacDonald (2008) argues that social values, as the literature describes them, can be framed as either analytic or normative (Again, see McBarnet, 1978; Packer, 1968; Smith, 1997; Duff, 1998). MacDonald (2008) explains that analytic constructions of social values require the socio-legal researcher to utilise Weberian ideal-types (see Weber in Merton, 1952). Ideal-types are "purely logical" theoretical constructs, they offer a "one-sided accentuation of one or more points of view" (in MacDonald, 2008: 16) ¹². Meanwhile, normative constructions of the word efficiency and other social values rely on individual interpretive judgements, not on

¹¹ This is a point similarly held by Berlin (2002: 217) when discussing "the pluralism of values". Namely, "the very desire for guarantees that our values are eternal and secure in some objective heaven is perhaps only a craving for the certainties of childhood or the absolute values of our primitive past" (Berlin, 2002: 217).

¹² For example, see MacDonald's (2008: 28) "investigative efficiency". This is an ideal-type because it relies on the police/prosecution being inerrant/infallible truth seekers. This is, of course, an impossible reality. As Weber explains, an ideal-type of this kind is a "mental construct [that] cannot be found empirically anywhere in reality" (in MacDonald, 2008: 46). Such theoretical constructions are useful because they aid thinkers in analysis and exposition. However, they cannot be used for practical policy reform recommendations because of their extreme characteristics.

accentuated, extreme rational theoretical ideals¹³. MacDonald's (2008) revisions are useful because they untangle some of the contentions held in the literature, where thinkers have (and continue to) debate what the "real inefficiencies" are (see Marsh, 2016: 51; Nicklas-Carter, 2019; further discussed in Section 2.4). In applying MacDonald's (2008) theoretical framework, this thesis accepts that there are many overlapping and competing accounts of social values, including that of efficiency¹⁴. Indeed, a simple yes/no approach to the different ways in which values are held is not useful.

This thesis has utilised MacDonald's (2008) theoretical framework to understand what values underpin the summary justice process. MacDonald (2008: 2) argues that a researcher can form a normative interpretation ("non-ideal-type") of social values by reflecting on a historical (empirical) account of a particular strategy or approach. MacDonald (2008) argues that such an approach is useful for policy reform focused research because of its close relationship with real world practices. This is compared to the alternative "purely logical" ideal-type which "is founded on a non-implementable premise" (MacDonald, 2008: 16; 77). Applied to the this thesis, the researcher used original observational data of courtroom practices to form an interpretation of the values that underpin the summary justice process.

¹³ MacDonald (2008: 59) exemplifies 'equality' as such a possible normative construction of a social value. MacDonald (2008) explains that a socio-legal researcher may begin research with the vague idea that equality refers to the ability of a criminal court to process defendants in a comparable manner. Then, MacDonald focuses on how some defendants may have greater financial resources than others and therefore, they may have unequal access to legal representation. Constructions of inequality of this sort are interpretive and based on the researcher's normative reflections as to what qualifies inequality. In this example case, different financial resources qualify inequality. Another interpretation of inequality could be based on, for example, defendants varying different treatment as it relates to their race. Such constructions, as presented here, are not an ideal type because the logical, rational parameters that qualifies inequality are not fully accentuated. Rather, these constructions of inequality rely on the judgement/interpretation of the researcher. Normative constructions of this type are useful for analysing current practices (a description of reality) and for describing 'what ought to exist' (policy reform recommendations) (MacDonald, 2008: 53).

¹⁴ Heffernan's (2000: 80) influential essay makes a similar observation to MacDonald (2008) when they comment upon "normative pluralism". Namely, Heffernan (2000) believes that social justice can mean different things when applied to the criminal justice process because of its interpretative basis: "there are multiple, inconsistent, conceptions of social justice. Each of these conceptions is relevant to the different components of criminal justice — to formulations of the rules of criminal procedure and also to formulations of excuses and justifications. Thus, each generates different, and often irreconcilable, policy conclusions for criminal justice". See Section 2.2.4 that further discusses the role of social justice in criminal justice.

Based on this initial normative, qualitative interpretation, the researcher then developed a critical discussion regarding whether the summary justice process is overly efficient or not (see Chapters 4, 5 and 6). It is from this critical discussion that the present thesis offers reform recommendations.

2.2.3 NEW PUBLIC MANAGEMENT

Building on the previous theoretical framework sections, the present section proceeds to explain the conceptual framework of the thesis. Namely, this section argues that the concepts of managerialism and post-managerialism are useful for understanding contemporary criminal justice reforms and some of their potential problems. This section begins by explaining what New Public Management is and how it emerged out of the larger neoliberal context. From this, the section explains Raine and Willson's (1995; 1997) envisioned post-managerial future for the English and Welsh criminal justice process. It is at this point the thesis establishes itself as sharing a similar research direction to that of Raine and Willson (1997). Namely, the thesis is concerned that the current summary justice process is being negatively impacted by managerialist reform changes. This section then unpacks how some recent studies including that of Ward (2014; 2016) have criticised criminal justice reform changes because they are aligned with managerialism (rather than post-managerialism). In addressing these points, this section establishes how the present thesis is situated within the broad study of New Public Management.

To begin, it is necessary to explain what neoliberalism is as this forms the larger ideological narrative which contextualises New Public Management. Neoliberalism emerged in the 1980s, when England and Wales (as well as other Western nations) embraced a more "*laissez-faire*", free-market oriented approach to governing the public sector (Harvey, 2005; Wacquant, 2012; Bell, 2011: 140). In practical terms, the government oversaw the reallocation of work from the public sector to the private sector (Harvey, 2005; Wacquant, 2012). For example, see the involvement of the private sector regarding prisons in the 1990s (Ludlow, 2015) and the probation service in the 2010s (Deering and Feilzer, 2015). Additionally, neoliberalism promoted the idea of a small government with the citizenry taking more individual responsibility¹⁵ for their own wellbeing. Within this broad

¹⁵ This drive towards individualism has also been framed as the "responsibilisation" of the of the citizenry, especially when referring to the recipients of state services (see Liebenberg, Ungar and Ikeda, 2013: 1).

ideological shift, the style of management within remaining public services also shifted, taking on more business-like characteristics. The socio-legal literature refers to this shift within public services as New Public Management (NPM hereafter) (see Hood, 1991; Hood and Scott, 1996; Walsh, 1995).

NPM steers public services towards free-market inspired actuarial measures of success (cost-savings, target-setting, time-trimming, waste mitigation and production output). This is in contrast to services relying on a sense of rectitude or due process associated values (originally conceptualised in Hood, 1991; also see Feeley and Simon, 1992; Raine, 2001). To use the phraseology of Spigelman (2001: 2) from his Australian court study:

“Perhaps the most definitive characteristic of the ‘new public management’ is the greater salience that is given to what has been called the three ‘e’s’ - economy, efficiency and effectiveness - in competition with other values of government activity such as accessibility, openness, fairness, impartiality, legitimacy, participation, honesty and rationality”.

There have been many branches of specialist socio-legal research that have examined such competing values in the criminal justice system. For example, see Feeley and Simon’s (1992: 452) research on actuarial justice and the “New Penology”, O’Malley’s (2010) research on risk management, and Harcourt’s (2010: 74) research on “neoliberal penalty” (also see Fitzpatrick, Seago, Walker and Wall, 2000). Of particular interest to the present study is the specialist NPM-oriented work of Raine and Willson (1993; 1995; 1997) because they have given specific attention to efficiency and courtroom criminal justice.

Raine and Willson (1995; 1997) argue that the criminal courts are unlike other public services because of how criminal justice values are intrinsic to the running of the service. Consequently, the criminal justice process cannot embrace managerial values of efficiency (including cost-mitigation and time-trimming) like other public sectors (also argued in MacDonald, 2008). Indeed, as Raine and Willson (1997: 92) have explained, the moral elements of criminal justice (including that of judicial independence and democratic oversight) have “never sat comfortably” with NPM reforms. This has raised difficult questions about how to prioritise managerial values (including that of cost-cutting, speediness, waste mitigation, etc.). This is a problem that Sander’s (2002: 327) has similarly recognised:

“This barely needs justification. However important it is that criminal justice be fair and democratic, it is equally important that other public services such as health care, education, and housing be underpinned by similar values. Fairness and democracy in criminal justice cannot be pursued unconditionally otherwise there would be insufficient resources to do the same for other public services. The idea that 'you can't put a price on justice' has never been true. We can, we do, and we should. The difficult question is what *priority* to give to efficiency”, (emphasis added).

Indeed, whilst various other values (not limited to those mentioned above) underpin the substantiveness of criminal justice in England and Wales, policy makers face the difficult task of deciding how to prioritise these values. The risk for policy makers is that if they prioritise managerial efficiency values over other substantiating values, then the quality of the justice process may diminish.

In view of this discrepancy, Raine and Willson (1997) envisioned a new ideological framework for the criminal justice process that goes beyond NPM, called post-managerialism. In this post-managerial model of criminal justice, the concept of efficiency is not myopically concerned with economic, actuarial matters (as described by Spigelman, 2001). Instead, under Raine and Willson's (1997) post-managerialism model, efficiency in a classical managerial sense was only desirable if other justice-substantiating values such as “fairness and security” were not disadvantaged (Raine and Willson, 1995; 1997: 93). To this end, Raine and Willson (1997) offer an answer to Sander's (2002) concern regarding how to prioritise the managerial efficiency aspect of the lower criminal courts. Namely, the process must be primarily substantiated by quality justice values, with classic managerial values (including that of cost-savings) being secondary to this. This post-managerial vision of efficiency is therefore distinct from the classical managerial vision because of its focus on how values should be prioritised¹⁶. Rephrased, and in employing the pluralistic framework of Section 2.2.2, the present study views managerial efficiency and post-managerial efficiency as

¹⁶ In greater detail, Raine and Willson (1997: 92) argue that post-managerialism is grounded in a “new moral base”, that is “is in greater harmony with the values and priorities traditionally associated with criminal justice than managerialism”. For Raine and Willson (1997), these values include proportionate sentencing, localness, professional leadership, amongst other.

distinct normative concepts, with that latter supporting a more substantiated justice process¹⁷.

The present thesis continues in Raine and Willson's (1995, 1997) line of investigation, to examine what values and forms of efficiency are present in the contemporary, in-court, summary justice process and to steer more toward post-managerial forms of efficiency. To use Raine and Willson's phraseology, "might the steady progress made over many decades regarding human rights be put at risk by managerialist pressures?" (1995: 39; also see Ward, 2014; 2016). Indeed, the present thesis shares the same concern, specifically regarding the reach and trajectory of managerial efficiency pressures in the summary justice process (see the problem of over-efficiency, further discussed in Section 2.3.3).

Relatedly to Raine and Willson's work (1995; 1997), other recent studies have criticised criminal justice reform changes because they are for managerialism. Indeed, as Moore (2001: 33) has emphasised, "quality of justice is being eroded by the drive towards managerial efficiency" (similarly argued in Nicklas-Carter, 2019). This is a view similarly upheld in Welsh's (2016) study that examined how managerial speedy-justice pressures have marginalised defendants in the criminal justice process (similarly argued in Transform Justice, 2018). Other contextualising works include Bohm (2006: 127) and Ritzer (1993: 36), who have framed contemporary criminal justice as "McJustice", in reference to the fast-food restaurant McDonalds. Indeed, with McDonalised public services, the "best that can usually be said is that it is efficient and it is over quickly", the process is not substantiated beyond this (Bohm, 2006: 127; also see Robinson, Priede, Farrall, Shapland and McNeill, 2018). Rhodes (1996: 652) has similarly framed the prioritisation of managerialism as the "hollowing out" of state services (also see Law and Mooney, 2007; Deering and Feilzer, 2018). Building from these prior works, the present thesis frames the summary justice process as being 'overly efficient' when it is primarily characterised by managerial efficiency values to the detriment of other, justice-substantiating values (further discussed in Section 2.3.3; also see Belbot and Marquart, 1998: 305). The present thesis situates itself within these prior studies by investigating whether the contemporary summary justice process of England and Wales is primarily committed to a classical NPM model of operation, to the detriment of justice quality (whether it is overly efficient or not).

¹⁷ This pluralistic conceptualisation of efficiency following the multi-dimensional framework unpacked in Section 2.2.2.

The most significant comparative and contextualising work for the present study is that of Ward (2016; also see 2014). Building from Raine and Willson (1995; 1997), Ward's (2016) work begins by setting the scene of recent modernisation changes that followed from the 2000s into the 2010s (further discussed in Section 2.3). These include the rolling out of video conferencing technology/virtual courts, the reduction of local justice, revisions to case management rules, the development of specialised courts and the professionalisation of magistrates amongst other government streamlining efforts (further discussed throughout Section 2.4). Ward (2016) equates these modernisation changes largely as an extension of classical managerial efficiency pressures (as described in Raine and Willson, 1995; 1997). In view of these modernisation changes, Ward (2016: 135) continues the investigative line of questioning proposed by Raine and Willson (1997) asking if, "sufficient consideration is given to procedural due process within these modernising changes"? Ward (2016) contributes an answer to this question by first establishing that classical managerial pressures are laudable in the sense that they mitigate against delays. However, Ward (2016) then emphasises that contemporary streamlining efforts do significantly put at risk due process concerns. To this end, Ward (2016) draws attention to the continued reach of managerial efficiency pressures to negatively impact the summary justice process.

2.2.4. QUALITY OF JUSTICE

This section argues that the concept of quality justice / the substantiveness of justice is tethered not only to post-managerialism (as discussed in the previous section) but also to social justice and procedural due process. This section makes this argument by first drawing attention to the ambiguousness that surrounds the concept of quality justice, and how its assessment primarily relies on critical analysis. Following this, the section explains how Ward's (2016) discussion of social justice and procedural due process is useful for guiding a critical discussion of justice quality in the summary justice process. In addressing these points, the thesis does not offer a definitive list of values that are for quality justice. Rather, it establishes the concepts that the researcher used to guide a critical discussion of summary justice practices and the values that underpin these. In doing so, this section concludes the conceptual framework of the thesis.

Quality of justice is an ambiguous concept which relies primarily on critical reflection. This ambiguousness around the concept of quality justice is a problem that Raine (1993: 85) encountered early in their summary justice managerial research:

“no one seems to have established an acceptable definition or approach to its pursuit. Indeed, the term ‘quality’ is in danger of meaning all things to all people (or not very much to anyone)”

Raine (1993) would later indicate that quality justice connects to post-managerialism and more specifically to what they describe as the “new moral base” (see Raine and Willson, 1997: 92; previously discussed in Section 2.2.3). Despite this, there remains ambiguity regarding what values underpin this new moral base. Indeed, whilst Raine and Willson (1997) offer some key characteristics that define post-managerial criminal justice, they do not robustly define these. For example, Raine and Willson (1997: 86) explain that due process is a defining value of post-managerial criminal justice but they do not expand upon this idea beyond explaining that it opposes “cost-efficiency” and “cut service standards”. Thus, a similar ambiguity problem arises as reported by MacDonald when criticising Packer’s (1968) use of the term due process (see Section 2.2.2). Namely, it is unclear what a post-managerial vision of criminal justice would prioritise in order to promote justice quality. Thus, the present researcher uses the concept of post-managerialism only as a useful, indicative guide for critically discussing summary justice practice, rather than framing it as a robust standard from which to assess justice quality.

In developing this understanding of substantive / quality summary justice further, the present thesis draws upon Ward’s (2016) discussion of social justice and procedural due process. In integrating ideas from her work, the present thesis establishes a more rigorous framework from which to understand quality of justice in the summary justice process. First, the present thesis subscribes to the view that social justice informs criminal justice. Whilst this point is emphasised in Ward’s (2016) work, this connection is widely recognised in the socio-legal and criminological literature (see van Swaaningen, 1999; Heffernan, 2000; Barry, 2005). Indeed, as Heffernan (2000: 51) explains:

“When we speak of criminal justice, we ask generally whether certain acts deserve to be punished and ask specifically whether a given act by a given defendant should be punished. ... [Meanwhile] when we speak of social justice, we ask whether the burdens and benefits of social life have been fairly distributed among members of a particular society” (Heffernan, 2000: 49).

Therefore, the concept of criminal justice (what people deserve) requires reflection on wider social issues such as equitable and equal access to resources and

opportunities (social justice). This concept applies not only to criminal justice outcomes (the criminal sanction) but also to how court users experience the criminal justice process. Namely, the process should make adjustments so that equitable and equal treatment is applied to court users. In practical terms, the justice process can uphold social justice by, for example, providing an in-court interpreter for non-native English speakers or by providing legal aid representation for those who can otherwise not afford it (similarly described in Laster, 1990; Bhattacharjee, 2018). In these examples, the process becomes substantiated (for quality justice) by embodying the values of equitable participation and representation. In this way, the concept of social justice informs what values are for quality of justice.

Second, and in conjunction with social justice, the thesis adapts Ward's (2016) account of procedural due process to inform its understanding of justice quality. Ward (2016) has conceptualised procedural due process by drawing significantly from Heffernan (2000) and the Human Rights Act 1998 (also see Tyler, 2007; Galligan, 1996). As Ward (2016: 17) explains:

"I adopt the term 'procedural due process' and apply it in terms of defendants' rights within criminal court processes and procedure. In this way, interest is placed on how it applies to processes and procedures that are – or are not – granted to defendants in the lower criminal court system, such as the right to be tried in an impartial hearing in open court, the right for the accused to know the case against them, the right to legal assistance etc."

By 'rights and procedures', Ward (2016) refers to the Human Rights Act 1998, which also relates to the rights upheld in the European Convention of Human Rights (ECHR) and Article 6¹⁸. Ward (2016) uses these rights as a basis to investigate her empirical data, questioning whether summary justice practices are abiding by these rights and therefore, whether the summary justice process is fair and protects against injustices. Similarly to Ward (2016), the European Commission for the Efficiency of Justice (2016; ECEJ hereafter) has focused on how human rights should be upheld in the justice process in order to secure justice quality. In greater detail, the ECEJ (2016: 13) argues that there are a range of values or "pillars of quality" that substantiate the justice process, these include publicity and transparency, adequate legal assistance and comprehensibility.

¹⁸ This includes the right to a fair trial.

Again therefore, the present thesis recognises that there is a connection between values that are for procedural due process and quality of justice.

This section concludes the framework of the thesis by establishing what it means when using the interchangeable terms quality of justice / the substantiveness of justice. Namely, the thesis builds from Packer's seminal 1968 work and his 'Integrated Theory of Criminal Punishments' which justifies the use of criminal punishments and subsequently, the process that leads to those punishments (see in Section 2.2.1). From here, the thesis has argued that whilst the criminal justice process is necessary, the values that underpin the process have been debated both in terms of what values should mean as well as how they should be prioritised in the process (see Section 2.2.2). This has led the thesis to argue that managerial values of efficiency (which include cost-saving, time-trimming, waste-mitigation) are desirable but only when they do not primarily characterise the justice process, as this negatively effects quality of justice (see post-managerialism in Section 2.2.3). In this final section, the thesis has argued that the concepts of quality of justice is informed by ideas of social justice and procedural due process. Whilst this concluding section does not present an exhaustive list of quality justice values, it does serve to demonstrate how the thesis engaged in a critical assessment of the summary justice process, using the concepts of social justice and procedural due process.

2.3 CONTEXTUALISING THE PROBLEM OF OVER-EFFICIENCY

The following sections unpack the background context that has led to thinkers' concern that the courts are overly efficient, the problem that the present thesis focuses upon. Section 2.3.1 begins by detailing how the efficiency-focused austerity measures that followed the 2007/8 financial crash fits into a larger historical shift that has been for greater efficiency in the English and Welsh summary justice process. Second, Section 2.3.2 discusses four influential contemporary government reports that have shaped the summary justice process by iteratively arguing for more efficiency-focused reforms. Third, Section 2.3.3 uses Leveson's (2015b) and Nicklas-Carter's (2019) work to draw attention to how the summary justice process may be prioritising managerial efficiency over other values that ensure justice quality. In doing so, this final section makes explicit the central problem this thesis is interested in investigating, summary justice over-

efficiency. Collectively, these sections establish the time period, contextualising issues and research problem that anchors the thesis.

2.3.1 AUSTERITY, NEW LABOUR & THE CONSERVATIVE GOVERNMENT

This section details how the efficiency-focused austerity measures that followed the 2007/8 financial crash fit into a larger historical shift that has been for greater efficiency in the English and Welsh summary justice process. This section supports this point by first detailing how the 2007/8 financial crash resulted in austerity policies that especially targeted the summary justice process. Second, this section explains how this austerity-era efficiency policy builds on the New Labour government's policy reforms that emphasised speedy criminal justice. Third, this section explains how following both the New Labour government and the financial crash of 2007/2008, the Conservative government continued to emphasise greater efficiency in the criminal courts. In discussing these points, this section establishes the contextual timeframe for the present study.

The 2007/8 financial crash resulted in efficiency-focused austerity policies that especially targeted the summary justice process. Following the global financial crash of 2007-2008, the government of England and Wales sought to secure financial stability through implementing "cuts" to public services (Phillip, 2016; Nicklas-Carter, 2019: 9). The lower criminal courts process more than 95% of all criminal cases and therefore, these courts demand a large amount of resources (Sanders, 2002; Ashworth and Redmayne, 2010). In view of this, government budgeteers took the view that the lower criminal courts, the magistrates' courts of England and Wales, should be a point of focus when implementing efficiency-focused austerity measures (Nicklas-Carter, 2019). As reported in the Ministry of Justice's (2013: 14, emphasis added) 'Transform the CJS Strategy' and their associated 'Action Plan', "we cannot hope to achieve our shared outcomes¹⁹ unless we have a more *efficient* system". Here, the Ministry of justice emphasised that efficiency should be the priority value when reforming the summary justice process.

¹⁹ These outcomes include punishment for offenders, reparations for victims and public protection amongst other normative principles (Ministry of Justices, 2013: 14).

The prior New Labour government established the political foundations for the contemporary government's drive for greater efficiency in the summary justice process. Prior to the Coalition government's austerity measures, the early 2000's New Labour prime minister Tony Blair was notable for his crime-focused manifesto. Captured within this ideological vision was a speedy, modernised criminal justice system:

“of all the public services we inherited in 1997, the most unfit for purpose was the criminal justice system [...] The system itself is the problem. We are trying to fight 21st century crime - ASB, drug-dealing, binge-drinking, organised crime - with 19th century methods, as if we still lived in the time of Dickens” (Blair in BBC, 2004: online)

In an effort to modernise the court process, Tony Blair's premiership oversaw the implementation of the Criminal Justice Act 2003²⁰. This Act recategorised a large number of criminal offences from the slower Crown Courts to the faster magistrates' courts. Combined with the drive to be tough on crime, the Criminal Justice Act 2003 also introduced “hearsay” and “bad character” evidence into the court process (Ward, 2016: 4). Whilst these changes sped up the justice process (conviction rates), these changes also raised due process concerns²¹ (see Sanders, Young, Burton, 2010). By prioritising speediness over due process, the New Labour government set the contemporary political foundations for transforming the criminal justice system (including the summary justice process) into something more efficient.

The efficiency changes that were introduced by New Labour were notable for their rhetoric that was pro-social justice whilst simultaneously being pro-efficiency. This is a point echoed by Tony Blair when he stated that, “it is the combination of economic efficiency and social justice that marks this government out from its predecessors”, and that, “the old choice that you had to choose between economic efficiency and social justice no longer apply. You can in fact have both” (in Dillow, 2007: 10). This vision to have both economic efficiency and social justice simultaneously, without undermining or deprioritising either somewhat reflects the post-managerial vision laid out by Raine and Willson (1997; previously discussed

²⁰ The present thesis recognises that the Crime and Disorder Act 1998 was arguably the key piece of legislation that the New Labour government oversaw, in terms of its wider influence on criminal justice.

²¹ Namely, these thinkers were concerned about the integrity of the evidence used to secure convictions.

in Section 2.2.3). An important distinction, however, is that Raine and Willson (1997) gave emphasis to prioritising substantiating service values first (a moral base), with efficiency values serving secondary to this. By contrast, and as argued by Dillow (2007: 22), New Labour engaged in “pretending that trade-offs can be avoided” and therefore, this prevented adherents from:

“thinking deeply about fundamental values. Afterall, if we don’t have to choose between liberty, equality or efficiency, we don’t have to think about why these are valuable, or even about what they mean”.

The rhetoric of New Labour was therefore optimistic but not theoretically robust (similarly discussed in Barry, 2005; Cook, 2006). Despite this, post-New Labour governments would continue to make use of such optimistic rhetoric, claiming that the criminal justice process can both uphold efficiency and quality justice (social justice) without engaging in trade-offs (similarly argued in Nicklas-Carter, 2019; further unpacked in Section 2.3.2).

Following both the New Labour government and the financial crash of 2007/2008, the Coalition and subsequent Conservative governments continued to emphasise greater efficiency in the criminal courts. This drive for greater efficiency was captured under the slogan “do more with less” and perhaps more famously, in David Cameron’s 2010 ‘Big Society’ speech (in Williams, Goodwin and Cloke, 2014: 2805; also see Judiciary of England and Wales, 2018: 13). Under the banner of the Big Society, the government emphasised that community and voluntary services should play a greater role in the criminal justice process (relieving pressures on the courts). This form of efficiency framed local organisations as being best oriented to address local issues (promoting justice outcomes), whilst also producing a secondary financial benefit (cost-savings) (Williams, Goodwin and Cloke, 2014; also see Morgan, 2012). In practice, these contemporary government reforms pushed for greater competition between legal firms for legal aid²² cases, whilst simultaneously making the criteria for legal aid eligibility more specific (limiting some court users’ access to legal aid support) (Nicklas-Carter, 2019). Coupled with these changes to legal aid, the government pushed for solicitors/lawyers to embrace more pro bono work (voluntary service work)

²² Legal Aid is an English and Welsh public service that was established with the Legal Aid and Advice Act 1949. The purpose of legal aid is to allow English and Welsh court users to have ‘access to justice’, to provide court users with legal advice and representation if they cannot afford it themselves (Hynes and Robins, 2009; Mant, 2017).

(Nicklas-Carter, 2019). In this way, the government continued with its vision to prioritise efficiency in the summary justice process.

2.3.2 INFLUENTIAL GOVERNMENT REPORTS

This section unpacks key, contemporary government-related reports that have shaped English and Welsh criminal court reform over the last two decades. In doing so, this section discusses the following key reports: (1) Auld's (2001) *Review of the Criminal Courts of England and Wales*, (2) Falconer's *Delivering Simple Speedy, Summary Justice* (Department of Constitutional Affairs, 2006), (3) the Ministry of Justice's (2012) White Paper, *Swift and Sure Justice* and finally, (4) Leveson's (2015a), *Review of Efficiency in Criminal Proceedings*. The present section critically appraises these key government reports and explores some of their important efficiency related contributions. In doing so, this section serves to anchor the thesis to these influential texts.

First, this section will unpack Auld's (2001) review and its influence on the lower criminal courts of England and Wales. Auld's (2001) review called for broad, sweeping reforms into the criminal justice process of England and Wales. Indeed, it was Auld's (2001: 1) view that the criminal courts had a large capacity to become more "streamlined". In practical terms, Auld (2001) sought to have the courts make greater use of emerging technologies (such as software packages and online video conferencing tools). Additionally, one of Auld's (2001) influential reorganisation proposals was to introduce sanctions for when the defence and prosecution parties did not adequately cooperate with case management duties. More specifically, Auld argued that:

"There should be national standard timetables and lists of key actions for preparation for trial [...] the parties should endeavour to prepare for trial in accordance with the timetable and list of key actions appropriate to the case and to resolve between themselves any issues of law, procedure or evidence that may shape and/or affect the length of the trial and when it can start", (2001: 55-56).

Auld's (2001) vision was that if such instructions as those above were not followed then it would be permissible for a bench to accept an adverse inference of a

defendant's guilt or to stay²³ a prosecution for abuse of process. In doing so, both the prosecution and defence would be incentivised for efficiency, they would work together out of self-interest whilst generating speedy case disposals. Auld's (2001) drive with this streamlining-oriented recommendation was to reduce the time spent during trials that centred on agreeing points of debate. The Criminal Procedure Rules 2005 (CPRs) codified Auld's streamlining-oriented case management recommendations (Ministry of Justice, 2020; also see the Courts Act 2003). Section 2.4.1 further discusses the CPRs and how some contemporary thinkers contest defence-prosecution cooperativeness as a means to ensure justice quality.

Auld (2001) also recommended that the government should establish an intermediate tier of the criminal courts. Namely, Auld (2001: 280) reasoned that an intermediary "District Division" would allow for the criminal court process to become more specialised. As a result, Auld (2001) argued that the court would generate speed-based efficiencies (rapid case disposals) whilst making more appropriate use of qualified judicial staff. In greater detail, this District Division would operate as an intermediary between the lower criminal courts (the Magistrates' courts) and the upper criminal courts (the Crown Courts). Auld (2001: 433) envisioned that the Magistrates' Courts could focus more on speediness (and cost savings) by having these courts deal only with non-serious or "less serious" matters. Meanwhile, Auld (2001) took the view that the Crown Court could focus its resources on addressing only serious cases. Auld's (2001) proposed new court would have "a district Judge and at least two experienced magistrates", reflecting its intermediate status (Auld, 2001: 280). In this way, Auld's (2001) vision was that the use of distinct courts could result in speedy case disposals and more appropriate resource allocations. Whilst the District Division level court never became part of the English and Welsh justice system, it remains an influence on the socio-legal literature. Section 2.4.5 and 2.4.6 discusses the role of magistrates and court specialisation further.

Throughout this proposed reorganising of the criminal courts, Auld (2001) also recommended that the summary justice process should become more professionalised. In greater detail, Auld (2001) argued that criminal justice should omit magistrates' amateurism (laity) in some circumstances to allow other individuals with technical legal and professional knowledge to make judicial

²³ Meaning, a bench could disallow the prosecution from advancing further with their case. For example, a magistrate could reject the prosecution's request for an adjournment if they had previously failed to comply with their case management duties.

decisions. Indeed, it was Auld's (2001: 375) view that "criminal law may be so complex that the decision-makers need special expertise", and that consequently magistrates should not be allowed to sit on such cases, "or that only magistrates with appropriate training and expertise, may sit". Successive governments did not integrate this professionalisation recommendation of Auld (2001) into the summary justice process. Still, this professionalisation idea has influenced the socio-legal literature and subsequent efficiency-focused initiatives, provoking questions around what the professional status of magistrates should be in the summary justice process. This is further discussed in Section 2.4.5.

A final significant contribution of Auld (2001) was his comments on specialist courts. As Auld (2001) describes, specialist or specialised courts and court processes are identifiable by at least one of three characteristics: (i) they draw upon bespoke (expert) knowledge when decision-making or rely on bespoke experts in a supporting capacity, (ii) they do not rely on a traditional adversarial model and focus instead on problem solving, (iii) they concentrate on processing cases of a single type (also described in Donoghue, 2014b). (For example, therefore, Drug Rehabilitation Review²⁴ hearings are specialised courts, further discussed in Section 2.4.6). Given this broad definition, Auld (2001: 27) was of the view that "there is no compelling case at present for the creation of any specialist courts, in particular, drugs or domestic violence courts". Auld's (2001: 378) rationale for this view was that 'making better use and support for what we have' would be a more sensible use of the public purse, rather than attempting to mimic the success of other nations' (specifically American) problem-solving courts which could be a financially costly experiment.

²⁴ DRR hearings are for offenders who have had a history of drug misuse and are willing to engage with local services to address this. As Donoghue (2014a: 71) explains further: "the terms of DRRs vary according to the number of contact hours which offenders are required to attend and these are determined by the nature and seriousness of the offence committed. Less intensive orders will require a lower number of contact hours, usually involving a weekly drug test and meeting with a probation officer, as well as attending a drug treatment agency for a treatment session, while more intensive orders will generally involve at least two weekly drug tests as well as a number of treatment sessions and other contacts with the treatment provider(s) including group sessions. An offender's progress on a DRR will be reviewed monthly by the court. If offenders fail to keep to the agreed terms of their individual treatment plan, they will be returned to court for breach of the order, which often results in a more onerous sentence being imposed. Offenders who successfully complete their DRRs but who have continuing need of treatment support will be offered referral into voluntary treatment services in their locality. Lawyers are absent from DRR review hearings".

Second, this section will unpack the influential report that Lord Falconer oversaw, *Delivering Simple Speedy, Summary Justice* (Department of Constitutional Affairs, 2006; DoCA hereafter). This DoCA (2006) report built on Auld's (2001) efficiency-focused work by targeting, amongst other issues, disclosure (the responsibilities that both legal parties have when handling evidence prior to a hearing / trial). The DoCA (2006) report argued that poor case management on behalf of the defence and prosecution was responsible for delayed justice. This is despite the case management rules (CPRs) that were implemented following Auld's (2001) report. In more detail, the DoCA report argued that the defence would often engage in 'fishing expeditions' (DoCA, 2006: 25; also see Gross, 2011: 28). This strategy involves the defence making lengthy and numerous requests of the prosecution to release evidence. In doing so, the defence would tax prosecution resources, distracting them from constructing a robust case for their own client. Meanwhile, the report accused prosecution parties of engaging in 'warehouse disclosures' (DoCA, 2006: 25). This is a strategy that relies on providing the defence with unnecessary evidence/files to review (DoCA, 2006). In doing so, the prosecution would prompt the defence to expend their resources in sieving through evidence to find the items they need. Effectively, therefore, these fishing expeditions and warehouse disclosure practices were for inefficiency.

To challenge these disclosure/case management inefficiencies, legislators placed several duties on the defence and prosecution (DoCA; 2006; also see Gross, 2011; Gross and Treacy, 2012; Leveson, 2015a). In 2007, the "Criminal Justice: Simple, Speedy, Summary" (CJSSS hereafter) initiative implemented the recommendations of the aforementioned DoCA (2006) report (described in Donoghue, 2015a: 167; also see Leveson, 2007; Ward, 2016). Namely, the CJSSS initiative established more stringent time limits for the criminal courts to dispose of criminal cases, mitigating against solicitors' fishing exhibition and warehouse disclosure strategies. It also set time limit targets for adjournments, further speeding-up the case disposal process. In 2012, the criminal justice system integrated a similar initiative to CJSSS called, "Stop Delaying Justice" (described in Ward, 2016: 30). This new initiative sought "to reinvigorate tighter time frames between arrest and trial" (Ward, 2016: 24). As with Auld's (2001) original proposal for the CPRs, these more contemporary initiatives have attracted debate regarding how cooperative solicitors should be. More specifically, thinkers have debated to what degree solicitors should work together to prioritise speediness in the justice process, and how these pressures may negatively impact quality justice (see Raine, 2001; McEwan; 2011; further discussed in Section 2.4.1).

Third, this section will unpack the Ministry of Justice's white paper, *Swift and Sure Justice* (Ministry of Justice, 2012). There are four concepts within this document that are relevant to the socio-legal study of summary justice efficiency: "swift justice", "sure justice", "efficient justice through technology" and finally, speedy justice through "discounts" (Ministry of Justice, 2012: 28, 45, 43, 32). By 'swift justice', the Ministry of Justice's (2012) report captures ideas of speed-based and victim-oriented justice. As the Ministry of Justice (2012: 28) explains when addressing this concept:

"A member of the public would be astounded if they visited a court. They would see rigid working practices and they would see a culture that seems to tolerate waste, delay and failure. The people who suffer most from these failings are the victims and witnesses who have placed their trust in the system, often during a traumatic period in their life"

This swift justice concept fits into the Ministry of Justice's (2013) aforementioned rhetoric about how efficiency is at the heart of the justice process, with other justice principles hinged on this primary value (also see Nicklas-Carter, 2019). Indeed, to reiterate, "without efficiency other justice outcomes cannot be achieved" (Ministry of Justice, 2013: 14). Applying this contextualising 2013 report to the 2012 statement above about swift justice, it is rational to frame the Ministry of Justice's (2013) reform approach as entwining victim-focused justice as a product of speediness. In this way, swiftness or 'swift justice' connects to the government's long-standing speed-focused (delay-mitigation) reform agenda.

By 'sure justice', the Ministry of Justice's (2012) report refers to early and proportionate criminal sentencing practices. Rather than taking a critical or social justice perspective on the issues of early and proportionate sentencing practice, the report adopts a managerial perspective (unpacked in Section 2.2.3, 2.2.4). Namely, the Ministry of Justice (2012: 35) report argues that the criminal justice sector should begin "opening up services to new suppliers and fresh ideas, paid by the results they achieve". In this way, the Ministry of Justice (2012) report reflects Raine and Willson's (1993; 1997: 93) managerial model of criminal justice that sponsors a "resource allocation to reward performance by results" (also see NPM in in Section 2.2.3).

The Ministry of Justice 2012 white paper also called for the criminal court to further embrace technology to mitigate against delays. Part 5 of the Ministry of Justice (2012: 43) report, titled "efficient justice through technology", makes this point

explicitly. As with Auld's (2001) report, the Ministry of Justice (2012) white paper calls for a greater reliance on video conferencing technology and case management technologies to speed-up the disclosure of evidence between parties (further discussed in Section 2.4.3).

Lastly, in regard to the Ministry of Justice's (2012: 32) report, it proposed that if a defendant pleads guilty early in the justice process, then they should receive a 'discount' on their sentence. The purpose of this was to incentivise defendants to engage in the hastening of the justice process, to encourage expedient prosecution-to-conviction rates. By encouraging (guilty) defendants to omit the trial portion of the justice process, the summary justice process could conclude more quickly. Whilst this scheme was being piloted at the point of the reports publication in 2012 (and was legislatively supported with the Criminal Justice Act 2003, s.144), the criminal justice system implemented the scheme across England and Wales in 2017 under the title, the "Early Guilty Plea" (EGP) scheme (described in Johnston and Smith, 2017: 211). Under this official scheme, defendants could receive up to a third off their criminal convictions if they pleaded guilty at the earliest possible point in the criminal justice process (Johnston and Smith, 2017). In this way, the Ministry of Justice (2012) white paper was for efficiency in terms of promoting defendants to participate in the rapid case disposal process. Thinkers have questioned how this EGP scheme impacts upon quality of justice, in terms of promoting speediness over safeguards for false guilty pleas (further discussed in Section 2.4.2).

Fourth, and finally, this section will unpack Leveson's (2015) report, *Review of Efficiency in Criminal Proceedings*. In this work, Leveson (2015: 27) promoted the "Transforming Summary Justice" (TSJ hereafter) initiative, which supports the development of specialised anticipated guilty plea courts²⁵. These specialised court processes focus on productivity targets. By the courts listing teams working with the police and the prosecution, they can identify cases where defendants have indicated that they will submit a guilty plea. The courthouse can then list these cases for anticipated plea-focused courtrooms. The benefit of this, Leveson argued, is that these cases can be streamlined in specialist courts, with some cases being resolved in a single hearing, improving the productivity (efficiency) of the courthouse (further discussed in Section 2.4.6).

Another significant contribution in Leveson's (2015a) work was his renewing of support for technologies in the court process. This included the expansion of video

²⁵ Sometimes called GAP courts (guilty anticipated plea).

conferencing software and particularly, the digitisation of paper-based materials (similarly argued for in the Ministry of Justice's 2012 white paper). Indeed, as Leveson (2015b: s.23) would later comment on his original digitisation reform, "paper-based processes cannot be sustained in the digital age and may indeed push the system to breaking point". Additionally, Leveson (2015a) envisioned technology as a means to enhance the flow of key case information between staff. Namely, criminal justice agencies such as the probation service, Her Majesty's Courts and Tribunal Service (HMCTS) and the Crown Prosecution Service (CPS) use separate and service-unique software packages to manage a criminal case which can sometimes cause delays during the in-court process. This led Leveson (2015a) to voice support for a single, unifying software platform that would reach across agencies, increasing the accessibility of information²⁶. Leveson's (2015a) report therefore, like the previous government reports mentioned in this section, placed efficiency (achieved through technology) at the heart of efficiency reforms.

Leveson's (2015a) drive for technocratic justice has been a point of criticism. Some thinkers have taken the view that it undercuts the substantiveness of the justice process, as technology focused-justice prioritises one-dimensional, productivity targets rather than professional standards (Marsh, 2016; Gibbs, 2017; further discussed in Section 2.2.3, 2.2.4). This is a view that fits into a larger overarching criticism that thinkers had been levelling at the English and Welsh justice system since the 1990s (see NPM in Section 2.3.3; also see Raine and Willson, 1995; 1997). In contrast to these overarching criticisms, Leveson (2015b: s.24) emphasised that the criminal justice system would "collapse" unless it achieved greater efficiency (further discussed in Section 2.3.3 below). The subsequent section unpacks this efficiency dilemma further, forming the focus of the present thesis.

2.3.3 THE PROBLEM OF OVER-EFFICIENCY

This section explains the central problem this thesis focuses upon, summary justice over-efficiency. The section begins by defining what the thesis means when

²⁶ Also see the 2015 "Transforming Summary Justice" (TSJ, hereafter) initiative that focused on systems integration between agencies (Her Majesty's Crown Prosecution Service Inspectorate, 2016: 7). Also see the 2017 "Common Platform" project that aims to create a software platform that integrates the case management functionality of multiple criminal justice agencies (Ministry of Justice and Her Majesty's Courts and Tribunals Service, 2018: 11; Her Majesty's Crown Prosecution Service Inspectorate & Her Majesty's Inspectorate of Constabulary).

using the terms 'over-efficiency' and 'overly efficient'. From this, the section explains Leveson's (2015b: s.24) argument that criminal justice processes are currently at risk of "collapse" because they are under-efficient (marginalising the problem of over-efficiency). Second, and in contrast to Leveson (2015b) this section explains how criminal justice professionals are concerned that the courts are becoming overly efficient, which has generated the secondary problem of court crises (as reported by Nicklas-Carter, 2019). Third and finally, this section argues that greater academic insight could help summary justice efficiency reformers to mitigate against the problem of over-efficiency. Together, these points establish the problem that the thesis investigates: the summary justice process is at risk of becoming overly efficient, diminishing the quality of the justice there.

To begin, this section establishes what the thesis means when using the term 'over-efficiency' and 'overly efficient'. The present study uses these terms in a similar way to that of Belbot and Marquart (1998), Shichor and Gilbert (2001), Holland (2015), Ferguson (2016) and Hansen and Umbreit (2018)²⁷. As Belbot and Marquart (1998: 305) has explained, "an overly efficient system results in quick, routine, arbitrary decisions that fail to meet the needs of the institution". This critical view of efficiency reflects the aforementioned works of Raine and Willson (1997). Namely, whilst managerial values are desirable for ensuring some degree of efficiency for public services (such as speediness and cost-savings), this should not be to the extent that they displace primarily substantiating values that connect with ideas of procedural due process and social justice (previously discussed in Section 2.2.4; also see Ritzer, 1993; Rhodes, 1996; Sanders, 2002 and Bohm, 2006). Indeed, if the summary justice process primarily commits to managerial values to the detriment of other quality justice values, it becomes 'hollowed out' (as discussed in Section 2.2.3; see Rhodes, 1996; Law and Mooney, 2007; Deering and Feilzer, 2018). Rephrased more succinctly, when managerial efficiency values²⁸ primarily characterise the summary justice process to the detriment of other quality justice values²⁹, it is overly efficient.

²⁷ All of these thinkers have examined the role of efficiency in justice processes but in a broader context (not specifically to do with the English and Welsh summary justice process).

²⁸ Which include speediness, cost-savings, time-trimming, waste-mitigation, etc. (see Section 2.2.3).

²⁹ These quality justice values include equitable participation and representation, judicial impartiality, transparency, comprehensibility (further discussed in Section 2.2.4).

Leveson (2015b: s.24) argues that criminal justice processes are currently at risk of “collapse” because they are under-efficient, marginalising the problem of over-efficiency. For Leveson (2015b), the risk of collapse stems from the criminal courts inadequate planning and/or capacity to adapt to necessary (austerity) cost-cutting and productivity changes (as described in the prior sections). The result of such inadequate change, Leveson (2015b) warns, is that substantial service problems will develop. Rephrased, Leveson (2015a; 2015b) has been primarily concerned with how criminal court processes do not prioritise efficiency high enough.

At the same time, however, Leveson (2015b) has raised concerns that justice quality may diminish because of an opposite problem, the process could become overly efficient because of his (and others) recent reforms. Leveson (2015b: s.9) has emphasised that, “we must obviously ensure that due process is not jettisoned in the desire to accommodate speed or to incorporate technological change”. Conversely, he has questioned, “Will the critical need for financial savings herald changes previously considered unacceptable? Time alone will tell” (2015b: s.9, s.24). To this end, whilst Leveson (2015b) supported a radical drive to make the criminal court process more efficient (lower running costs, greater speediness, etc.), he was also conscious that these efficiency reforms may diminish justice quality. Indeed, the unconditional policy goal of cost-savings and speediness may jettison the quality-justice (due process). Such over-efficiency concerns of Leveson (2015b) are fleeting however, the emphasis of Leveson’s (2015a) work is the need to make more radical changes to avoid justice collapse from the problem of under-efficiency. This has resulted in the problem of over-efficiency being marginalised in his work.

In contrast to Leveson (2015a, 2015b), Nicklas-Carter (2019) has drawn attention to how criminal justice professionals have been concerned that the courts are becoming overly efficient which has generated a secondary problem, court crises. Indeed, Nicklas-Carter (2019) explains that justice professionals (court staff, solicitors, judges, etc.) have perceived the government’s efficiency related changes (both proposed and implemented) as largely negative, undermining quality of justice. In response, justice professionals in the 2010s withdrew their labour from the criminal courts as a form of protest against this perceived over efficiency, generating service disruptions (see Mount, 2013; Bar Council, 2018a; Law Society, 2017). These disruptions to court services are what Nicklas-Carter (2019: 64) means by ‘court crisis’: it is the disruption of criminal court services because of a conflict between ambitious (radical) pro-efficiency government policy and the interests of legal professionals.

Whilst Nicklas-Carter (2019) centres his discussion of court crises on legal aid efficiency reforms, the present study views the court crisis as potentially expanding out into other broader efficiency-related, criminal court reform areas. Indeed, there are other areas where thinkers have contested the government's summary justice efficiency reforms which include: changes to case management rules, the Early Guilty Plea Scheme, magistrates' professionalisation and the courts use of live link technologies (Section 2.4 discusses these further). Indeed, there are wide-ranging and competing narratives regarding how the summary justice process should prioritise the efficiency. Therefore, the thesis takes the view that the risk of future court crises based on the problem of overly efficient policy reform is still present.

Greater academic insight could help summary justice efficiency reformers better understand and address the problem of over-efficiency. Indeed, recent government-sponsored reports have predominantly focused on making the summary justice process speedier and less costly, focusing on the issue of under-efficiency (Leveson, 2015a; 2015b; also see Section 2.3.2). As a result, the government literature has largely marginalised the problem of over-efficiency. Therefore, the present thesis identifies the risk of the summary justice process becoming overly efficient as an issue that warrants further attention from researchers. Indeed, additional research can provide greater insight into what values are currently underpinning the summary justice process (whether the courts are overly efficient) and then if necessary, provide insight into remedial efficiency-focused policy reforms. This is an approach to academic research that Duff (2009) similarly advocates for. Namely, academic research is useful because it can serve in an "underlabouring" capacity for policy makers, "to engage with the world of public policy" (Duff, 2009: 247, 249; also see Carrier, 2014). This is the task that the present thesis engages in, focusing on the problem of over-efficiency.

2.4 COURT PROCESSES UNDERGOING RADICAL REFORM

The thesis contributes to a debate in the literature regarding how the summary justice process prioritises efficiency, specifically in terms of what impact this has on other quality justice values and whether this produces the problem of over efficiency. The following sections builds from Section 2.3 by unpacking the main court processes that have been subject to recent and radical efficiency reforms, as

well as how thinkers³⁰ have conflicting views about whether these processes are for over efficiency or not. More specifically, this section explores the debate surrounding the following areas: cooperative case management (see Section 2.4.1), the Early Guilty Plea scheme (see Section 2.4.2), live link technology (see Section 2.4.3), legal aid provisions (see Section 2.4.4), the role of magistrates and their amateurism (see Section 2.4.5) and finally, the courts use of diversion and specialised processes (2.4.6). In doing so, the following sections provide greater detail regarding how efficiency in the summary justice process is contentious.

2.4.1 COOPERATIVE CASE MANAGEMENT

This section unpacks the values debate that surrounds the Criminal Procedure Rules (CPRs). This section achieves this by first re-establishing Auld's (2001) assertion that the CPRs promote cooperative practices resulting in greater efficiency in the summary justice process. Following this, this section details how some thinkers have argued that the CPRs undercut adversarial practices that promote values of civil protection and verdict accuracy. Then, this section explores Welsh's (2016) argument that greater cooperation between court staff is marginalising defendants in the justice process. Between these thinkers, there is a contention as to whether the summary justice process should promote greater cooperativeness or adversarialism.

Auld (2001) and his contemporaries have asserted that cooperative values result in a more efficient summary justice process. Namely, Auld (2001) has argued that the prosecution and defence should cooperatively work together to bring to light matters of factual significance prior to trial, streamlining the summary justice process. As previously discussed in Section 2.3.2, this approach coincides with time limits and request restrictions that the CPRs place on the defence and prosecution when making disclosure requests. The result is that the process mitigates against game playing that relies on "fishing expeditions" and "warehouse disclosures" (Department of Constitutional Affairs, 2006: 25; Auld, 2001). These CPRs therefore, promote speedy justice values through pragmatic, cooperative practices. This drive is reflected in Auld's (2001: 459) comment, "the criminal trial

³⁰ Including government advocates, the Ministry of Justice, legal profession advocates, influence groups, third sector organisations and academics. This approach to framing the literature reflects a similar approach used in Nicklas-Carter's (2019) review of efficiency in the English and Welsh criminal justice process.

is not a game under which a guilty defendant should be provided with a sporting chance". Similarly to Auld (2001), the Ministry of Justice (2005) has emphasised that compelled cooperativeness results in faster case disposals and relatedly, cost-savings (also see swift and sure justice in Section 2.3.2). To this end, Auld (2001) and the Ministry of Justice (2005) have provided a defence for the CPRs as they uphold efficiency (speediness and cost-savings) (also see Leveson, 2015).

Meanwhile, other thinkers have criticised the CPRs for promoting managerial efficiency (speedy case disposals through cooperativeness) at the expense of civil protection and verdict accuracy values (see Hall, 2010; McEwan, 2011). Hall (2010) and Munday (2019: 11) have argued that because the CPRs obligate defendants to "actively assist the court" and to "co-operate in the progression of the case", the CPRs have negated defendant's right to silence³¹. Under the CPRs, if a defendant remains silent and therefore does not satisfactorily cooperate with case management duties, the judiciary can accept the defendant's silence as an adverse inference of guilt³². Hall (2010) has argued that the right to silence is an important aspect of adversarial justice because it protects defendants from being coerced by government officials to self-incriminate and therefore, also uphold verdict accuracy values (also see McEwan, 2011). The Law Society (2007) further supports this unfairness criticism of the CPRs by drawing attention to how an adverse inference from being silent works against Article 6(2) of the Human Rights Act 1998: the courts should consider defendants innocent until proven guilty. Silence, for the Law Society (2007), is not reasonable grounds to prove guilt. Under Article 6, the prosecution holds the burden of proof, not the defence. Therefore, it is unfair to infer guilt from a defendant if they do not adequately cooperate with case management duties. Marsh (2016) similarly arrives upon this analysis emphasising that the CPRs effectively deprioritise verdict accuracy by inadequately assigning the burden of proof to the defence in an effort to secure greater managerial efficiency (speediness and cost-savings). To this end, Hall (2010), Marsh (2016) Munday (2019) and the Law Society (2007) have argued that the CPRs have diminished the quality of justice at the lower courts by eroding adversarial practices that uphold values of civil protections and verdict accuracy.

Resonating with this criticism, Welsh's (2016) PhD work has argued that wider cooperative managerial pressures (which include the CPRs) have marginalised defendants in the court process. Welsh (2016: 104) has argued that reforms such

³¹ This problematic possibility is something that Auld (2001) has acknowledged.

³² See s.3.3a and s.3.2.2g of the CPRs.

as the CPRs promote “routinisation” between court staff as they seek to dispose of cases as speedily as possible, excluding the involvement of defendants. This results in high degrees of co-operation between court staff, to the detriment of defendants’ meaningful participation in the justice process. Indeed,

“High degrees of co-operation tend to marginalise defendants from active participation in the proceedings. [...] As work patterns are standardised in order to process cases as quickly as possible, the individual circumstances of defendants become less relevant [...] speedy case progression dehumanises defendants, whose cases are all managed subject to the same procedures even though they are likely to involve different issues and defendants are likely to have different priorities”. (Welsh, 2016: 151; 172-173).

To this end, values that uphold social justice and procedural due process are deprioritised in favour of speediness through cooperative practices. Namely, as discussed in Section 2.2.4, defendants’ unique social circumstances (including social disadvantage) may not be engaged with because of such highly cooperative processes. Additionally, the process may deprioritise defendants’ effective participation in favour of speediness (similarly discussed in ECEJ, 2016). In this way, the CPRs can work towards eroding quality of justice in favour of efficiency (speediness), resulting in the problem of over-efficiency.

2.4.2 THE EARLY GUILTY PLEA SCHEME

This section unpacks the Early Guilty Plea (EGP) scheme and how thinkers have contested its impact on the criminal justice process. This section achieves this by first re-establishing the Ministry of Justice’s (2012) argument that the EGP scheme is for efficiency (speedy justice and resource savings) and is for victim-focused justice. Following this, this section draws upon other thinkers who frame the EGP scheme as promoting verdict inaccuracy and consequently, promoting a form of inefficiency. In this way, this section draws attention to how thinkers have framed the EGP scheme as being both for and against different interpretations of efficiency.

To begin, the Ministry of Justice (2012) has argued that the EGP scheme embodies values of efficiency (speedy justice and resource savings) whilst also being for victim-focused justice (also see Sentencing Council, 2016; Section 2.3.2).

Whilst the criminal justice process of England and Wales has considered the stage at which a defendant pleads guilty since 2003, it was only in 2017 with the Sentencing Council (2017) guidelines that formally established the EGP scheme (also see Criminal Justice Act 2003, s.144; Section 2.3.2). As discussed in Section 2.3.2, the EGP scheme gave guidelines for judges instructing them to give a discounted sentence to defendants who plead guilty early in the criminal justice process, in a tiered manner. The greatest discount available for defendants was up to a third had they plead guilty at the earliest possible point. An early guilty plea results in trials being averted, resulting in resource savings (managerial efficiency) (Sentencing Council, 2017). EGPs also have the benefit of mitigating against the likelihood of a cracked trial (where a defendant pleads guilty just before trial). Cracked trials are for inefficiency because defence and prosecution solicitors expend resources compiling their respective cases in preparation for trial (Sentencing Council, 2016; Ministry of Justice, 2012). The EGP scheme also worked towards sparing witnesses and victims the emotional burden of attending court, by encouraging defendants to plead guilty before court proceedings take place (Sentencing Council, 2016: 7; also see Rossetti, 2015). In this way, the EGP scheme is both for efficiency (speediness and resource savings) whilst also being for victim-focused justice.

In contrast to this position, other thinkers have framed the EGP scheme as diminishing the quality of justice because it results in innocent individuals receiving criminal sentences. As emphasised by Johnston and Smith (2017: 211), some defendants may have an “overwhelmingly powerful” fear of imprisonment and an EGP discount may be the difference between a custodial and non-custodial sentence. Therefore, some defendants may offer a false confession using the EGP scheme to avoid a custodial sentence at all costs (also argued in Redlich, Summers and Hoover 2010; Johnston, 2016; Horne, 2016). This argument fits into a larger body of literature that discusses how the process can be the “primary punishment” for court users (Feeley, 1992: 199). The seminal work of Feeley (1992) has drawn attention to how the lower criminal court process can cause significant adversity for court users through time spent in jail (remand), missed work or extra costs incurred from having to attend court. The process therefore can work against ideas of high-quality justice because of how it can promote adversity for court users outside of the formal criminal sanction. This view is upheld by more contemporary thinkers who have argued that even brief time spent in remand may be incentive enough for defendants to enter a false guilty plea under the EGP

scheme³³ (Cheng, 2013a, 2013b; Baughman, 2017). To this end, the use of the EGP scheme promotes verdict inaccuracy, diminishing the quality of justice.

Meanwhile, others have framed the EGP scheme as being for inefficiency. This somewhat novel view is upheld by Marsh (2016: 56) who explains that the EGP scheme is inefficient because it promotes “the conviction of innocent people and their incarceration (at public expense)” (Marsh, 2016: 56). To this end, Marsh (2016: 51) is specifically criticising Leveson’s (2015a) pro-managerial vision, arguing that he is ignoring the “real inefficiencies” that effect the criminal justice process. Similarly, Horne (2016) has emphasised that although a punishing process is likely the primary reason for false confessions, the EGP scheme does little to challenge this. Rather, the EGP exasperates the likelihood of false confessions (Horne, 2016). This concern is similar to what American scholars have called, “the innocence problem”³⁴, when describing the effect of plea bargaining in the American criminal justice context (see Covey, 2009: 73; Dervan, 2012). Despite the significant differences between the American justice system and the English and Welsh justice system and their use of plea bargains, a concern with verdict accuracy is shared by thinkers concerned with both systems.

2.4.3 LIVE LINK AND EFFECTIVE PARTICIPATION

This section unpacks the recent criminal court reforms regarding the video conferencing technology live link, and how thinkers debate the values which this technology brings to the criminal justice process. This section begins by establishing government advocates’ perspective that live link is simultaneously for cost and time-savings (managerial efficiency) as well as for greater court user-focused justice. Second, and in contrast to this first point, this section explains thinkers’ concern that live link is unreliable and subsequently causes cost and speed inefficiencies (generating managerial inefficiency). Third, this section presents thinkers’ concern that live link undermines the value of effective participation, working against the interests of court users and overall quality of justice. Collectively, this section demonstrates that there is contention amongst

³³ This is akin to the long-standing observation that the criminal justice process is ‘the primary punishment’ and that it acts as a “degradation ceremony”, regardless of the defendant’s guilt (Garfinkel, 1956: 420; Feeley, 1992; also argued in McConville and Bridges, 1993; Baughman, 2017).

³⁴ Namely, innocent defendants are motivated to give false confessions because of institutional pressures (a lesser guaranteed sentence, case finality, etc.).

thinkers regarding the criminal courts' use of live link because of its impact on efficiency and justice quality.

Government thinkers have argued that live link is simultaneously for cost and time savings as well as for court-user focused justice (see Leveson, 2015a; House of Commons Justice Committee, 2019). Leveson (2015a) has praised live link because of its capacity to secure hypothetical cost and time savings by omitting the need to physically transport prisoners to and from the courthouse. Indeed, Leveson's (2015a: 13) view of live link technologies were ambitious, as he argued that virtual courts should become the "default position" for conducting most hearings. This argument of Leveson (2015a) fits into larger changes that governments have made in recent years regarding courthouse closures and courthouse-centralisation. As Adisa (2018: 6) succinctly explains, "In the last 8 years, the Ministry of Justice have closed over 90 regional courts in the UK as part of its rationalisation strategy to achieve economic efficiency". Leveson (2015a) envisioned that live link could offset reduced physical, local justice with heightened electronic or virtual justice, using live link technology³⁵. Leveson (2015a) also argued that the use of live link works not just for managerial efficiency but efficiency from a court user perspective. Namely, it brings convenience to the court process. At present, court users sometimes make "extensive and time-consuming journeys, for hearings that often only last a very short period of time" (Leveson, 2015a: 21). Therefore, by allowing court users to log in from a local computer they avoid the inconvenience of travel. In this way, Leveson (2015a) has argued, live link reforms are both for cost and time savings as well as for quality justice, as it promotes the value of convenience for court users.

Other thinkers, however, have argued that live link is unreliable and causes cost and speed inefficiencies (Gibbs, 2017; Donoghue, 2017; McKay, 2018). Gibbs (2017) has drawn attention to how live links supporting technologies (such as that of internet connectivity, media players and speakers) frequently fail during proceedings. Consequently, cases involving live link are often relisted for a later date, resulting in inefficiency (case disposal delays) (Donoghue, 2017; Gibbs, 2017a). Additionally, Gibbs (2017) and McKay (2018) have noted that the justice

³⁵ Albeit, Adisa (2018: 7) reported mixed results regarding the reduction of physical court houses. Whilst economic benefits for the court were notable they also argued that "as things stand, it would be difficult to say that access to justice has not been compromised", diminishing the quality of justice of the courts (Adisa, 2018: 40). It is worth noting however, that this study was of the Suffolk area only. Therefore, these results may not be generalisable to all courts across England and Wales.

system (court managers) have had to divert staff and resources from elsewhere to mitigate against such delay-causing failures, which may cause secondary inefficiencies elsewhere in the justice process. In this way, thinkers have argued that live link is not for managerial efficiency, it can promote delays and resource wasting.

Meanwhile, Gibbs (2017) and McKay (2018) have argued that the use of video-conferencing technology has obstructed court users' effective participation in court proceedings, undermining the quality of the summary justice process. Both Gibbs (2017) and McKay (2018) have presented evidence of court staff intentionally muting court users' microphones during live link hearings, preventing live link court users from engaging with their hearing. Beyond these actions of staff, Gibbs (2017: 18) has argued that the use of live link has had a tendency to cause court users to "zone out", to become disengage from legal proceedings. Again, this raises questions regarding the usefulness of live link to support effective participation ends³⁶. This supports the view that live link technology is not for quality of justice, as it does not support the value of effective participation.

2.4.4 LEGAL AID & DIY DEFENCE

Building upon the discussion of Section 2.3, this section unpacks the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO hereafter) and how thinkers have contested its impact on the criminal justice process. This section achieves this by first establishing the view of government advocates that LASPO promotes criminal court cost-saving efficiencies whilst maintaining service standards. Second, this section explores other thinkers' argument that LASPO has resulted in a "DIY Defence" culture which has "clogged up" the summary justice process, causing delay related inefficiencies (Doward and Dare, 2016: online; Marris in HC Deb 1 January 2017: col 119wh). Third, this section presents thinkers' argument that LASPO has deprioritised the interests of justice in favour of cost-savings, diminishing the substantiveness of criminal justice (The Chartered Institute of Legal Executives, 2014). Collectively, this section draws attention to how there is debate surrounding LASPO's impact on the criminal justice process.

³⁶ This seems to reflect the view of Crown Prosecution Service staff regarding live link: "A disappointingly low proportion of CPS staff (17.9%) thought that the introduction of digitisation [live link] had been effective in improving the quality of service to victims and witnesses" (Her Majesties Crown Prosecution Service Inspectorate & Her Majesty's Inspectorate of Constabulary, 2016: 42).

Government advocates have advanced the view that LASPO reforms reduce the amount of paid legal aid working hours whilst maintaining service standards (Leveson, 2015a; Gallagher in Her Majesty's Courts and Tribunals Service, 2016). According to Leveson (2015a), LASPO reforms have been useful because they require legal aid solicitors to take on a greater number of cases whilst keeping paid working hours the same. Leveson (2015a) has argued that this LASPO efficiency goal (to do more with less) is achievable because of his other, contextualising efficiency reforms that tackle waste and inefficiency (see Section 2.3.2). For example, Leveson (2015a) explains that owing to innovations such as live link (a video conferencing technology), legal aid solicitors have greater availability which allows them to take on more cases even though less paid working hours are available (Leveson, 2015a; see also, House of Commons Justice Committee, 2015). In this way, Leveson (2015a) and other government advocates have argued in favour of LASPO reforms as it promotes efficiency (legal aid solicitors taking on more cases without extra pay).

In contrast to the government's position, some have argued that LASPO reforms have resulted in inefficiency. Doward and Dare (2016) have argued that LASPO reforms have made the application process more difficult for court users and consequently, self-representation has increased (DIY defence) (also see Law Society, 2017). As stated by the National Audit Office (2014: 14), self-representing court users are undesirable because they "lack the knowledge and skills required to conduct their case" which results in a lengthier case disposal process (also see Bowcott, 2014; Doward and Dare, 2016; Trade Union Council, 2016). DIY defence practices have also caused secondary inefficiency costs elsewhere in the criminal justice system (Trade Union Council, 2016). Banerjee and Smith (2018) have emphasised that defendants rely on non-partisan legal advisers in courtroom proceedings in the absence of paid legal representation. This has had the effect of distracting legal advisers from their primary duties (also see Legal Aid Agency, 2018). This has led some to argue LASPO reforms have generated "inefficient, slower and more costly trials" by causing staff to divert their attention away from their central duties (see Welsh, 2013, 2016; Barendrecht, Kistemajerm, Scholten, Schrader and Wrzesinska, 2014: 86). To this end, some thinkers have argued that LASPO reforms have "clogged up" the summary justice process, generating inefficiency (Marris in HC Deb 1 January 2017: col 119wh).

Other thinkers have criticised LASPO for deprioritising the interests of justice in favour of cost-savings in the criminal justice process (The Chartered Institute of

Legal Executives, 2021; also see Banerjee and Smith, 2018). The “interest of justice” principle serves as a standard for discerning which individuals should be given legal aid representation to ensure a just hearing outcome (see The Chartered Institute of Legal Executives, 2021: 3.22). In a more technical legal sense, the interests of justice are defined by the Widgery test³⁷. Doward and Dare (2016) and the Law Society (2017) have claimed that a significant portion of the population have passed the Widgery test yet, the state has not assigned legal aid representation to them owing to limited resources (also see Chartered Institute of Legal Executives, 2021). Consequently, thinkers have argued that “LASPO has failed” to deliver on its efficiency aim: to maintain criminal justice service standards whilst reducing costs (JUSTICE, 2017; Joint Committee on Human Rights, 2018; Bar Council, 2018a: online; 2018b).

2.4.5 MAGISTRATES’ ROLE

This section unpacks the recent efficiency-focused reforms that have shaped the role of magistrates in the criminal justice process, and how thinkers have contested the impact of these changes. This section achieves this by first establishing the government’s efficiency reforms that have aimed to have magistrates “do more with less” (Burnett, 2018: 13; Ministry of Justice, 2012). This section then explores other thinkers’ criticism that the magistrates are becoming “case-hardened”, undermining the fairness and therefore quality of the criminal justice process (Donoghue, 2014b: 940; Morgan and Russell, 2000). Following this, this section details Ward’s (2016: 142) view that despite magistrates’ present “lay legal professional” status, they are able to uphold social justice values in the summary justice process. In doing so, this section centres on the values debate that surrounds the magistrates’ role with particular attention given to ideas of professionalisation and amateurism.

The government has implemented reforms to have magistrates “do more with less”, promoting greater efficiency (Williams, Goodwin and Cloke, 2014: 2805; Burnett, 2018: 13). To encourage speedier case disposals, the Ministry of Justice (2012) has assigned new roles and responsibilities to magistrates. This has expanded the amount and types of work they can process. At the same time,

³⁷ The Widgery test requires court users to answer a series of questions such as: “it is likely I will lose my liberty” and “I may not be able to understand the court proceedings or present my own case”, among other statements (Legal Aid Agency, 2018: s3.1, s3.6). If a court user passes this test, they are deemed to need a legal aid representation as it is in the interests of justice (Law Society, 2017). This legal concept is enshrined in the Human Rights Act 1998 under Article 6(3)(c).

criminal cases have increasingly been diverted from the costly Crown Courts to the comparatively inexpensive magistrates' courts (Ministry of Justice, 2012; also discussed in Donoghue, 2014; Ward, 2016). To generate further cost savings, the total number of lower criminal courthouses³⁸ and the number of magistrates has decreased. This has resulted in magistrates' workloads becoming more concentrated: they must do more work in fewer locations in fewer numbers (House of Commons Justice Committee, 2016).

Other thinkers have argued that these changes have "case-hardened" the magistracy, undermining the fairness of the criminal justice process (Morgan and Russell, 2000; Sanders, 2001; Smith, 2004; Donoghue, 2014: 940). Traditionally, thinkers have framed professional district judges, who have a wealth of legal knowledge and experience, as being case-hardened: for one-dimensionally applying legal rules in an emotionally sterile or cynical manner to the detriment of upholding values of fairness and sensitivity for court users (see Boyle, Hadden and Hillyard, 1980; Sanders, 2001). In contrast, thinkers have argued that amateur, "fresh" magistrates are typically more emotionally considerate when handling cases and subsequently, magistrates deliver fairer sentences (in Donoghue, 2014: 935; Morgan and Russell, 2000; Smith, 2004; Davies, 2005). Donoghue (2014b) has argued that government efficiency changes have undermined the amateurism of magistrates, which has subsequently undermined the fairness qualities that magistrates bring to the summary justice process (similarly argued in Morgan and Russell, 2000; Smith, 2004; Davies, 2005). In this way, thinkers have framed such efficiency-focused reforms that promote the professionalisation of magistrates as also diminishing the substantiveness of the justice process.

Ward (2016) contributes to this debate by emphasising that whilst it is evidenced that magistrates serve in a lay legal professional style, this is not to argue that their quality of justice is entirely undermined. Rather, Ward (2016: 129, 142) has emphasised the capacity of magistrates to act as "social justice innovators". This argument is similar to that of Winick and Wexler (2003) regarding their pioneering therapeutic jurisprudence approach to law reform, that frames sentencers as having a rehabilitative potential for substance addicted offenders. Indeed, see Ward's (2016: 127) commentary regarding how one magistrate "set up a supported hostel for young men coming out of prison with no secure accommodation to move

³⁸ See the Court Estate Reform Programme 2010, and the 2015 and 2018 programmes of the same name (Her Majesty's Courts and Tribunals Service, 2018).

to on release”. As Ward (2016) explains, this action of the magistrate emerged from their view that offending emanates from social disadvantage (a lack of access to housing in this case). For Ward (2016: 23), this summary justice practice demonstrates the “embedding of social justice principles”, promoting quality of justice. Ward (2016: 139) has further emphasised that magistrates may be more desirable than district judges because they bring the “added value of shared decision-making in their tribunal benches of three”. To this end, lay legal professional magistrates may be preferable to that of professional district judges as they promote social justice and draw upon shared decision making. This suggests that the current balancing of professionalism with amateurism is somewhat effective and is not, at least entirely, for over-efficiency.

2.4.6 SPECIALISED COURT PROCESSES & DIVERSION

This section unpacks thinkers’ efficiency-oriented arguments that surround the government’s recent implementation of specialised courts and diversion pathways in the summary justice process. This section achieves this by first re-establishing that specialised courts, problem-solving courts and diversion services are distinct. Second, this section provides greater detail regarding the government’s implementation of TSJ³⁹ specialised courts and how they have aimed to produce streamlining / efficiency benefits. Third, this section explains how some thinkers have argued that government reforms should focus more on the development of problem-solving courts (Donoghue, 2014b; Snedker, 2018a; 2018b). Collectively, this section draws attention to how thinkers have contested recent efficiency reforms that have marginalised problem-solving courts in the summary justice process.

To begin, it is first necessary to re-establish the distinction between specialised court processes and problem-solving court processes (first discussed in Section 2.3.2; see Auld, 2001). This section draws attention to this distinction because of how there is a contention between thinkers about what direction court specialisation should take. As Donoghue (2014b: 32) clarifies, ‘specialist courts’ is an umbrella term:

“specialist courts are not necessarily ‘problem-solving’ in nature,
as they may have a narrower remit, with objectives centred upon

³⁹ The Transforming Summary Justice initiative is first discussed in Section 2.3.2.

efficient and consistent dispute resolution ('fast track' courts), rather than addressing structural inequalities"

Indeed, for Donoghue (2014b), whilst all problem-solving courts are specialist courts, not all specialist courts are problem-solving courts. The key contention, Donoghue (2014b) explains, between the two is that problem-solving courts seek to tackle structural inequalities as well as embrace therapeutic jurisprudence. Indeed, problem-solving courts are not focused on speediness or actuarial measures of success.

Meanwhile, diversion services are distinct from both of these court types because they focus on redirecting defendants with severe mental health conditions out of the criminal justice system. As the Bradley report (Department of Health, 2009) noted, the courts alongside other criminal justice authorities can and should play a key role in diverting such defendants from the criminal court process⁴⁰. The component of the courts that deal with this diverting is the Liaison and Diversion service, which was established as a standardised national service following the Bradley report⁴¹.

The government's implementation of TSJ specialised courts has sought to achieve greater streamlining / efficiency benefits. TSJ courts are specialist in that they only process cases of a type (GAP/NGAP cases) and thereby produce streamlining benefits (see Section 2.3.2; Leveson, 2015a). Leveson's (2015a) effort to develop TSJ hearings have focused primarily on efficiency ends, not problem-solving values (further supported with Her Majesty's Crown Prosecution Service Inspectorate, 2016). This development of TSJ courts follows in the government's wider efficiency-focused approach, which has terminated problem-solving courts such as that of North Liverpool Community Justice Centre (NLCJC) because they

⁴⁰ To explain further, in England and Wales, if criminal justice practitioners suspect that a defendant is living with a mental health disorder, they are to inform liaison and diversion (L&D) staff who are then obligated to screen the suspected defendant (as directed under the NHS England Liaison and Diversion Programme, 2014; also see Mental Health Act 1983 revised 2007, s.39; Department of Health, 2009; Reed, 1992). Following this screening, if L&D staff confirm that the defendant is living with a mental health disorder, staff are to divert the defendant from the standardised criminal court process. To this end, court staff have a responsibility to refer/initiate diversion proceedings if they suspect that a defendant is living with a mental health disorder (NHS England Liaison and Diversion Programme, 2014).

⁴¹ This report is not included in Section 2.3.2 because it does not centrally focus on the summary justice process, the court process, or efficiency. Rather, its task is primarily centred on the prison system and as a secondary issue, how this relates to the courts and other areas of the justice process.

were not cost-effective⁴² (see Her Majesty's Crown Prosecution Service Inspectorate, 2016; Vara, 2014).

Meanwhile, others have argued that government reforms should focus more on the development of problem-solving courts (Donoghue, 2014; Snedker, 2018a, 2018b). In greater detail, Donoghue (2014: 249) has argued that between the development of L&D services and specialist efficiency-focused courts (such as TSJ courts), there is a "short/medium term initiatives" gap that addresses defendants' social disadvantage. Snedker (2018a; 2018b) has criticised the Bradley report (Department of Health, 2009) for partly producing this service gap. Indeed, the Bradley report gave preference to the establishment of a national L&D service over the establishment of problem-solving mental health courts on efficiency grounds. The Bradley report's rationale behind this efficiency claim was that the criminal courts were ill-equipped to address dual diagnosis cases where, for example, mental health issues intersect with substance misuse issues⁴³. In contrast to this position, Donoghue (2014b: 9) has argued that the criminal courts act as a "window of opportunity" for dealing with such issues⁴⁴. This is a view supported by Bramley *et al.* (2015) who have argued that defendants require a more ambitious, holistic approach that goes beyond current L&D services and especially that of efficiency-focused TSJ courts. Collectively therefore, these thinkers have contested the government's non-development of problem-solving courts on (managerial) efficiency grounds, emphasising their utility to uphold justice quality by addressing defendants' social disadvantage.

⁴² Whilst the government has continued to experiment with problem-solving courts since the closure of the NLCJC, these have only been through the use of small pilot programmes (further discussed in Donoghue, 2014b).

⁴³ Miller (in Donoghue, 2014b: xx) gives somewhat tacit support for this view, as they argue that a criticism of problem-solving justice is its capacity to produce the 'courtification' of social welfare. In greater detail, Miller's concern is that the criminal courts may become a necessary and unreliable step for seeking social/medical aid (in Donoghue, 2014b). For Miller, this type of process is undesirable because it risks serving in a gate-keeping capacity for wider social services (in Donoghue, 2014b).

⁴⁴ Indeed, it is for this reason that Donoghue (2014b: 101) frames the government's closure of the NLCJC as, "very unfortunate: it was an innovation that was supported by many exceptionally dedicated professionals who were determined to bring a more 'community focussed' and 'therapeutic' approach to the court system when compared to traditional case processing".

2.5 REVIEW OF EXISTING RESEARCH

This section offers a review of the summary justice efficiency literature with a specific focus on key methods and findings. In doing so, the following sections offer a review of government-related research (see Section 2.5.1), quantitative research (see Section 2.5.2) and other, non-government related research (see Section 2.5.3). By ‘government-related’, the thesis reflects the work of Nicklas-Carter (2019), drawing together those research documents that have been produced by government and departmental advocates, including the Ministry of Justice. This is opposed to other research which is attached to third sector organisations, influence groups or was produced by independent academics. In reviewing this literature, the present thesis unpacks the methods and key findings used within criminal justice, efficiency-related research. This review subsequently facilitates for Section 2.6, in conjunction with the prior sections in this chapter, to formally articulate the aim, objectives and research questions of the thesis. This review also supports Chapters 4, 5 and 6, by laying out key texts that inform their critical discussions.

2.5.1 GOVERNMENT-RELATED RESEARCH

This section offers a review of key, influential, government-related research, arguing that the present thesis can contribute to the summary justice efficiency literature by examining the in-court process directly in a bottom-up fashion. This section does this by first arguing that government-related research has largely provided a “top-down” perspective of summary justice efficiency, rendering a bottom-up research gap in the literature (similarly argued in Donoghue, 2014b: 64). Second, current state-sponsored efficiency reforms (both proposed and implemented) would benefit from more nuanced practice-focused research because it could curtail unintended negative justice outcomes. Third, the austerity-based/pro-managerial efficiency interests of government-sponsored reports limit their interpretative scope, subsequently giving support for greater academic research into summary justice efficiency. Collectively, these points draw attention to how the present thesis can contribute towards filling a gap in the literature.

To begin, government-related research has overly relied upon a top-down approach towards understanding summary justice efficiency, rather than integrating a bottom-up approach (similarly argued in Donoghue, 2014b). Indeed, Leveson’s (2015a) work draws upon the insights of deputy directors, chief operations managers and chief constables. Similarly, Auld’s (2001) review draws upon consultations with twelve high-ranking individuals provided by the Lord

Chancellor. Meanwhile, the Ministry of Justice's (2012) *Swift and Sure Justice* white paper primarily rests its analysis on statistical insights, not on-the-ground experiences of staff or court users. This collective government-sponsored approach to analysing summary justice efficiency excludes the lived accounts of those who pass through the justice system as users⁴⁵ (defendants and victims) and those who deliver summary justice in-court (lower band staff including ushers, solicitors, legal advisors, etc.) (similarly argued in Donoghue, 2014b). In doing so, this government research renders a bottom-up gap in the literature, marginalising those who primarily experience the summary justice process and the efficiency issues they face.

Additionally, current government-related efficiency reform recommendations would benefit from more nuanced, empirical, practice-focused research. This is an issue that Leveson (2015a) indirectly concedes throughout his review. For example, consider his reform recommendations on the use of technology in the in-court justice process: "new technologies are now available which will provide a reliable and high-quality means of dealing with many, *but clearly not all*, aspects of criminal cases" (Leveson, 2015a: 13; emphasis added). Following this statement, Leveson (2015a) did not offer a detailed account of how policy reformers could implement technology for processing cases in a systematic, reliable and high-quality way. As Section 2.4.3 has unpacked, this is something that summary justice thinkers are concerned with. Leveson (2015a: 16) instead leaves this pragmatic, practice-focused task to another party: "I suggest a committee should be constituted of representatives from the participants in the criminal justice system to determine best practice in the conduct of such [live link] hearings". Here, the concrete 'best practice' element of his reform recommendation for more technology is out-sourced to a (vague) third party. This vagueness regarding how the summary justice process should implement his reform ideas in concrete terms is a theme

⁴⁵ The notable exception to this top-down approach is the DoCA's (2006: 12) report that utilised a survey of 1,027 members of the public "aimed at testing people's attitudes on pre-court disposals" and also used a series of workshops with ~100 "members of the general public as well as some one-to-one interviews with stakeholders". However, it is notable that this report was conducted more than 10 years prior to the present thesis, rendering its insights dated.

throughout Leveson's (2015a) work⁴⁶. The literature would benefit therefore, from greater empirical, practice-focused research that can provide more granular insight regarding how to implement efficiency-focused reforms.

This lack of clarity regarding how the summary justice process should integrate efficiency-focused reforms results in a secondary problem, it can cause spurious or unintended justice outcomes (similarly argued in Reiling, 2010). A House of Commons Justice Committee (2019) report recognised this problem when discussing current and proposed live link efficiency-focused reform recommendations (which includes those offered by Leveson, 2015a):

“the use of video hearings and video links in the UK is limited. What there is raises many questions as to its suitability for anything other than straightforward cases. We recommend that, as a priority, the Ministry of Justice commissions independent research on video hearings and video links with a primary focus on justice outcomes. This research should be completed before HMCTS makes more widespread use of video technology in courts and tribunals” (House of Commons Justice Committee, 2019: 69; also argued in McKay, 2018).

Indeed, it is possible that current implementations of live link technology may well be diminishing the substantiveness of the summary justice process. This is an issue that Leveson does not expand upon in his 2015 review (again see Section 2.4.3). This lack of focus on real world and current practice is similarly an issue in Auld's (2001) review and the Ministry of justice's (2012) whitepaper. For example,

⁴⁶ Indeed, Leveson (2015a) has externalised practice-focused research throughout his review. Sometimes this is vague, where he does not clarify who should conduct the research. This is the case when he discusses training for court staff on how to use technology. Here, Leveson (2015a: 67) does not specify what the training should target in concrete terms or who should do the research only that, “I recommend that a review of this training is undertaken and refresher training implemented as appropriate”. Similarly, Leveson gives vague reform recommendations on how CPR practices should be reformed (see s.279). On other occasions, Leveson (2015a) externalises practice-focused research out to other programmes and agencies. This is the case with digital evidence presentation practices. Here, Leveson (2015a) calls upon working members of the CJS Efficiency Programme to provide specific concrete insight. Alternatively, consider Leveson's recommendations on fast tracking early guilty plea cases. Here, Leveson calls upon TSJ working members to provide concrete practice reform recommendations regarding how to “fast-track” (Leveson, 2015a: 99). In all these cases, Leveson's (2015a) reform recommendations are speculative (not specific in terms of concrete, real practice). This limits the usefulness of his reform recommendations, it is unclear how to implement what he advocates for in real, practice amending terms.

see Auld's (2001: 280) proposal for a "District Division" court or the Ministry of Justice's (2012: 43) "efficient justice through technology" idea (first discussed in Section 2.3.2). These are theoretical, envisioned constructs that emerged from largely desk-based research, not from directly observing real world practice in an iterative, methodical manner. Therefore, like with Leveson's (2015a) work, the recommendations in Auld's (2001) and the Ministry of Justice's (2012) work lacks a grounded-in-observed-practice, quality-safeguarding character. Indeed, it is reasonable to conclude that these efficiency reform recommendations could have wide ranging and unexpected outcomes, negatively impacting the substantiveness of justice (similarly argued by Gibbs, 2017). Therefore, the present study recognises that further in-court, evidence-based research could draw attention to these otherwise hidden and negative justice outcomes.

Lastly, academic research into summary justice efficiency reform is uniquely valuable because of its capacity to be independent from government sponsored interests. As Nicklas-Carter (2019: 66) explains:

"the debate on court efficiency and the effects of the measures adopted or proposed to attain that efficiency have been mainly conducted outside the academic arena and confined to the main protagonists of the government [...] Most of the references to this efficiency drive have, by necessity, rested upon governmental rather than academic papers"

Indeed, as legal professionals have argued, the government's drive for efficiency has often been uncritical and does not address "real issues" which question the reach of austerity/pro-managerial efficiency changes⁴⁷ (Nicklas-Carter, 2019: 66; also see Bar Council, 2018a; Law Society, 2017). Additionally, whilst Nicklas-Carter (2019) states that the criminal justice efficiency reform debate has largely taken place 'outside the academic arena', there have been some important academic studies in recent years. Notable works include that of MacDonald (2008), Donoghue (2014b), Ward (2016) and Marsh (2016), amongst others⁴⁸. Notably, Marsh (2016: 51) has used similar phraseology to Nicklas-Carter (2019), arguing

⁴⁷ It is notable that government thinkers have argued against the legitimacy of legal professionals' criticisms of recent efficiency reforms, framing legal professionals as comprising of "fatcats" who are protesting to preserve their own financial self-interests (Perkins, 2001: online; also see Office of Fair Trading, 2000; Nicklas-Carter, 2019). This point however, serves to promote the usefulness of academic research into summary justice efficiency, as it is independent from both the government and legal professionals.

⁴⁸ Section 2.5.3 unpacks these other influential academic works.

that Leveson's (2015a) work does not critically discuss the "real inefficiencies" of the summary justice process because of a prior commitment to achieve cost-savings (previously discussed in Section 2.3). The usefulness of further academic research, therefore, is that it can provide unique insight regarding the summary justice efficiency, partly because of its independence from pro-managerial efficiency/austerity-based influences.

2.5.2 QUANTITATIVE RESEARCH

This section offers a review of summary justice, efficiency-focused quantitative research, emphasising that the present thesis can contribute to the literature through an exploratory, qualitative approach. This section begins by explaining that the Ministry of Justice has produced much of the quantitative, summary justice, efficiency-focused literature. Second, this section explains how these quantitative reports adopt a narrow, reductive view of efficiency and consequently, these reports may not account for important externalities such as how the process upholds values that are for procedural due process and social justice. Third, this section argues how it is difficult to develop quality-justice improving policy reform recommendations from these quantitative research documents, drawing attention to the usefulness of exploratory, qualitative research. Throughout, these key points draw attention to the limitations of the quantitative methodological approach for understanding summary justice efficiency.

The Ministry of Justice has produced much of the quantitative, summary justice, efficiency-focused literature. Indeed, every year since 2014, the government has released quarterly statistical reports on the productivity of the criminal courts which includes analyses of its efficiency (Ministry of Justice, 2013; also see for example, Ministry of Justice, 2021). These quarterly reports give details of what efficiency-related changes have happened that quarter, using managerial metrics of speediness, delay mitigation and outstanding case statistics. There have been some independent quantitative studies into the lower criminal court justice, however, these have typically been international and not specific to the English and Welsh context limiting their usefulness to the present thesis (see for example Christy, Poythress, Boothroyd, Petrila and Mehra, 2005; Ferrandino, 2013; Odhiambo, 2016; Bumblauskas and Kalghatgi, 2018).

Owing to how these Ministry of Justice reports adopt a narrow, reductive view of efficiency there may be important externalities being unaccounted for, which includes how the process upholds values that are for procedural due process and

social justice. Indeed, in order for the Ministry of Justice to produce statistics, it must narrow the parameters of what is measurable, as is standard practice in quantitative research (King and Wincup, 2007). Consequently, when discussing efficiency, the Ministry of Justice has focused on a limited range of concepts⁴⁹. Of note, the Ministry of Justice typically focuses on case backlogs, cracked trials⁵⁰, ineffective trials⁵¹ and the length of the overall process from charge to disposal (see for example, Ministry of Justice, 2021). The issue here then, is that these quantitative reports are not exploratory. Of specific relevance to the present study, these reports do not examine how values of procedural due process and social justice are upheld in the justice process (similarly argued in King and Wincup, 2007). Indeed, with the Ministry of Justice reports focusing only on managerial issues, their investigations may have overlooked other forms of efficiency or important issues that relate to efficiency which cannot be quantified. Therefore, the researcher recognises that further qualitative research would aid in providing greater insight into summary justice efficiency, contributing an exploratory character to the literature.

It is difficult to develop quality-justice improving policy reform recommendations from these quantitative research documents. As Lawrence and Homel (1986: 167) have emphasised, a limitation of quantitative court research is that quantitative variables “provide information which is too simplistic and static to be of much value in building an explanation” of the court process (also see Feeley, 1992; Chamberlain, Keppel-Palmer, Reardon and Smith, 2019). As a result, it is difficult to form justice-improving policy reform recommendations that engage with the normative concepts of social justice and procedural due process (see Section 2.2.4 regarding how these concepts connect with quality justice). Indeed, it is unclear what can (or should) be changed in the process without understanding what is taking place in the in-court process in real (normative) terms. Therefore, despite

⁴⁹ Namely, these quarterly reports have focused on the number of out-of-court disposals, the length of the case disposal process, remand times, the number of cracked trials, prosecution/conviction rates, the number of ineffective and effective trials, sentencing outcomes (including outcomes such as whether the defendant received a suspended sentence, community order, fine or other outcome).

⁵⁰ As Her Majesty’s Court Service and the Crown Prosecution Service (2007: 3) explain, a cracked trial is: “on the trial date, the defendant offers acceptable pleas or the prosecution offers no evidence. A cracked trial requires no further trial time, but as a consequence the time allocated has been wasted, and witnesses have been unnecessarily inconvenienced thus impacting confidence in the system”.

⁵¹ As Her Majesty’s Court Service and the Crown Prosecution Service (2007: 3) explain, an ineffective trial is: “on the trial date, the trial does not go ahead due to action or inaction by one or more of the prosecution, the defence or the court and a further listing for trial is required”.

the advantages that these quantitative reports bring, the present thesis draws attention to how the literature would benefit from greater research that can explore the concept of summary justice efficiency qualitatively.

2.5.3 OTHER RESEARCH

This section offers a review of the other research that has investigated criminal court efficiency, arguing that there is an observation-based summary justice research gap. In support of this overarching point, this section begins by arguing that summary justice efficiency research has largely been theoretical or relied on interview⁵² data. Second, this section argues that most contemporary, observation-based, lower criminal court efficiency research does not focus on the English and Welsh justice system. Third, this section argues that contemporary academic research has largely focused on one issue or process within the criminal courts in relation to efficiency, rather than examining the in-court process as a holistic whole. Collectively, these points draw attention to how additional court observation, summary justice efficiency research can produce unique insights regarding the development of future reform recommendations.

To begin, research on summary justice efficiency has largely been theoretical or relied on interview data, to the exclusion of research that is primarily observation based. Indeed, the present thesis recognises that there has been much legal-doctrinal and theoretical research on the issues of the CPRs and the right to silence (see Hall, 2010; McEwan, 2011; 2013; McConville and Marsh, 2015). These works collectively argue that the CPRs generate efficiency (speedy justice) at the expense of fairness as they omit adversarial fact-checking processes (as discussed in Section 2.4.1). However, there is little contemporary evidence to suggest that such fairness-undermining practices take place during the summary justice court process in concrete (direct observation-based) terms. Likewise, Horne's (2016) work that focuses on defendants' plea giving relies on interview data involving solicitors and defendants outside the courtroom (see Section 2.4.2). Although no doubt useful for gaining insight into the difficulties defendants face during the summary justice process, Horne's (2016) research does not focus on the entire courtroom workgroup and how they collectively interact during proceedings in observational terms. Consequently, there is an element that impacts the plea-giving process that is hidden in the literature, owing to this lack of

⁵² Either wholly or as part of a mixed/multi methodology.

in-court observational data. Similarly, live link research has largely relied upon roundtable discussion data, interview data or written testimonies from court staff, not by observing how courtroom proceedings apply such technology (see Ellison and Munro, 2013; Gibbs, 2017; McKay, 2018; also see Section 2.4.3). A similar narrative surrounds the contemporary literature regarding the role of magistrates in an efficiency-oriented justice process (see Section 2.4.5). Namely, this literature has largely been theoretical (see Sanders, 2001; Davies, 2005) or has largely relied upon interview data in favour of (or instead of) direct, in-court observational data (see Douglas and Laster, 1994; Moore, 2001; Welsh, 2016; Ward, 2016; Nicklas-Carter, 2019). Together, these different areas of the summary justice efficiency literature have largely omitted observing in-court practices as a primary data source. This renders a data gap in the literature. Namely, the summary justice efficiency literature would benefit from additional in-depth, direct observational research to examine what real-world practices take place during the in-court process.

This gap in the literature is important because theoretical and interview-based research into the lower criminal court process has several important limitations (that observational research does not have). Theoretical and doctrinal accounts of summary justice efficiency risk disconnecting socio-economic and cultural issues from policy reform discussion (which impacts social justice and procedural due process considerations). Indeed, Altheide and Johnson (1998: 297) have argued that observational research can “reflect tacit knowledge, the largely unarticulated, contextual understanding that is often manifested in nods, silences, humour and naughty nuances” (also see Smith, 2004). Similarly, Ali, Yusoff and Ayub (2017: 474) have emphasised that “the law does not operate in a vacuum” and therefore, researchers should seek to gain as great an understanding of contextualising (concrete) reality as possible. Therefore, if the literature made use of more direct observational, in-court research a richer understanding of courtroom practice could emerge, positively influencing future efficiency reforms.

Additionally, this observational element is useful because it can mitigate against participant bias, a problem associated with interview-based research (see Grimm, 2010). As explained by Grimm (2010: 258), the interviewed subject is prone to, “choose responses they believe are more socially desirable or acceptable rather than choosing responses that are reflective of their true thoughts or feeling”. The consequences of this, is that researchers may report “socially desirable” narratives from participants which are not reflective of reality, whilst under-reporting those elements of summary justice practice that are not socially desirable (Grimm, 2010: 258). This point resonates with an adage of Margaret Mead that what participants

“say, what they do, and what they say they do are entirely different things”, (Mead in Blocher, Corporon, Crammer, Lautzenheiser, Lisk & Miles, 2010: 13). To this end, the observational data gap in the summary justice efficiency reform literature is an important one, it can complement the established interview-based research by mitigating against the social desirability problem.

Most contemporary observation-based, lower criminal court efficiency research does not focus on the English and Welsh justice system (see Varma, 2002; Edwards, 2005; Richardson, 2006; Freeman, 2009). Of note has been the Australian work of Roach Anleu and Mack (2005; 2007; 2009; 2013; also see, Roach Anleu, Blix, Mack and Wettergren, 2011). Whilst this international literature is relevant to the present study in a comparative sense, it has limited direct application to the English and Welsh context. Indeed, it needs little justification to draw attention to how there are different cultural norms, laws and importantly for this study, value prioritisations in different legal jurisdictions on the international stage. More briefly stated, policy makers cannot make one-to-one parallels between findings of the Australian lower criminal courts and that of England and Wales. These are culturally unique institutions despite following the same common law principles and despite being influence by global trends (such as that of NPM, see Section 2.2.3). Therefore, given the valuableness of specifically English and Welsh lower criminal court observational research, the thesis identifies this as an important research gap.

Contemporary academic research has largely focused on one issue or process within the criminal courts in relation to efficiency, rather than examining the in-court process as a holistic whole. Indeed, research articles on summary justice efficiency have typically focused on one aspect/process in isolation⁵³. For example, authors have examined efficiency changes made to the CPRs (see Johnston, 2019), the use of EGPs (see Johnston and Smith, 2017), legal aid provisions (see Flynn and Hodgson, 2017) and the use of live link (see Ellison and Munro, 2013). These research approaches are in contrast to the more holistic, explanatory and emergent forms of courtroom observation research that was notable between the 1950s and 1990s. Indeed, the aforementioned contemporary works are in contrast to the earlier works of Garfinkle (1956), Rock (1993), Feeley (1992) and Ulmer

⁵³ A notable exception here is the work of Marsh (2016) who does indeed primarily focus on efficiency in the criminal court process, albeit this is a purely theoretical piece. Another exception here is that of Ward (2016) who focuses on managerial changes over recent years in the summary justice context and does rely on some court observation insights. However, as mentioned in her research largely relies on interviews with magistrates rather than primarily using court observation data.

(1997) which were more exploratory in their research approach (also discussed in Section 3.3). These ethnographically-focused works made use of a prolonged court observation method to holistically and emergently understand the “social world” of the courts (see Rock, 1993; 1991: 266; also see Ulmer, 1997). As stated by Rock, by being conscious of all court room actors (court users and staff) and well as place and time more broadly, they gained insights into the “unique constellation of social forms” that took place in the criminal justice process (Rock, 1972: 97; 1991; 1993). This holistic and exploratory (rather than myopic) approach of Rock (1993) was useful from a policy-reform perspective. Indeed, this work informed the Victims Charter. Given the advantages of this approach for policy reform insights, the present thesis takes the view that further research of this type would be beneficial. It could generate unique, exploratory insights that mitigate against the problem of over-efficiency in practical, reform recommendation-based terms.

2.6 RESEARCH AIM, OBJECTIVES & QUESTIONS

This section sets out the aim, objectives and research questions of the thesis. This section achieves this by first noting the differences between aims, objectives and research questions and the value of each. Second, this section explains its research aim, linking it back to the previous sections in this chapter. Third, this section lists the objectives of this research, indicating what the content of the remainder of the thesis entails. Fourth and finally, this section formalises its research questions, reiterating the importance of the thesis and how it contributes to a debate in the literature regarding how the summary justice process should prioritise efficiency. Collectively, these points link the prior sections of this chapter together, clarifying the purpose of the thesis and indicating its direction in the remaining chapters.

It is necessary to clarify what the differences are between aims, objectives and research questions and the value of each. Educators provide conflicting accounts of the role of aims, objectives and research questions in post-graduate research (as well as what order researchers should structure these key components) (see Thomas and Hodge, 2010; Abdulai and Owesu-Ansah, 2014). For the purposes of this thesis, it is sufficient to subscribe to Abdulai and Owesu-Ansah (2014: 6) definition of a research aim: it is “basically a purpose statement that defines the trajectory or route and destination of research”. The purpose of stating a research aim is to succinctly re-state the research topic (Abdulai and Owesu-Ansah, 2014).

Meanwhile, the role of research objectives is to explain the “realization of the research aim”, to explain in unambiguous terms how the research aim will be achieved through a series of steps (Abdulai and Owesu-Ansah, 2014: 6). Whilst some thinkers believe it is unnecessary to offer readers research questions after presenting research objectives (see Thomas and Hodge, 2010), research questions can serve as a more accessible heuristic device for readers and are therefore useful. The present thesis subscribes to this perspective and consequently includes research questions alongside research objectives. These research questions serve as motivating statements which the remainder of the thesis refers to and answers, with the final conclusion chapter explicitly answering these.

The present study’s research aim emerged from this chapter’s previous sections. The aim of this thesis is:

To investigate how lower criminal courtroom practices prioritise efficiency and from this, to develop policy reform recommendations which address the problem of over efficiency, promoting quality of justice.

As Section 2.3 explains, summary justice efficiency reform has overwhelmingly focused on the issue of under-efficiency, promoting values of speediness, cost-saving and waste-mitigation in the in-court process. In doing so, these reforms have marginalised the problem of over-efficiency. It is this problem that the present study has focused upon. To briefly reiterate Section 2.3.3, an overly efficient justice system is primarily characterised by managerial values (such as speediness, cost-savings and waste-mitigation) at the expense of substantiating values (such as accessibility, openness, impartiality, and comprehensibility) (see Sections 2.2.3, 2.2.4 and 2.3.3). The negative consequence of such an overly efficient justice process, therefore, is that it becomes “hollowed out” (see Law & Mooney, 2007: 272; in Section 2.2.3). Consequently, the mission of the present thesis, has been to investigate what values currently underpin in-court summary justice practices and from this, to offer policy reform recommendations that target the problem of over-efficiency, promoting quality of justice. In order to achieve this aim, the present thesis utilised a court observation method that examines courtroom practices directly, filling a gap in the literature (as discussed throughout Section 2.5).

To achieve this aim, this section offers four research objectives. These research objectives are as follows:

1. To observe summary justice practices as they take place in an English and Welsh magistrates' courthouse.
2. To identify the dominant values that underpin these observed practices.
3. To critically discuss these interpretations of value-laden practices and their prioritisations in view of the concerns raised in the literature.
4. To generate efficiency-focused reform recommendations aimed at improving the summary justice process.

Objective one reflects the gaps in the literature that Section 2.5 identified. As Section 2.5 reports, much of the summary justice literature has used a top-down approach, is theoretical and/or has substantially relied upon out-of-court, interview-based data. Therefore, by relying primarily on direct observation of real-world practices, the present thesis seeks to secure a unique perspective on summary justice efficiency. This court observation method is discussed in Chapter 3, (see Section 3.4). Meanwhile, objective two reflects the theoretical framework of Section 2.3, that social values are pluralistic, interpretative and can emerge from analysing empirical data. By the researcher analysing court practices using an open-ended interpretative approach (rather than an approach that commits itself to a single interpretation of social values), this thesis offers an equally open-ended, exploratory account of what values underpin the observed summary justice process. The first half of Chapter 4, 5 and 6 present this initial data analysis. The second half of these chapters answer objective three. Here, the thesis connects the concerns of the literature (discussed in Section 2.4) with the researcher's interpretations of how the observed summary justice practices prioritise efficiency. In doing so, the thesis offers a critical analysis of the original data whilst drawing upon the quality justice concepts of procedural due process and social justice (see Section 2.2.4). Chapter 7, the concluding chapter then addresses objective four. Here, the main arguments from Chapter 4, 5 and 6 are drawn upon to facilitate for a discussion regarding policy reform recommendations, as well as areas for future research.

Finally, this thesis offers research questions to serve as a heuristic device for readers, with each chapter frequently linking back to these. The research questions are:

1. By directly observing the summary justice process from the courtrooms of a single English Magistrates' courthouse, and in

utilising an exploratory approach, what values are embedded in individual and institutional practices?

2. In critically discussing these process-defining values and their prioritisations, should the summary justice process become more efficiency-oriented or should some other value be prioritised?

3. Based on this assessment, what specific reform recommendations can be made to improve the observed summary justice process?

These research questions centre on the efficiency value-prioritisation debate that exists between the government and the Ministry of Justice, legal professionals and influence groups amongst other thinkers (see Section 2.4). To reiterate Section 2.4, there is debate in the literature regarding what values the current summary justice process embodies and from this, what direction further efficiency reforms should take. On one side, the Ministry of Justice and government advocates have largely upheld that recent efficiency reforms have achieved both cost-savings alongside quality justice-promoting changes. On the other side of the debate legal professionals, influence groups, third sector organisations and academics have raised concerns that recent efficiency reform changes promote managerial efficiency to the detriment of allowing the summary justice process to uphold other quality-justice assuring values (creating the problem of over-efficiency). The present thesis contributes to this debate by investigating this over-efficiency problem. By using original, observational data to examine in-court practices, the present thesis offers a unique and independent interpretation of the values that underpin the summary justice process. This case study of a single magistrates' courthouse then offers policy reform recommendations in view of the problem of over-efficiency, giving underlabouring direction to policy reform makers as how to improve the justice process. This thesis is important because it provides policy reform-directed insight into how the summary justice process can curtail the problem of over-efficiency, promoting quality of justice.

CHAPTER 3. RESEARCH DESIGN

3.1 INTRODUCTION

This chapter argues that a stenographic court observation method of a single courthouse coupled with thematic data analysis was the best research design choice for this thesis to answer its research questions. This chapter begins by providing some contextual information regarding the criminal courts, explaining why it makes for a sensitive research site (see Section 3.2). Following this, Section 3.3 explains why an ethnographic approach best suited the research aims of this thesis. Succeeding this, Section 3.4 explains the merits of the stenographic data collection method and subsequently, how the researcher collected 66 days of court observations. This same section then offers some reflections on the data collection process. Section 3.5 then offers an account of how the researcher thematically analysed the data and how they used elements from grounded theory to enhance this analysis. This section also discusses institutional discourses, the researcher's positionality and the presentation of the thesis findings. This is followed by an account of the researcher's legal and ethical considerations (see Sections 3.6, 3.7). Finally, this chapter concludes by addressing some design limitations of the thesis (see section 3.6). Throughout this chapter, the thesis draws upon a range of socio-legal, court observation studies to inform and justify its methodological choices.

3.2 THE CRIMINAL COURTS AS A RESEARCH SITE

This section provides a contextual backdrop to the data the researcher collected and analysed for this thesis. First, this section discusses how the lower criminal courts are a sensitive data collection site because this is a place where legal justice and punishment decisions are made about people. This first key point concludes by emphasising that the present study was required to consider this sensitivity, to ensure the ethicalness of the research. Second, this section discusses the high volume of business that takes place at the lower criminal courts, and how this subsequently impacted the present study's data collection method. Finally, this section discusses the disadvantaged social and lifestyle backgrounds of court users, and how this subsequently shaped the present study's analytical approach. This section discusses these three points whilst drawing upon other socio-legal works, demonstrating the significance of these contextual issues. Overall, the

present section draws attention to the uniqueness of the lower criminal courts as a research site and the sensitivity issues it raises. At the same time, this section demonstrates that the present study reflected on this research site uniqueness as to develop a considered, research design.

To begin, the lower criminal courts are a sensitive research site because this is a place where people are criminally accused and have legal and punitive decisions made about them. This sensitivity is demonstrated in Ward's (2016) socio-legal work. In the following extract, Ward (2016) accounts for how the criminal courts process people who are living through adversity. Compounding this, Ward (2016: 58) also emphasises how the courts exacerbate lived adversity by delivering formal, legal punishments:

“This was an emotional morning in court for its illumination of the impact the penalties imposed are likely to have on the lives of defendants and their ability to function in the way they are used, for instance the already-depressed mother losing her driving licence for 18 months when she has four small children to get to and from school and hospital appointments to keep for her unwell six-month-old twins, on top of the elderly mother she looks after.”

In the above case, the defendant is experiencing adversity owing to issues of depression and the responsibilities of being a mother of four young children and being a carer for their elderly mother. The criminal sanction of losing a driving license further exacerbates the court user's lived adversity. This compounding of adversity renders the criminal courts an emotionally sensitive research site (also see Feeley, 1992; Section 2.4.2). Therefore, when researchers conduct data collection in the lower criminal courts, they should be sensitive to the court users' lived adversity. In doing so, researchers can be mindful of their own courtroom behaviour, avoiding unnecessary/avoidable harm to participants. This is a point elaborated upon in Section 3.4.3 specifically in terms of how the researcher considered their own presence during the data collection process for this thesis.

Other court participants (not just defendants) contribute to the emotional sensitivity of courtroom legal justice and punishments. Some thinkers have argued that sentencers may deliver punishments out “of genuine love” with the intention of having a beneficial community effect but also struggle with the aforementioned adversity this causes offenders, generating personal difficulties⁵⁴ (see Braithwaite, 2007; Griffiths, 1970: 359; also see Roach Anleu and Mack, 2005). Other socio-legal thinkers have emphasised the emotional distress experienced by

⁵⁴ See Griffiths (1970: 371) work regarding the “Family Model” and Braithwaite's (2007) argument that shame can have a positive, community integrating effect.

victims/survivors in the legal justice process, drawing attention to how the process can have victims/survivors re-live their trauma by narrating it during the oral testimony process (Lees, 1996; Smith, 2013). A seminal work on this subject is Adler (1987) who has argued that the court process can cause “secondary victimisation” for rape victims (also see Lees, 1996; Smith, 2018: 216). Additionally, this adversity of victims/survivors and witnesses can be compounded when court officials do not believe/accept their testimony as truthful (Lees, 1996; Smith, 2013). Collectively, these thinkers demonstrate that legal justice and punishments have an emotional impact on court staff and victims/survivors and witnesses. Therefore, when researchers approach the criminal courts as a field site, they should do so with an appreciation of these emotional components of the justice process, to ensure that they conduct their research ethically (similarly argued in Smith, 2013). Section 3.6 of the thesis discusses these aforementioned complex and compounding sensitivity issues, ensuring the ethicalness of the thesis.

Second, the Magistrates’ courts are a unique research space owing to the high volume of business that these courts process. The lower criminal courts of England and Wales process more than 95% of all criminal cases (Sanders, 2001). The reason for this is because almost all criminal cases (regardless of their seriousness) begin at the Magistrates’ courts. This has led Sanders, Young and Burton (2010: 500) to state that the Magistrates courts of England and Wales are the “workhorse” of the criminal justice system. Meanwhile, Mileski (1971: 179) has emphasised that the mission of the lower courts is to deliver “mass justice”, rather than highly tailored individual justice. This workload intensity is significant because it shapes the type of data that researchers can collect. Court observations of Magistrates’ court cases often last minutes (or even seconds), rather than hours or days, which is typical of Crown court cases (see Mack and Roach Anleu, 2007). Indeed, as Mack and Roach Anleu (2007: 349) report regarding their Australian lower criminal court study, “one-quarter of all matters were dealt with in less than one minute”. Meanwhile, Ward has reported that “local court closures have squeezed the volume of business into a smaller number of courts, with the result that they are congested, hectic places” (2016: 53). Consequently, the present study required a unique observational data collection method, in order to keep pace with this ‘hectic’ environment. Building upon this backdrop, Section 3.4.1 and 3.7 discusses the usefulness of an observation-only, stenographic data collection method.

Third, the criminal courts process a diverse range of disadvantaged persons which require socio-legal researchers to make use of an adequately encompassing analytical framework. To explain further, those in contact with criminal justice

services (including the magistrates' courts) are more likely to be: from lower socio-economic backgrounds (Duncan and Corner, 2012); living with one or more substance addictions (Bramley *et al.*, 2015; Drug Policy Alliance, 2011); homeless or have recently been made homeless (Cooper, 2016), living with one or more mental health conditions (Walsh, 2005); a non-native English speaker (Fowler, 2013) (also see, Ministry of Justice, 2010; HM Government, 2012). Such factors are complex in terms of how they relate to criminality and how these different forms of disadvantage intersect with each other (Duncan and Corner, 2012). Ward's (2016: 14) contemporary work, argues that socio-legal researchers can account for the diverse range of disadvantage experienced by court users by adopting a social justice approach (also see Barry, 2005; previously discussed in Section 2.2.4). Whilst Section 2.2.4 has already unpacked its social justice informed framework, Section 3.5.4 further discusses how the thesis interpreted institutional and individual practices within the summary justice process, in view of social justice issues.

3.3 PREVIOUS STUDIES AND THE QUALITATIVE, ETHNOGRAPHIC APPROACH

The present study used a qualitative, ethnographic approach to facilitate for a critical analysis of summary justice efficiency. This section critically appraises this approach by first explaining why the research questions in Chapter 2 required the thesis to use a qualitative approach. Second, this section explains the unique ability of ethnography to gain rich insights into courtroom phenomenon. Lastly, this section establishes why the ethnographic approach was suitable for the policy reform recommendation aspect of the present thesis. By unpacking these points, the present section draws upon other court studies and methodological socio-legal texts, further locating the thesis in the socio-legal literature and justifying its research design choices.

To begin, the present study utilised a qualitative approach because this was necessary to answer the inductive, open-ended research questions presented in Chapter 2. The research questions in Chapter 2 are inductive because they call for the researcher to build an exploratory understanding of what values exist in the summary justice process (Braun and Clarke, 2013). As demonstrated in Welsh's (2016) court observation study on managerialism and access to justice (see Section 2.4.1, 2.5.3), the merits of a qualitative approach is that it can produce emergent understandings of phenomena. As described in Chapter 2, the present

study sought to garner a more expansive understanding of efficiency in the summary justice process. Therefore, it was logical for the thesis to follow in the qualitative tradition. This approach is in contrast to the efficiency-focused court study of Ferrandino (2013) which used a quantitative approach in order to test pre-existing theories regarding the timeliness of trials (see Ferrandino, 2013). Quantitative approaches are for testing theory because they reduce observed phenomena down to pre-defined categories for statistical analysis (Braun and Clarke, 2013). The exploratory research questions of Chapter 2 are not compatible with this reductionist aspect of the quantitative approach (previously discussed in Section 2.5.2). This incompatibility, therefore, supports the present study's qualitative approach.

Within the range of possible qualitative approaches, the thesis used an ethnographic approach because of its unique ability to capture a rich understanding of the courtroom process. Ethnography is a methodological approach which relies on a researcher being emerged in a research site over a prolonged period (Flood, 2005; Singh, 2012). In doing so, ethnographic researchers observe not only participants but also the natural environment in which they are collectively situated (Flood, 2005; Singh, 2012). This approach affords ethnography a richness-advantage that is absent in other qualitative data collection methods (such as interviewing and focus group-based research). Indeed, as argued by Flood (2005: 33), whilst many qualitative methods have been used by socio-legal researchers in the past, "only one [ethnography] gives us insight into the richness of social life". There is a significant ethnographic history in the socio-legal literature owing to its unique ability to gain rich insights (for example, see Emerson, 1969; Merry, 1990; Feeley, 1992; Singh, 2012). A notable example of this approach is Rock's (1993: 275) work that examined a London Crown Court, explaining how the process comprised a professional world of insiders and by contrast, court users who are "bewildered" outsiders. Applied here, the thesis followed in this ethnographic socio-legal tradition as to produce as rich findings as possible regarding the summary justice process and its efficiency.

Additionally, the researcher utilised an ethnographic approach because of how it has historically been useful for the development of courtroom policy reform recommendations. Qualitative ethnographic observations are valuable for reform-oriented research because the approach can capture the "gap between law on the books verses law in action" (Menkel-Meadow, 2019: 39; also see Section 3.5.4). In doing so, prominent socio-legal court studies have utilised this approach to better understand the practicalities of law and criminal justice. For example, see Lees' (1996) work which observed the injustices of rape survivors because of the

masculine norms that are embedded in the justice process, specifically regarding what sort of behaviours the court considers unusual, sexual or not respectable. In making such observations, Lees (1996) collected concrete evidence to substantiate policy reforms in precise terms, by offering a critical analysis of real-life practices. Indeed, as with Lees' (1996) work, her critical observations formed the basis of a series of Home Office reforms (see, Smith, 2013). Similarly, see Rock's (2004) work that details how their ethnographic approach was key to the development of the Victims Charter (previously discussed in Section 2.5.3). The present study follows in this tradition. By being emerged in real-world practice, the researcher aimed to form critical insights into how the summary justice process could be reformed in concrete-terms as to curtail the problem of over-efficiency.

3.4 METHOD OF DATA COLLECTION

The thesis utilises 66 days of courtroom observational data that the researcher collected between the 1st January 2018 and the 31st June 2018. The researcher used a machine to type observational, stenographic notes of proceedings. The researcher did not use audio recording equipment for legal reasons (discussed in Section 3.6). The observational notes were verbatim, meaning that the researcher generated typed notes of courtroom participants utterances (similarly described in Short and Leight, 1972). The researcher collected data from the public galleries of a single courthouse, rendering the thesis a case study.

This section explains this stenographic data collection method and why this was useful for answering the research questions of Section 2.6. Section 3.4.1 begins by exploring the merits of the stenographic method compared to other similar observational methods. Section 3.4.2 then explains the sample of the thesis and how the researcher selected courtrooms for observation, from the 1st January to the 31st June 2018. Following this, Section 3.4.3 offers some of the researcher's reflections regarding their presence in the courtroom, detailing how they minimised their impact on proceedings as much as possible (see Section 3.4.3). Collectively, these sections establish the pragmatic elements that generated raw data for the thesis.

3.4.1 STENOGRAPHY

The purpose of this section is to clearly convey why this research used a stenographic method, given that other options were available. This section begins

by explaining the benefits of the stenographic method. Following this, this section acknowledges that a weakness of the stenographic method is that it requires a high skill level and that it is prone to researcher fatigue. This leads this section to explain how it mitigated against these weaknesses. Collectively, this section argues that the stenographic data collection method has been useful for providing the present thesis with a unique perspective on summary justice efficiency.

Stenographic data collection is advantageous because it produces verbatim data that can be used to re-examine courtroom proceedings. Indeed, the stenographic researcher generates an account of proceedings that faithfully reflects the spoken accounts of participants (Short and Leight, 1972). In the English and Welsh criminal court context, the stenographic approach relies on typed accounts of direct observations, as audio recordings of court proceedings are legally prohibited (further explained in Section 3.6). It is this typed note-taking form of stenographic research that the present thesis has employed. The merits of this data collection approach are that the researcher can explore their data post-hearing, to identify overlooked issues. Indeed, as the researcher has a continuous and systematic account of proceedings, they gain a reviewable overview of the justice process and courtroom events (similarly stated in Alge, 2009; also see Baldwin, 2008). With stenographic data it becomes possible to review entire court hearings, if required. This approach contrasts with the traditional, ad libitum note-taking data collection method. The ad libitum method requires the researcher to note only the details they believe to be of relevance at the time of observation. If the ad libitum researcher overlooks an (important) issue at the time of observation, this understandably cannot be recovered. Owing to this advantage, the present thesis utilised a stenographic data collection method.

A disadvantage of the stenographic, verbatim data collection method is that it demands the researcher to type observations quickly and accurately over prolonged periods (as argued by Baldwin, 2008). Baldwin (2008: 245) has argued that verbatim note-taking can exhaust the researcher because they are subject to “lengthy periods of unrelenting tedium”, as the researcher must attentively note (type) all court participants' statements. For this reason, Alge (2009) has argued that the stenographic method is an infeasible method for doctoral students. Indeed, socio-legal researchers have advocated for the (traditional) ad libitum note-taking method as a more achievable method of data collection as it mitigates against researcher fatigue compared to the verbatim, stenographic method (see Alge, 2009; Emmison, Smith and Mayall, 2012). At the same time however, as this data collection method is not advised it is also subsequently underused in the literature. Given how the thesis is interested in gaining a unique perspective on the summary

justice process (see Section 2.6), the researcher decided to use the stenographic data collection method while forestalling its disadvantages⁵⁵.

To forestall aforementioned disadvantages of the stenographic data collection method, the researcher trained to increase their typing skill for speed and endurance purposes. The researcher learnt to use word processing macros so that when they pressed multiple keys simultaneously, they produced a string of letters/words speeding-up their note-taking. This typing method is comparable to the concept of “chording” used by professional in-court stenographers, as describe by Pick (1978: 39). The researcher also used stenographic speed and endurance training software packages during the pilot study phase in 2017. Additionally, the researcher used acronyms and abbreviations throughout the data collection process, to further aid their typing speed and mitigate against fatigue. Finally, the researcher tolerated an error rate greater than 3% of their total word count⁵⁶. The researcher accepted this error rate given that they could correct mistyped words afterwards. To amend mistyped words, the researcher considered the context of the errors and the bunching of mistyped letters to approximate what words they should have typed (see Appendix 1 for an example of the original raw data the researcher produced and how they amended it). In taking these actions, the researcher was able to use the aforementioned stenographic approach whilst minimising its negative aspects.

3.4.2 SAMPLE

This section details the sample of the thesis. This section begins by explaining the technical aspects of the thesis sample, in numeric terms and how this forms a case

⁵⁵ Indeed, owing to the difficulties involved in using a stenographic method and consequentially its under-utilisation in the socio-legal literature, the present study has a greater capacity to make an original contribution to knowledge. Mueller-Bloch and Kranz (2015) have argued that it is important for sociological researchers to identify gaps in the literature that are not just theoretical. Instead, they have argued that researchers should be conscious of methodological gaps: “a variation of research methods is necessary to generate new insights or to avoid distorted findings” (Mueller-Bloch and Kranz, 2015: 8). This is a view similarly held by Jacob (2011) and Miles (2017) who have argued that researchers should be conscious of methodological gaps, not just theoretical or evidence-based gaps. Therefore, in utilising the underused data collection method of stenography, the present thesis strengthens its original contribution to knowledge claim, as it works towards filling this methodological gap.

⁵⁶ This error rate is significant because the Council for the Training of Journalist (NCTJ) (2019) demands that shorthand journalists should be able to record verbatim accounts with a maximum error rate of 3%.

study of a single magistrates' courthouse. Following this, this section explains the convenience-based sampling method that the researcher followed, some of its weaknesses and how the researcher mitigated against these. Lastly, this section details how each of the courtroom types the researcher observed produced a diverse range of data that was relevant for investigating summary justice efficiency. By unpacking these points, the present section clarifies the sample of the thesis and how it forms a case-study of a single Magistrates' courthouse.

To begin, it is necessary to explain the technical aspects of the thesis sample, in numeric terms. The researcher collected data from 13 adult courtrooms of a single magistrates' courthouse over a 6-month period, from the 1st January to the 31st June 2018. In total, the researcher observed 66 full working days of court proceedings⁵⁷. Over the 6-month data collection period, the researcher observed all hearing types with the exception of youth justice hearings. The researcher avoided these hearing types because of their unique ethical and legal complications and how these would demand additional resources to investigate⁵⁸. As a result, the researcher collected data from the remaining hearing types: sentencing hearings, adjournment hearings, case management hearings, breach of bail hearings, warrant application hearings and drug rehabilitation review hearings. The researcher observed all courtroom actors who were present in the courtroom during the summary justice process. This included administrative officers, probation officers, both prosecution and defence solicitors, legal advisors, magistrates, district judges, defendants, complainants, witnesses, prison officers, cells officers and court ushers. Given that the thesis observed proceeding in all available adult courtrooms of a single magistrates' courthouse, this renders the thesis a case study. The table below details the number of courtrooms the researcher observed. It also details how the courtrooms were typically dedicated to a single type of hearing. Hereafter, the thesis refers to these courtrooms which typically processed a given hearing as a 'courtroom type' (for example, traffic court, DRR court, etc.).

⁵⁷ The researcher conducted a preliminary pilot study prior to this. The pilot study lasted from early September to mid December 2017. The pilot study was used to explore methods of data collection only. Chapters 4, 5 and 6 do not offer an analysis of the pilot study data.

⁵⁸ Indeed, given that this thesis made use of a single researcher, it was unfeasible to expand the scope of the thesis to investigate youth hearings. For details regarding the legal restrictions that surround the observation and reporting of youth hearings, see the Section 55 of the Youth Justice and Criminal Evidence Act 1999.

Type of courtroom proceeding	Number of courtrooms assigned to each type	Number of days spent conducting observations in each type (gross total)
Video Conference Hearings (live link)	2	10
Breach Matters	1	5
Drug Rehabilitation Requirement (DRR) Review Hearings	1	6
Traffic Related Hearings	1	5
Held Overnight / Remand Hearings	1	5
Transforming Summary Justice initiative ⁵⁹ Hearings (Guilty Anticipated Plea)	1	5
Trials	3	15
Domestic Violence Trials	3	15
<i>Total</i>	<i>13</i>	<i>66</i>

Table 1. Table to show data collected between 1st January to 31st June 2018, detailing the types of courtroom observed and the number of days spent conducting observations

⁵⁹ For specific details regarding what qualifies for a Transforming Summary Justice hearing, see the Crown Prosecution Service's (2015) guidance.

Whilst the thesis offers a case study of a single lower criminal courthouse, the sampling method the researcher used in terms of observing the courtrooms reflected a convenience-based method (described in Bornstein, Jager and Putnick, 2013). In greater detail, the researcher observed courtroom one on the first day of data collection. Then on the second day, the researcher observed courtroom two, and so on⁶⁰. Often, however, courtrooms did not open as expected or they started later in the day. There were multiple reasons for such unexpected courtroom closures. For example, in simple cases, court staff/court users were not punctual. On other occasions, there were technical failings regarding video conferencing technology/computer software or there would be an absence of court work for a given courtroom type. In response, the researcher would progress to the next listed courtroom. This is the convenience-based aspect of the researcher's data collection approach: the researcher attempted to observe each courtroom in a serial-like fashion but if this was not possible, they would move onto the next available courtroom.

The thesis recognises that a weakness of this sampling method is that it is prone to producing over and under-representative data. Bornstein, Jager and Putnick, (2013) explain that with convenience sampling, research is likely to only capture data that is available rather than to capture data that is a balanced representation of the field site/population. This was an issue that the researcher encountered. Owing to aforementioned irregularities in terms of when courtrooms would be open, the collected data (initially) became unrepresentative of a cross-section of the courthouse's workload. To mitigate against this data representation issue, the researcher monitored the number of days they spent observing each courtroom type. The researcher then noted when some gaps in the data emerged (because one courtroom was closed for a day, for example). In response, the researcher filled that gap in the data by conducting additional observations of the under-observed courtroom at the end of the observation cycle. In this way, the researcher collected data which reflected a cross-section of the work from each courtroom type and therefore, a cross-section of the courthouse's overall workload.

Lastly, this section details how each of the courtroom types the researcher observed produced different types of data that were relevant for investigating summary justice efficiency. Each courtroom type produced different types of data largely because of the unique constellation of court participants that were present,

⁶⁰ Once the researcher observed courtroom thirteen, the researcher began again at courtroom one, repeating the observation cycle. The researcher attended the chosen courthouse for the entirety of each working day, (Monday-Friday).

the type of work they processed and the varying courtroom facilities assigned to each type of process. For example, in live link hearings, court practices were often fast-paced because court staff could mute a defendant's microphone, marginalising them from the process. Meanwhile, DRR hearings placed magistrates and defendants closer together in physical space without solicitors being present, resulting in more personable and lengthy proceedings. Whilst each courtroom type produced different types of data, this diversity enabled the researcher to offer equally rich insights into the concept of efficiency in the summary justice process.

The exception to this was traffic court observations, these produced the least useful data for the thesis. Traffic hearings were the least attended by defendants and therefore, court staff would often dispose of the cases through the "proved in absence" procedure (see Corbett, 2012: 257). In practical terms, this meant that court staff would process these cases administratively. In doing so, little communication took place between court staff. This made it unclear what documentation was being shared between staff and what tasks were being completed and in what numbers. Understandably, when such occurrences happened, the researcher acknowledged that a lack of verbal verification of courtroom actions obscured an analysis of the process. To this end, this is a weakness of the thesis, it is an accepted limitation of the observation-only approach. As mentioned in Section 2.5, the thesis aims to compliment other research (such as interview-based studies), to offer a novel insight into proceedings. Therefore, this weakness is tolerated because of how the observation-only approach of the thesis offers otherwise unique insights into the summary justice process and its efficiency.

3.4.3 REFLECTIONS ON RESEARCHER PRESENCE

This section argues that the researcher had a minimal impact on court proceedings and participants' behaviour, producing a minimal Hawthorn effect. In making this argument, this section begins by explaining what the Hawthorn effect is and why the researcher was interested in minimising this effect. Following this, this section argues that because the researcher introduced themselves to court staff prior to data collection, this mitigated against an intrusive research atmosphere. This section then explains that the researcher's choice of stenographic machine minimised their impact on proceedings. Finally, this section explains that the researcher was self-reflective about their potential to negatively impact victims of crime and took steps to mitigate against this possibility. Collectively, these points

come together to present a case that the researcher's passive, observation-only stance resulted in a minimal impact on proceedings and on participant behaviour.

To begin, it is necessary to explain what the Hawthorn effect is and why the researcher was interested in minimising this effect. Ideally, the courtroom ethnographer is an “insider” and is able to work as a proverbial “fly on the wall”, to observe the behaviour of participants without influencing them (Welsh, 2016: 37; Mabry in Alasuutari, Bickman and Brannen, 2008: 220). Of course, such an aim is impossible as courtroom researchers are visibly present in the courtroom and therefore must have some impact on participants, typically generating curiosity (reported in McBarnet, 1981; Herbert, 2002). Socio-legal researchers sometimes refer to this influence as the “Hawthorn effect”, when the researcher’s presence impacts the issue that the researcher is attempting to investigate (see McBarnet, 1981; Hutton, 2017: 65, Velasquez Valenzuela, 2018). Instead of attempting to eliminate the Hawthorn effect, socio-legal researchers offer an open reflection on their experience to allow for a deeper understanding of their collected data (see McBarnet, 1981; Hutton, 2017: 65, Velasquez Valenzuela, 2018). Following in this court study tradition, this section offers such a reflection, arguing that the present thesis had a minimal Hawthorne effect and general impact on court proceedings and participants.

The researcher introduced themselves to court staff prior to data collection, as to mitigate against setting an intrusive atmosphere. An intrusive atmosphere is undesirable as court staff may mask or modify their natural behaviours. To counter such an undesirable reaction, the researcher spoke to the court usher of each courtroom before entering. In doing so, the researcher informed the usher of their researcher status and their intention to make stenographic notes in the courtroom. The court usher would then enter the courtroom, ask for permission from the residing bench (of either magistrates or a district judge) and then without exception, the usher informed the researcher that they could enter and take notes as requested. The researcher took the view that because they openly approached participants, it was more likely that participants were relaxed when performing their duties than what they otherwise would have been (similarly argued in Jorgensen, 1989). This approach to conducting court observations follows in the work of Welsh (2016) and Hutton (2017). These thinkers argue that it is customary for socio-legal researchers to introduce themselves to court staff before conducting courtroom observations / data collection. Whilst there is no legal obligation to do this, it works towards setting an unintrusive tone with staff (similarly argued in Smith, 2013; Grech, 2017; further discussed in Section 3.6). It also empowers staff by making them aware of what the researcher is there to do (similarly argued in Smith, 2013).

At the same time, the researcher perceived participants' relaxed behaviour as indicative that the researcher's presence had a minimal Hawthorne effect (similarly described in the court observation study of Velasquez Valenzuela 2018). Indeed, during the data collection period, staff were somewhat unexpectedly relaxed and forthcoming with the researcher. Occasionally, staff would argue with each other and make comments about their personal lives in the researcher's presence. On one occasion, a member of staff showed the researcher pictures of their family on their phone, despite the researcher's passive observational stance. Such behaviours surprised the researcher because the level of decorum that typically permeated the courts was not present. The researcher assigned this relaxed behaviour of staff to the long period of time the researcher spent in the research site. As discussed in Section 3.4.2, the researcher spent three months conducting a pilot study in 2017. Therefore, when data collection began in early 2018, the researcher was proverbially 'part of the furniture' as one usher commented. The researcher took the view that owing to participants' relaxed behaviour, the researcher had likely developed rapport⁶¹ that mitigated against the likelihood that staff would conceal otherwise typical behaviour. Whilst this point rests on the perception of the researcher rather than on third-party evidence which would be preferable, it contributes towards clarifying the researcher's perception of proceedings and to be transparent as possible about the data collection process.

Additionally, the researcher chose to use a stenographic typing machine to minimise their impact on proceedings. Traditional pen and paper note-taking can be loud in a typically calm and often silent courtroom. As commented upon by Fowler (2013) and Read (1996: 87), the "rustling of paper", turning of pages and noise of a pen/pencil moving across paper can distract others in the courtroom. In contrast to this, the researcher used purposely designed quiet keys to type their observational notes. Whilst the keyboard was not absolutely silent, it was the researcher's perception that this was less invasive than the noise of pen on paper and the rustling of paper and notebooks.

Furthermore, the researcher took the view that aesthetically, they conformed with the scene of the modern, device-enabled courtroom. In the contemporary courtroom, it is customary for court staff to use either a tablet or a laptop computer. This is also true of reporters and students who attend public galleries and often make use of tablets and laptops for note-taking. Indeed, at least in the researcher's

⁶¹ The researcher was aware of the risk of over familiarising with participants, as discussed in Kanuha (2000). This issue is addressed in Section 3.5.5, along with the issue of the researcher's previous contact with the research site.

experience, typing on machines is not uncommon in the courtrooms of the magistrates' courts. To this end, in the researcher's view, using a stenographic method had some advantages in terms of minimising their potential impact on the data collection process, producing a minimal Hawthorne effect.

Finally, the researcher was self-reflective about their capacity to negatively impact victims of crime and consequently, they took steps to mitigate against this possibility (similarly discussed in Lees, 1996; Smith, 2013; 2020). Socio-legal scholars have recognised that the court process itself can be victimising for survivors of crime (discussed in depth in Walklate and Clay-Warner, 2017; also see 3.2). The researcher was concerned that their presence may contribute to victims having an otherwise unnecessarily negative experience of the justice process. In view of this problem, the researcher took a passive, observational-only role. In doing so, the researcher attempted to make their presence in the courtroom space as non-disruptive as possible (similarly described in Smith, 2013). In practical terms, this meant not engaging in conversations with individuals between court hearings or during breaks in proceedings as much as possible (again, similarly described in Smith, 2013). Whilst this approach does not entirely ensure that the researcher did not negatively impact court users, it served to reduce this risk. Additionally, the researcher emphasises the mission of the thesis, to develop reform recommendations that take seriously the experiences of court users (which includes victims of crime) in the summary justice process as to promote justice quality (see procedural due process and social justice in Section 2.2.4). To this end, the purpose of the research works towards the betterment of the process that is in the interests of court users, mitigating against the potential harm of thesis (further discussed in Section 3.7).

3.5. DATA ANALYSIS

The thesis used thematic analysis enhanced with grounded theory techniques to analyse the collected data and ultimately, to answer the exploratory-oriented research questions presented in Chapter 2. To begin, Section 3.5.1 explains why thematic analysis was useful for the present study whilst also addressing some of its disadvantages and limitations. Following this, Section 3.5.2 explains how the researcher used thematic analysis with grounded theory techniques to improve the quality of the research. Section 3.5.3 proceeds to explain why the present study did not utilise a "pure" grounded theory approach (Urquhart, 2012: 15). Moving beyond this, Section 3.5.4 explains how the data was used to engage with

institutions and institutional discourses. Lastly, Section 3.5.5 then offers an account of the researcher's positionality and how the researcher was critically self-reflective of this as to promote the quality of the research. Overall, this section explains and justifies the data analysis approach of the thesis.

It is essential to unpack what thematic analysis is before explaining why the thesis used this data analysis method. As explained by Braun and Clarke (2013: 337), a theme is a "patterned meaning across a dataset that captures something important about the data in relation to the research question, organised around a central organising concept". Applied to this thesis, the researcher used court observations for their dataset. They then analysed this dataset using the framework of Section 2.2, specifically regarding how interpretivist values characterise the summary justice process. From this analysis of the data, three patterns emerged, centring on characterising, overarching values. These values are speediness, standardisation and procedural adversity and are presented in Chapters 4, 5 and 6, answering the research questions of Section 2.6. In this way, the researcher used thematic analysis to identify, organise and report themes from their collected data.

3.5.1 THEMATIC ANALYSIS

This section unpacks why thematic analysis was useful for the present study whilst also addressing some of its disadvantages and limitations. This section begins by explaining how the present study's passive data collection method was compatible with thematic analysis. Second, this section explains that thematic analysis was appropriate given the early-researcher status of the researcher. Third, this section argues that thematic analysis was appropriate for the thesis because of its large data set. Lastly, this section explains how a weakness of thematic analysis is that it is prone to being misused by early-researchers and how it can over-simplify data. Collectively, this section justifies the present study's use of thematic analysis whilst contouring some of its limitations.

To begin, thematic analysis was a suitable approach for the present study owing to how it was compatible with the researcher's previous commitment to use a passive court observation data collection method (further detailed in Section 3.4.3). Contrasting data analysis methods such as that of narrative analysis and social network analysis require the researcher to be active during the data collection phase (see Holstein and Gubrium, 2003; Holstein and Gubrium, 2003; Campbell, Clark, Keady, Kullberg, Manji, Rummery and Ward, 2019). To explain

further, the narrative analysis method expects the researcher to take an active role in seeking out their participants' experiences (Holstein and Gubrium, 2003). For example, the narrative analysis researcher may use prompting questions during an interview (Campbell et al, 2019). Similarly, the social network analysis method requires the researcher to utilise a data collection method that enables them to actively investigate or “map out” components of a community (Campbell et al. 2019: 2). For example, the social network analysis researcher may use multiple data collection methods such as interviews followed by textual analysis or two-sets of interviews with the same/similar groups of participants. As explained in Section 3.6, the researcher was legally compelled to be non-disruptive in the courtroom and therefore, could not interact with participants in an investigative manner. Furthermore, as explained in Chapter 2, the extensive use of court observations over other data collection methods was necessary to ensure that the thesis was able to fill a gap in the literature (see Section 2.5). Therefore, compared to other comparable data analysis methods (narrative analysis and social network analysis), thematic analysis was most appropriate given the present study's previous commitments to using a passive but gap-filling court observation method.

Additionally, thematic analysis was an advantageous data analysis method because it was accessible for the present early career researcher. Indeed, thematic analysis “does not require the detailed theoretical and technological knowledge of other qualitative approaches” (Nowell, Norris, White and Moules, 2017: 2). Given the limited time and available resources of this thesis, other more complicated approaches such as that of critical discourse analysis and Foucauldian discourse analysis are undesirable (similarly argued in Wooffitt, 2005). Therefore, given the accessibility of thematic analysis to the present, they perceived this data analysis method as preferable.

Thematic analysis was also useful because of its compatibility with the large data set that the researcher collected. The researcher observed hundreds of hours of courtroom proceedings, generating a large data set. As the researcher was individually overseeing the organisation and management of their data, they were consequently concerned that the analysis phase may become unwieldy. As reported by Nowell, Norris, White and Moules (2017: 2), thematic analyses are useful for taking large datasets and rendering them down into “a clear and organized final report” (also see King, 2004). Therefore, the researcher viewed thematic analysis as an appropriate data management approach.

Lastly, the present thesis recognises that thematic analysis has some disadvantages. Namely, King (2004) has reported that it is common for inexperienced researchers to (whether consciously or not) offer themes that comprise the researcher's own assumptions rather than generating themes that are the product of reflection and an interrogation of the data. Additionally, King, Horrocks and Brooks (2018: 22) have argued that thematic analysis can “over-simplify” data. Namely, they argue that theme generation may prompt a researcher to forcibly marginalise insightful anecdotal and/or idiosyncratic cases. To mitigate against these disadvantages, the thesis utilised some grounded theory techniques. The next section unpacks these grounded theory elements.

3.5.2 THEMATIC ANALYSIS WITH GROUNDED THEORY TECHNIQUES

This section argues that the addition of grounded theory techniques to the present study's thematic analysis method has enhanced its research quality. This section discusses the merits of the following four grounded theory techniques⁶²: a three-step coding process, a focus on deviant cases, the use of theoretical saturation and lastly, the reflective use of memos. The present section unpacks these techniques, making explicit their contributions to the data analysis process⁶³.

To begin, the present thesis made use of a three-step, grounded theory inspired coding process which had the benefit of improving the trustworthiness of the research. More specifically, the thesis employed initial line-by-line coding followed by axial coding and then finally, thematic coding (see Charmaz, 2014). Line-by-line coding was used to begin data analysis, by assigning value-based codes to the data on a literal, line-by-line basis (Charmaz, 2014; Saldaña, 2013). This initial coding step gave the thesis a structured rather than haphazard start to data analysis, a criticism King (2004) has levelled at the traditional thematic analysis

⁶² The researcher recognises that these techniques are not exclusively associated with grounded theory but they are used within grounded theory research (similarly described in see King, 2004; Bryant and Charmaz, 2007).

⁶³ It is important to emphasise that the present study does not claim to be a grounded theory study. The emphasis of the present study has not been theory generation (as is the purpose of the grounded theory approach) (Charmaz, 2014). Instead, the present study was interested in creating policy reform recommendations (as discussed in Section 2.6). This goal does not require the construction of theory and therefore, for the sake of parsimony, the thesis did not use a traditional grounded theory approach. See Section 3.5.3 for a more extensive defence as to why the thesis did not use a more extensive grounded theory approach.

approach. By the researcher following such a structured approach to coding, the researcher's auditing team (the PhD candidate's supervisors) were able to oversee how the researcher was analysing the data from the start of the process. This heightened the transparency of the thesis and its auditability, improving its trustworthiness⁶⁴ (see Lincoln and Guba, 1985).

Following line-by-line coding, the researcher engaged in axial coding followed by theme-based coding to further improve the trustworthiness of the research. Traditional thematic analysis relies on a two-step coding process, "generating initial codes" and "searching for themes" (Nowell et al, 2017: 4). In contrast to this traditional thematic analysis approach, the thesis used the additional intermediate coding step, "axial coding" (Charmaz, 2014; Saldaña, 2013: 51). The purpose of this additional coding stage is to allow the researcher to connect initial codes together, before moving on to the final stage of coding (theme generation). The present research utilised this additional level of coding to allow the auditing team (the researcher supervisors) to monitor the research more finely. Therefore, this granular level of coding oversight served to improve the trustworthiness of the data analysis process. Additionally, the thesis utilised this three-step process because it allowed the researcher to better conceptualise and manage the theme generation process. As similarly explained by Wagner and Fernández (2015: 45), a three-phase coding process works towards producing thorough research as it provides ample opportunity for the researcher to reflect upon their data. Together therefore, this three-step coding process mitigated against the aforementioned criticism that thematic analysis is prone to researcher's using their assumptions as themes, rather than relying on a thorough analysis and reflection of their data (see King, 2004).

Meanwhile, the researcher took note of deviant cases, (sometimes called "negative cases"), when analysing and writing-up the data (Flick, 2009: 432; 2018). Deviant cases are those cases (or codes) that the researcher identifies from the data that run counter to their emerging themes or emerging theory (Draucker, Martsof, Ross and Rusk, 2007). For grounded theorists, this awareness of deviant cases is key to the theory generating process because they aid the researcher to critically reflect on their tentative theories (Glaser and Strauss, 1967; Draucker, Martsof, Ross and

⁶⁴ This is similarly argued by Charmaz (2008: 94), who has stated that line-by-line coding builds trustworthiness because it "reduces the likelihood of imputing your motives, fears, or unresolved personal issues" to the collected data.

Rusk, 2007⁶⁵). Indeed, “if comparisons expose a seemingly deviant case, it is no cause for alarm. An exception becomes another variable to be accounted for and classified in a grounded theory” (Covan, 2007: 63; originally argued in Glaser and Strauss, 1967). Rephrased, by seeking and considering deviant cases, grounded theorists embody a critical, exploratory, investigative approach when analysing data which helps to strengthen the trustworthiness of their work. This approach is counter to thematic analysis which (as mentioned in Section 3.5.1) can oversimplify data to fit dominating themes. Therefore, the researcher reported upon deviant cases in Chapters 4, 5 and 6, mitigating against this over-simplification issue that is associated with traditional thematic analysis⁶⁶.

Additionally, the researcher integrated the grounded theory concept of “theoretical saturation” to further enhance their data analysis approach (Bryant and Charmaz, 2007: 12; Charmaz, 2014). Like with the previous point, it is best to explain what this grounded theory concept is before explaining how (and why) the researcher integrated it into the thesis. For grounded theorists, the generation of theory is not restricted by (arbitrary) set sample sizes. Instead, a grounded theory researcher continually collects data until no new collected data shapes their emerging theory. It is when the researcher feels confident in the robustness of the emergent theory that the data collection period ends. Consequently, for grounded theorists, their theory generation process has an open-ended, exploratory character that views data analysis and data collection as parallel, entwined tasks. Rather than focusing on theory generation (as with the grounded theory approach), the present study set out to achieve “thematic saturation” (see Green and Thorogood, 2004; Bran and Clarke, 2019: 4). In greater detail, the researcher analysed the data as it was being collected. Data collection was only stopped when the researcher was not able to generate new themes from their data. In this way, the researcher began data collection with no sample termination date, data collection was open-ended. It was the coding of the data and the point of thematic saturation that drew an end to the data collection process. The benefit of this approach to sampling was that it allowed the thesis to be more exploratory than what it otherwise would have been

⁶⁵ It should be noted that negative case analysis is not specific to the grounded theory approach, it is also upheld by Lincoln and Guba (1985) simply as being part of trustworthy research practice.

⁶⁶ The researcher acknowledges that this consideration of deviant cases is not the same as in grounded theory, rather this appropriation is inspired by the inclusive, critical and exploratory drive of the grounded theory approach (again, see Bryant and Charmaz, 2007). By recognising and integrating a commentary of deviant cases in the written analysis of the thesis (a grounded theory tradition), the researcher countered the over-simplification criticism which is traditionally associated with thematic analysis (see King, 2004).

if it used a standardised sample size. Indeed, if the researcher set a sample size on the outset, the researcher may not have arrived upon rigorous (saturated) key themes. To this end, the present study employed the concept of saturation (traditionally a grounded theory technique) to better answer its exploration-oriented research questions, presented in Chapter 2.

Lastly, the researcher used memos extensively throughout the data collection process, to aid in the creation of robust themes. This is a technique that Charmaz (2017: 36) advocates for, as part of her described “methodological self-consciousness” approach. According to Charmaz the purpose of using extensive reflexive memos is to develop more considered theory. This result is possible because, as Charmaz argues (2017), the researcher continually scrutinises their collected data from varying perspectives, challenging their tacit assumptions. As mentioned in the introduction of this section, the present thesis was not interested in creating theory. Therefore, in appropriating this technique, the researcher used memos to continually reflect on their observations from varying perspectives and then from this, the researcher more deeply considered codes and themes. In practice, the researcher made 70 reflexive private memos over the course of their research. From their subjective perspective, they found the memoing exercise valuable for reflective purposes and consequently, for generating robust themes.

3.5.3 WHY NOT USE A ‘PURE’ GROUNDED THEORY APPROACH?

Following the previous section, readers may question why the researcher did not utilise a traditional, “pure” grounded theory approach (Urquhart and Fernandez, 2006: 461). Grounded theory, in its pure form, was not appropriate for the current study because of two key reasons. First, the passive observation data collection method of the thesis is incompatible with the theoretical sampling criteria used within the grounded theory data analysis method. Second, grounded theory is primarily concerned with theory generation, whilst this thesis has been primarily concerned with generating policy reform recommendations. This section will unpack these two reasons, justifying why the thesis did not use a traditional, pure grounded theory approach.

First, the present study did not make use of a pure grounded theory approach owing to the inability of the present study to meet theoretical sampling criteria. In grounded theory, the researcher must reflect upon the data as it is being collected/coded and then to identify new methods and sites for further data

collection (Charmaz, 2008; previously discussed in Section 3.5.2). The grounded theory researcher must do this in order to test their tentative theories. Indeed, by iteratively using new data collection methods and field sites/participants, the grounded theory researcher becomes more confident in their theory. For the present study, this was not possible owing to resource and legal limitations. This thesis comprised a single researcher and therefore, it would have been excessively strenuous for them to observe more than a single field site for a prolonged period. Meanwhile, as discussed in Sections 3.4, 3.5.2 and further elaborated in Section 3.6, the researcher was legally required to be non-disruptive to proceedings. Meaning that a passive, observation-only data collection approach was compulsory in the courtroom space. Indeed, the researcher was prohibited from contacting participants whilst in the gallery of the courtroom. Whilst the thesis could have made use of interviews outside of the courtroom space, this would have ran counter to the observation-only gap in the summary justice efficiency literature that Section 2.5 has identified. Consequently, a classical theoretical sampling approach was untenable for this thesis. Rephrased, the present study could not employ a traditional, pure grounded theory approach to data analysis.

Second, and as mentioned in the research questions, a key aspect of the thesis has been the generation of policy reform ideas, not theory generation. Indeed, grounded theory relies on gathering evidence to support an emergent theory (Charmaz, 2014; 2017). This has not been the mission of the present thesis, as indicated in Section 2.3.3 and formally presented in Section 2.6. Indeed, the present thesis has centrally concerned itself with an underlabouring⁶⁷ task for policy makers, to provide policy reform ideas regarding how to curtail the problem of over-efficiency in the summary justice process (similarly discussed in Duff, 2009; Carrier, 2014). Theory creation is not a prerequisite for the development of policy reform recommendations (defended in Hawkins, 2018). Therefore, this pragmatic, policy reform focus of the thesis renders a traditional, grounded theory approach inappropriate in its pure form. Consequently, whilst the thesis appropriates some elements of a grounded theory approach to enhance its data analysis method (as discussed in Section 3.5.2), it does not fully subscribe to this method.

⁶⁷ Further discussed in Section 3.5.4.

3.5.4 ANALYSIS OF INSTITUTIONS AND INSTITUTIONAL DISCOURSES AROUND EFFICIENCY.

This section argues that the methodology of the thesis has accommodated for an analysis of institutional discourses around efficiency in the summary justice process. This section supports this argument by first unpacking how the current study's qualitative, ethnographic socio-legal approach facilitated for an examination of law on the books versus law in action. Following this, the section explicates how the case-study nature of the thesis allowed for limited but useful underlabouring policy reform recommendations to emerge. Lastly, this section explains how the underlabouring stance of the present study contrasts with other established historical socio-legal, court observation studies. Collectively this section explains how the thesis connects with the wider summary justice efficiency reform literature, with a specific focus on its mission to render policy reform recommendations.

The current study's qualitative, ethnographic socio-legal approach facilitated for an examination of law on the books versus law in action. This approach to courtroom research is well documented in the socio-legal literature. McCoy (1993) and Menkel-Meadow (2019) argue that court observation studies are useful because they can compare legal policy with courtroom practices. Menkel-Meadow supports this claim by emphasising that "institutions [are] needed to be studied empirically to assess, among other things, the 'gap' between the 'law on the books' and the 'law in action'" (2019: 35). Additionally, McCoy (1993: 4) has emphasised that "the gap between law in theory and in practice" is an established part of the socio-legal research approach⁶⁸, on-the-ground qualitative research can offer rich insights into the realities of justice (also argued in Casper and Breteton, 1984; Griffiths in Banakar and Travers, 2005). In doing so, socio-legal works can challenge and advance official institutional discourses regarding the justice process. Applied here, this thesis has scrutinised institutional narratives around courtroom efficiency, such as that of 'swift' and 'sure' justice by comparing the grey literature

⁶⁸ McCoy (1993: 4) refers to this phenomenon as "ratcheting" because of how there is often delay in how law on the books takes some time to eventually be accepted as law in practice. Breteton and Casper (1984) explain this concept first in their American socio-legal study of courtroom sentencing changes. They noted that when a new mandatory-minimum sentencing law was enacted, court culture may be slow to fully implement corresponding practices. Instead, the culture of the court may slowly and gradually integrate the law into their normal daily routines. Indeed, as McCoy (1993: 4) summarises, "when new legislation requires court personnel to alter their accepted work patterns, change will not occur immediately". The concept of ratcheting therefore, refers to the delay taken between a new law/policy being implemented and the time taken for it to be fully normalised into daily working practice/values.

with observed practice and concepts of social justice and procedural due process (Ministry of Justice, 2012: 5; see Sections 2.2.4, 2.3.2). Indeed, the present study offers a critical discussion of institutional discourses around summary justice efficiency by using original observation data and the study's aforementioned theoretical and conceptual framework.

The case-study nature of the thesis allowed for limited but useful underlabouring policy reform recommendations to emerge. This present study's underlabouring position is similarly advocated for by Bhattacharjee (2012). Bhattacharjee (2012) has commented upon a separation of responsibility from the generation of policy recommendations and the task of evaluating the workability of those recommendations. Indeed, as Bhattacharjee (2012: 111) has argued, it is a separate research task to "independently assess whether and to what extent are the reported findings transferable to other settings". The present study accepts the same stance, it is beyond the scope of this thesis to offer an assessment regarding the practicalities of the national implementation of exploratory policy reform recommendations. The mission of the thesis is significantly less ambitious, it is to develop reform recommendation ideas that may help policy makers when conceiving of future changes to the summary justice process, in view of the aforementioned problem of over-efficiency (first discussed in Section 2.3.3). The thesis does not engage with institutional discourses around summary justice efficiency with the intent of immediately and directly changing national policy.

The underlabouring stance of the present study contrasts with other established historical socio-legal, court observation studies. Indeed, previous court observation researchers have argued that there is some standardisation between lower criminal courts of the same constitutional area in terms of layout, the laws applied there and the roles and duties of staff (Feeley, 1992; Yin, 2003; Scheffer, 2005). Therefore, policy reform recommendations generated from a single case study are transferable to other courthouses in a given constitutional area because a single courthouse is "not so atypical as to be unique", at least not in an absolute sense (as argued by Feeley, 1992: xxxii; Scheffer, 2005; Yin, 2003). In contrast to this perspective, the present study emphasises that the merit of a court observation case study is that it can render exploratory, "underlabouring" reform ideas (Duff, 2009: 247, 249; also see Carrier, 2014), not strong transferability claims. To reiterate therefore, the task of this thesis is not to result in direct lower criminal court change, rather it is focused on exploratory and original knowledge creation.

3.5.5 POSITIONALITY AND PREVIOUS PROFESSIONAL EXPERIENCE

This section unpacks some reflections regarding the researcher's positionality, arguing that their reflective self-critical approach enhanced the quality of the thesis. This section begins by discussing what positionality means and why it is related to quality research. Second, this section establishes why the researcher's heightened privilege required equally heightened reflections. Third, this section explains how the researcher made use of regular meetings with their supervisors to ensure that the coding process was adequately self-reflective. Fourth, this section clarifies the researchers prior professional experience and motivations for the research, increasing the transparency of the research. Fifth, this section explains that the researcher regularly held meetings with their supervisors and made use of a private journal to mitigate against the risk that the researcher would over identify with participants. Lastly, and related to the previous point, the section explains how the researcher's prior experience at the field site was advantageous because it allowed the researcher to navigate issues of localised "legalese" (Rowe, 2009: 14). In exploring these points, this section situates the researcher within their court observation method.

To begin, it is necessary to explain what positionality means. Positionality refers to the social and political stance "of the researcher in relation to the social and political context of the study" (Coghlan and Brydon-Miller, 2014: 627). In methodological terms, the purpose of unpacking a researcher's positionality, and then reflecting on this, is to heighten the quality of a research project. As similarly argued by Mark and Gamble (2009: 206) and Hillyard (2007: 274), "high-quality" research means that research should be both ethical and substantially critical. By the researcher being reflective of their positionality, they work towards the criticalness of their work (Coghlan and Brydon-Miller, 2014). The following points in this section explore those aspects of the researcher's positionality which when unacknowledged, could have significantly and saliently shaped the data analysis process, diminishing the quality of the research.

The researcher was aware that their heightened privilege equally heightened the risk that they could be insensitive to those forms of oppression experienced by non-white, non-native English speaking, non-male individuals, diminishing the quality of research (similarly discussed in Rowe in Coghlan and Brydon-Miller, 2014). The researcher is a white, native English-speaking male. As explain by Crenshaw in their seminal 1991 work, it is these characteristics that result in high levels of privilege in Western society. Crenshaw (1991) explains this phenomenon by taking a critical race perspective, drawing attention to how minority ethnic

individuals are subject to forms of oppression. This observation connects to the earlier observation of Jackson (1975: 467) regarding “black phobia” and the later works of Perry (2014) regarding islamophobia. Applied to this thesis, the researcher recognised that a disproportionate number of individuals coming before the courts are from Black, Asian and Minority Ethnic (BAME) backgrounds (see Duncan and Corner, 2012). Additionally, court users disproportionately have distinguishing disadvantaging factors, such as having a history of homelessness or substance addiction, which the researcher has not experienced (see Walsh, 2005; Duncan and Corner, 2012; Bramley et al, 2015; previously discussed in Section 3.2). Therefore, the researcher acknowledged that their unexamined privilege could prevent them from recognising the negative experiences of lesser privileged individuals/court users. As the framework of Section 2.2.3 has explained, analyses of the court process necessitates consideration of the “burdens and benefits of social life” (social justice) (Heffernan, 2000: 49). Therefore, in an effort to gain as great an understanding into summary justice efficiency as possible, the researcher continually reflected on their own privilege, sensitising them to the research site and issues of social justice.

The researcher made use of regular meetings with their supervisors to ensure that the coding process was adequately self-reflective. Saldaña (2012) explains that when a researcher engages in value coding, they must also engage their own value system. In doing so, value coding becomes a process that is prone to positionality oversights, which diminish the quality of research. Saldaña (2012: 114) explains this phenomenon in the following example:

“If a participant states, ‘I really think that marriage should only be between one man and one woman,’ the researcher is challenged to code the statement any number of ways depending on the researcher’s own systems of values, attitudes, and beliefs. Thus, is this participant’s remark to be coded: V: TRADITIONAL MARRIAGE, B: HETERO-NORMATIVITY, or A: HOMOPHOBIC?”, (original emphasis).

Indeed, the researcher’s coding choices are entwined with their positionality, the values that are associated with their own identity and privileges. The researcher is not an objective instrument. As previously mentioned, the researcher embraced a social justice-informed framework for understanding the justice process whilst also embracing a critical, reflective approach towards ensuring research quality. Aiding in this critical approach, the researcher held regular meetings with his supervisory teams prior to, during and after the data collection period. In doing so, the

supervisor team aided the researcher to reflect upon their observations. In this way, the reflective process of scrutinising the researcher's beliefs throughout the data analysis (coding) phase aided in promoting the quality of the research.

Additionally, the researcher acknowledges that their prior professional history was a significant factor that shaped the focus of the research. Prior to the research taking place, the researcher worked at the field site for a two-year period as an administrative officer⁶⁹. During this professional period, the researcher took an interest in the criminal court process and the impact it had on defendants. Specifically, the researcher took the view that the process could be reformed, with a view to making it more socially just for court users (as similarly commented upon by Feeley, 1992). This professional experience was a motivating factor for the present study. Such motivations are relevant as they indicate to readers (and reflectively back to the researcher) how the researcher's motivations could saliently shape the focus of thesis (similarly argued by Welsh, 2016). In acknowledging the perspective of the researcher here, the thesis aims to advance the transparency and self-critical grounding of the thesis, improving the quality of the research.

Owing to this previous work history, there was a heightened risk the researcher would over-identify with participants, negatively influencing the independence aspect of the research. Meaning, there was the potential that the researcher would identify with participants to the degree that the researcher would side uncritically with their value judgements, thus biasing the data collection process and analysis phase (similarly described in Kanuha, 2000: 1). The researcher identified this risk early in the research process (before the data collection phase) and discussed it with their supervisory team. In doing so, both the researcher and the supervisory team were conscious of this potential risk and consequently, they paid special attention to this throughout the research period (again, see Kanuha, 2001; also see Welsh, 2016). In greater detail, the researcher regularly checked-in with their supervisory team regarding issues of over-identification during monthly (and sometimes weekly) meetings. Prior to these meetings, the researcher gave their supervisory team copies of the raw data collected that week as to audit the researcher, as previously mentioned (similarly described in Lincoln and Guba, 1985). In addition to these meetings and auditing measures, the researcher was

⁶⁹ It is worth noting that, owing to the size of the field site, the researcher never came into contact with any of the research participants prior to the research project. Indeed, the researcher's prior professional role as an office administrative assistant meant they had little contact with the courtroom.

motivated to critically reflect upon their role in the data collection process through using a private research journal. In this way, the researcher mitigated against the risk of over-identifying with participants, which could have diminished the quality of the research.

At the same time, the researcher's prior experience at the field site was advantageous because it allowed the researcher to navigate issues of localised "legalese" (Rowe, 2009: 14). The researcher was accustomed with the localised slang of the courthouse (abbreviations and acronyms) because of their prior professional time there. This was important because it allowed the researcher to understand otherwise obscure references in hearings. Some examples being, 'stat decs' meaning 'statutory declaration', 'S165' meaning 'financial means inquiry', 'S142' meaning 'reopening of a case' and 'NGAP' meaning 'not guilty anticipated plea'. Thus, when staff used such legalese in the courtroom, the researcher had a heightened ability to understand proceedings compared to if the researcher was observing a courthouse which they were unfamiliar. In brief, the researcher's prior history with the research site facilitated a greater understanding of the observed criminal justice process which subsequently contributed to richer, informed research findings and substantiated policy reform recommendations (similarly argued in Welsh, 2016).

3.6 LEGAL CONSIDERATIONS

This section explains how the researcher conducted the research in a legally appropriate manner. This section supports this statement by first explaining how the researcher worked within the concept of "open justice" (Moran, 2014: 143). Second, this section explains how the researcher abided by the Contempt of Court Act 1981, by working within the remit of the 'Strict Liability Rule' (S1-7). Lastly, this section explains how the researcher abided by the Contempt of Court Act 1981 by making no audio recordings of the observed proceedings. These legal issues are important, as a failure to comply can result in serious criminal charges. Indeed, if a researcher is found to be in breach of the Contempt of Court Act 1981, they can receive a financial penalty of up to £2,500 or two years in prison. Understandably therefore, issues of legality have been a point of focus for the present socio-legal researcher.

To begin, the researcher was able to make court observations because of the "open justice" principle (Moran, 2014: 143). This principle refers to how the courts are legally a public space, where the public has the right to freely observe and

make notes of the justice process that takes place there (Funnell, 2013; Nicholls, Mills and Kotecha, 2013; Chard, 2016; also see HMCTS in Chard, 2016; Moran, 2014: 143). This is a point made clear by Lord Justice Burnett who has stated that, “There is no rule of law, practice or convention prohibiting all those in court from making notes without permission”⁷⁰ (Burnett in *Ewing v Crown Court* 2016, S14; also see Her Majesty’s Courts and Tribunals Service, 2013; Chard, 2016). Similarly, Her Majesty’s Courts and Tribunals Service has emphasised:

“justice is administered in open court where anyone present may listen to and report what is said. There can be no objection to note taking in the public gallery [...] Court staff need to be alert, but it is not for them to prohibit the practice” (HMCTS, 2013: S1.5).

In view of the open justice principle, the researcher was not legally required to seek formal institutional consent before conducting the observational research. This was a point raised and confirmed with the ARU ethics committee, prior to data collection. In doing so, the researcher acted in a legal manner when they conducted their note-taking of court proceedings.

Meanwhile, the researcher abided by the ‘Strict Liability Rule’ by anonymising and protecting data from public view (see Contempt of Court Act 1981, s1-7). This rule emphasises that a court observer can be found guilty if they have interfered with the course of justice by publishing details of an ongoing case. The rule clarifies that a note-taking researcher is not guilty if, “(having taken all reasonable care) he does not know and has no reason to suspect that relevant proceedings are active” by the time they publish their notes (S3.1). The researcher worked within this rule by anonymising all data at the point of collection, (as detailed in Section 3.7). As a result, the thesis mitigated against its potential to interfere with ongoing cases, as readers cannot identify any case with reasonable certainty. Additionally, the researcher allocated a minimum of a three-year delay between their last day of

⁷⁰ The technicalities of this sentiment are upheld in the Crime and Disorder Act 1998 section 62A (7); granted that a trial has concluded it is legally permissible to report upon proceedings identifying: “(a) the identity of the court and the name of the justice or justices; (b) the name, age, home address and occupation of the accused; (c) [...] any relevant business information; (d) the offence or offences, or a summary of them, with which the accused is or are charged; (e) the names of counsel and solicitors engaged in the proceedings; (f) where the proceedings are adjourned, the date and place to which they are adjourned; (g) the arrangements as to bail; [F2(h)]whether, for the purposes of the proceedings, representation was provided to the accused or any of the accused....” (see Section 3.6.3 for more details regarding this legality).

data collection and the publication of the thesis. Notably, the English and Welsh justice system resolves most criminal cases within 154 days (see Donoghue, 2014b). Therefore, given this delay, the thesis mitigates against the likelihood that a reader could identify a case through inference. Taken together, this thesis mitigated against potentially affecting ongoing cases by anonymising the data and by waiting over a year before publication. Rephrased, the research took reasonable care to comply with the Contempt of Court Act 1981⁷¹.

Lastly, the researcher worked within the confines of the Contempt of Court Act 1981 (s9) by refraining from making audio recordings of hearings. According to the Contempt of Court Act 1981 (s9), if a court observer makes a visual or audio recording of a court proceeding, they are in breach of the law. The same act also prohibits observers engaging in live-text publishing of court events through social media (see Judicial College, 2015). The intention of these restrictions has been to avoid “trial by newspaper” but now, in its contemporary form, the Act also works to protect against “trial by social media” (Beke, 2014: 62; Taylor and Tarrent, 2019: 50). The researcher was aware of these restrictions prior to data collection. As a result, the researcher was informed and preserved the legality of their research by not making any audio or visual recordings of proceedings. The researcher collected data through note-taking only.

3.7 ETHICAL CONSIDERATIONS

This section argues that the thesis was ethical because of its precautionary measures that have mitigated against the risk of harm to participants. This section supports this claim by first explaining the researcher’s pro-active (rather than defensive) ethical approach. Second, the researcher mitigated against the risk of reinforcing problematic ideological assumptions by being conscious of this risk on the outset. Third, this section explains how the researcher sought staff’s expressed consent. Fourth, this section explains how legal restrictions obstructed the researcher from acquiring court users’ informed consent. In view of this, this section outlines how the research adopted measures to ensure court users’ anonymity. Lastly, the researcher argues that the utilitarian nature of the thesis

⁷¹ The researcher further worked towards protecting the collected data by taking practical security measures. Namely, the researcher secured all court observations to a secure electronic device (an encrypted Micro SD card) and then regularly uploaded this at the end of each research day to a secure computer. The researcher stored this memory card in a locked cabinet at a secure location when not in use.

justifies its semi-overt character. In addressing these issues, the researcher sought to elevate the consideration of court-based research ethics to a more sophisticated level than what previous court studies have practised⁷².

To begin, this thesis adopted a pro-active ethical approach to research. This approach is in contrast to what Humphries and Truman (1994: 29) has called a “defensive stance”. As Humphries and Truman (1994) have explained, some researchers may present their ethical considerations after the research has taken place, with a view to justify their actions/behaviour. The thesis does not subscribe to this retroactive approach to research. Rather, the thesis has taken a proactive approach. This approach requires the researcher to take account of the potential impact of their research on the field site and participants, prior to data collection (see Shaw and Holland, 2014). In doing so, the integrity of the research is improved and harm is more strongly mitigated against.

Second, the thesis recognises that it has the capacity to negatively impact vulnerable court users by reinforcing problematic ideological assumptions and institutional practices. Indeed, as argued by Renzetti and Lee (1993) as well as Hughes (2000: 235), criminal justice researchers who study government institutions have the capacity to reinforce “prevailing dominant ideological assumptions and institutional practices”. These ideologies and institutional practices can negatively impact court users by demonising them or by reproducing social myths (rather than myth busting) (discussed in Bell, 2011; Welsh, 2016). Public discourses around lower criminal court justice has historically been supportive of punitive and pro-prosecution narratives (discussed in Welsh, 2016). As explained in Section 3.2, court users are representative of a diverse range of vulnerabilities and therefore, a myopic commitment to punitiveness is inappropriate. The thesis has the potential to offer “scientific credibility” to such problematic conceptualisations of court users and inadvertently support unjustly intrusive institutional practices (similarly argued in Hughes, 2000: 235). The social justice-oriented approach of the thesis has prompted the researcher to reflect over their own privileges (see Section 3.5.4) and consequently, the researcher has been sensitised to the social disadvantages of court users (also see Section 3.2). In

⁷² The approach of the present study, (to be highly sensitive to ethical issues in the courtroom), is counter to the advice offered by Moore and Friedman (1993) who have argued that ethical risks are low in conducting court research: “it is difficult for sociologists to violate research ethics because participant observation techniques are highly constrained by the courtroom setting. [...] While observations of a courtroom may be conducted covertly [or semi-overtly], the behavior is public and occurs within open court [...] the observer plays a passive role in court interaction” (Moore and Friedman, 1993: 125).

doing so, the researcher has been conscious of how the thesis relates to surrounding discourses and its potential negative impact, promoting the integrity of the research and mitigating against its potential to cause harm.

Additionally, the thesis serves in an empowering capacity for court users by platforming their experiences. This approach reflects Scutt's (1988: 127) comments that courtroom justice can be a form of "hidden justice". Indeed, government-led reports that have examined the institutional practices of the lower criminal courts have historically focused on actuarial/managerial criteria for success (see Section 2.3). In doing so, these reports have marginalised the lived experiences of court users. This thesis serves in an empowering capacity by moving beyond these institutional criteria (similarly argued in Shaw and Holland, 2014). Indeed, the thesis offers an investigation that centres on issues of justice quality that involves the courts upholding the concepts of social justice and procedural due process that serves to benefit court users.

As an added protective measure, the researcher removed themselves from the gallery if they believed they were (or would) have an adverse impact on court users. The researcher understood that by being present in this emotional space (the courtroom), they could contribute to the negative effect on court users (similarly argued in Smith, 2013). Indeed, the courtroom can be an emotionally demanding space due to how intimate personal details of peoples' lives are announced publicly, in extensive forensic detail (see the profound research on rape trials by Adler, 1987; Lees, 1996; Smith, 2013; also see Sections 3.2, 3.3). Therefore, the researcher agreed that if they suspected they were having a negative effect on participants, then they would end the court observations for that given hearing⁷³. Again, this approach to courtroom research sought to reduce the harm that can potentially take place owing to power differences between the researcher and participants. In practice, the researcher removed themselves once from a

⁷³ This decision followed in the researcher's prior Anglia Ruskin University ethics training in 2016 (which covered matters of emotionality and harm). Additionally, this decision was informed by the researcher's moral conscience. This method of obtaining ethical legitimacy by combining informal training and relying on the moral conscious of the researcher follows in the recommendations laid out by Murphy and Dingwall (2007).

courtroom's public gallery, this was during the pilot study portion of the research journey⁷⁴.

Furthermore, the researcher preserved the ethicalness of the thesis by seeking out the expressed consent of court ushers and (by proxy) the bench, prior to collecting data from the courtroom. The researcher liaised with a court usher each research day prior to conducting data collection. The researcher would ask the usher if they could enter the courtroom and make stenographic notes throughout proceedings. The court usher would then relay this request to the residing bench (either a magistrate or district judge) and then following this, the court usher would invite the researcher to the public gallery, confirming the consent of the bench. There were no days where the usher denied the researcher access. This type of consent was expressed, it was not signed informal consent (see Bottoms and Tankebe 2012; Roberts and Indermaur, 2008).

The researcher used verbal, expressed consent rather than signed informal consent owing to the fast pace nature of the courtroom. The researcher acknowledges that signed informed consent is more robust for auditing purposes and arguably therefore, more ethical than expressed consent (see Roberts and Indermaur, 2008). However, the researcher did not wish to obstruct proceedings by making frequent signature requests of busy court staff as this could have resulted in negative legal complications (see Section 3.6). Indeed, as discussed in Smith's (2013; 2020) courtroom observation study, the court workgroup's expressed consent through a court usher is a preferable ethical measure, given the legal restrictions of the courtroom space (also see Steward, 2004). Therefore, given the limiting conditions of the courtroom space, the researcher sought expressed consent over signed informed consent.

The researcher initially intended to acquire the consent of court users but this was not achievable without obstructing the court process (similarly discussed in Smith, 2020). Indeed, a researcher can be found in contempt of court if they distract/obstruct court staff from performing their duties (see the Contempt of Court Act 1981 in Section 3.6). This is a pertinent issue because the researcher initially wanted to acquire the informed consent of court users either before or after a

⁷⁴ The researcher removed themselves once from the courtroom during the pilot study portion of the research journey. There were no times during the data collection period in 2018 where the researcher removed themselves from the courtroom. The researcher's infrequent use of this sensitivity policy is likely due to the "low stakes" of the Magistrates' Courts compared to that of the Crown Court (as described in Lees, 1996; Smith, 2013; Feeley, 1992: xxix).

hearing had taken place⁷⁵. This would have required the researcher to continually enter and exit the courtroom to speak to court users, which would likely distract/obstruct court staff from their duties. Whilst well intentioned, this hypothetical travelling of the researcher for informed consent purposes would have likely distracted the court workgroup from legal proceedings. Therefore, the researcher decided not to pursue the informed consent of court users (a position similarly taken by Steward, 2004; Smith, 2013; 2020). Smith (2020), Funnell (2013: 1) and van Cleve (2016), like the present researcher, have recognised that informed consent from court users is desirable but not legally practical. In doing so, they argue that “the absence of fully informed consent is acceptable if associated with action to ensure anonymity” (Funnell, 2013: 1; van Cleve, 2016). Following in the work of Funnell (2008) and van Cleve (2016), the researcher took steps to ensure the anonymity of participants.

Indeed, the researcher refrained from noting identifying information during the data collection process to protect court users. The publication of court-based empirical data can serve as an additional punishment to criminals, as such publications can perpetuate public stigmatization (see Jacobs and Larrauri, 2012). In extreme cases, the publication of a court user’s details can contribute to vigilante attacks (see Allison, 2000). Meanwhile, for victims of crime, the publication of criminal events involving them can have a re-victimising effect, effectively causing them to re-live their trauma (see Smith, 2020). To prevent court users from being identified, the researcher did not note any of the names of participants. The researcher also refrained from noting any place names (including the name of the observed courthouse). This anonymising of the data prevented readers from being able to “jigsaw” the data (Saunders, Kitzinger and Kitzinger, 2014: 1). As Saunders, Kitzinger and Kitzinger (2014) explain, jigsawing is when a reader connects some key pieces of information together from a case (road names, courthouse names, etc.) to identify the name of a participant. As a further protective measure, the researcher anonymised the data at the point of collection (a practice similarly used in Smith’s 2013 court observation study; also see Funnell, 2013 and van Cleve, 2016). The researcher anonymised the data at-the-point of collection to avoid harm through human error (for example, if the researcher lost the data in a public place⁷⁶ or some revealing information was published inadvertently). Taken collectively, the

⁷⁵ Note that despite not being able to secure the informed consent of court users, the ethics committee of Anglia Ruskin University approved this research approach.

⁷⁶ Note that all data was nevertheless stored in a secure location at the end of each research day so the likelihood of such an event was low (previously discussed in Section 3.6).

researcher used these extensive anonymity measures to protect court users in the absence of informed consent.

Lastly, the researcher argues that the utilitarian nature of the thesis justifies its semi-overt character. The research was semi-overt⁷⁷ because it did not make use of explicit (signed) informed consent (see Pratt, 2000; Calvery, 2008; 2017). Whilst court staff were aware as to why the researcher was in the public gallery, court users were not. In reflecting upon this concern, the researcher adopted a similar utilitarian perspective as Smith (2013) when she conducted her court observation study. Namely, the researcher took the view that the social justice and procedural due process-oriented approach of the thesis, with its focus on forming quality justice improving reform recommendations, rendered its semi-overt elements ethically permissible. This approach is centred on a commitment to contributing “to the wider good” (Shaw and Holland, 2014: 106).

At the same time, the researcher was conscious that no research project is fully overt, even when utilising signed informed consent. As explain by Calvery (2008), when research lasts lengthy periods, participants may become accustom to the researcher’s presence, as is intended with an ethnographic approach (explained in Section 3.3). Coupled with this comfortableness, participants may not accurately recall what the research project is about. This subsequently raises questions about what degree a researcher should continually confirm participants’ informed consent (Calvery, 2008). As Calvery (2008) and Smith (2020) comment, an absolute commitment to overtness is untenable, and can even be framed as counter to the purposefulness of the ethnographic method. Consequently, the researcher’s approach to informed consent reflects the guidance of the Socio-Legal Studies Association (2009: 6-7):

“...during anthropological fieldwork, it may not be possible to obtain written consent [...] specific attention needs to be given to the challenges of gaining consent, whether consent is needed, and what steps need to be taken to ensure the protection of privacy of the observed people”

⁷⁷ This is sometimes called “quasi-covert” or “semi-covert” (Smith, 2020: 10; Calvery, 2008: 905).

Indeed, by the research attempting to secure participants informed consent as much as possible and by utilising anonymity measures to protect participants, the thesis subscribes to the guidance of the Socio-Legal Studies Association (2009).

This semi-overt approach is in contrast to deceptive research, as described by Smith (2020). Namely, semi-overt and covert research is when the researcher does not fully declare themselves or their study to participants (Calvery, 2008; Smith, 2020). Meanwhile, deceptive research requires the researcher to actively mislead participants (Calvery, 2008; Smith, 2020). The present researcher did not actively mislead participants. Like with Smith's (2020) approach, the researcher was open and transparent if any person asked about their presence in the courtroom or why they were making notes. To this end, whilst the researcher was semi-overt, they were not deceptive.

To conclude, the researcher attempted to obtain participants informed consent as much as practically possible (which included obtaining verbal consent for court staff). Meanwhile, the researcher was not legally able to request the informed consent of court users. Therefore, the research gave specific attention to anonymity measures designed to protect participants privacy. Indeed, in this way, this thesis has been conducted in a sensitive and ethical manner. As a final note, the ethics committee of Anglia Ruskin University also agreed with this approach, providing an additional layer of ethical oversight for the thesis.

3.8 OTHER DESIGN LIMITATIONS

This section explains some of the limitations of the thesis whilst arguing that despite these weaknesses, the research design of the thesis was useful for answering the research questions of Chapter 2. In support of this argument, this section begins by explaining that although a longitudinal study would have been useful for generating exacting summary justice efficiency reforms, the present thesis did not have the available resources to conduct this type of research. Following this, this section appraises and justifies the researcher's choice to not quantitatively contextualise their findings, arguing that this would have contributed towards obscuring/unnecessarily cluttering the research findings. Together, this section largely draws attention to the limited resources of the thesis whilst emphasising the capacity of the thesis to make a significant and original contribution to knowledge.

To begin, the researcher recognised that a longitudinal study would have been potentially more useful for generating summary justice efficiency reforms, compared to the case study method of the present thesis. Indeed, critics may draw attention to the case study, cross-sectional aspect of the thesis and how a longitudinal approach would have generated more exacting summary justice efficiency reforms (see Section 3.4.2). It would have been useful to examine the criminal court process prior to and after key efficiency policy was introduced, such as that regarding the introduction of GAP and NGAP courts (see Section 2.4.6). In doing so, the researcher could have examined quality of justice directly following the government's introduction of efficiency reforms (as unpacked in Sections 2.3 and 2.4). Such a longitudinal approach to court observation / criminal court reform research has been used in the American context, generating acute insights regarding how to shape future policy (see for example, Rossman, Roman, Zweig, Lindquist, Rempel, Willison, Downey and Fahrney, 2011). Unfortunately, the researcher's limited resources prevented them from conducting such a longitudinal study. Indeed, the time and monetary resources required to organise and track policy changes in the courts would have been substantial. Consequently, the researcher decided against using a longitudinal approach, albeit it likely would have rendered more powerful findings than that of the present study. Despite this, the researcher maintains that the case-study approach of the thesis is useful for its ambition to generate policy reform ideas that tackle over-efficiency (see Section 3.5.4). Indeed, the case study approach still provides rich insight into the daily workings of the summary justice process: what practices take place there, what values underpin these practices and how this impacts quality of justice.

Meanwhile, other critics may draw attention to how the thesis did not quantitatively contextualise its findings. The researcher has not provided contextualising quantitative data because this would have contributed towards obscuring/unnecessarily cluttering the research findings. Whilst the researcher did generate quantitative data when coding (the number of codes and their frequency), this did not indicate the importance or cultural impact of the codes that they generated. To explain further, if an event happened a handful of times, warranting the research to only compose a handful of codes, this would not detract from the potential cultural importance of that observation or how that observation fed into a wider theme. Hypothetical examples of such rare but significant observations could include if the researcher observed the judiciary acting with extreme and explicit prejudice towards a select demographic, or if staff engaged in illegal practices. In either hypothetical example, the researcher would produce few codes / would infrequently apply existing codes. This small number of codes and their frequency

would not mean that the observed practices were insignificant but their small number may suggest this to readers. This is a point similarly identified by Saldaña (2013: 39), “frequency of occurrence is not necessarily an indicator of significance”. Indeed, the assumption that a small number of codes indicates an insignificant practice is somewhat implied with quantitative contextualisation and is entirely untrue. Additionally, such quantitative context would have contributed towards already wordy explications of the observed themes, making the findings less accessible. Rephrased, such quantitative context could clutter the researcher’s explanation of key findings, rather than help elucidate them. Therefore, the researcher viewed the quantitative contextualisation of findings as undesirable.

3.9 SUMMARY

In summary, this chapter has explained and justified the research design choices of the thesis. Sections 3.2 and 3.3 have established that the lower criminal courts are a sensitive research site and that the ethnographic approach is useful for studying the social world that exists there. From this, Section 3.4 has explained the stenographic data collection method of the researcher as well as their passive, observation-only approach. Meanwhile, Section 3.5 has critically appraised the thematic data analysis method of the thesis, explaining how this was useful for policy reform recommendation purposes. Next, Sections 3.6 and 3.7 have established the legality and ethicalness of the thesis. Lastly, Section 3.8 accounts for some of the criticisms that readers may level at the design choices of the thesis. Collectively, these sections establish the methodology that the thesis used to answer its research questions (see Section 2.6).

Building from the present chapter, the next three chapters present the findings of the thesis. In doing so, Chapters 4, 5 and 6 each begin with initial data analysis, explaining the themes that the researcher generated from their 66 days of court observations. The three themes that these chapters unpack are speed-focused managerialism, standardised defendant processes and finally, court users’ procedural adversity.

CHAPTER 4. SPEED-FOCUSED MANAGERIALISM

4.1 INTRODUCTION

This chapter builds from the previous research design chapter by explaining the first of three themes that the researcher generated from the data. To reiterate briefly, the previous research design chapter has explained how the researcher conducted court observations and then coded the data which resulted in overarching themes. This chapter presents three subthemes in support of the first overarching theme, 'speed-focused managerialism'.

The first half of this chapter serves to answer the first research question from Chapter 2: 'what values are embedded in individual and institutional practices?'. Namely, this chapter explains how staff prioritised the value of speediness during the in-court summary justice process, through various micro-level, managerial practices. This chapter presents these speed-focused managerial practices in the following subthemes: District judges and magistrates as managerial leaders (see Section 4.2), solicitors' co-operative case management (see Section 4.3) and finally, the workgroups speed-oriented defendant management (see Section 4.4). These subthemes draw upon example extracts throughout, to evidence the researcher's interpretation of the data⁷⁸. In doing so, this chapter demonstrates how the subthemes formed, and how these subthemes support the overarching theme, speed-focused managerialism.

Section 4.5 serves to answer the second research question that was presented in Chapter 2⁷⁹. Section 4.5 achieves this by discussing the researcher's interpretation that court staff prioritised speediness over the quality justice assuring values of fairness, verdict accuracy, democratic oversight, adversarialism, defendant participation, defendant comprehension, sentence proportionality and institutional legitimacy. On this basis, Section 4.5 argues that the summary justice process

⁷⁸ For greater detail regarding the reflective, interpretive process undertaken by the researcher please see Section 2.2.2 and 3.4.3.

⁷⁹ The second research question is, 'in critically discussing these process-defining values and their prioritisation, should the summary justice process become more efficiency-oriented or some other value be prioritised?' (originally presented in Section 2.6).

should refrain from becoming more efficient in speed-focused, managerial terms, to avert becoming more overly efficient (as discussed in Section 2.3.3).

4.2 DISTRICT JUDGES AND MAGISTRATES AS MANAGERIAL LEADERS

This subtheme unpacks the researcher's interpretation that magistrates and district judges engaged in managerial leadership practices that prioritised the value of speediness. The following observations from the raw data support this subtheme. First, district judges were pro-active in leading case progression for speedy case disposal ends. Second, district judges' leadership embodied an intimidating character, which pressured other courtroom staff to commit to speedy justice values. Third, district judges actively discouraged court staff from prioritising any other value that was not for speed. Fourth, district judges engaged in plea bargains mid-hearing to achieve speedy justice. Fifth and finally, magistrates adopted a *laissez-faire* leadership style, by enabling speed-focused cooperative spaces to emerge for solicitors and legal advisors. Collectively, these interpretations contribute towards answering the first research question⁸⁰: district judges and magistrates upheld the value of speediness when performing as courtroom leaders.

First, district judges were pro-active in leading case progression for speedy case disposal ends. This proactiveness is demonstrated in the following example extracts. In extract 1, the district judge anticipates what the defence solicitor is to say before they finish their sentence and interjects, speeding-up the case disposal process. Meanwhile, in extract 2, the district judge anticipates the point to be raised by the solicitor and again, interjects as to speed up the court process.

Extract 1

District judge: Why adjourned and not bailed?

Defence solicitor: Yes [...] My client would like to seek

District judge: (Interrupts) Technical bail?

Defence solicitor: Yes.

⁸⁰ To reiterate Section 2.6, the first research question is, '...what values are embedded in individual and institutional practices?'.

Extract 2

Defence solicitor: I don't know if you have had the opportunity to read the

District judge: (Interrupts) yes, I am just reading it now. Can you please just allow me to.

Defence solicitor: Yes sir, sorry sir.

(A few moments pass. The district judge concludes reading)

District judge: Yes, Mr Solicitor?

Defence solicitor: So, sir, in relation to...

These examples demonstrate how district judges used a firm tone to control conversational turn taking. The result was that district judges proactively omitted any unnecessary conversational exchanges between themselves and other members of the workgroup. In doing so, judges embodied a leadership character, district judges could rally the court workgroup to deliver speedy justice.

Second, district judges' leadership embodied an intimidating character, which was conducive to pressuring staff to commit to speedy justice values. Consider the following example extract where the district judge announces to the court workgroup to call on the next case. Here, the prosecution solicitor demonstrates non-verbal signs of anxiousness as they take a few moments to search for the required charge sheet to present to the court:

Extract 3

Prosecution solicitor: (Speaking to district judge) I am just trying to open the document. Erm, I have a charge sheet but it's related to a charge in 2016 not 2018 [...] (looks / scrolls through laptop)

(Silence from all staff. A moment passes)

District judge: (Inaudible / whispers to legal advisor)

(I am close to the crown prosecution solicitor. I can see in her face, she is panicking / worried, eyebrows raised, hand around mouth. She keeps swallowing. Eyes darting across computer)

Anxious behaviour, such as that above, was unique to when district judges were present. This workgroup anxiousness appeared to emanate from an expectation that they should complete case-progression tasks at a pace determined by the district judge. Indeed, as with extract 1 and 2, district judges were for speedy case disposals.

Third, district judges actively discouraged court staff from prioritising any other value that was not for speed. Extract 4 exemplifies this. Here, a district judge scolds a solicitor for seeking to establish a duress defence for their client (which means that the court workgroup cannot dispose of the case that day):

Extract 4

- District judge:* Okay. So, erect a skeletal argument, in 30 years of this business, I have seen one case succeed on duress!
- Defence solicitor:* Erm, yes sir (sounds nervous/trembling)
- District judge:* That's just my view, so erect a skeleton argument, show me on what basis you think you can succeed on duress.

In the above example extract, the solicitor prioritises adversarial values. This is evident in how they are advancing the interests of their client (the defendant), by seeking to defend them at trial. The solicitor's value prioritisation works against speedy justice ends because trials are a lengthy process. The district judge in the above example extract embraces a disapproving tone in commenting upon the solicitor's choice to defend their client at trial, suggesting that the district judge would have preferred a speedier plea of guilty at the current hearing. This further demonstrates the district judge's embodiment of speed-focused values.

Fourth, district judges engaged in plea bargains mid-hearing to achieve speedy justice. Consider the below exchange where a district judge interrupts a solicitor mid-statement to encourage a defendant (the solicitor's client) to accept an impromptu plea bargain:

Extract 5

- District judge:* Yes, sit down Mr D. I have read the report. [...] I will say today that he is doing well on a supervision and he is doing well. I have read the probation report.
- Defence solicitor:* That is an advantage over me sir, I still haven't seen it.
- District judge:* I am saying here now that he (the defendant) is doing well, as he has got a job and he is working well. If he accepts his plea then I will suspend the sentence, he is paying off his fines and I don't intend, to wish to waste the time of witnesses and victims. Would you like to have a word with him now?
- Defence solicitor:* Erm, yes sir. (leaves courtroom with defendant)

(Time elapses. The defence solicitor re-enters court via main public entrance with defendant)

District judge: Are we going to trial or not Mr. Solicitor?

Defence solicitor: No, sir.

(The defendant enters the docket. The legal advisor reads out the charge and requests the defendant plea)

Defendant: Guilty.

District judge: Okay, good.

In the above extract, the district judge uses their influence to encourage a defendant to plead guilty. This is evident in how the solicitor makes use of the time granted by the judge to leave the courtroom and speak to his client, rather than persisting with a not guilty plea. Again, this leadership practice of the district judge is beneficial from a speedy justice perspective, as they avoided a lengthy trial.

Fifth, and in contrast to district judges, magistrates adopted a *laissez-faire* leadership style. Magistrates worked to establish speed-focused, cooperative spaces for solicitors and legal advisors. In greater detail, magistrates would listen to staff's workflow concerns, then following this, the magistrates would retire from the courtroom space. This practice was for speedy justice values, as it enabled solicitors (both defence and prosecution) and legal advisors to work outside of the formal hearing process. In this less formal space, solicitors and legal advisors could cooperatively work together to find speedy solutions to case management issues. The following example demonstrates this *laissez-faire* leadership practice of magistrates and how they established cooperative, speed-focused workspaces for legal advisors and solicitors:

Extract 6

Defence solicitor: Yes, your worships, this matter has made significant progress it may well be, in fact, that given a little more time, we could maybe be able to resolve the matter entirely, erm, by continue speaking to my friend (gestures to prosecution solicitor)

Magistrate: Hmm. So, how much time would you need, do you think it's possible to resolve this matter completely?

Defence solicitor: I would say, maybe,

Legal advisor: Until 10 past 11?

Defence solicitor: Yes, yes I think so.

Magistrate: Okay we will retire then [...]

(Magistrates retire / leave the courtroom. Time elapses. Magistrates return to court from retirement / re-enter the courtroom)

Magistrate: Was that time helpful?

Prosecution solicitor: To a large extend, I do think so, sir. The issue has now been narrowed down to a very small point.

As the above example demonstrates, the magistrate facilitated for the defence and prosecution solicitors to convene privately instead of proceeding with the hearing as it was listed for the day. In doing so, the solicitors cooperated to 'narrow down' which part of the evidence they contested. The solicitors, along with the legal advisor, worked outside of the hearing process to resolve case management issues speedily. This allowed the formal (time-consuming) case management hearing process to be conducted in a swifter fashion, the workgroup was able to largely omit a formal case management hearing. To this end, magistrates' *laissez-faire* leadership style embodied speedy justice values.

In summary therefore, it is the researcher's interpretation that district judges and magistrates upheld speed-focused values through their court leadership styles. Namely, district judges promoted speediness through controlling conversational turn taking, adopting an intimidating character and by actively discouraging court staff from upholding any other values that were not for speediness. Meanwhile, magistrates upheld speed focused values by making frequent use of retirements to enable a cooperative, speed-focused managerial space to emerge for legal advisors and solicitors. This initial data analysis is critically discussed in Section 4.5.

4.3 SOLICITORS & CO-OPERATIVE CASE MANAGEMENT

This subtheme unpacks the researcher's observations of cooperative solicitor practices that, in the researcher's view, prioritised speediness values. The following observations from the raw data support this subtheme. First, solicitors would convene prior to a hearing/trial taking place to resolve case management issues. Second, solicitors would work together during pre-hearing cooperative planning periods to determine case outcomes (including whether or not a defendant should be found guilty). Third, prosecution solicitors rarely contested defendants' mitigating factors, reflecting their cooperative drive for speedy case

disposals. This subtheme concludes by offering a fourth point about how solicitors departed from cooperative, speed-focused values when conducting cross-examinations at trial. This last observation is noteworthy as it demonstrates the limit of solicitors' cooperative focus on speediness. Collectively, these interpretations contribute towards answering the first research question ⁸¹ : solicitors' cooperative managerial practices were for speediness values.

First, solicitors would convene prior to a hearing/trial taking place to cooperatively resolve case management issues. Such practices embodied speedy justice values because solicitors' cooperative planning resulted in more focused (succinct) hearings/trials. These speed-focused practices were very common during the observation period. It was normal practice for defence solicitors and crown prosecution service solicitors to convene minutes (or even seconds) before a hearing began to discuss case management issues. The following extracts demonstrate this pre-hearing/trial cooperative planning practice of solicitors:

Extract 7

Prosecution solicitor: Don't worry, I'm not going to try and do anything to try and ambush you

Defence solicitor: No, yeah yeah, yeah

Prosecution solicitor: [...] I don't think it's a lie, I just think that maybe she just misremembered it

Defence solicitor: And the thing is, I feel like Mr X is the most helpful to my client. So, I was like 'are you sure he's not here?' (referencing to the location where the crime took place) (laughs)

Prosecution solicitor: Yeah, it's; it would be an odd lie.

Defence solicitor: Exactly. It doesn't help either side.

Extract 8

(Defence solicitor and prosecution solicitor continue watching the CCTV footage/evidence on a laptop. The two are shoulder to shoulder. They are both comparing written statements to the CCTV footage. The footage is also on a large screen overhead)

Prosecution solicitor: To me, that punch could be left or right. I can't really see that (gesturing to the computer)

⁸¹ To reiterate Section 2.6, the first research question is, '...what values are embedded in individual and institutional practices?'

Defence solicitor: So, what, what, what. Oh. He's pushing his hands off there.

Prosecution solicitor: Well, he is definitely backing off and then he clearly goes for him (pause) [...] I mean he's got (sigh) ahh he has resist (short for the charge 'resist a police constable in execution of duty') erm. I'm not saying he definitely can but there is the argument that he can say he was resisting [...] I suspect that this is going to go upstairs (slang for Crown Court) on a 47 (short for a Section 57 assault charge), isn't it?

Defence solicitor: Yeah, I think so because this is arguably a category 1 because (words drop off / inaudible)

Prosecution solicitor: Yeah, yeah

In extract 7, the prosecution solicitor and the defence solicitor worked together to discuss the role of a witness's statements in the upcoming trial, concluding that the witness is unreliable for both parties. As a result, the solicitors agreed not to present this evidence and the summary justice process was sped-up. Meanwhile, in extract 8, the prosecution and defence solicitors worked together to review the charge put to the defendant. In doing so, they discussed whether the case should remain in the magistrates' court or whether they should send it to the Crown Court. This practice similarly embodies speedy justice values because the solicitors worked together, outside of the highly procedural and time-consuming case management hearing process.

Second, solicitors would work together during pre-hearing cooperative planning periods to establish hearing/trial outcomes (including whether or not a defendant was guilty). These practices were for speedy justice because they omitted time-consuming, adversarial practices which rely on zealous advocates testing the strength of evidence. Consider the below succinct example which evidences how a defence solicitor clarified to the prosecution that they believed their client to be guilty, despite their client's plea of not guilty. For context, the individuals present in the courtroom during this pre-hearing planning period was the defence solicitor, prosecution solicitor and legal advisor which was typical of pre-hearing planning sessions:

Extract 9

Prosecution solicitor: So, is this a not guilty plea?

Defence solicitor: For the moment. What a prat!

In this example, the defence solicitor's announcement initiated a conversation regarding how they should plan the upcoming trial. This would mean that although

solicitors pre-planned a hearing/trial, they would still take part in the formal, adversarial processes that followed. This rendered solicitors' adversarial practices pseudo in nature. Rephrased, following such pre-hearing planning sessions, solicitors would feign being zealous advocates for their client in the formal hearing process, as they had already established court hearing/trial outcomes with the opposing party's solicitor. In this way, solicitors' pseudo-adversarial practices embodied speedy justice values.

In further support of the above interpretation, the researcher observed two solicitors who explained that they were in favour of cooperativeness because it served towards speedy justice ends. During the observation period, there was a court user who sat in the gallery who asked two presiding solicitors, 'do you two pretend to argue with each other?'. (The court users seemingly made this comment because they arrived upon a similar interpretation to that detailed above, regarding how solicitors performed in a feigned adversarial manner). The prosecution and defence solicitors responded as follows, in the below extract. In this exchange, the tone was open and relaxed. This exchange occurred during the pre-hearing/trial period, whilst magistrates were in retirement:

Extract 10

Prosecution solicitor: There is no point in not getting along with each other because otherwise it just makes it harder for you to compromise.

Defence solicitor: Yeah, that's it.

Court user: I think it's good, to rather make friends, rather than actually hate each other (laughs).

Prosecution solicitor: Yeah, that's it.

Defence solicitor: If you are going to have petite arguments then you are not going to be able to achieve much.

As supported with the above example extract, solicitors performed in a feigned adversarial or pseudo-adversarial fashion. They favoured cooperativeness as this would cause speedy case disposal outcomes. Or to use the defence solicitor's phraseology, 'If you are going to have petite arguments then you are not going to be able to achieve much'. Again therefore, reinforcing the point previously made, solicitors' shared prioritisation of speedy justice values drove their cooperativeness.

Third, prosecution solicitors' cooperative drive for speediness resulted in them rarely contesting defendants' mitigating factors. Consider the following extract

taken from a domestic violence case which demonstrates the typical non-adversarialism of prosecution solicitors (how they did not challenge the defences mitigating factors):

Extract 11

Defence solicitor: He has elderly parents who are extremely ill. [...] both mother and father have serious heart problems [...] he is effectively looking after his parents [...] due to conditions imposed upon him, he is unable to make contact with his mother as she lives very close to the complainant [...] still he has organised for another relative to look after his mother [...] sir, he is hoping to return back to his parents to help them, they are at the forefront of his mind, he has expressed his remorse, sir. [...] he tells me since January he has not taken a drop of alcohol [...] so also, more pivotal. I will be asking you to consider that at the forefront of his mind is rehabilitation.

(Hearing continues until the magistrate announces the defendant's sentence. Prosecution does not contest the above mitigating factors of the defence. The magistrate then formally concludes the sentencing hearing)

Court user: (Cries loudly) Everything she said about him is wrong! He doesn't even look after his mum and dad!

Legal Advisor: Well, hang on just, there (legal advisor is tripping over their words). He (the defendant) may still be outside. Ms Defence Sol. was just doing her job.

Defence solicitor: I'm sorry, I'm just doing my job.

Court user: He was laughing as he was leaving! Did you see him? He's got away with it!

In the above example extract, the defence solicitor presented a series of mitigating factors in a somewhat scatter gun manner to encourage the magistrates to give a lesser sentence. The prosecution gave no contest and following this, the magistrate passed sentence. By omitting adversarial contests regarding the defendant's mitigating factors, solicitors disposed of cases quickly. Of course, however, as demonstrated in the above example this did raise accuracy issues from a court user in the gallery. Namely, the court user was concerned with the accuracy of the sentence given that, to their knowledge, the defendant 'doesn't even look after his mum and dad'. To this end, prosecution solicitors' none contesting of mitigating factors generated sentence proportionality concerns.

Finally, and as a caveat to the previous points made in this section, the researcher gathered evidence to demonstrate that solicitors departed from cooperative, speed-focused values when conducting cross-examinations at trial. This observation is noteworthy because, in the researcher's view, it demonstrates the limit of solicitors' cooperative focus on speedy case disposals. Solicitors of both sides would frequently make handwritten notes during their opponent's cross-examinations, seemingly preparing counter points or new lines of questioning. In the researcher's view, such committed adversarialism was also evident in how solicitors of both sides would eagerly interrupt their opponent during cross-examination. Such interruptions would typically happen when a solicitor believed that their opponent's questioning was irrelevant or unfair to their client. Consider the following extracts involving a sexual assault matter (in extract 12) and a domestic violence matter (in extract 13) which demonstrates solicitors' commitment to adversarial values:

Extract 12

Defence solicitor: Screaming and shouting you were, weren't you?

Witness: No.

Defence solicitor: Just like you were in your 999 call, weren't you?

Witness: No.

Defence solicitor: You put your own son in the middle of an argument, telling him not to undo his seatbelt

Prosecution solicitor: (interrupts) is that a question or?

Defence solicitor: It's coming now sir! (This exclamation is directed at the prosecution solicitor. A brief pause, then the defence solicitor draws their attention back to the witness). What do you do after Mr Defendant tells your son not to undo his seat belt?

Extract 13

Defence solicitor: (directing cross-examination questions to the witness who is in the witness box) Well, in your evidence, you said that "you didn't go out" but now you are saying that you did go out, and now you are saying that you changed your evidence.

Prosecution solicitor: Well, I would appreciate it if my learned friend (interrupted by the defence solicitor)

(The defence and prosecution solicitor talk over each other, building up to shouting over each other)

As demonstrated above, solicitors were not absolutely concerned with speed and cooperative practices. Instead, solicitors interrupted each other and drew their opponent's attention to the rules of proper procedure. To this end, during cross-examinations, solicitors adopted substantiated or true (rather than pseudo) adversarial values. As a last point of emphasis, the researcher only observed solicitors embodying true adversarialism during serious cases such as that of sexual or domestic violence (like in the above example extracts). Solicitors did not demonstrate true adversarial values during lesser serious matters, such as that of littering or driving penalties. In this way, solicitors' sense of case seriousness determined whether they should prioritise true adversarialism over speediness. Indeed, in the researcher's interpretation, this was the limit of solicitors' prioritisation of speedy justice values.

In summary therefore, it is the researcher's interpretation that solicitors upheld speed-focused values through their cooperative managerial practices. Namely, solicitors would convene prior to a formal hearing taking place in the courtroom to resolve case management issues as well as to determine case outcomes. Additionally, prosecution solicitors would rarely contest defendants' mitigating factors, further speeding up the case disposal process. As a caveat to these dominant speed-focused values, this section notes that during the cross-examination portion of trials, solicitors would not prioritise speediness. This initial data analysis is critically discussed in Section 4.5.

4.4 THE WORKGROUP & DEFENDANT MANAGEMENT

This subtheme unpacks the researcher's observations of the court workgroup's defendant management practices that, in the researchers view, prioritised the value of speediness. By 'court workgroup', this section refers to the observed courthouse's collective professional staff who were present in the courtroom during proceedings. This includes district judges, magistrates, legal advisors, and solicitors. The following observations from the raw data support this subtheme. First, the court workgroup strictly controlled defendants' verbal participation as to ensure they could dispose of cases speedily. Second, the court workgroups quick processing of cases caused defendants to not understand proceedings. Third, legal advisors would mute defendants during live link hearings, to ensure that the

court workgroup could dispose of cases uninterrupted. Fourth, the court workgroup would rely on defendants as being an in-court, means information source to streamline the case disposal process. This section offers a final point as a caveat to the prior four points. Namely, when defendants represented themselves (engaged in DIY defence), this would significantly slow down proceedings as the court workgroup would engage with the defendant to ensure that key processes were completed satisfactorily. Collectively, these interpretations contribute towards answering the first research question ⁸²: the court workgroup's defendant management practices prioritised the value of speediness.

First, the court workgroup strictly controlled defendants' verbal participation as to ensure they could dispose of cases speedily. When defendants attempted to speak freely during their hearing/trial, a member of the court workgroup would almost always interject to prevent them from further interrupting proceedings. This frustrated defendants. Consider the following example extracts which demonstrates this frustration:

Extract 14

- Defendant:* Well, I am guilty but
- District judge:* (Interrupts) Please sit-down Mr Defendant, I'm sure Ms Solicitor can explain for us. (shouts) I said sit down Mr Defendant, this is what Ms Solicitor is here for!
- Defendant:* Arhhh! (sits down)

Extract 15

- Defendant:* (Inaudible)
- Magistrate:* (interrupts and speaks over defendant loudly) We will order a collection order so that bailiffs will be ordered, if you do not make payment
- Defendant:* That's not fair
- Magistrate:* (Interrupts, shouting louder than before) It is fair!

Extract 16

- Defendant:* (Interrupts) Can I say something please?

⁸² To reiterate Section 2.6, the first research question is, '...what values are embedded in individual and institutional practices?'.

Defence solicitor: No.

District judge: If you interrupt again, I will send you to the cells. This is not a public forum shouting match. Am I clear?

Defendant: (Pauses) I just wanted

District judge: (Interrupts) Am I clear?

Defendant: Yes.

As shown in the above extracts, the workgroup actively prevented defendants from speaking freely. See, for example, the short one-word answer of the defence solicitor in extract 16 or, how the district judge shouts at the defendant in extract 14. These interruptions denied defendants' voice in proceedings and typically, defendants received such interruptions negatively (as seen in extract 14 and extract 15). Indeed, defendants appeared to be frustrated at not being able to contribute their voice to proceedings. It was the researchers view that the purpose of staff acting in this controlling manner over defendants was that it resulted in speedy justice.

Second, and in relation to the prior point, the court workgroup's quick processing of cases caused defendants to not understand proceedings. This point applies to summary justice proceedings generally, as well as those parts of the process that focuses specifically on defendants. The following example extract demonstrates staff's prioritisation of speed over defendant comprehension:

Extract 17

Legal advisor: Please stand Mr Defendant. [...] would you like your trial in this court or in the Crown Court?

Defendant: Sorry I never understood that.

(The legal advisor reiterates the previous question, speaking very fast)

Defence solicitor: (Interrupts) He wishes it to be dealt with here.

In extract 17 above, court staff seemed aware that the defendant did not understand what was being asked of them. Instead of the court workgroup focusing on the defendant's capacity to comprehend the question and have them contribute, the legal advisor repeats the misunderstood question at speed and then the solicitor interjects. Here, the court workgroup effectively omits the defendant's role in the summary justice process. In this way, the court workgroup worked

together, upholding the shared value of speedy justice by managing defendants' participation in proceedings.

In further support of the above point, staff would often refuse to assist defendants by providing a written summary of their hearing as this streamlined the in-court, case disposal process. Defendants' requests for a written summary of their hearings seemed to emanate from their lack of comprehension of the court process. Consider the following examples that support this point:

Extract 18

- Magistrate:* We are adjourning onto the x date.
- Defendant:* Erm. Can you put that in writing? I've got my address (speech trails off)
- Legal advisor:* No, we won't do that, you are here in court so now the ownness is on you.

Extract 19

- District judge:* I am going to extend the drug rehabilitation order until x date/time, this year. You will also have another appearance here at the court for review on the x date/time.
- Defendant:* Please, can someone write all this down for me
I have, I have
- Defence solicitor:* Don't worry Ms Defendant, I will get this to you.

In extract 18, the defendant requested assistance in order to comprehend what the justice process expected of them following the hearing (possibly such as when they were to attend the next hearing). Despite this, the legal advisor refused to assist the defendant. This likely caused the defendant to leave the courthouse with only a partial understanding of the hearing they attended. The researcher interpreted that staff did not intend to confuse defendants. Rather, staff were simply primarily concerned with achieving speedy case disposals.

Third, legal advisors would mute defendants during live link hearings to prevent them from interrupting the summary justice process. In greater detail, during the data collection period, legal advisors would regularly mute a defendant during their hearing, without the consent of a defendant and without forewarning. The result was that cases would go uninterrupted by the defendant and therefore, the workgroup could dispose of cases quickly. Consider the following example extract,

which demonstrates a legal advisor muting a defendant for 45 minutes during a bail hearing:

Extract 20

Legal advisor: (Picks up TV / live link remote and unmutes video link screen) Alright Mr. Live link officer, can you hear us again?

Live link officer: Hello, yes, I do.

Legal advisor: Could you please bring us Mr Defendant?

Live link officer: Yes, I will do now.

(Time elapses. The defendant enters on the TV / live link screen)

Legal advisor: Right, okay. Mr Defendant, can you hear us okay?

Defendant: Yeah, fine thanks.

Legal advisor: (Legal advisor conducts identification checks with the defendant) Okay, so I see here you have appeared before the court on x date, the case was, erm. Sorry, a not guilty plea was given with a trial date fixed on the x date, do you remain not guilty?

Defendant: Yes.

Legal advisor: Okay, just listen carefully please. (The legal advisor mutes the defendant via a remote control)

(The prosecution solicitor presents a case for no bail. This is followed by the defence solicitor who presents a case for bail. ~45minutes elapse during this period)

Magistrate: Yes, I don't know if you heard that (now talking to the defendant onscreen), but there will be another video link hearing.

(Legal advisor unmutes the defendant)

Defendant: Yep.

Magistrate: Alright Thankyou

(End of hearing)

In the above example extract, the observed muting of defendants for large portions was typical of how legal advisors controlled defendants during live link hearings. Legal advisors would un-mute a defendant only when a crucial information exchange was necessary, such as when they asked for a defendant's confirmation

of plea. Legal advisors only unmuted defendants for key information exchanges, reflecting a prioritisation of speedy justice values.

Fourth, the court workgroup would rely on defendants as being an in-court, means information source as to streamline the case disposal process. Means information was important during sentencing hearings as this allowed magistrates and district judges to deliver proportionate sanctions⁸³. In the observed data, however, it was common practice for defendants to express that they were not sure of the accuracy of the means information they were providing to court staff. Regardless, court staff would accept this potential error by requesting that the defendant provide information to the best of their ability. Following this, the magistrates or district judge would immediately sentence the defendant. This practice likely rendered punishments disproportionate because it relied on defendants being honest in a process that decides how much they should be punished. The following example serves to demonstrate this staff practice:

Extract 21

Magistrate: You know you don't need exact figures just whatever is fine, just fill in the boxes don't bother with everything like 'catalogues' and whatever

Defendant: Sure, sure

(Silence. Time elapses. The court usher exits the courtroom via the public entrance. Silence continues.)

Magistrate: Are you there?

Defendant: Well, the best I can off the top of my head

Magistrate: (Interrupts) Don't worry, don't worry! Well, we will now retire and consider this.

(The court usher hands over documents / passes files from the defendant to the magistrate)

Defence solicitor: (Murmurs / whispers to the defendant) Don't be alarmed about that, that is normal.

As demonstrated above, the defendant was not prepared to provide accurate means information to the court. Regardless, staff encouraged the defendant to present means information, this resulted in cases being finalised quickly. A court usher succinctly identified this problem early in the data collection process when

⁸³ Specifically, it allowed sentencers to deliver a financial punishment (fine, compensation order, etc.) that was based on the defendant's financial circumstances.

they commented, “There is no way to tell if what they [defendants] put on the means form is true, we just have to believe them”. Despite questions of information accuracy being raised here, the researcher interpreted this defendant management practice of staff as being primarily for speedy justice.

Finally, as a caveat to the prior points, the researcher observed that court hearings would slow down in pace if a defendant represented themselves during a hearing (if a defendant engaged in DIY defence). The following example extracts serve to demonstrate how proceedings would slow down the justice process during such DIY defence cases. For greater context, extract 22 is from an exceptional hardship hearing⁸⁴ which the defendant, after attending the hearing, discovered that the exceptional hardship procedure was not something they wanted to pursue. Meanwhile, in extract 23, the magistrate engages in a lengthy conversation to ensure the defendant understands the impositions that the court has made against them. Both example cases draw attention to how a lack of representation causes the summary justice process to become slower.

Extract 22

Legal advisor:

[...] Mr Defendant entered an Early Guilty Plea on the X date, it is before you today [...] the speed appears to be 52 mph in a 40mph limit, erm (pause) [...] is there anything you wish to tell the magistrates about in relation to the offence here today Mr Defendant?

Defendant:

Nothing

Legal advisor:

Nothing? Okay. [...] so your driving record has 9 points on it. [...] there are three other convictions on here [...] the magistrates must consider disqualification for at least 6 months unless you can demonstrate to the magistrates you will suffer exceptional hardship. Do you have any evidence with you today?

Defendant:

No, I don't [...] the first thing is, that, I take responsibility, [...] I take responsibility for taking the children to school [...]

⁸⁴ In this hearing, the defendant was expected to present evidence in support of the argument that they would undergo exceptional hardship if their driving license was revoked, a penalty that was imposed against them from a prior hearing. Such exceptional hardship cases typically focus on how the defendant has family or work commitments that centre on driving and therefore, how the court should make an exception in their case to not revoke their driving licence despite the number of points they have accumulated.

Magistrate: (interrupts) you must remember that this isn't 'ordinary hardship' this must be 'exceptional hardship'

Defendant: Well I have no basis, I am sorry that I have wasted your time erm

Extract 23

Magistrate: You came here today to do a statutory declaration and you don't even have that [referring to evidence to support the statutory declaration], from the post office?

Defendant: Well, I never knew what this was today, I have had so many court hearings that

Magistrate: No, no, you should have brought your evidence with you today, do you understand the predicament here today?

Defendant: Well sorry, when I spoke to the lady downstairs, she just said I should turn up and talk to the magistrates and speak to the magistrates and that would be that

Magistrate: Well yeah, you can present your case, but you need evidence. [...]

(Time elapses as the magistrate and defendant attempt to clarify the impositions the court has made against the defendant)

The above example extracts serve to demonstrate how key procedural issues became problems when a defendant represented themselves during a hearing. Either hearings were listed that did not need to take place (as with example extract 22) or a significant portion of time was spent explaining to defendants the details and importance of their case (as with example extract 23). This final observation serves as a caveat to the prior points because in such DIY cases, the court workgroup would slow down proceedings as key procedural steps rested on the actions of defendants. Indeed, the court workgroup were limited in such cases to manage defendants for speedy justice ends.

In summary therefore, it is the researcher's interpretation that the court workgroup upheld speed-focused values when managing defendants in the summary justice process. Namely, court staff would control conversational turn taking as to resolve cases quickly, regardless of whether this caused defendants to poorly understand the process. Additionally, in further controlling conversational turn taking, legal advisors would mute defendants for prolonged periods during live link hearings. Following this, this section discussed how the court workgroup would rely on a defendant as a convenient in-court information source, so that they could

expediently address questions regarding the defendant's financial means (which raised information accuracy concerns). Finally, this section offers a caveat to the prior four points, demonstrating how DIY defence practices limited the court workgroups capacity to manage defendants for speedy justice ends. This initial data analysis is critically discussed in Section 4.5.

4.5 CRITICAL DISCUSSION OF VALUE PRIORITISATIONS

This section argues that the summary justice process should become less efficiency-oriented, in speed-focused terms. Instead, the summary justice process should prioritise other substantiating values, as not to make the process primarily focused on speediness for its own sake which produces the problem of over efficiency. By critically discussing how the observed summary justice process prioritised speediness over other quality-justice values, this section answers the second research question⁸⁵. This section supports its overarching argument by drawing upon the observations of Sections 4.2, 4.3 and 4.4, explaining how these observed speed-focused practices deprioritised values of: fairness, verdict accuracy, democratic oversight, thorough fact-checking, defendant participation, defendant comprehension, sentence proportionality and institutional legitimacy. Before concluding, this section draws attention to how DIY defence practices were the exception to the central argument made here. Namely, DIY defence practices were for low quality justice because (at least in part) they slowed down the justice process. Throughout, the conceptual framework of Section 2.3 guides this critical discussion⁸⁶. This critical discussion also draws upon other thinkers who have commented upon the issue of (over) efficiency in the summary justice process (see Section 2.4, 2.5). In doing so, this section connects the findings of the thesis with the aforementioned summary justice efficiency literature.

To begin, district judges' mid-hearing plea bargaining practices deprioritised the value of fairness and verdict accuracy. As Section 4.2 has explained, district judges engaged with defendants mid-hearing, encouraging them to give a guilty plea in

⁸⁵ The second research question is, "In critically discussing these process-defining values and their prioritisations, should the summary justice process become more efficiency-oriented or should some other value be prioritised?" (originally presented in Section 2.6).

⁸⁶ Regarding how critical thinking alongside concepts of procedural due process, social justice and post-managerialism inform ideas of substantiated/quality justice.

favour of an immediate and favourable sentence (see example extract 5). In the researcher's view, this practice of district judges worked against Article 6.2 of the Human Rights Act 1998 (the right to a fair trial). As explained in Section 2.2.4, under this article, the court should operate with the presumption that the defendant is innocent until proven guilty (through the trial process). Given that the district judge engaged in a plea bargain mid-hearing, before a full trial had taken place, this suggests that the judge operated from the presumption that the defendant was guilty. In this way, the process deprioritised fairness values (from a human rights perspective) in favour of speed-focused managerialism. As human rights align with substantiated justice (as explained in Section 2.2), the thesis takes the view that the mid-hearing, plea bargaining practices of district judges diminished the substantiveness of the summary justice process.

Additionally, district judges' plea bargaining deprioritised the value of verdict accuracy. This practice deprioritised the value of verdict accuracy because it was unclear why defendants pleaded guilty following a district judge's plea bargain. As previously established in Section 2.4.2, this is the same issue described by Covey (2009: 73) and Dervan (2012) when detailing the "innocence problem". Indeed, when plea bargains are used to motivate a guilty plea from a defendant before a trial has taken place, it becomes convoluted as to why a defendant pleads guilty. It may be because they were factually guilty and the plea bargain was able to successfully elicit this truth. Alternatively, the motivation to plead guilty may emanate from a drive to omit a prolonged, risky, punishing process despite being factually innocent. It is unknown which of these two narratives is true and apply to the observed practices of Section 4.2. As successful plea bargains omit the fact-finding portion of the summary justice process (the trial), plea bargains also omit a verdict based on an adversarial test of evidence, degrading the accuracy of verdicts produced by the justice process. In this way, the plea-bargaining practices of district judges diminished the quality of the justice process because it deprioritised the value of verdict accuracy.

Critics of the above assessment may argue that the observed plea-bargaining practices of district judges were for post-managerial justice, as they combined both speediness with victim-focused justice. The Ministry of Justice (2012: 28) has reflected such a perspective when commenting on how 'swift justice' is desirable not just for its intrinsic speediness benefits but also because it is victim focused. Indeed, "justice delayed is justice denied" (Herbert in Ministry of Justice, 2012: 3; see Section 2.3.2). This thesis found some evidence to support this claim. As unpacked in Section 4.2, the plea-bargaining practices of district judges resulted in speedy case disposals. Additionally, and as emphasised by the district judge in

example extract 5, such speedy case disposals could save victims and witnesses the inconvenience of attending court, effectively resulting in victim-focused justice.

Despite this, the present study maintains that this form of efficiency does not go far enough to preserve the substantiveness of the summary justice process. As explained in Section 2.2.4, procedural due process (which encompasses human rights) is central to substantiating the summary justice process. Speediness and its secondary benefits are not enough to primarily substantiate the process (as established in Section 2.2.4). Indeed, such an approach causes a “hollowing out” of justice (Bar Council, 2018b: 37). Whilst the observed plea-bargaining practices promoted speediness and victim-focused justice, it still deprioritised the value of fairness from a human rights perspective and verdict accuracy. Therefore, this plea-bargaining practice worked against (at least partially) procedural due process, a key concept which substantiates the process. To this end, whilst the observed plea-bargaining practices produced some benefits (speediness and victim-focused justice), they were not enough to preserve the substantiveness of the process (procedural due process that robustly prioritises human rights and verdict accuracy). As a result, this thesis does not accept the interpretation that the observed mid-hearing, plea bargaining practices of district judges were for post-managerial efficiency in a robust sense.

Second, magistrates’ *laissez-fair* leadership practices deprioritised the value of democratic oversight. As reported in Section 4.2, magistrates would strategically leave the courtroom to allow other professional staff to resolve hearing matters between themselves (typically focusing on case management issues). Whilst this *laissez-faire* leadership style produced speediness in terms of rapid case disposals, this also required magistrates to deprioritise their contribution to the process in terms of providing third-party oversight of professional practices. As upheld by Sanders (2001), what substantiates this oversight is that magistrates are lay volunteers from the public, they provide a democratic oversight component to the justice process (as discussed in Section 2.4.5). Therefore, the researcher interpreted magistrates’ *laisse-fair* leadership practices as prioritising the value of democratic oversight in favour of speed-focused managerialism. As explained in Section 2.2.4, what substantiates the summary justice process is, in part, procedural due process, which is tethered to democratic values. Consequently, the researcher took the view that magistrates’ voluntary absence from the courtroom was for low quality justice, contributing to the problem of over efficiency.

This finding connects with the aforementioned work of Ward (2016) and Donoghue (2014b), using both of their ideas to frame magistrates as being managerially case-

hardened. Whilst Ward (2016) has emphasised that despite professionalisation, magistrates still contribute added value to the summary justice process over professional district judges, the present study draws attention to how their commitment to professionalism may have a significant, negative effect. Namely, they withdraw their lay democratic oversight benefits from the process in favour of a managerial commitment to speedy justice. This is a similar concern that is raised by Donoghue (2014b), regarding the possibility that magistrates are becoming case-hardened (see Section 2.4.5). This thesis specifically frames the observed practice of magistrates as a form of managerial case-hardening: magistrates are acclimatised to professional standards of legal administration to the degree that they prioritise managerial efficiency above traditional democratic oversight values. Given the government's recent drive to have magistrates "do more with less", it is plausible to connect recent policy reform changes with these negative, managerial case-hardening practices (David Cameron in Williams, Goodwin and Cloke, 2014: 2805, also see Section 2.3). In this way, recent policy reforms may well have prompted over-efficiency in terms of diminishing the benefits that the magistrates' role brings to the summary justice process.

Third, solicitors' cooperative in-court, pre-hearing/trial planning practices that prioritised speediness also deprioritised adversarialism practices that were for thorough fact-checking. As explained in Section 4.3, solicitors would often work cooperatively to manage case files just before hearings took place. Here solicitors would jointly decide the reliability of witness testimony, what the criminal charges should be, as well as whether a defendant was guilty. This gave the observed solicitors' adversarial performances a theatrical / pseudo character, during formal hearings. Indeed, in the researcher's interpretation, such practices omitted sincere and zealous fact-checking between the prosecution and defence during formal case management hearings. To this end, justice outcomes were not reflective of thorough fact-checking, rather they embodied a cooperative spirit that prioritised immediate case finality through compromise. Rephrased, solicitors were for speediness for its own sake, contributing to the problem of over efficiency (see Section 2.3.3)⁸⁷.

Fourth, and similarly to the previous point, prosecution solicitors' non-contesting of mitigating factors deprioritised values of thorough fact-checking that are

⁸⁷ As a caveat to this point, and to repeat Section 2.4.1, adversarial procedures are not necessarily synonymous with quality of justice. In this particular case however, the researcher took the view that adversarial procedures were for quality of justice because of their capacity to increase the reliability of the process, through thorough fact-checking.

traditionally upheld in adversarial practices. As Section 4.3 explained, prosecution solicitors would rarely challenge the mitigating factors presented by defence solicitors, resulting in speedy case disposals. This practice would mean that the process would not investigate evidential points that could affect sentencing. As exemplified with extract 11 of Section 4.3, such uncontested mitigating factors made it unclear whether the defendant had stopped using alcohol/drugs, taken on new carer duties and was genuinely motivated to engage with criminal justice services. Indeed, in this example extract, the prosecution did not investigate the factualness of these factors. If sentencers accepted such factors as truthful, as they did in extract 11, when they were factually not true then inaccurate sentence outcomes would follow, diminishing the quality of justice. Rephrased, such poor accounting and acceptance of mitigating factors results in an inaccurate view of the “burdens and benefits of social life”, negatively effecting the proportionality of sentences (see Section 2.2.4 regarding social justice; Heffernan, 2000: 49). To this end, whilst prosecution solicitors’ non-challenging of mitigating factors resulted in rapid case disposals, this also deprioritised the value of thorough fact-checking (and relatedly sentence proportionality).

A concern of the researcher is that solicitors’ deprioritisation of thorough fact-checking in favour of speediness may reflect a deeper issue, a novel form of game playing. To briefly reiterate Section 2.4.1, the Criminal Procedure Rules (CPRs) were in part, designed to discourage adversarial game playing in the form of “fishing expeditions” and “warehouse disclosures” (Department of Constitutional Affairs, 2006: 25; also see Auld, 2001). Applied to the aforementioned practice of solicitors’ cooperativeness over adversarialism, it is the researcher’s concern that solicitors may be working together for their shared self-interests rather than primarily for the interests of justice. Namely, and reflecting a concern raised in Nicklas-Carter’s (2019) work, rapid case disposals may be primarily serving defence solicitors by increasing the number of legal aid/private cases they can accept/dispose of, which subsequently increases their revenue (previously discussed in Section 2.4.1). Meanwhile, Crown Prosecution Service solicitors may primarily seek rapid case disposals simply for relief from their increasingly concentrated workloads. Together, defence and prosecution solicitors may be prioritising speediness because it primarily serves their interests rather than what would work primarily in favour of a substantiated, thoroughly investigated judicial outcome. Whilst this game playing dimension of the process is speculative, it would nonetheless negatively affect the substantiveness of the summary justice process. Additionally, district judges’ proactive leadership practices may be encouraging this speculative form of game playing. As unpacked in Section 4.3,

district judges operated as court workgroup leaders, pressuring both defence and prosecution solicitors to prioritise speedy case disposals above that of other values (see example extracts 4 and 5). To this end, the proactive leadership of district judges may have an enabling character, giving tacit permission for both the defence and prosecution to engage in game playing that results in speedy justice.

Fifth, legal advisors' muting of defendants during live link hearings deprioritised the value of defendant participation and relatedly, procedural fairness. To briefly reiterate from Section 4.4, it was common for defendants to be muted for large portions of their live link hearing to allow court staff to speedily dispose of cases without interruption or distraction. As a consequence, however, defendants could not fully contribute/participate vocally to the process. This observation connects with the works of Tyler (2003) who has argued that procedural fairness is at least partly connected to how defendants view the court as engaging with them and listening to their concerns (previously discussed in Section 2.2.4). Given that legal advisors would purposely limit a defendant's voice to the minimum required for speedy case disposal purposes, the researcher takes the view that defendants were not adequately engaged in the process. Rephrased, the observed summary justice process prioritised speediness over values of defendant participation. To this end, this practice negatively affected the substantiveness of the process in favour of speediness, resulting in over-efficiency.

This analysis links with the work of Gibbs (2017) and McKay (2018) who have commented on how live link hearings have a tendency to marginalise and dehumanise defendants (previously discussed in Section 2.4.4). As Gibbs (2017) argues, muting practices dehumanised defendants, it renders the process something that is done to defendants rather than something that they were involved in. McKay (2018) draws attention to the potential severity of these problematic muting practices. McKay's (2018) Australian work reported that some defendants would not only be muted but they could not hear proceedings. It is plausible that this severe form of non-participation could occur in the observed English and Welsh summary justice process, given that such occurrences have taken place in the comparable, common law criminal courts of Australia. Indeed, it is possible that the observed summary justice process is not for quality because it has a marginalising and dehumanising effect on defendants.

Sixth, and relatedly to the previous point, the court workgroup's quick processing of cases deprioritised the value of defendant comprehension and procedural fairness. To briefly reiterate Section 4.4, the court workgroup would secure speedy case disposals through cooperatively managing defendants' participation (their

voice and comprehension) in the courtroom, not just when using live link. This did indeed promote speedy case disposals. However, defendants also reported a desire to take part vocally in the process and when staff denied defendants this, they became frustrated (see example extract 17, 18, 19 in Section 4.3). As discussed in Section 2.2.4, comprehensibility is a key value that substantiates the justice process (see European Commission for the Efficiency of Justice, 2016; also see Section 2.2.4). Therefore, given that the process prioritised speediness at the expense of defendant comprehension, the researcher is of the view that the observed practices were for low quality justice. This practice reflects concerns raised by Tyler (2007). Namely, that procedural fairness is at least partly connected to how defendants view the justice process as allowing them to vocally contribute and to be listened to by judicial staff (see Section 2.2.4). As defendants could not raise their concerns before the court and therefore be listened to, the process deprioritised the value of procedural fairness alongside defendant comprehension in favour of speed-focused managerialism. This negatively impacted the substance of the process, reflecting the problem of over-efficiency (as discussed in Section 2.3.3).

This analysis connects and builds from Welsh's (2016: 151) argument that "high degrees of co-operation tend to marginalise defendants from active participation in the proceedings" (see Section 2.4.1). Indeed, as argued here, the court workgroups cooperative managerialism resulted in speedy justice whilst also marginalising defendants. A central contention drawn to in Welsh's (2016) work, however, was that defendants are not a homogenous group. Rather, they have "different issues and defendants are likely to have different priorities" (Welsh, 2016: 173). To this end, and as argued by Feeley (1992), a slow process can be the primary punishment for court users and therefore, these defendants may approve of their marginalisation in the process granted that the process becomes faster (previously discussed in Section 2.5). Meanwhile, other defendants may indicate that they would prefer a slower process with their greater involvement in it, to work against what some may experience as a dehumanising process (as argued in Welsh, 2016; Gibbs, 2017). The usefulness of this research is that it has collected evidence to demonstrate that defendants would make it clear when they did not understand proceedings and wanted to gain greater insight. Indeed, as demonstrated in Section 4.4, defendants would make their concerns known to the court and sometimes, they would offer suggestions regarding how they could gain greater comprehension of the process, such as through the use of a post-hearing receipt (see example extracts 17, 18, 19). Section 7.5 develops from this point

further, unpacking how the thesis offers implications for future research and considerations for policy reformers.

Seventh, the court workgroup's reliance on defendants as a means information source deprioritised the value of sentence proportionality and connectedly, institutional legitimacy. As established in Section 4.4, the court workgroup would rely on defendants to provide means information in-court, accepting information inaccuracies in favour of obtaining an immediate and actionable completed means form. Whilst somewhat self-evident, rapid but inaccurate means information negatively impacted sentencers' capacity to formulate proportionate sentences. Indeed, relying on (criminal) individuals to provide truthful information which will shape the severity of their punishment is unreliable⁸⁸. The researcher took the view that the observed practices were also a disservice to victims and the public, as criminal sentences were not impartial. Again, offenders/defendants could influence their own sentencing by relaying inaccurate information about their financial means as they were knowledgeable that sentencers would tolerate inaccuracies on financial means information forms (see example extract 21). This tolerance for means information inaccuracy negatively affected the legitimacy of the courts as an institution to deliver impartial justice. Rephrased, the present analysis argues that the process was overly efficient because of how it prioritised rapid case disposals (speediness) over procedural due process (sentence proportionality and institutional legitimacy).

This analysis advances the Ministry of Justice's and government advocates' work regarding the development of joined-up services/efficiency through technology (see Section 2.3). As reflected in Chapter 2, the socio-legal literature has not prominently discussed the efficiency role of means forms in the summary justice process. In a broader sense, however, the researcher recognises that the Ministry of Justice's (2012) drive to establish joined-up services can bring the benefits of rapid and reliable information sharing⁸⁹ (similarly argued in Department of Constitutional Affairs, 2006; Leveson, 2015). The thesis expands upon these works by suggesting that the courts' reliance on defendants as a means information source should be a target for joined-up services/efficiency through technology. Indeed, this research identifies this as an overlooked area of reform that could positively impact the quality of the summary justice process: to allow the courts to overcome its reliance on defendants as a truthful information source and

⁸⁸ Whilst the researcher does appreciate, like Packer (1968: 187), that "the best source of information is the suspect himself".

⁸⁹ See Section 2.3.2 regarding their efficiency through technology comments.

to instead rely on other government services to provide this information immediately in-court. There is the possibility that this change could produce post-managerial efficiency. Namely, the process could retain the value of speediness whilst sentences could become more proportionate because they use more reliable information and subsequently, this could bolster the institutional legitimacy of the courts as their sentences are more impartial. This direction for policy reform is further discussed in Section 7.5.

This section offers a final point of analysis: DIY defence practices significantly slowed down proceedings without promoting quality of justice. To briefly reiterate Section 4.4, when a defendant represented themselves at court (engaged in DIY defence), they bottlenecked the flow of the court process. This caused unnecessary hearings to take place and required court workgroup members to intervene, providing ad hoc advisory help to defendants. When such DIY defence practices took place, they did not promote values that were for social justice, procedural due process or post-managerialism. Rather, the process simply became slower, and staff were reactionary and pragmatically-focused. To reiterate Section 2.2.3 and 2.2.4, quality justice is for values that uphold social justice and procedural due process as well as, on a secondary basis, traditional managerial values that ensure the process is not unnecessarily wasteful or prone to avoidable delays (also see Raine and Willson, 1997; 2001). Given that such delays would not occur when solicitors represented defendants in the courtroom, the researcher takes the view that the provision of defendant representation is not wasteful and indeed, is for quality justice during the in-court summary justice process.

This analysis reflects the concerns of Marris (in HC Deb 1 January 2017: col 119wh) as well as Doward and Dare (2016) regarding how LASPO may promote defendant self-representation which then causes the process to become 'clogged up' (previously discussed in Section 2.4.4). As discussed here, the present study has observed some of these quality justice-undermining practices forecast by independent thinkers. Whilst the present study cannot make a definitive causal link between the government's introduction of LASPO and the observed slow justice because of self-representation, such a link is plausible.

To conclude, therefore, this section has contributed towards answering the second research question by arguing that at various points in the observed summary justice process, it should become less efficiency-oriented in the speed-focused managerial sense. Instead, it should prioritise other quality justice values, including that of: verdict accuracy, democratic oversight, defendant participation, defendant comprehension, procedural fairness, sentence proportionality and institutional

legitimacy. This section identified several areas that warrant further discussion of policy reform. These include that of district judges' mid-hearing plea bargaining practices, solicitors' possible game playing (which is enabled by district judges' proactive leadership style), defendants' comprehension of the in-court process and how the court accesses means information for sentencing. Section 7.5 expands further upon these lines of discussion and, in combination with the critical discussion sections of Chapters 5 and 6, it provides an answer to the third and final research question.

4.6 SUMMARY

In summary, this chapter has contributed towards answering the first⁹⁰ and second⁹¹ research questions. Sections 4.2, 4.3 and 4.4 contribute towards answering the first research question by explaining how managerial practices that prioritised the value of speediness were present in the observed summary justice process. Meanwhile, Section 4.5 contributes towards answering the second research question by critically discussing how the process prioritised the value of speediness over other quality justice values. In doing so, Section 4.5 argued that the process should become less efficient in the speed-focused managerial sense and it should instead prioritise values that promote quality of justice as to curtail the problem of over efficiency. The concluding chapter of this thesis builds upon this prior critical discussion, offering policy reforms that can actualise the envisioned reprioritisation of values in the summary justice process (see Section 7.5).

⁹⁰ The first research question is, “by directly observing the summary justice process from the courtrooms of a single English Magistrates’ courthouse, and in utilising an exploratory approach, what values are embedded in individual and institutional practices?” (originally presented in Section 2.6).

⁹¹ The second research question is, ‘in critically discussing these process-defining values and their prioritisation, should the summary justice process become more efficiency-oriented or some other value be prioritised?’ (originally presented in Section 2.6).

CHAPTER 5. STANDARDISED DEFENDANT PROCESSES

5.1 INTRODUCTION

This chapter builds from the research design chapter by explaining the second of three themes that the researcher generated from the data. To reiterate briefly, the researcher conducted court observations using a stenographic method, the researcher then coded this raw data and from this, three themes emerged. This chapter presents three subthemes in support of the second overarching theme, standardised defendant processes.

Following from the first research question⁹² presented in Chapter 2, the present chapter explains how staff and institutional summary justice practices embodied values of standardisation, specifically when engaging with defendants. Staff and institutional practices upheld standardisation values by processing all defendants in a similar manner, despite their being significant differences between defendants. This chapter explains these standardised processes by unpacking three subthemes: underused defendant mental health diversion processes (see Section 5.2), under-specialised processes for substance-related offenders (see Section 5.3) and finally, absent disadvantage-addressing processes (see Section 5.4). These subthemes draw upon example extracts throughout, to evidence the researcher's interpretation of the data⁹³. In doing so, this chapter demonstrates how the subthemes formed, and how these subthemes support the overarching theme, standardised defendant processes.

Section 5.5 answers the second research question⁹⁴ by arguing that the summary justice process should focus upon specialisation rather than standardisation when processing defendants. In support of this overarching argument, Section 5.5 unpacks the researcher's interpretation that the summary justice process prioritised the value of standardisation over the quality justice assuring values of

⁹² To reiterate, the first research question is, '...what values are embedded in individual and institutional practices?' (originally presented in Section 2.6).

⁹³ See Section 3.4.3 and 3.5 for further details regarding the reflective, interpretive process undertaken by the researcher.

⁹⁴ The second research question is, 'in critically discussing these process-defining values and their prioritisation, should the summary justice process become more efficiency-oriented or some other value be prioritised?' (originally presented in Section 2.6).

defendant safeguarding, fair sentencing, rehabilitative sentencing, pragmatic problem-solving and institutional legitimacy. Section 5.5 arrives upon this evaluation by critically discussing the initial thematic analysis of Section 5.2, 5.3 and 5.4. In making this argument, the researcher frames the observed summary justice as being overly efficient (first discussed in Section 2.3.3).

5.2 UNDERUSED MENTAL HEALTH DIVERSION PROCESSES

This subtheme unpacks the researcher's observations of court staffs' practices that, in the researcher's interpretation, prioritised standardisation values. The following observations from the raw data support this subtheme. First, court staff would refrain from investigating evidence of defendants' in-court mental health disorders. Second, magistrates and judges often assumed a position of disbelief regarding defendants claimed mental health issues. Third and finally, staff were unfamiliar with how to action mental health diversion processes. Collectively, these interpretations contribute towards answering the first research question⁹⁵: court staff upheld standardisation values when processing mental health-related defendants.

First, court staff would refrain from investigating in-court evidence of defendants' mental health disorders. Throughout the data collection period, the researcher observed several defendants that he suspected were living with a mental health-related issue which went unaddressed by the court workgroup during the in-court process. As extract 24 demonstrates, these suspected defendants would display behaviour that was highly erratic, their behaviours would often be volatile and aggressive. Alternatively, as extract 25 demonstrates, suspected mental health affected defendants would be intensely introverted and childlike.

Extract 24

(The cells officer was halfway through taking off the defendant's handcuffs, then puts them back on the defendant. The defendant is arguing with cells officer in the docket, details of this argument are inaudible)

Legal advisor: Mr Defendant, could you give the court your full name?

⁹⁵ The first research question is, '...what values are embedded in individual and institutional practices?' (originally presented in Section 2.6).

Defendant: I don't feel very well! I need my medication! Let me out! I need my medication!

District judge: That will happen as soon as possible.

Defendant: Let me get out, this is bullshit yo! Let me tell you then, I'm on recall, this is stupid, I'm ill

District judge: Please be quiet!

Extract 25

Legal advisor: ...do you have anything to add?

Defendant: (silent / no response)

Defence solicitor: Well, I think he knows (shouting almost at their client, the defendant) that you have been very fairly treated today. And you are not, not, not going to be doing anything like that again, are you?

Defendant: (shakes head)

Magistrate: So, do you have any help with, erm, at home?

Defendant: No.

Magistrate: And do you live with anyone?

Defendant: (shakes head)

Magistrate: Right, well you need to appear at x court at x date.

The above two extracts were common court workgroup practices: when a defendant presented behavioural evidence that they were living with a mental health issue(s) during proceedings, staff would refrain from investigating these issues. Instead, staff would commit to proceedings as normal. Consequently, it was unclear whether the defendant was of sound mind and, ultimately, whether the court workgroup should have diverted the defendant onto a mental health pathway. Indeed, in extract 24, court staff dismissed the defendant's access to medication concerns during in-court proceedings. Staff did not respond by investigating what the defendant meant by "I need my medication", or whether the defendant's (mental) wellbeing was suffering. Similarly, staff in extract 25 did not explore the defendant's mental well-being despite there being in-court, behavioural evidence from the defendant they were living with a mental health vulnerability/disorder. The researcher took this interpretation owing to the childlike, meek behaviour of the defendant. Additionally, court staff spoke to the defendant in very simplified English and in a manner that suggested that they were aware that the defendant was living

with a mental health issue. Despite this evidence of significant mental health issues, the process continued similarly to other hearings without an in-court investigation into the wellbeing of defendants.

Second, magistrates and judges often assumed a position of disbelief regarding the claimed mental health issues of defendants. Extracts 26 and 27 demonstrates this position of magistrates and judges. In extract 26, the defence solicitor attempts to bring to the attention of the court that their client has a mental health diagnosis and potentially, therefore, the court should divert their client onto a mental health pathway. Meanwhile, extract 27 demonstrates the disbelief from one magistrate in the brief time between court hearings, when the defendant was absent from court.

Extract 26

- District judge:* Time and again I hear that 'he has mental health issues', he only has mental health issues unless he has been diagnosed.
- Defence solicitor:* Well, I have a letter here from his doctor here saying that he has ongoing mental struggles
- District judge:* What does that mean? Has he been to see a psychiatrist? Has he a condition?
- Defence solicitor:* Erm, well (gestures to papers / shows document)
- District judge:* I'll read it! Pass it here! (The district judge is almost shouting. Usher passes document from the solicitor to the judge)

Extract 27

(The defendant leaves the courtroom)

- Magistrate #1:* Well. He will be going to jail.
- Magistrate #2:* Yeah. Yeah. Yeah, mental health pffft!

As the extracts above demonstrate, both district judges and magistrates assumed a position of disbelief when being informed of a defendant's adverse mental health. The reluctance to view mental health claims as credible and therefore warrant diversion was present even when a high standard of proof was present, such as that of a written diagnosis as in extract 26. To this end, the researcher interpreted district judges and magistrates as being committed to processing all defendants in a standardised manner.

Third, staff were unfamiliar with how to action mental health diversion processes. The below example extract demonstrates this. Here, a solicitor makes a district judge aware of a defendant's poor mental health and following this, the district

judge asks the workgroup for confirmation as how to proceed. This suggests the district judge was unfamiliar with non-standardised processes:

Extract 28

- Defence solicitor:* He (the defendant) is clearly, clearly unwell... . I am aware that he faces a very real risk that he will return to prison today
- District judge:* And he is, erm, very unwell?
- Defence solicitor:* I believe that if we take this, him, out of the system, that is undoubtably; that would be the best way forward.
- District judge:* Who makes that decision?
- Defence solicitor:* My friend here.
- District judge:* The crown? (Referencing to the prosecution solicitor)
- Defence solicitor:* The crown.
- District judge:* Okay, so the reality is that he needs mental health services [...] so how does this work? Detain him under the Mental Health Act?

In this example extract, the district judge demonstrates non-familiarisation with the mental health diversion process. They ask for confirmation from hierarchically, lower-ranking members of the court workgroup regarding how to proceed with actioning the mental health diversion pathway. In this way, the researcher interpreted the district judge in this example extract as embodying procedural standardisation values.

In summary therefore, court staff upheld the value of procedural standardisation when engaging with mental health-related defendants. As demonstrated throughout this section, the researcher upholds this interpretation by demonstrating how court staff would not investigate a defendant's claimed mental health issues in-court. Alternatively, staff would assume a position of disbelief regarding a defendant's claimed mental health issues, this includes when a solicitor would present a defendant's mental health claim. Lastly, staff were also unfamiliar with the mental health diversion process. This initial data analysis is critically discussed in Section 5.5.

5.3 UNDER-SPECIALISED PROCESSES FOR SUBSTANCE-RELATED OFFENDING

This subtheme contributes towards answering the first research question by explaining how staff and institutional practices upheld standardisation values when processing substance-related offenders. The following observations from the raw data support this subtheme. First, under no circumstances was substance-compelled explanations of behaviour accepted by sentencers as a mitigating factor. Second, sentencers morally reprimanded substance-related offenders, like they did other non-substance related offenders. Third, sentencing hearings focused on responsabilising substance-addicted offenders whilst not addressing outstanding health concerns. Finally, this section offers a fourth point which is a caveat to the previous three points. During the data collection period, the researcher observed some specialist (non-standard) drug rehabilitation review courts (see Section 3.4.2). In the researcher's interpretation, these drug court processes were not specialised enough to robustly address the needs of substance-affected offenders. Consequently, despite there being specialist drug court processes in place in the observed courthouse, the overarching theme of procedural standardisation remains. Collectively, these interpretations contribute towards answering the first research question⁹⁶: court staff upheld standardisation values when processing substance related defendants/offenders.

First, under no circumstances did sentencers (district judges and magistrates) accept substance-compelled explanations of behaviour as a mitigating factor. Contrary to framing substance use as a defence or mitigating factor, solicitors framed substance use as a criminal offence or as an aggravating factor. This meant that sentencers would increase the severity of sanctions when an offender was under the influence of a substance. The following brief statement from a district judge demonstrates this institutional practice:

Extract 29

District judge: Please stand Mr Defendant (...) you say that you were drinking and on drugs and you present that as a mitigating factor, it's not, it's an aggravating factor.

The above framing of substance use as an aggravating factor is understandable as it frames the offender as being irresponsible with their use of substances. This is an institutional practice not only because the researcher widely

⁹⁶ The first research question is, '...what values are embedded in individual and institutional practices?' (originally presented in Section 2.6).

observed statements such as the above from sentencers but also because the Sentencing Council's (2004) guidelines establish this position formally, regarding what qualifies as a mitigating and aggravating factor. This acceptance of substance use as an aggravating factor functions when presuming that the offender has voluntary control regarding whether they consume a given substance. Often however, solicitors and probation officers would report that defendants/offenders were under the addictive influence of a substance, revoking their voluntary control and therefore, at least to some degree, the defendant's culpability was lessened. This raises jurisprudence concerns regarding the myopic, standardised view of the summary justice process when sentencing substance-related offenders.

Indeed, court staff frequently framed defendants as being remorseful about their substance addictions, raising jurisprudence questions about how the court applies a standardised, responsibilising approach to crime involving substance addiction. Consider the following example extracts that are typical of the observed sentencing hearings involving substance⁹⁷ addiction. In example extract 30, the offender is being sentenced with criminal damage. Meanwhile, in extract 31, the offender is being sentenced for theft. In both cases, the offenders' drug use/addictions were not framed as a mitigating factor. Rather, both defendants were framed as being remorseful for being addicted to a substance and that they are willing to take on greater responsibility for their use of substances:

Extract 30

Defence solicitor:

...the problems that Mr Defendant has had recently, has been mainly due to a spice addiction. (the defendant/offender is crying) He is really struggling to overcome that particular addiction ... with regards to the cell damage, he defecated in the cell and wiped the contents around the cell and it had to be subsequently cleaned. He does say however that at the time he was in a bad place and he apologises profusely...

(time elapses)

Magistrate:

Right, Mr Defendant. Is there anything you wish to add?

⁹⁷ Defendants were addicted to a range of substances. No single substance was prominent throughout the collected data. Addictions to alcohol, synthetic cannabinoids ('spice'), cocaine, heroin and methamphetamine were all commonly reported.

Defendant: ...I am so sorry for causing the commotion and erm, I wasn't erm (defendant is crying, unable to speak) ... I am so sorry, I have never done anything like this (defendant cries/sobs uncontrollably)

Extract 31

Probation Officer: Good morning mam, this is the 6 shop thefts, the background is that he has a drug addiction ... of note is that he has been abstinent until 8 months ago. ... he was using about £20 of heroin and £20 of crack cocaine which was being funded for by his crimes. ... he sees being caught a something of a blessing. ... he says now that he wants to go back to his AA meetings

In the two above example extracts, the culpability of the offenders is in question given the role of addiction over their voluntary behaviour. Indeed, it remains unclear to what extent substance addiction impacted offenders' behaviour and subsequently, to what degree it can be reasonably upheld that the offenders are morally culpable for their behaviour. Despite this, individuals who were identified as being addicted to a substance were processed in a standardised manner. Under no circumstances were addiction-based explanations accepted by the court as a mitigating factor.

Second, sentencers morally reprimanded substance-related offenders, like they did other non-substance related offenders. It was common throughout the observation period for the bench to explore an offender's substance abuse by questioning them. In doing so, like with other non-substance related sentencing hearings, the bench would morally reprimand their behaviour before formally sentencing them. The following extracts exemplify such moral reprimands:

Extract 32

Magistrate: I think you have a problem with drink

Defendant: (strong eastern European accent) Well, I, I did not drink all of last year then I did at December.

Magistrate: ... what do you drink?

Defendant: Vodka, beer and cider.

Magistrate: Not very healthy, is it?

Defendant: Erm, sorry?

Magistrate: I said, that's not very healthy. Is it?

<i>Defendant:</i>	Erm, no.
<i>Magistrate:</i>	And what do you intend to try and do with yourself?
<i>Defendant:</i>	I have an (inaudible)
<i>Magistrate:</i>	I can't understand you. Speak up. And slowly.
<i>Defendant:</i>	I, I, I have an appointment (pause) with the alcohol team and erm, they are to treat me for erm, (pause) alcohol

Extract 33

<i>Magistrate:</i>	How much (cocaine) do you usually pay per, erm, portion?
<i>Defendant:</i>	Too much, too much. I am hoping to get help from probation.
<i>Magistrate:</i>	How much per hit?
<i>Defendant:</i>	About 20.
<i>Magistrate:</i>	That's a lot, isn't it?
<i>Defendant:</i>	Yeah, too much.
<i>Magistrate:</i>	... you are wasting your money away, aren't you? Not good, is it?

In the above extracts, it is the researcher's interpretation that the magistrates framed the offenders' substance abuse and their criminality as being part of a lifestyle that is within their control and therefore, their behaviour is morally reprehensible. In extract 32, the magistrates framed the offender's substance abuse as being akin to a lack of self-care and self-entrepreneurship: "Not very healthy is it?", "what do you intend to try and do with yourself?". Similarly, in extract 33, the magistrate framed the offender's spending on substances as representative of poor individual choices: "you are wasting your money away aren't you? Not good, is it?". Such comments from the bench on moral behaviour and lifestyle choices were common throughout all sentencing hearings⁹⁸ (apart from drug rehabilitation review court hearings). To this end, sentencers' moral reprimands of defendants regardless of the role of substances in their lives represented a commitment to the value of procedural standardisation.

⁹⁸ For example, it was typical of the bench to scold traffic offenders for having a history of speeding.

Third, and connecting from the previous point regarding sentencers' moral reprimands, sentencers responsibilised substance-related offenders like non-substance related offenders. Indeed, the responsabilisation aspect of sentencing hearings would follow the benches moral reprimands. In this way sentencing hearings were logical, once sentencers established an offender's morally poor behaviour, defendants were then told that they should take responsibility and change in some manner. The following example extracts demonstrate this responsabilisation aspect of the summary justice process. In both of the following example extracts, the defence has made clear to the court that the defendant was addicted to a substance and this was a factor at the time of their offending. Regardless, district judges and magistrates would typically insist that substance-related offenders take greater responsibility for their circumstances, as was normal practice for non-substance related offending.

Extract 34

District judge: Please stand Ms Defendant. I understand that your life has been chaotic ... still (pause) if anyone is to signpost you or to help you it is your offender manager ... the probation service is willing to work with you again. If you have any further breaches ... you are likely to have this order revoked and you will likely go to prison, do you understand that?

Defendant: Yes, yes (crying).

Extract 35

Magistrate: ... (if) you commit any other offence again in the next 9 months then you will be brought back to the court to deal with this matter ... you must make sure that you take responsibility for this imposition and make sure its paid do you understand?

Defendant: Yes, sir.

Indeed, extracts 34 and 35 above demonstrate how district judges and magistrates would regularly responsibilise substance-related offenders, encouraging them to better engage with criminal justice services, to adhere by their criminal sentence and to resolve their substance addictions. Like with the previous point regarding culpability and jurisprudence, the bench would not explore the link between substance addiction and self-control. Therefore, the capacity of substance-related offenders to take on any responsibility successfully was unknown. Such a consideration was understandably not present with other offence types, such as that of traffic offending as the capacity to exercise self-control was not in doubt.

However, offenders with often lifelong connections to substance abuse (such as those discussed throughout this section) brings into doubt their capacity to exercise self-control and therefore, abide by their sentence which includes attending probations-related events and paying impositions on time. Despite this uniqueness regarding substance-related offending, sentencers responsibilised all offenders in a standardised manner.

Finally, this section offers a fourth point which is a caveat to the previous three points. The researcher interpreted the observed DRR⁹⁹ hearings as prioritising values of personableness and problem-solving. However, the observed courthouse rarely practised¹⁰⁰ these DRR hearings and, in the researcher's interpretation, the processes were not specialised enough to substantially address the concerns raised by the substance-related offenders. Consequently, the overarching subtheme of procedural standardisation remains despite this caveat. The following extracts unpack how DRR courts were different from all other hearing types (see Table 1 in Section 3.4.2) yet were not specialised enough to substantially address the concerns of substance-related offenders. Of note here, is the magistrates' tone in welcoming the offenders and how the offenders speak freely about the social obstacles they have been facing:

Extract 36

- | | |
|--------------------|---|
| <i>Magistrate:</i> | We have been going through this and its great (referring to the report in front of them). Drug wise, are you on substitutes? |
| <i>Defendant:</i> | Well. I am using. |
| <i>Magistrate:</i> | You are? |
| <i>Defendant:</i> | Yeah, I'm on cannabis but no longer on cocaine. And erm, I realised that alcohol really changes me, so that's why I fell into erm, smoking a bit more weed. |

⁹⁹ During the data collection period, the researcher observed specialist (non-standard) Drug Rehabilitation Requirement review hearings (sometimes referred to as drug courts or DRR courts by staff) (See Section 3.4.2). These were significantly different to the vast majority of the other observed hearings in terms of physical layout of the courtroom, the social tone of proceedings (involving all of those present) and the pacing of the proceedings (again see the description in Section 3.4.2).

¹⁰⁰ See table 1 from Chapter 3. Here, the thesis makes clear that there was only one courtroom dedicated to DRR hearings. Additionally, this courtroom type was only active one day per week, unlike the other courtroom types that were active on all days of the week.

Magistrate: Right, what was that catalyst for all of this?

Defendant: Well. I would say it was the death of my cousin 5 years ago, so, erm yeah.

Extract 37

Magistrate: Hiya, hello, do we call you? X or x?

Defendant: X If you want

Magistrate: How are you doing x?

Defendant: I have a bit of a cold.

(time elapses)

Magistrate: Right, so what's the problem?

Defendant: Just really depressed.

Magistrate: Right, have you been keeping your appointment with probation?

In the above examples, the offenders gave candid accounts of their disadvantaged (and criminal) lifestyles. This is evident in extract 36 where the defendant explains that despite their previous substance-related criminal history, they have continued to take drugs. From this, the magistrates explored what specific factors relate to the defendant's continued substance use, the defendant's family death. Similarly, in extract 37, the magistrates began personably by asking the defendant, "how are you doing?". This sociable element is not typical of summary justice proceedings. Indeed, see Chapter 4 which discusses the theme of speediness. Following this, the magistrates openly asked the defendant what issues were affecting them (depression). In this way, the criminal justice process in the above examples was something that the defendant was involved in, rather than the justice process being something that was done to them: defendants could freely explain the issues they were facing because of the non-standardised, slow pace of proceedings and the personableness of the magistrates.

Problematically, however, the present study observed that the advice offered by magistrates was amateur in nature and consequently, magistrates individual problem-solving during DRR hearings was not as substantive as it could have been. The following extract demonstrates the limits of magistrates' problem-solving advice. The following example extract continues from extract 36 above. For greater context, the offender in extract 36/38 has a known history of substance abuse and, as discovered through the exploratory DRR court method, the offender's motivation

for their criminal behaviour stems from unresolved trauma surrounding the death of their cousin. In view of this, the sitting magistrates offered the following advice:

Extract 38

Magistrate: Very good, well I think you are on track. The drugs, the cannabis, is not good for you. I recommend that you stay away from it.

Whilst this extract is brief, this is also the extent of the advice the magistrate offered the defendant. The magistrate's advice does embody a socially supportive quality, yet in the researcher's interpretation they do not adequately address the reason for the offenders reoccurring behaviour (the adverse psychological impact of the defendant's deceased cousin). Indeed, the advice of the magistrate appeals to the defendant's sense of self-control, as the magistrate urges the offender to "stay away from it (drugs)". In this way, magistrates' Drug Rehabilitation Review hearings, like in other court hearings, embodied the same standardised approach of responsabilising defendants for their criminal behaviour and life-style changes.

The researcher made a similar substantiveness observation regarding the case in extract 37. Later in this case, the magistrates also offered the defendant limited advice. To explain further, the offender explained that they lived with severe depression and as a result, they lacked motivation: they felt like they "can't do anything at the moment". The defendant clarified that their depression immobilised them, "I just get lost in myself". Following this, the magistrate offered the following advice:

Extract 39

Magistrate: Right, well, what you are going to do when you leave here? You will leave here and get a calendar, get a pen and write on it, colour code it!

Defendant: Yeah, that's a good start.

Magistrate: Isn't it!

Like in the previous example case (extracts 36 and 38), the advice given by the magistrate in the above case (extracts 37 and 39) does not substantially engage with the underlying cause of the defendant's substance-related behaviour (their severe depression). Instead, the magistrate compels the defendant to "get a calendar, get a pen and write on it, colour code it". Again, like in the previous example case, the observed justice in extract 39 undercuts the hearing's problem-solving qualities by appealing to the defendant's sense of self-control

(responsibilisation), encouraging the defendant to overcome their adversity through self-organisation. To reiterate therefore, the magistrates in DRR hearings embodied the same responsibilising approach that was present in other non-DRR hearings. Responsibilising defendants was a standardised process in the observed courthouse, regardless of whether defendants' crimes were substance related or whether they engaged in DRR hearings.

In summary therefore, the researcher interpreted that court staff and institutional practices upheld procedural standardisation values when they processed substance-related offenders. This section supports this subtheme by first drawing attention to how the summary justice process only accepted substance as an aggravating factor, rather than a mitigating factor. In doing so, this section has emphasised the limitations of a court process that prioritises the value of standardisation. This section then explained how sentencers would morally reprimand substance related offenders in a similar manner to non-substance related offenders. Following this, the present section explained how sentencers responsibilised substance related offenders, again, like other non-substance related offenders. Finally, this section unpacked how the observed courthouse made use of specialised DRR hearings yet, these hearings represented only a small minority of cases during the observation period. Also, these DRR hearings incorporated the same responsibilising approach of other, standard hearing types. Additionally, the present section drew attention to how magistrates' advice giving during DRR hearings was not as substantive as it could have been, drawing attention to capacity of such hearings to be more specialised.

5.4 ABSENT MULTIPLE DISADVANTAGE- ADDRESSING PROCESSES

This subtheme contributes towards answering the first research question by explaining how institutional practices upheld standardisation values, when processing defendants with multiple and compounded disadvantage. In complicating matters, this section explains how staff practices, whilst rare, challenged standardised institutional practices. This section explains this complex interplay between institutional and staff practices by first explaining how defendants embodied multiple and compounded disadvantage. (This first point effectively sets the scene for unpacking the subsequent points in this section). Second, this section explains how the criminal courts processed and sentenced disadvantaged criminals the same as other criminals, in a standardised manner.

This section's third point explains how staff would vocalise their dissatisfaction with how the lower courts processed disadvantaged defendants/offenders, drawing attention to institutional constraints. Fourth and finally, this section explains how defence solicitors would argue for their client to receive lengthy prison sentences so that they could secure disadvantage-addressing programs for their clients (defendants/offenders). (These programs were otherwise not available through the standard court processes). Collectively, these interpretations from the data contribute towards answering the first research question¹⁰¹: institutional court practices upheld standardisation values when processing defendants with multiple and compounded disadvantage.

First, defendants from the observation period embodied multiple and compounded forms of social disadvantage. It was common throughout the data collection period for defendants to embody multiple disadvantaging factors that intersected, creating unique compounded forms of disadvantage. Below are some examples which demonstrate typical instances of defendants' compounded disadvantage¹⁰². In all three example extracts, the defendants were reportedly homeless, dependent on drugs and/or alcohol (addicted) and had severe mental health issues. For greater context, in extract 40, the police arrested and charged the defendant for possession of a bladed article. Meanwhile, in extract 41, the defendant appeared at court for breach of a probation order (a substance-related rehabilitation activity requirement). Finally, in extract 42, the police had arrested and charged the defendant for stealing cash money from a local shop.

Extract 40

Defence solicitor: Could you please explain the nature of having the bladed article?

Defendant: Well, I was upset at the time and I was intending to use the article to cause damage to myself and end my life.

Extract 41

Defence solicitor: ...Mr Defendant has not been paid any benefits since December last year because he doesn't have a bank account and he uses that account of his friend ... he is currently on anti-depressants medication ... he tells me he doesn't have a will to live ... he says that he begs

¹⁰¹ The first research question is, '...what values are embedded in individual and institutional practices?' (originally presented in Section 2.6).

¹⁰² Whilst these example extracts will be familiar to those with a criminological or socio-legal background (see Section 3.2).

every day and all day. He tells me that he does not actively beg but he just sits and waits because he doesn't want to get arrested for begging ... he tells me about his day to day living and he, he tells me first thing in the morning he throws up, he is not a very well man. ... in these circumstances it is very hard for him to comply with services...

Extract 42

Defence solicitor:

... The (stolen) money used was to take drugs, and purchase the hotel room. The rest of the money was recovered, and those drugs were to be used for an overdose. ... so yes, this is a sad case your worships. This is not something that was done maliciously or vindictively, this is a sad case, he is simply unwell.

In all of the above examples, the researcher framed the issues of homelessness, drug use and poor mental health as disadvantaging factors because they reportedly related to the criminality of defendants/offenders (and these issues were not present in cases that were otherwise similar). Therefore, the researcher found it reasonable to frame such issues as being disadvantaging (similarly argued in Section 2.2.4, 3.2). When all three forms of disadvantage were present in a given case these intersected, creating a unique form of disadvantage. Extract 42 exemplifies this unique compounded form of disadvantage. Here, the homeless defendant stole money to pay for hotel lodging and drugs in order to establish the conditions they felt were necessary to commit suicide. In this manner, the researcher interpreted multiple forms of disadvantage as creating more intensified forms of disadvantage than if they were present in isolation. Indeed, one form of disadvantage appeared to influence and compound other forms of disadvantage.

Second, the observed courthouse processed and sentenced disadvantaged defendants/offenders the same as other non-disadvantaged defendants/offenders. This is despite the unique interplay that disadvantaging factors had in influencing offenders' behaviour. The below extracts show these standardised processes. For context, in extract 43, the defendant is street homeless and faced the charge of stealing food (theft). Meanwhile, in extract 44, the defendant was street homeless and faced the charge of possession of a bladed article (a knife):

Extract 43

District judge:

...You pleaded guilty to shop lifting that happened last year. ... at the time, I understand that you had to steal to buy food, regardless that doesn't make it acceptable

Extract 44

Probation officer: ...He is currently living, for the majority of time, on the street ... he says the knife is just for self-defence, being on the street he says he has been attacked a number of times and that is why he had it in his possession...

In extract 43, the researcher interpreted the offender's behaviour as being sustenance based, they stole food to meet basic living needs whilst being street homeless. Meanwhile, in extract 44, the researcher interpreted the offender's behaviour as being self-defence based. As the probation officer clarifies, the offender possessed a blade in order to protect themselves which was reasonable given that they had, "been attacked a number of times". In this manner, the researcher understood that often, disadvantage in its compounded forms connected to criminality. Despite this, the observed summary justice process did not account and adjust for disadvantage. Rather, the court processed and sentenced disadvantaged offenders in a standardised manner, regardless of whether their criminality related to sustenance or personal protection concerns.

Third, and as a caveat to the above observation, staff would vocalise their dissatisfaction with how the lower courts processed disadvantaged defendants/offenders, drawing attention to institutional constraints. The following example extract demonstrates this dissatisfaction of the court workgroup. For context, this extract captures the brief time between hearings when one defendant with compounded disadvantage left the courtroom and another defendant was brought in by an usher. This allowed the court workgroup to speak openly without a defendant being present.

Extract 45

(Homeless defendant just left the courtroom)

Magistrate: Accommodation is the key, isn't it? (expressed enthusiastically)

Legal adviser: Yeah

Probation officer: Yep

Magistrate: They have proved it, haven't they? I mean, that guy is absolutely, is totally ideal to be in housing, it would save on all other services if we could just get him in housing, reduce paramedic and other revolving door services!

Probation officer: Yeah, yeah

As demonstrated in the above example extract, whilst staff would formally uphold standardisation values in the hearing process, once the hearing ended, court staff would voice dissatisfaction with the justice they delivered. This is evident above in the above extract, the workgroup draws attention to how there is not enough housing support for homeless defendants and how this lack of support serves as a 'revolving door' for other standardised criminal justice services. In doing so, staff demonstrated a professional appetite for a shift in institutional values away from standardisation when it came to processing and sentencing disadvantaged defendants.

Fourth and finally, defence solicitors would argue for their client to receive lengthy prison sentences so that they could secure disadvantage-addressing programs for their clients (defendants/offenders). Such programs were otherwise not available through the standard court process. Indeed, defence solicitors would often argue at sentencing hearings for their client to be imprisoned for lengthy periods of time, beyond what the prosecution solicitor would advocate for. In the researcher's interpretation, the reason for this was because defence solicitors believed that prisoners serving lengthy sentences gained access to robust interventionist, problem-addressing programs. See the following example extract that evidences defence solicitors' pro-prison stance when representing defendants with multiple forms of disadvantage:

Extract 46

Defence solicitor:

No sir, (my defendant has) no employment, bens (abbreviation for welfare benefits, such as Job Seekers Allowance) and no fixed abode ... in my submission, in someone in my defendant's position, I would put before you in due course, it is impossible that he be stabilised, controlled or be shown how to comply with the community in a period of 14 days. If that was possible, then it would have worked when he was in custody in September, because he was returned on licence, so if the multi-agency approach that we hear about would have worked then, (he) would have been complying. ... the reason why he is not complying is because he has issues beyond his control. ... he has mental health issues beyond his control ... he spent initially 3 months in custody, it is impossible to resolve or begin to resolve even in a 3-month period. It would have to be a longer project. ... a sentence of 6 years may well have assisted him. It may have ... treated, medicated, and assisted him. I argue that a further 14-day period would do nothing. He will then be released and I am not a fortune reader but I imagine that he would still be in a

position where he would not be able to comply.
... that is the harsh reality of his condition.

As the defence solicitor argues here, some of the observed defendants faced disadvantage that was “impossible to resolve or begin to resolve even in a 3-month period. It would have to be a longer project”. Therefore, the defence solicitor seemingly found it reasonable to argue that their client should receive a long prison sentence because they believed this would give their client greater access to interventionist, problem-solving services. Whilst the details of such disadvantage-addressing services remain unspecified, the defence solicitor maintains that a short “14 day (prison) period would do nothing”, whereas “a sentence of 6 years may well have assisted him”. It is notable that the defence solicitor made this recommendation with their defendant who faced compounded disadvantage as well, seemingly that their unorthodox recommendation was warranted given the defendant’s complex history. To this end, it was the researcher’s interpretation that defence solicitors were against standardised institutional practices for defendants with complex and compounded forms of disadvantage.

In summary therefore, institutional practices upheld standardisation values when processing defendants with multiple and compounded forms of disadvantage. This section began by first unpacking defendants’ multiple and compounded forms of disadvantage as it was typically presented during the summary justice process. This initial point explained how defendants’ compounded disadvantage would often bring together issues of drug abuse, homelessness and poor mental health. This section then explained how there was a discrepancy between institutional and court staff practices. Namely, court staff were dissatisfied with institutional standardised practices for disadvantaged defendants. Finally, this section drew attention to defence solicitors’ unorthodox advocacy practices, where they would argue for their client to receive longer rather than shorter prison sentences. Defence solicitors seemed to believe that disadvantage-addressing services were available in prison, that were otherwise unavailable in the standardised, in-court summary justice process. This initial data analysis is critically discussed in Section 5.5.

5.5 CRITICAL DISCUSSION OF VALUE PRIORITISATIONS

This section argues that the summary justice process should deprioritise the value of standardisation in favour of other quality justice values. This section makes this

argument by critically discussing how the practices of Sections 5.2, 5.3 and 5.4 upheld the value of standardisation to the detriment of other quality justice values, including: defendant safeguarding, fair sentencing, rehabilitative sentencing, pragmatic problem-solving and institutional legitimacy. In making this overarching argument, this critical discussion section contributes towards answering the second research question¹⁰³. Additionally, this critical discussion utilises the conceptual framework of Section 2.2¹⁰⁴ whilst drawing upon other thinkers who have commented upon (over) efficiency in the summary justice process (see Section 2.3.3, 2.4, 2.5). In doing so, this section connects this prior literature with the findings of this thesis, providing a springboard for answering the third and final research question in Chapter 7.

First, court staff's non-investigation of defendants' in-court mental health issues deprioritised the value of defendant safeguarding. To briefly reiterate Section 5.2, the researcher frequently observed defendants who were evidently living with mental health issues that affected their summary justice experience. Despite this, court staff processed such defendants like that of non-mental health affected defendants, in a standardised manner. In the researcher's interpretation, these practices worked against the value of defendant safeguarding because there was in-court evidence that should have prompted a referral to courthouse Liaison and Diversion¹⁰⁵ (L&D) service members. Indeed, as with example extract 24, the defendants would often audibly make clear that they were unwell and needed psychiatric aid/medication before continuing with their hearing. Alternatively, defendants would demonstrate behaviours indicating that they were not able to fully engage with the in-court justice process (see the analysis of extract 25). Instead of addressing such court user behaviour (actively engaging in defendant safeguarding), the court workgroup seemed to be more centrally concerned with processing cases systematically, in a routine, standardised manner¹⁰⁶ (similarly discussed in Welsh, 2016). In this way, the observed process was for over-

¹⁰³ The second research question is, "In critically discussing these process-defining values and their prioritisations, should the summary justice process become more efficiency-oriented or should some other value be prioritised?" (originally presented in Section 2.6).

¹⁰⁴ Regarding how critical thinking alongside concepts of procedural due process, social justice and post-managerialism inform ideas of substantiated/quality justice.

¹⁰⁵ This service is explained in Section 2.4.6.

¹⁰⁶ Emphasis is given to the word 'seemed' here. As discussed in Chapter 3, a limitation of the present study is its observation-only design. Indeed, the researcher was unable to consult the supporting court records for each hearing (such as whether L&D services were consulted).

efficiency, it was primarily committed to managerial values (standardisation) to the detriment of other quality justice values relating to social justice (defendant safeguarding).

Similarly, sentencers' seeming unfamiliarity with how to action mental health diversion processes deprioritised the value of defendant safeguarding. To briefly reiterate, Section 5.2 unpacked how the researcher observed court staff occasionally wanting to divert a defendant from the criminal justice process but were unsure how to action such a procedure (see example extract 28). As explained in Section 2.4.6, since the rolling out of L&D services, court staff should be aware of the various ways that they can and should divert such cases from the summary justice process. Meanwhile, as discussed in Section 2.2.4, the concept of procedural due process relies on the proper execution of processes and procedures that are granted to defendants which includes L&D services. Given that staff were unsure about how to action such diversion pathways, this suggests that such pathways are not regularly used or at least, staff were not confident about how to safeguard such disadvantaged defendants. Again therefore, the researcher interpreted that the court workgroup could have more substantially upheld the value of defendant safeguarding, promoting quality of justice.

Together, the court workgroup's non-investigation of defendants' mental health conditions and their unfamiliarity with the diversion process gives support to the literature's claim that pro-streamlining managerial reforms should be curtailed. Namely, the aforementioned standardisation-oriented practices of Section 5.2 resonate with the Australian lower criminal court work of Roach Anleu and Mack (2007: 341) who have argued that court staff are primarily focused on "getting through the list", reflecting a commitment to streamlined managerialism (previously discussed in Section 2.5.3). Similarly, in Welsh's (2016: 67) work, she has highlighted how the court workgroup is committed to "routinisation" which often has a marginalising effect on court users (previously discussed in Section 2.4.1). And particularly, this negatively affects those living with mental health-related issues owing to their additional vulnerabilities who may find it difficult to appropriately contribute their voice to the justice process (Welsh, 2016; also see JUSTICE; 2017). In view of this, Section 7.4 and 7.5 further discusses how quality justice values can be upheld through the curtailment of streamlining, managerial (standardised) practices.

Second, magistrates' and judges' presumed disbelief regarding the claimed mental health issues of defendants deprioritised the value of fair sentencing. As unpacked in Section 5.2, sentencers would openly announce their scepticism of defendants'

mental health claims, both when the defendant was and was not present. It is possible that the reported mental health issues of defendants were factually true and so severe that they (should have) significantly impacted sentencing, or possibly exculpated them. Indeed, as discussed in Section 2.2.4, Article 6(2) of the Human Rights Act 1998 compels the court to presume a defendants' innocence until proven otherwise. Therefore, when court staff operated from a position of disbelief regarding the potentially exonerating claims of mental health-affected defendants, they effectively denied them the right to be presumed innocent (see procedural due process in Section 2.2.4). At the same time, the process is also for quality when it recognises and appropriately adjusts for social disadvantage (which includes poor mental health) throughout the court process (see social justice in Section 2.2.4). Again, given that court staff operated from a position of disbelief regarding defendants claimed mental health issues, the process was not supportive of this form of social disadvantage. Reframed, this lack of adjustments for mental health affected defendants negatively impacted fair sentencing. In the researcher's interpretation therefore, these practices of staff did not robustly uphold a value that is for procedural due process and social justice, negatively affecting the quality of the summary justice process.

Third, sentencers' standardised approach to sentencing, which relied on moral reprimands and responsabilisation comments deprioritised the value of rehabilitative sentencing for substance-related offenders. To briefly reiterate Section 5.3, magistrates and district judges emphasised at the sentencing stage that offenders' substance misuse was morally reprehensible and that these offenders should take greater responsibility by exercising greater executive control over their behaviour (see the analysis of example extract 32, 33, 34 and 35). Whilst such moral reprimands and responsabilisation comments were typical of all of the observed sentencings (reflecting the value of standardisation), when this occurred for substance-related offending the researcher interpreted these practices as deprioritising the value of rehabilitative sentencing. The researcher made this interpretation because sentencers' comments did not reflect a consideration of the key issue (substance-related behaviour/offending) in a wider sociological/holistic manner that offers varying justifications and excuses for behaviour¹⁰⁷ (previously discussed in Section 2.2.4; Heffernan, 2000). Indeed, as explained by Winick and

¹⁰⁷ Whilst sentencers would make use of probation orders (which includes Rehabilitative Activity Requirements) that upheld rehabilitative values, their moral reprimands and responsabilisation comments remained the same. Indeed, and to reiterate, this was a standardised component of the observed summary justice process.

Wexler (2003), substance addiction brings into question the appropriateness of the standard criminal justice approach, which includes moral reprimands and the drive to responsabilise offenders (similarly argued by Snedker 2018a; 2018b; Donoghue, 2014b; Liebenberg, Ungar and Ikeda, 2013; also see Section 3.2). A rehabilitative court response is more appropriate given its capacity to connect with the issues that support substance addiction and conjunctly, substance-related offending (again see Winick and Wexler, 2003; also see Section 2.4.5, 2.4.6). In this way, when processing substance-related offenders, the observed summary justice process could be of greater quality if it prioritised the value of rehabilitative sentencing rather than standardisation.

As a caveat to this point, the researcher observed some Drug Rehabilitation Requirement review hearings ¹⁰⁸ that did embody problem-solving values, promoting social justice. As previously discussed in Section 5.3, DRR review hearings embodied a more relaxed character as magistrates explored defendants' significant life events and challenges (including the role of substance abuse in their lives). To this end, there were some court practices that stepped away from being myopically focused on the individual and their alleged moral and responsibility failures. However, and as commented upon in Section 5.3, the degree to which these hearings upheld the value of rehabilitative sentencing is questionable. It is the researcher's view that magistrates explored complex social justice issues (such as compounded homelessness, chronic substance abuse, chaotic family relationships, etc.) in a limited fashion because the observed magistrates were ill-equipped to navigate such complex issues. Indeed, they were not rehabilitative/therapeutic professionals. Whilst the present study recognises that the observed problem-solving values were preferable to dominating standardisation values, quality of justice here could still improve (to more robustly promote social justice). Namely, the magistrates' courts could improve quality of justice by more strongly moving away from standardised court processes and further towards specialised/professionalised processes (possibly out of court) which more acutely uphold rehabilitative/therapeutic values.

This critical discussion point connects with the wider work of Donoghue (2014a; 2014b), Miller (in Donoghue, 2014b) and Ward (2016), offering a gradient-based view of magistrates. As previously discussed in Sections 2.4.5 and 2.4.6, Donoghue (2014a; 2014b) and Ward (2016) have emphasised the positive transformative role of magistrates when they engage with court

¹⁰⁸ See Section 3.4.2 for the specific details regarding the number of DRR courts the researcher observed compared to other court hearing types.

defendants/offenders. Meanwhile, Miller (in Donoghue, 2014b: xx) has drawn attention to the potential inefficiency that can follow from the “courtification” of therapeutic/rehabilitative services¹⁰⁹ (see Section 2.4.6). Whilst the social justice innovator contributions of magistrates are positive (as discussed by Ward, 2016), future policy reform should also recognise that magistrates are not rehabilitation/therapeutic professionals. Indeed, as demonstrated with the analysis of example extract 36/38 and 37/39 in Section 5.3, magistrates gave advice to offenders that whilst well intentioned, took on a pseudo-therapeutic character. This observation occupies some theoretical space between that of Donoghue (2014b), Ward (2016) and that of Miller (in Donoghue, 2014b), offering a gradient-based view of magistrates’ role in criminal justice proceedings. This consideration is further discussed in Chapter 7 in view of potential future policy reforms.

Fourth, the courts focus on punitive sentencing for defendants with multiple and severe forms of disadvantage deprioritised the value of pragmatic problem-solving. To briefly reiterate Section 5.4, defendants would often live with multiple forms of disadvantage and commit crimes that were related to sustenance and/or personal protection concerns¹¹⁰. Despite magistrates/district judges recognising this, they would sentence such offenders similarly to that of non-disadvantaged offenders in a standardised and somewhat, factory-like manner. This observation provides further support to the literatures assessment that criminality is often entwined with complex and connected forms of social disadvantage which requires specialised processes to resolve (see Donoghue, 2014; 2014b; Duncan and Corner, 2012; Bramley *et al.*, 2015; See Section 3.2). Whilst the thesis is not novel in providing this observation, the thesis draws attention to the historic nature of this problem of how a contemporary standardised summary justice approach is inadequate for addressing multiple and severe (compounded) disadvantage cases. Indeed, the observed summary justice process missed an opportunity to promote greater social justice (to address social disadvantage). To this end, the observed justice could have been of greater quality.

Fifth, and in addressing the caveat point from Section 5.4, defence solicitors’ drive to secure lengthy sentences for their clients deprioritised the value of institutional legitimacy. To briefly reiterate the initial analysis of extract 46, defence solicitors

¹⁰⁹ The tethering of access to social services to gatekeeping/net-widening criminal justice institutions (previously unpacked in Section 2.4.6).

¹¹⁰ See for example, the analysis of extract 43 in Section 5.4 which centres on how a homeless individual required food, so they resorted to theft. Alternatively, see extract 40 in the same section, which focuses on how a defendant owned a bladed article because they (allegedly) feared for their safety whilst being street homeless.

would paradoxically argue for their client to receive lengthy prison sentences because, they argued, it would help to alleviate the social disadvantage of their client. Reframed, defence solicitors seemed to believe that prison is a facilitator of social justice: a place to address social disadvantage, including homelessness and drug addiction. Evidentially, the standardised summary justice process is ill-equipped to address social disadvantage without inevitably punishing/relying on prison, or at least, so the observed solicitors argued¹¹¹. This brings into question the capacity of the courts to deliver justice. To use Packer's (1968: 56) phraseology, a criminal sentence that conflates punishment with rehabilitation is a form of "gratuitous cruelty". To this end, these practices diminished the legitimacy of the observed summary justice.

This critical discussion point connects with the other observations of Section 5.4. Namely, how other court staff would regularly vocalise their dissatisfaction with how the lower criminal courts processed disadvantaged defendants/offenders. See example extract 45, where court staff draw attention to the institutional constraints of the magistrates' court when delivering sentences which involve multiple and compounded forms of social disadvantage. Their comments, alongside that of the aforementioned pro-prison defence solicitors, suggests that the justice process cannot adequately facilitate for social justice directly in its present configuration. This limitation is a point of inefficiency. The courts have a capacity to become more post-managerially efficient by developing processes that more appropriately resolve social disadvantage (promoting greater social justice) whilst simultaneously, resolving factors that entwine with criminality/reoffending (effectively reducing the courts' future workload). This policy reform line of discussion is further expanded upon in Chapter 7.

In summary, therefore, this section has contributed towards answering the second research question by arguing that at various points in the observed summary justice process, it should deprioritise the value of standardisation in favour of other substantiating justice values. Specifically, the researcher has argued throughout this section that the process should focus on prioritising the values of: defendant safeguarding, fair sentencing, rehabilitative sentencing, pragmatic problem-solving and institutional legitimacy. The researcher has argued for this re-prioritisation of values despite recognising some of the streamlining (efficiency) benefits that are present when the summary justice process prioritises the value of standardisation.

¹¹¹ Again, as previously stated, the researcher is aware of sentences' other rehabilitative options and court processes (including that of probation orders, RARs and DRR review hearings) which can be used for social justice ends.

This section has also signposted several areas that warrant further discussion of policy reform and future research, these include: court staffs' non-investigation of defendants' in-court mental health issues, magistrates' and judges' presumed disbelief regarding defendants claimed mental health issues, sentencers' standardised approach to sentencing which relied on moral reprimands and responsibilisation comments and finally, the courts focus on punitive sentencing for disadvantaged defendants (which includes compounded forms of disadvantage). Chapter 7 expands further upon these lines of discussion and, in combination with the critical discussion sections of Chapters 4 and 6, it provides an answer to the third and final research question.

5.6 SUMMARY

In conclusion, this chapter has contributed towards answering the first¹¹² and second¹¹³ research questions. Sections 5.2, 5.3 and 5.4 contribute towards answering the first research question by explaining how the value of standardisation was present in the observed summary justice process. Meanwhile, Section 5.5 contributes towards answering the second research question by arguing that the value of standardisation did not serve to primarily substantiate the summary justice process. This led this chapter to argue that the summary justice process should implement reforms that deprioritise the value of standardisation, as to promote other values that are for quality of justice. The concluding chapter of this thesis builds from this critical discussion, detailing how to implement these value reprioritisations in future practice (see Section 7.4), answering the third and final research question.

¹¹² The first research question is: "by directly observing the summary justice process from the courtrooms of a single English Magistrates' courthouse, and in utilising an exploratory approach, what values are embedded in individual and institutional practices?" (originally presented in Section 2.6).

¹¹³ The second research question was: 'in critically discussing these process-defining values and their prioritisation, should the summary justice process become more efficiency-oriented or some other value be prioritised?' (originally presented in Section 2.6).

CHAPTER 6. COURT USERS'

PROCEDURAL ADVERSITY

6.1 INTRODUCTION

This chapter builds from the research design chapter by explaining the third and final theme that the researcher generated from the data. To reiterate briefly, the research design chapter has explained how the researcher conducted court observations using the stenographic method and then coded this data to produce three overarching themes. This chapter presents three subthemes in support of the overarching theme, court users' procedural adversity.

Following from the first research question¹¹⁴ presented in Chapter 2, the present chapter explains how staff and institutional practices embodied values of procedural adversity (as experienced by court users). Staff and institutional practices may not have intended to uphold the value of procedural adversity. Nonetheless, from the researcher's interpretation of the observational court data, this was a dominating, characterising value of the summary justice process. This chapter explains these practices by unpacking two subthemes: adversity from oral evidence (see Section 6.2) and negative externalities for defendants (see Section 6.3). These subthemes draw upon example extracts throughout, to evidence the researcher's interpretation of the data¹¹⁵. In doing so, this chapter demonstrates how the subthemes formed, and how the value of procedural adversity connects to these subthemes.

Section 6.4 answers the second research question¹¹⁶ by arguing that the summary justice process should become more efficiency-oriented from a court user-focused perspective. This section arrives upon this conclusion by critically discussing the data of Sections 6.2 and 6.3. In making this critical discussion point, this chapter

¹¹⁴ The first research question is, 'by directly observing the summary justice process from the courtrooms of a single English Magistrates' courthouse, and in utilising an exploratory approach, what values are embedded in individual and institutional practices?' (originally presented in Section 2.6).

¹¹⁵ See Chapter 3 for greater detail regarding the reflective, interpretive process undertaken by the researcher.

¹¹⁶ The second research question is, 'in critically discussing these process-defining values and their prioritisation, should the summary justice process become more efficiency-oriented or some other value be prioritised?' (originally presented in Section 2.6).

draws attention to how court users could view the process as being more efficient if their adversity was mitigated against, which would mean reprioritising quality justice values. In doing so, Section 6.4 gives specific attention to how the observed summary justice process deprioritised values of court user safeguarding, accessible justice, procedural fairness and verdict accuracy.

6.2 ADVERSITY FROM ORAL EVIDENCE PROCEDURES

This subtheme unpacks the researcher's observations of oral evidence-giving practices that, in the researcher's interpretation, embodied the value of procedural adversity for court users. This section supports this point by first demonstrating how victims who gave oral evidence-in-chief experienced adversity when narrating a defendant's/offender's criminal behaviour. Second, solicitors' use of cross-examination often entwined emotionally intense accusations of disbelief regarding the victim's/complainant's account. Third, the cross-examination process also caused adversity as it compelled court users to recount and explain issues of an intimate/sensitive nature. Collectively, these interpretations contribute towards answering the first research question¹¹⁷: oral evidence practices embodied values of procedural adversity for court users.

First, victims who gave oral evidence-in-chief experienced adversity when narrating the crime in question. The following example demonstrates this point. For greater context, the victim/witness here is a non-native English speaker, (which explains their improper use of English). The victim also gave this oral evidence prior to cross-examination (as is the case with oral evidence-in-chief), meaning that the victim/witness at this point was fresh to the day's in-court proceedings.

Extract 47

Prosecution solicitor: What effect did it have on your mind, how did you feel?

Victim: I will be crying lots of time, most of the times

Prosecution solicitor: How did you feel inside?

Victim: I was feeling very bad.

¹¹⁷ The first research question is, '...what values are embedded in individual and institutional practices?' (originally presented in Section 2.6).

Prosecution solicitor: What specifically was it that made you feel bad?

Victim: (crying) I will think that I had been very, very good to him and he is still doing this to me

In this example extract, the victim is evidently emotionally engaged. The process is somewhat self-evidently, a negative emotional experience as the victim is crying during the process (despite the victim's solicitor leading proceedings). The researcher interpreted the adversity experienced by the victim as being connected to how their solicitor compelled them to narrate the effects of the crime: "What specifically was it that made you feel bad?". Rephrased, the oral evidence-in-chief process effectively caused the victim to relive the adverse emotional experience of the crime.

Second, solicitors' use of cross-examination often entwined emotionally intense accusations of disbelief. In greater detail, when solicitors were cross-examining a victim/complainant, they were often not emotionally sterile or forensic in their line of questioning. Rather, solicitors would entwine emotional force behind points of investigation¹¹⁸. The following example extracts taken from cross-examinations supports this point:

Extract 48

Defence solicitor: Right, just to go back ... he grabs the hand to which the scissors are in, do you remember that? And then he tries to bite your face, how does he do that? (the solicitor picks up and drops her stack of papers on the desk and looks at the witness)

Victim/complainant: I don't remember

Defence solicitor: Wow. Wow. Well, you seemed very clear before didn't you? When my friend (referring to the prosecution solicitor) was talking to you

Victim/complainant: (interrupts / inaudible)

Defence solicitor: (interrupts) Let me finish, please! (pause) So, ... there is a lot you can't remember, you can't remember a lot, isn't there?

Extract 49

¹¹⁸ Typically, these points would focus on the inconsistency within a victim's/complainant's statement.

Defence solicitor: ... you hid them (the defendants clothing) in a bag under the baby's pram, didn't you?

Victim/complainant: No, they were in plain sight.

Defence solicitor: (cough-laugh) Alright. Huh, moving on

...

Defence solicitor: (interrupts) Well you never mentioned in your statement that you were slapped by Mr D, and that you were holding your baby at the time? (shouting) (Researcher's note: shouting has a tone as if directed at a misbehaving child) I'm going to suggest that you never reported those things now did you because it simply didn't happen, did it! (pause) So. (pause) (lower tone, almost a whisper) Then what happened?

In extract 48, and in the researcher's interpretation, when the solicitor interrupted the victim/complainant, this demonstrated/re-established a controlling power dynamic between the solicitor and the victim/complainant (similarly described in Section 4.4 with solicitor-defendant interactions). Additionally, in this same extract, the solicitor accentuated their disbelief regarding the victim's/complainant's account by dropping their stack of papers on their bench. Combining this power dynamic element with the solicitor's demonstration of disbelief, this gave the cross-examination process an emotionally intense character. Meanwhile, in extract 49, the tone of the solicitor is also used to emphasise disbelief, the solicitor switches from shouting to quiet speaking. In the researcher's interpretation, this change in tone moved beyond the sterile cross-examination of facts and instead gave the courtroom atmosphere an emotionally hostile character. Indeed, for this reason, the researcher interpreted the cross-examination process for court users as an emotionally adverse one.

Third and finally, the cross-examination process also caused adversity as it compelled court users to recount and explain issues of an intimate/sensitive nature. The following example extract demonstrates the often sensitive nature of such oral examinations. For context, this example draws upon the cross-examination of an elderly defendant who was charged with a motoring offence (speeding). The defendant also had a prior medical history of incontinence.

Extract 50

Prosecution solicitor: ...what precautions do you usually take?

Defendant: What do you mean? (inaudible)

Prosecution solicitor: What precautions do you take to prevent soiling yourself?

Defendant: Well, there is nothing you can really do. It's just a sudden thing

Prosecution solicitor: Is there any sort of medical underwear that you can use?

Defendant: Well, apart from wearing a nappy there is nothing I can do. Apart from wear a nappy, which is what I would use when I was in intensive care, ... some days you can live with it and predict it other days you cannot its very up and down

This example extract is pertinent because it demonstrates the range of issues that affected court users. By solicitors testing the oral evidence of a witness, they would often scrutinise their sexual history, personal habits, and (as above) medical history. Combined with solicitors' aforementioned emotional accusations of disbelief, the solicitor's scrutiny of sensitive issues (such as the defendant's medical history above) further rendered the summary justice process adverse for court users. This example is also pertinent as it draws attention to how the cross-examination process was emotionally adverse for both defendants and victims/complainants.

In summary, it is the researcher's interpretation that the value of procedural adversity characterised the observed, oral evidence-giving practices (the oral evidence-in-chief and cross-examination process). Namely, the researcher took the view that the oral evidence-in-chief process effectively caused victims to relive adverse emotional experiences. Additionally, during cross-examination, solicitors often entwined emotionally intense accusations of disbelief, further rendering the summary justice process adverse for victims/complainants. Finally, this section has also drawn attention to how the cross-examination process also caused adversity for court users because it compelled them to explain issues of an intimate/sensitive nature. Section 6.4 builds on this initial data analysis, critically discussing how the summary justice process should deprioritise the value of procedural adversity.

6.3 ADVERSE EXTERNALITIES FOR DEFENDANTS

This subtheme unpacks the researcher's observations that institutional and individual summary justice practices embodied the value of procedural adversity, regardless of whether this was the intention of such practices. The following points support this subtheme: first, defendants would have to travel significant distances

to attend court hearings. Second, some defendants reportedly experienced adversity because they had to forgo paid work in order to attend court hearings. Third, when the court held defendants in remand, defendants reportedly found this an emotionally demanding experience. Fourth and finally, a small number of defendants announced that they wanted to give a false and early guilty plea because the process was too long. Collectively, this initial data analysis contributes towards answering the first research question ¹¹⁹. Namely, the researcher interpreted some individual and institutional summary justice practices as embodying the value of procedural adversity because of how such practices placed negative externalities on defendants, whether this was intended or not.

First, defendants would have to travel significant distances to attend court hearings. The following extract exemplifies this point. Here, the magistrate speaks to their legal advisor in the brief time between sentencing hearings for rail fare-related offences:

Extract 51

Magistrate: Can I ask a question? (directed at the legal advisor) So, a lot of these travelling offences are between x city (~20-30 miles away) and x city (another city ~20-30 miles away). So, why are they coming here? Look at this defendant for example (gestures to papers), he lives in x city (~50 miles away).

Legal advisor: I am not too sure mam. It must have cost him a lot just to come here though

Of note in the above example extract, is that the members of the court workgroup seemed to be aware of the negative impact of non-local justice on defendants. Indeed, the cost of paying for a journey to attend a criminal hearing ~50 miles away for a non-serious criminal matter (non-payment of a train ticket in the above extract) would likely be equivalent to or more costly than the criminal fine/imposition made by the courts¹²⁰. This is of course presuming that the defendant would be found guilty of the offence. In cases where the court finds non-local defendants not guilty, the summary justice process effectively externalises the cost of due process onto defendants. In this case, court users must endure the inconvenience of travel including its financial cost to establish their innocence. To this end, the researcher

¹¹⁹ The first research question is, ‘...what values are embedded in individual and institutional practices?’ (originally presented in Section 2.6).

¹²⁰ The most extreme example of this was observed when the defendant alleged that they had to commission a private helicopter flight in order to attend the court, as they worked as an oil rig worker offshore in a foreign country.

interpreted the institutional practice of listing cases in a non-local manner as embodying values of extra-judicial adversity, because of its inconvenience-impact on defendants.

Second, some defendants reportedly experienced adversity because they had to forgo paid work in order to attend court hearings (and the courts did not compensate this missed paid work). Indeed, defendants often reported that they forwent paid work to attend court. The judiciary does not consider this externality (missed paid work) when attempting to form a proportionate sentence and there is no procedural means available for defendants to seek missed work compensation through central funds (see The Prosecution of Offenders Act 1985, s4.4.1). Therefore, the summary justice process had an adverse effect on some defendants. Consider the following example extract which demonstrates this typical negative experience of defendants owing to missed paid work:

Extract 52

Magistrate: I hope you realise that this is a matter that is something you should deal with directly.

Defendant: Yeah, I feel it, I lost work of over £1,000 just to be here.

Magistrate: Very well, you may leave.

Of course, the researcher could not verify the above statement from the defendant as being factually true owing to the limitations of the present study's observation-only method. The present study did not investigate whether the defendant in the above example extract actually forwent £1,000 worth of paid work in order to attend court. Still, the present study emphasises that this sentiment was common throughout the collected data: defendants regularly voiced concern in-court that they had incurred financial losses because their court attendance resulted in missed paid work. Owing to the frequency at which defendants raised similar concerns, the researcher believes it likely that defendants did incur a punishing effect because of missed paid work opportunities, whilst the exact financial amount is unknown. Again therefore, the researcher interpreted the observed summary justice process as embodying the value of procedural adversity: defendants experienced adversity (missed paid work) from participating in the summary justice process.

Third, when the court held defendants in remand, defendants found this an emotionally demanding experience. To reiterate briefly from Chapter 2, remand is when criminal justice authorities (typically a local courthouse or prison) hold a defendant in custody whilst they await trial. The following example extracts

demonstrates this emotionally challenging experience of defendants. For context, extract 53 is from a sentencing hearing. Meanwhile, extract 54 shows a defence solicitor speaking to a prosecution solicitor in between hearings. In this latter extract, the defence solicitor had just returned from the courthouse cells where his client was reportedly agitated by his confined space.

Extract 53

Defence solicitor: You have already heard that Mr Defendant has no previous convictions ... he has spent the night in the cells ... (murmurs / whispers to the defendant. Pauses) my client tells me that being in custody is "the worst time of his life"

Extract 54

Defence solicitor: I knew this would happen, he (the defendant) is just getting aggressive because he is locked up there, this is what happened yesterday

In both example extracts, the defendants had negative experiences of remand. Throughout the data collection period, the researcher observed that remanded defendants spent varying amounts of time in custody (whether a few days as with extract 53 or a few weeks in extract 54). Whilst the researcher recognises that time spent in remand was often used to off-set criminal sentences, on other occasions, defendants were not found guilty of a crime. To rephrase, sometimes, defendants would spend significant periods of time (whether days or weeks) in remand (a cell), without being guilty of a crime. It is the researcher's interpretation therefore, that such defendants served quasi-prison sentences. (Additionally, the researcher recognises that the courts, as an institution, do not provide defendants with compensation for their time in remand when they are not guilty, as previously discussed in Chapter 2, see Section 2.4.2). Consequently, the researcher interpreted the institutional practice of remand as causing a negative externality for defendants. This led the researcher to interpret such practices as embodying the value of procedural adversity.

Fourth and finally, a small number of defendants announced that they wanted to give a false and early guilty plea because the process was too long. Such occurrences were sparse. Still, the researcher believed that the issue (defendants being motivated to give false guilty pleas) was significant enough to warrant reporting. See below two example extracts that demonstrate such defendant motivations. For context, extract 55 shows a brief conversation between a legal advisor and a magistrate before the court hearing began. Here, the defendant

appeared from live link (they were in remand). Meanwhile, extract 56 shows the remarks of a defendant who the court found not guilty of driving-related offences.

Extract 55

Defendant: Well. What would happen to me if I pleaded now?

Legal advisor: What? Erm, sorry?

Defendant: So, if I pleaded guilty now, could I get tried here?

Legal advisor: ... Erm, why would you want to plead guilty, Mr Defendant?

Defendant: Well, it doesn't change anything does it? ... if I just plead now, I can get it out the way, I would rather just get it done now.

Legal advisor: The allegation is 'intent to supply'.

Defendant: Yes, and I never wanted to do that.

Legal advisor: No, no, well the magistrates won't allow that obviously.

Extract 56

Defendant: ... If I would have knew that the court would have been as long as this, I would have just taken the fine and paid the £100!

Above, the defendants explain that being found wrongfully guilty was preferential to attempting to establish their innocence through the summary justice process. In extract 55, this appears to be the case because of the adversity associated with a pro-longed process. This is particularly evident where the defendant states, "if I just plead now, I can get it out the way, I would rather just get it done now". Meanwhile, in extract 56, the defendant who was eventually found not guilty by the court, explained that the proposed fine of £100 would have been less punishing than undergoing the court process. These two example extracts draw attention to how a lengthy summary justice process can reportedly be more punishing than a formal, judicial sentence. For this reason, the researcher arrived upon the interpretation that the observed justice embodied the value of procedural adversity.

In summary, it is the researcher's interpretation that the observed individual and institutional summary justice practices were for the value of procedural adversity, as they caused negative externalities for defendants. These negative externalities were the non-local listing of cases which was inconvenient for defendants.

Additionally, defendants reportedly had to forgo paid work in order to attend court hearings. Meanwhile, the courts use of remand was emotionally demanding for defendants. Lastly, a small number of defendants announced that they wanted to give a false and early guilty plea because the process was too long. Section 6.4 builds upon this initial data analysis, offering a critical discussion of how this value prioritisation impacts quality of justice.

6.4 CRITICAL DISCUSSION OF VALUE PRIORITISATIONS

The present section argues that the process is inefficient from a court user-focused perspective and that procedural adversity as a characterising value of the observed summary justice process, has wider negative quality justice implications. In support of this overarching argument, this section begins by explaining what the present thesis means by court user-focused efficiency and how this connects with Marsh's (2016: 51) work regarding the "real inefficiencies of the process". Second, this section explains that oral evidence-in-chief and cross-examination practices deprioritised the value of court user safeguarding. Third, this section explains how case listing practices deprioritised the value of accessible justice. Lastly, this section unpacks how remand practices deprioritised the value of procedural fairness. In addressing these points, this section answers the second research question¹²¹ by arguing that the summary justice process should become more efficiency-oriented from a court user-focused perspective, which also means reprioritising quality justice values.

To begin, the observed summary justice process was inefficient from a court user-focused perspective. This point is somewhat self-evident following the prior data analysis sections that have demonstrated how the summary justice process negatively impacted court users by upholding the value of procedural adversity (see Sections 6.2 and 6.3). In simple terms, this is what the thesis means by court user-focused inefficiency: the process is inefficient because of the adversity it caused court users. This view of inefficiency is similar to that of Marsh's (2016: 51) argument that lower criminal court reform has been ignoring the "real inefficiencies" of the justice process (previously unpacked in Section 2.2.2, 2.4.2). To reiterate,

¹²¹ The second research question is, "in critically discussing these process-defining values and their prioritisations, should the summary justice process become more efficiency-oriented or should some other value be prioritised?" (originally presented in Section 2.6).

Marsh (2016) has framed inefficiency as being court processes that inadequately served to ensure verdict accuracy (similarly argued by Horne, 2016). The thesis provides empirical evidence to support this theoretical assessment of Marsh (2016). Namely, the researcher observed how court users who experienced remand and/or a lengthy justice process were motivated to give early and false guilty pleas, rendering the summary justice process inefficient as it promoted inaccurate verdicts (see example extracts 55 and 56). The present thesis goes further however, to frame this form of inefficiency as being primarily tethered to the value of procedural adversity. As argued in the remainder of this section, the summary justice process' deprioritisation of other quality justice values (such as verdict accuracy) are secondary effects because of its upholding of procedural adversity. To this end, the thesis argues that the summary justice process should become more efficient from a court user-focused perspective, to deprioritise the value of procedural adversity and thereby uphold other quality justice values.

Second, oral evidence-in-chief and cross-examination practices deprioritised the value of court user safeguarding. To briefly reiterate Section 6.2, the researcher observed that the investigatory, oral evidence-giving portions of the summary justice process had a negative emotional impact on court users (see the analysis of example extracts 47, 48, 49 and 50). This observation fits into a larger narrative regarding how the justice process has increasingly become more task/productivity focused, rather than being focused on social impact/rectitude duties (see Sections 2.2.3 and 2.3). Whilst the researcher acknowledges that evidence gathering is a key aspect of the justice process, emotional distress is not necessary. Consequently, this thesis argues that the observed summary justice process has a capacity to become more for substantiated justice by reforming practices that uphold the value of procedural adversity in favour of practices that are for court user safeguarding.

This critical discussion point connects with the issues raised in Section 3.2, regarding the secondary victimisation capacity of the criminal court process. Namely, and as Adler (1987) argued in their seminal work, the justice process has a capacity to re-victimise through practices that are emotionally challenging, specifically around the oral evidence giving phase of the process (also see Lees, 1996; Smith, 2018). The present study connects to these prior studies by offering evidence that reconfirms this negative impact on court users whilst also drawing attention to the scope of this impact. Namely, whilst much contemporary research has focused on crown court matters and specifically the offence of rape (see Lees, 1996; Smith, 2018; again, previously discussed in Section 3.2), the present study draws attention to the capacity of the magistrates' court to commit secondary

victimisation (for non-rape cases). Additionally, and as perhaps a more novel contribution to the socio-legal literature, the thesis draws attention to the capacity of the summary justice process to negatively impact defendants who are themselves vulnerable during the oral evidence giving process (see the analysis of example extract 50). Given the historically negative impact of oral evidence giving practices alongside the present analysis, the thesis gives acute support for the reformation of such practices: to have the summary justice process reorient itself as to promote court user safeguarding.

Second, case listing practices deprioritised the value of accessible justice. As established in Section 6.3, defendants would often travel long distances to attend a court hearing, resulting in non-local justice which likely also incurred some financial costs (see example extract 51). Additionally, defendants reported that they would often forgo paid work in order to attend court, further inconveniencing them (see example extract 52). Travel expenses and missed paid work likely produced a significant barrier for court users in terms of their capacity to attend court, beyond the issue of pragmatic inconvenience. As unpacked in Section 3.2, lower criminal court users are typically from lower socio-economic backgrounds (also see Ward, 2016). This may well, therefore, produce a dilemma for court users: either choosing economic security or participation in the justice process (regardless of whether the court compels their attendance). To this end, the researcher interpreted current institutional case listing practices¹²² as deprioritising the value of accessible justice. As discussed throughout Section 2.2.4, accessibility is a value that works towards substantiating the justice process. Therefore, the researcher takes the view that the current summary justice process warrants reform. Namely, the summary justice process could be for greater quality (accessibility) by reforming case listing practices that are presently for procedural adversity.

Third, remand practices deprioritised the value of procedural fairness. To briefly reiterate the initial data analysis of Section 6.3, the researcher collected data to support the claim that defendants found their experiences of remand emotionally distressing. In the researcher's view, these practices worked against the value of procedural fairness because the process required defendants (who the court had not yet found guilty of a crime) to experience quasi-prison sentences. Indeed, in the researcher's view, time spent in remand resembled a punishment as the court

¹²² Emphasis is given here to the role of the courts and the provisions they make or do not make available (this also links to Section 2.2.4 and the concept of social justice).

forcibly withheld the defendant's liberty, as is typical with standard prison sentences (similarly argued in Cheng, 2013a, 2013b; Baughman, 2017; see Section 2.4.2). Reframed, the summary justice process deprioritised the value of procedural fairness as innocent court users would receive quasi-prison punishments when they were remanded into custody. Whilst the researcher acknowledges that remand serves a public protection role, public protection does not necessitate procedural adversity (pre-emptive punishment practices) (similarly argued in Baughman, 2017). To this end, the present thesis identifies that the process could be for improved quality if it deprioritised the value of procedural adversity. Chapter 7 further this discussion, drawing attention to areas of future policy reform research.

In summary, therefore, this section has contributed towards answering the second research question by arguing that the observed summary justice process should deprioritise the value of procedural adversity and become more efficient from a court user-focused perspective. In doing so, this section has argued that the summary justice process should prioritise other substantiating values, including that of court user verdict accuracy, safeguarding, accessible justice and procedural fairness. Throughout this critical discussion, this section identified several areas for policy reform. These include that of oral evidence-giving, case listing and remand practices. Section 7.4 expands further upon these identified areas of reform in combination with the critical discussion sections of Chapters 4 and 5, providing an answer to the third and final research question.

6.5 SUMMARY

In conclusion, this chapter has contributed towards answering the first¹²³ and second¹²⁴ research questions. Sections 6.2 and 6.3 contribute towards answering the first research question by explaining how individual and institutional summary justice practices were characterised by the value of procedural adversity. Meanwhile, Section 6.4 contributes towards answering the second research

¹²³ The first research question is, "by directly observing the summary justice process from the courtrooms of a single English Magistrates' courthouse, and in utilising an exploratory approach, what values are embedded in individual and institutional practices?" (originally presented in Section 2.6).

¹²⁴ The second research question is, 'in critically discussing these process-defining values and their prioritisation, should the summary justice process become more efficiency-oriented or some other value be prioritised?' (originally presented in Section 2.6).

question by critically discussing how the process deprioritised other quality justice values including court user safeguarding, accessible justice, procedural fairness and verdict accuracy. In doing so, Section 6.4 has argued that the process should deprioritise the value of procedural adversity as to produce a more substantiated justice process. At the same time, Section 6.4 has argued that the process could mitigate against an aspect of what Marsh (2016: 51) has termed “the ‘real inefficiencies’ of the process” (verdict inaccuracies caused by a punishing process that motivates defendants to give early and false guilty pleas). This has led this chapter to conclude that the observed summary justice process is inefficient from a court user-focused perspective. The concluding chapter of this thesis builds upon these prior contributions, to discuss how to implement this orienting of values in future practice, answering the third and final research question of the thesis.

CHAPTER 7. CONCLUSION

7.1 INTRODUCTION

This case-study of a single English magistrates' courthouse has set out to explore efficiency in the summary justice process, in view of the problem of over-efficiency (previously unpacked in Section 2.3.3). To investigate this issue, this thesis made use of a novel in-court, note-taking technique (stenography) within a larger ethnographic approach (see Section 3.4). Coupled with this data collection method, the thesis used Packer's (1968) work alongside that of McDonald's (2008) multi-dimensional framework to interpretatively explore what values characterise the observed summary justice process (previously discussed in Section 2.2.1, 2.2.2). The prior three chapters have offered a critical discussion of these value prioritisations, utilising the concepts of post-managerialism, social justice and procedural due process (see Section 2.2.4). This research approach differs from contemporary government research that has largely framed efficiency in narrow, managerial terms, or has inadequately theorised the relationship between social justice and efficiency (see Sections 2.2.3, 2.2.4 and 2.3). The research approach of the present thesis also contrasts with recent academic socio-legal research which has typically been theoretical or has made use of interview or mixed methods data (see Section 2.5). Consequently, the thesis makes an original contribution to knowledge regarding how the socio-legal literature understands efficiency in the summary justice process.

This thesis makes an original contribution to knowledge by providing insights into summary justice practices. In more specific terms, the thesis presents novel observational data to argue that there are summary justice practices that are primarily for managerial values of speediness and procedural standardisation to the detriment of quality justice values (see Chapters 4 and 5). These quality justice values include verdict accuracy, defendant participation and sentence proportionality. Rephrased, the thesis supports the claim that the summary justice process is overly efficient. The thesis has also argued that the summary justice process is inefficient from a court user-focused perspective, because of how it is characterised by procedural adversity (see Chapter 6). In this way, the thesis makes an original contribution to knowledge by demonstrating empirically how the process can be inefficient in multi-dimensional terms, moving beyond a managerial focus on actuarial measures.

This final chapter now moves to offer some reflections on this original contribution to knowledge, whilst also offering reform recommendations based on the research findings from the previous chapters. Section 7.2 emphasises why the thesis is important and timely, drawing attention to what the thesis set out to do by investigating efficiency in the summary justice process. Section 7.3 draws together the prior critical discussions of Sections 4.5, 5.5 and 6.4 to offer a collective reflection regarding how the thesis contributes to the socio-legal literature's discussion of managerialism in the summary justice process. From this, Section 7.4 offers some policy reform recommendations as based on the main findings of the thesis. Section 7.5 then details some of the wider implications of the thesis, whilst also drawing attention to its limitations and areas for future research. Finally, Section 7.6 affirms that the thesis has accomplished its research aim. By addressing these points, this final chapter pulls together the thesis. It synthesises what the thesis set out to do, the research questions it developed, what methods it used to answer those questions and what the main arguments of the thesis are whilst emphasising its original contribution to knowledge.

7.2 WHAT THE THESIS SET OUT TO DO

This section argues that the thesis has achieved its research aims regarding its investigation into how courtroom summary justice practices prioritise efficiency. This section begins by explaining how the problem of over-efficiency risks diminishing the quality of summary justice and, subsequently, why the thesis has been interested in this research problem. Following this, this section explains how the thesis has addressed some of the main gaps in the literature and in doing so, how the thesis has answered the research questions originally presented in Chapter 2. Collectively, this section explicates how the thesis has achieved what it set out to do, drawing attention to the usefulness of its conceptual framework and research design choices.

The thesis has focused on the problem of over-efficiency in the summary justice process, which is important because it affects the quality of justice that the lower criminal courts deliver (discussed in Section 2.3.3). As initially unpacked in Chapter 2, recent radical efficiency reforms have concerned summary justice thinkers because these reforms may be diminishing the quality of justice at the lower criminal courts (discussed in Section 2.4). The process is overly efficient when

managerial values¹²⁵ primarily characterise the summary justice process, to the detriment of other quality justice values¹²⁶ (further discussed in Sections 2.2.4 and 2.3.3). The aim of the thesis, therefore, was to investigate how lower criminal courtroom practices prioritise efficiency and from this, to develop policy reform recommendations that address the problem of over-efficiency, promoting quality of justice.

The thesis has answered the research questions of Chapter 2 (see Section 2.6). This chapter developed these research questions following a review of the literature. In greater detail, Section 2.5 drew attention to how much of the literature has been international (not specifically focused on English and Welsh summary justice) and/or has been theoretical (rather than empirically based). Additionally, this chapter drew attention to how the existing empirical work has typically made use of mixed methodologies, rather than utilising an in-depth court observation-only method (see Section 2.5). Section 2.5 also drew attention to the benefits of the exploratory, ethnographic studies that were notable between the 1950s and 1990s, and how the contemporary literature could benefit from more research of this type. Chapter 2 concluded, therefore, by arguing that the literature would benefit from additional exploratory courtroom observation research that could provide a unique perspective on summary justice efficiency. Indeed, the thesis took the view that in filling these gaps in the literature, it could provide new insight into how to address the problem of over-efficiency¹²⁷. Building from the aforementioned framework and literature review, the thesis articulated the following research questions, which the thesis originally presented in Section 2.6:

1. By directly observing the summary justice process from the courtrooms of a single English Magistrates' courthouse, and in utilising an exploratory approach, what values are embedded in individual and institutional practices?
2. In critically discussing these process-defining values and their prioritisations, should the summary justice process become more efficiency-oriented or should some other value be prioritised?

¹²⁵ Such as time-trimming, cost-savings and waste-mitigation.

¹²⁶ Such as verdict accuracy, defendant participation and sentence proportionality.

¹²⁷ Namely, the research aim of the thesis was: "To investigate how lower criminal courtroom practices prioritise efficiency and from this, to develop policy reform recommendations which address the problem of over efficiency, promoting quality of justice", (see Section 2.6).

3. Based on this assessment, what specific reform recommendations can be made to improve the observed summary justice process?

Chapters 4, 5, and 6 answer the first two research questions. Namely, the thesis addresses question one by presenting a thematic analysis of novel, stenographic data the researcher collected from a single English Magistrates' courthouse. The first half of these chapters focus on thematic data analysis. Meanwhile, Sections 4.5, 5.5, and 6.4 answer the second research question. Here, the thesis utilised its conceptual framework to critically discuss the observed summary justice practices, drawing attention to the capacity of the summary justice process to better uphold quality justice values. The specific findings of these chapters and their contribution to the field of socio-legal research is argued for in the subsequent section. The present final chapter answers the third and final research question in Section 7.4, building upon the aforementioned critical discussion sections.

7.3 MAIN FINDINGS & CONTRIBUTION

This thesis makes an original contribution to knowledge by using novel observational data to offer insight into the practices of the summary justice process. More specifically, this thesis has collected evidence that supports the argument that the summary justice process is overly efficient (see Chapters 4 and 5). At the same time, the thesis also argues that the summary justice process is inefficient from a court user-focused perspective (see Chapter 6). This section offers the researcher's reflections on this original contribution to knowledge, given the wider managerial context that situates the thesis (see Section 2.3, 2.4). In doing so, this section argues that the thesis is significant because it provides a unique and critical perspective on the government's summary justice efficiency reform agenda. In support of this overarching argument, this section begins by summarising the central findings of the thesis. From this, the section draws attention to how the findings of the thesis utilised a more dynamic theoretical and conceptual framework compared to that used in contemporary government reports. The result is that the thesis contributes a more exploratory investigation into summary justice efficiency. This section then emphasises how the thesis contributes to a growing body of socio-legal literature that studies managerialism in the lower criminal court process. Collectively, this section presents the central argument of the thesis whilst linking it into the criminal justice/criminal court efficiency reform discussion originally presented in Chapter 2.

The main finding of the thesis is that the summary justice process is overly efficient because it is characterised by the values of speediness and standardisation to the detriment of other quality justice values (see Chapters 4 and 5). The other main finding of the thesis is that the process is inefficient from a court user-focused perspective because of how the process is characterised by the value of procedural adversity (see Chapter 6). The researcher assigned values to observed practices using MacDonald's (2008: 2) multi-dimensional (pluralistic) framework which understands values as normative interpretations (or Weberian 'non-ideal-types') (see Section 2.2.2). From this, the thesis used the concepts of post-managerialism, social justice and procedural due process to guide a critical discussion of the observed value-laden practices (see Section 2.2.4). In each of the critical discussion sections of Chapters 4, 5 and 6, the researcher concluded that the summary justice process could more robustly uphold quality justice values. Indeed, the critical discussion sections uphold that efficiency as speediness and standardisation deprioritised a range of other quality justice values relating to the concepts of social justice and procedural due process (see Section 4.6, 5.6). Notably, these quality justice values include verdict accuracy, democratic oversight, defendant participation, defendant comprehension, procedural fairness, sentence proportionality, institutional legitimacy, defendant safeguarding, fair sentencing, rehabilitative sentencing and pragmatic problem-solving. Additionally, the thesis argued that the value of procedural adversity characterised the summary justice process, rendering the process inefficient from a court user-focused perspective (see Section 6.4). More specifically, the observed summary justice process was characterised by the value of procedural adversity to the detriment of quality justice values that include verdict accuracy, court user safeguarding, accessible justice and procedural fairness.

Compared to contemporary government reports, the thesis offers a more exploratory consideration of efficiency in the summary justice process. As discussed in Section 2.3, contemporary government reports have focused on how efficiency should be a primary value in the summary justice process. However, the government's conception of efficiency is largely managerial in the sense that it myopically focuses on actuarial targets of cost-cutting, time-saving, and waste mitigation¹²⁸. Alternatively, government reports have inadequately theorised the

¹²⁸ The key government reports of Section 2.3.2 evidence this approach. Namely, see Auld (2001), Department of Constitutional Affairs (2006), Ministry of Justice (2012) and Leveson (2015a). This actuarial framing and promotion of efficiency intensified following the financial crash of 2007/2008 and the government's introduction of austerity measures, further emphasising the importance of efficiency in the justice process (see Section 2.3.1).

relationship between social justice and managerial efficiency values, “pretending that trade-offs can be avoided” and that both sets of values can be pursued unconditionally (see Dillow, 2007: 22; in Section 2.3.1). Chapters 4 and 5 investigate summary justice practices by utilising a more theoretically rigorous approach. Namely, the critical discussion sections of these chapters question if the process can primarily uphold substantiating justice values, with conventional managerial efficiency values contributing on a secondary basis (see post-managerialism in Section 2.2.3). In this way, the thesis offers a vision of how the justice process can improve as based on empirical data. Meanwhile, Chapter 6 draws attention to how the observed summary justice process is inefficient from a court user perspective because of the adversity it causes them. Whilst it is not unusual for government reports to consider court user experience¹²⁹, the centrality of their experience in terms of an efficient process is unusual. To this end, the thesis expands the debate regarding what efficiency can (and should) mean in the summary justice process, moving beyond the conceptions of efficiency used in key government reports (see Section 2.3). In doing so, the thesis offers implications for future summary justice efficiency reforms: its evidence-based insights motivate the government to produce reforms that move away from managerial conceptions of efficiency (further discussed in Sections 7.4 and 7.5).

This thesis has also contributed to a growing body of socio-legal literature that studies managerialism in the lower criminal court process. Of note is how the thesis has drawn parallels with Australian lower criminal court research¹³⁰. Namely, the thesis has similarly argued to Roach Anleu and Mack (2007: 343; 2010) that the observed summary justice workgroup (notably magistrates and district judges) employs practices that promote rapid case disposals, to efficiently “get through the list”. Where Roach Anleu and Mack (2007, 2010), frame this speediness as being connected to legitimate decision-making (quality justice), the present thesis demonstrates how such speedy justice practices link with the problem of over-efficiency. In this way, the present thesis contributes to the international lower criminal court efficiency literature in a cautioning capacity. Meanwhile, the thesis also contributes to the literature by building upon Ward’s (2016) work. Namely, where Ward (2016: 142) has gathered evidence to frame magistrates as “social justice innovators”, the present thesis has demonstrated the limited ability of magistrates to engage with severe and compounded forms of defendants’ social

¹²⁹ See, for example, the Ministry of Justice’s (2013: 13) aforementioned ‘Transform the CJS Strategy’ and ‘Action Plan, (discussed in Section 2.3.1).

¹³⁰ See Section 2.5.3.

disadvantage in the courtroom space, largely owing to their lack of professionalism. To this end, the thesis contributes to the literature by offering a unique insight into the practices of magistrates in the summary justice process. Additionally, the thesis has connected with Marsh's (2016) theoretical work by providing empirical evidence that supports his concern that the summary justice process is inefficient from a verdict accuracy perspective. The present thesis has advanced this work by offering an interpretation of efficiency that centres on how the summary justice process prioritises the value of procedural adversity above other quality justice values (see court user-focused inefficiency in Section 6.4). Collectively, therefore, the present thesis has utilised a novel, observation-based method (stenography) to gain a unique perspective of English and Welsh summary justice efficiency, thereby making an original contribution to the socio-legal literature (also see Sections 1.4 and 2.5).

7.4 REFORM RECOMMENDATIONS

This section argues for some policy reform recommendations that seek to curtail the problem of over-efficiency in the summary justice process. This section begins by arguing that the Criminal Procedure Rules (CPRs) should prohibit district judges from engaging in plea bargains mid-hearing/trial. Second, this section recommends that the summary justice process should provide defendants with an immediate, in-court receipt of proceedings. Third, this section asserts that the defence should make use of evidence at the collaborative level when presenting mitigating factors during sentencing hearings. Fourth, this section argues that court staff should receive refresher training regarding their role in the diversion process. Fifth, this section recommends that the CPRs should make explicit that the defence party cannot advocate for their defendant to receive a lengthier prison sentence than what the prosecution is advocating for. Lastly, this section asserts that court users should be prompted about reimbursements for non-local travel expenses at the end of the in-court process. Collectively, these reform recommendations build on the prior critical discussion sections found in Chapters 4, 5 and 6 to answer the third and final research question¹³¹. As established in Section 3.5.4, the thesis presents these recommendations as useful ideas for policy reform makers who are

¹³¹ Namely, the third research question is, '...what specific reform recommendations can be made to improve the observed summary justice process?' (originally presented in Section 2.6).

interested in curtailing the problem of over-efficiency, they serve in an underlabouring capacity.

First, this section argues that the Criminal Procedural Rules (CPRs) should prohibit district judges from engaging in plea bargains mid-hearing/trial as to promote greater verdict accuracy. To briefly reiterate Section 4.2, the researcher observed how district judges would engage in quasi-plea bargains mid-hearing to motivate defendants to plead guilty, thereby speeding up the justice process. Problematically, this practice diminished the capacity of the process to render accurate verdicts of guilt. Indeed, it became unclear whether defendants were pleading guilty because they factually were or because they distrusted the process given district judges' remarks, which telegraphed that they viewed defendants as factually guilty prior to a full trial taking place. This, as discussed in Section 4.5, is similar to what Covey (2009) describes as the innocence problem (first discussed in Section 2.4.2). Therefore, in an effort to avoid this problem and preserve verdict accuracy in the summary justice process, this thesis argues that the CPRs should prohibit such mid-hearing/trial plea-bargaining practices.

Second, this section argues that the summary justice process should provide defendants with an immediate, in-court receipt of proceedings as to promote greater post-managerial efficiency. This reform recommendation follows from the critical discussion of Section 4.5, regarding how the court workgroup prioritised speediness over ensuring defendants' comprehension of the process. Written accounts (receipts) may allow defendants to better understand the process and what they can contribute to and when. Such written accounts could mitigate against defendants' mid-hearing interjections, as they would have greater awareness of what issues the court workgroup are to discuss at the varying points in the process. This could have the added benefit of allowing the court process to still utilise the speedy justice practices of staff (as unpacked in Section 4.4) whilst promoting greater verdict accuracy, as defendants would be knowledgeable of the appropriate times during their hearing/trial that they can contribute important information. As an added benefit, this reform could mitigate against those in the process being frustrated, as defendants and staff can contribute their important information without interruption/interjection. It is also noteworthy that this post-hearing receipt recommendation is supported with the comments of defendants. Indeed, the researcher observed defendants announcing to the court that they would benefit from an immediate, text-based, post-hearing account of proceedings (again, see Section 4.4). Consequently, the researcher argues that this reform recommendation is for post-managerial efficiency: the process could better uphold quality justice values of defendant comprehension and verdict accuracy alongside

managerial values of speediness through the use of immediate, post-hearing receipts.

Third, the defence should make use of evidence at the collaborative level when presenting mitigating factors during sentencing hearings. The critical discussion of Section 4.5 supports this reform recommendation, specifically regarding how the prosecution would often not contest the factualness of mitigating factors which resulted in speedy but likely disproportionate sentences. This recommendation would mean that the defence party could not present mitigating factors based on a defendant's testimony alone (as the researcher observed in Section 4.3). Rather, the court should raise the standard of proof required to present mitigating factors to the collaborative level. Meaning, the court should only accept mitigating factor claims that are supported by two forms of evidence (likely oral and document-based). A benefit of this reform is that it may discourage the defence from raising erroneous mitigation claims, which presently the defence can evidence on their client's oral testimony alone. The thesis therefore envisions that this new duty could speed up the process by omitting erroneous mitigation claims (effectively reducing the workload of the courts). At the same time, the process could produce more proportionate sentences, as sentencers are able to draw upon more substantial evidence that details the severity of mitigating factors. Rephrased, this reform could produce post-managerial efficiency in the summary justice process by promoting greater sentence proportionality whilst also upholding a speedy justice process.

Fourth, court staff should receive refresher training regarding their role in the diversion process. The critical discussion of Section 5.4 supports this reform recommendation, specifically regarding how court staff were unfamiliar with how to action the diversion process and how court staff appeared to overlook signs that defendants were living with severe mental health conditions/needs (first discussed in Section 5.2). Indeed, by court staff receiving additional mental health diversion process training, they may become empowered to make greater use of the diversion process. In doing so, court staff may be better able to connect appropriate disadvantage-addressing services (Liaison and Diversion) to those individuals who require them (defendants with mental health conditions), improving quality of justice. This reform recommendation also draws attention to the Bradley (Department of Health, 2009) report and its claim that Liaison and Diversion (L&D) services can produce efficiency in terms of reducing courthouse caseloads, by appropriately diverting cases out of the courts whilst simultaneously promoting more appropriate resolutions for vulnerable court users (see Section 2.4.6). The

present reform recommendation serves to promote this same end, framing it as being for post-managerial efficiency.

Fifth, this section argues that the Criminal Procedure Rules should make explicit that the defence party cannot advocate for their defendant to receive a lengthier prison sentence than what the prosecution is advocating for. This reform recommendation follows from the critical discussion of Section 5.4, regarding how defence solicitors viewed prison as a rehabilitative place that could resolve defendants' social disadvantage such as that regarding substance addiction and homelessness. The present thesis takes the view that defence solicitors should instead request that their client receive a Rehabilitation Activity Requirement (as is otherwise typical of defence advocacy). Alternatively, defence solicitors should request that the court divert their client from the criminal justice process entirely or that their client should make use of specialised court processes depending on the severity and type of their client's disadvantage (see the discussion of Section 2.4.6). This reform recommendation may well form part of a wider structural change in the criminal justice process¹³² (for example, by allowing the summary justice process to have greater involvement in the allocation of social housing, as one magistrate suggested in Section 5.4). Rephrased, the present thesis takes the view that the summary justice process can better safeguard vulnerable defendants with multiple and severe forms of social disadvantage by prohibiting pro-prison defence advocacy.

Lastly, the court should prompt defendants about reimbursements for travel expenses at the end of the in-court process. As Section 6.4 has established, the present thesis observed how justice was often non-local, demanding that defendants travel significant distances to attend court. This, therefore, rendered justice inaccessible for some. The researcher recognises that the government seeks to mitigate against non-local justice through more expansive use of live link in the near future (unpacked in Sections 2.3 and 2.4.3). However, these claims have been long standing and there are quality justice concerns regarding the widespread utilisation of live link (previously discussed in Sections 2.3, 2.4.3 and 4.4). At the same time, the researcher acknowledges that the court estates closure programme has been expanding (reducing accessibility to justice) (again see Section 2.3). To this end, the researcher takes the view that the courts' utilisation of greater travel compensation for defendants is a reasonable mitigating step to

¹³² Whilst such far reaching structural change is outside of the scope of this thesis, it does indicate a potentially useful direction for future research (further discussed in Section 7.5).

bolster access to justice and therefore, promote justice quality. Consequently, the researcher proposes the modest reform that the court workgroup prompt defendants about travel compensation at the end of each in-court proceeding, increasing the likelihood that this measure will be used¹³³. In this way, the summary justice process would operate to mitigate against travel costs that obstruct accessible justice, promoting quality of justice.

In summary, this section answers the third and final research question of the thesis by offering six reform recommendations. These reform recommendations build on the prior critical discussions of Section 4.5, 5.5 and 6.4. The intention of these reform recommendations is to offer policy makers with novel ideas regarding how to address the problem of over-efficiency in the summary justice process, reflecting the aim of the thesis as presented in Chapter 2 (see Section 2.6).

7.5 WIDER IMPLICATIONS, LIMITATIONS & FUTURE RESEARCH

This section argues for some wider implications of the thesis that go beyond the policy reform recommendations of Section 7.4. More specifically, this section discusses how the findings of the thesis impact future research and policy reform considerations regarding: the Criminal Procedure Rules, the role of magistrates, legal advisors' muting practices, the courts utilisation of defendants' means information, self-representation (DIY) practices, court staff assumptions of defendants' mental health, the future utilisation of problem-solving courts, the oral evidence process and the mitigation of early and false guilty pleas. These points link from the critical discussion sections of Chapters 4, 5 and 6, emphasising the wider impact of the thesis on the literature whilst also drawing attention to some limitations of the thesis.

First, future summary justice policy reforms should be cautious when amending the Criminal Procedure Rules (CPRs, see Section 2.4.1), as to not enable self-interested game playing to the detriment of summary justice verdict accuracy. As discussed throughout Section 4.3, the present thesis suggests that solicitors engage in a form of cooperative, self-interested speedy justice game playing (similarly discussed in Auld, 2001, see Section 2.4.1). Additionally, the thesis has

¹³³ The researcher recognises that The Costs in Criminal Cases (General) Regulations 1986 (s.23) facilitates for the courts to order costs to defendants for travel expenses (also see Berke, 2021).

demonstrated how district judges also seem to enable this self-interested speedy justice game playing (also see Section 4.3). Whilst the critical discussion of Section 4.5 has emphasised that this game playing is speculative, it remains that the concerns of Section 2.4.1 are plausible. Namely, such practices may be deprioritising the values related to procedural due process (human rights protections). Therefore, this issue warrants further research to preserve the quality of justice at the lower criminal courts.

Second, future reforms regarding the role of magistrates should be considerate of their useful but limited social justice function. As unpacked in Section 2.4.5 with Ward's (2016: 129) work, there is evidence to view magistrates as "social justice innovators". This renders the magistrates' role as one that is for quality justice, as based on the aforementioned conceptual framework of Section 2.2.4. At the same time however, the present thesis has observed the limited capacity of magistrates to perform a social justice function in the courtroom (DRR) space, they were unable to appropriately engage with social disadvantage in some of its severe forms (such as trauma-related substance addiction, see Section 5.5). Additionally, magistrates did not always commit themselves to social justice ends, as the thesis observed in lesser social disadvantage cases (also discussed in Section 5.5). Indeed, the thesis has explained how the observed magistrates made problematic responsibilisation comments and morally reprimanded socially disadvantaged offenders during standard, non-DRR hearings (discussed in Section 5.3). To this end, the thesis depicts a complex account of the role of magistrates in the summary justice process. This leads the thesis to conclude that the role of magistrates is useful but additional provisions are at least required to enable them to better engage with disadvantage defendants.

Third, legal advisors' muting practices warrant further research to explore their extent and impact. As Section 4.4 has explained, legal advisors would regularly mute defendants' microphones during their hearings, prioritising the value of speedy justice to the detriment of defendant participation. As Section 4.5 has further discussed, the researcher was unsure whether defendants were able to hear/view proceedings during live link hearings. Indeed, in the present research, the full extent of how criminal justice staff controlled the communication channels during live link courtroom proceedings was unclear. It is possible that criminal justice staff were intentionally and significantly limiting defendants' capacity to participate in proceedings, beyond the known observation of legal advisors muting defendants for speedy justice ends (see Section 4.4). In view of this, the thesis argues that further research could allow policy makers to better understand the full impact of live link technology on the court process and how this affects quality of

justice, with specific attention given to the powerful/controlling role of legal advisors. At the same time, in view of the capacity of live link to deprioritise the value of defendant participation, the thesis places pressure on policy reformers to limit their expansion of live link/video conferencing technologies until greater knowledge is acquired regarding its impact (similarly argued by Gibbs, 2017).

Fourth, further research would be useful to better understand how the courts can more reliably collect and utilise means information for proportionate sentencing purposes. To briefly reiterate Section 4.5, the courts would rely on defendants/offenders to supply means information that they would then use to render proportionate financial impositions. Whilst such practices enabled a speedy case disposal process, it also promoted sentence disproportionality because of defendants'/offenders' self-interest to receive a lenient sentence (again, see the discussion of Section 4.5). In view of this problem, the thesis recommends that the courts utilise a more reliable method by which to obtain defendants' financial means. For example, it may be possible for the courts to use digital records from Her Majesty's Courts and Tribunals Service or from the Department of Work and Pensions in-court, to establish a court user's financial means more accurately. Such a technical policy reform recommendation is beyond the scope of the present thesis. Therefore, this thesis instead draws attention to how this subject requires further specialist research.

Fifth, a further implication of this thesis is to raise awareness of problematic, in-court, self-representation (DIY) practices of defendants. The thesis recognises that the work of Bowcott (2014) as well as Doward and Dare (2016) have criticised the introduction of LASPO for promoting such self-representation cases (see Section 2.4.4). However, the present thesis cannot make a correlation between LASPO and the prevalence of self-representation cases because of its research design. Namely, the thesis did not collect observational data prior to the government's introduction of LASPO. This pre-LASPO data would have been essential for such a comparison. Therefore, the usefulness of the thesis is to draw the attention of researchers and policy reformers to how such self-representation practices do indeed take place in the contemporary summary justice process and that these practices are for low-quality justice (discussed in Section 4.5). This leads the thesis to emphasise that researchers/policy reformers may be interested in investigating how LASPO effects processes outside of the courtroom that are responsible for the allocation of legal representation.

Sixth, additional research would be useful to examine whether court staff are abiding by the recent guidelines of the Sentencing Council (2020)¹³⁴, regarding how staff should not make assumptions about court users' mental health. Section 5.5 has critically discussed how court staff would make presumptions about the credibility of defendants' mental health claims. Following the data collection and initial data analysis of the thesis, the Sentencing Council (2020) released guidelines that specifically targeted court staff's incorrect assumption about court users' mental health conditions (and how this negatively impacts sentencing). Given this, follow-up research would be useful to examine whether sentencers are continuing to make problematic assumptions about court users' mental health, as reported and discussed in Section 5.5. Or, whether this change in guidelines has had a positive impact on the courtroom process. Indeed, it may be the case that although there has been policy change, the culture of summary justice staff in the courtroom may remain problematic as observed in the present thesis.

Seventh, the thesis provides support for the greater utilisation of problem-solving courts in the summary justice process. As established in Section 5.4, standardised court processes do not adequately address the pragmatic aspects of criminal offending, such as that regarding subsistence related theft. This suggests that the utilisations of more pragmatic, disadvantage-addressing, problem-solving courts would be useful for engaging with such cases (as similarly argued by Donoghue 2014a; 2014b; see Section 2.4.6). The present thesis is aware of government advocates' argument that problem-solving courts are not cost-effective (see Vara, 2013; Section 2.4.6). Despite this, the present thesis maintains that in the interest of justice quality, some types of social disadvantage require non-standardised, pragmatic, problem-solving approaches (as unpacked in Section 5.5). The present thesis is also aware how the "courtification" of welfare services may create an obstacle for the actualisation of social justice (Miller in Donoghue, 2014b: xx, see Section 2.4.6; also see the critical discussion of magistrates' useful but limited social justice role in Section 5.5). Owing to the observation-only method of the thesis and its focus on the process (rather than wider inter-agency work), the thesis

¹³⁴ Towards the end of the research project, the Sentencing Council (2020) released new guidelines for the criminal courts' processing of defendants with mental disorders, neurological impairments, and developmental disorders. A merit of this new guidance is that it emphasises that sentencers should "avoid making assumptions" and drawing adverse inferences from a defendant's mental health (2020: s.4). Additionally, the report acknowledges that mental health difficulties are a credible reason to reconsider the culpability of an offender. Indeed, "in some cases, the impairment or disorder may mean that culpability is significantly reduced" which subsequently impacts the severity of sentencing (Sentencing Council, 2020: s.12).

cannot offer robust insights into how policy reformers can mitigate against the risk of courtification whilst also expanding the courts utilisation of problem-solving courts for social justice ends. To this end, the thesis recognises that there is ambiguity about what sort and to what extent the summary justice process can utilise a more pragmatic, problem-solving approach. For this reason, the research emphasises that this is an area that warrants further research.

Eighth, further research should explore how to alleviate the adversity-causing elements of the oral evidence giving process which negatively affects defendants, complainants/victims and witnesses. Indeed, as explained in Section 6.2, court users found the oral evidence process distressing, as similarly argued in Smith (2018: 216; also see 'secondary victimisation' in Section 3.2). The present thesis offers findings that expand upon the current literature by demonstrating the negative aspects of the oral evidence giving process on defendants in the summary justice process. Indeed, as unpacked by Smith (2018), much of the research in this area has focused on victims in the upper courts. The implication of this research, therefore, is to sensitise researchers to the capacity of the oral evidence giving process to produce adversity for defendants, alongside complainants/victims/survivors and witnesses.

Lastly, further research should investigate how to mitigate against the summary justice process motivating early and false guilty pleas. As Section 6.4 has critically discussed, the courts use of remand coupled with a lengthy justice process placed pressures on defendants to give false and early guilty pleas. In presenting this finding, the thesis has contributed to the literature by emphasising the negative aspect of remand practices for ensuring accurate verdicts (again, discussed in Section 6.4). At the same time, the thesis emphasises that this is a complicated area for policy reform because of how remand upholds public safety values. Additionally, as discussed throughout Chapter 2, speediness pursued unconditionally can have negative effects on justice quality (as discussed throughout Chapter 2). Consequently, the present thesis is unsure how to mitigate against the problem of early and false guilty pleas without negatively impacting the quality of justice of the lower criminal courts, outside of the aforementioned reforms of Section 7.4. Therefore, the research identifies this issue as a subject for future efficiency reform research.

In summary, this section builds upon the critical discussions of Chapters 4, 5 and 6 to conclusively situate the thesis within the contemporary socio-legal literature. In doing so, this section has drawn readers attention to the limited aspects of the thesis. Namely, whilst the observation-only method of the thesis has been useful

for gaining a unique perspective of in-court proceedings, such observations have limited explanatory power beyond this space. For this reason, much of the directions for future reform offered here point beyond the courtroom space, questioning the role of inter-agency work or how other institutions connect to and from the summary justice process.

7.6 CONCLUSION

This thesis has offered a case study of a single magistrates' courthouse that explores efficiency in the summary justice process. The overarching argument of the thesis has been that the observed summary justice process is overly efficient. Namely, the process is primarily characterised by managerial efficiency values of speediness and standardisation to the detriment of other quality justice values that relate to the concepts of procedural due process and social justice. Additionally, the thesis has argued that the summary justice process is inefficient from a court user perspective. The reform recommendations that the researcher developed from this approach serve in an underlabouring capacity for policy makers. The ambition of the thesis has not been to directly re-shape the lower criminal courts. Rather, it has had the more modest goal of generating evidence-based reform recommendation ideas that policy reformers can draw upon when attempting to promote justice quality. As evidenced throughout this final chapter, the thesis has achieved this objective.

The research design of the thesis has been central to its capacity to make an original and significant contribution to knowledge. Indeed, its contribution to knowledge stems from its novel observational data collection method and its theoretical and conceptual framework that allows for a critical exploration of values in the in-court, summary justice process. However, this same research design has limited the findings and reform recommendations of the thesis. In view of this, the thesis supports further research that more fully accounts for and address the problem of over-efficiency in the lower criminal courts.

LIST OF TABLES

Table 1. Table to show data collected between 1st January to 31st June 2018, detailing the types of courtroom observed and the number of days spent conducting observations.

LIST OF CASES

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APPENDIX 1: EXAMPLE OF RAW DATA

COLLECTION SHOWING THE COLLECTION

METHOD

The researcher used acronyms and abbreviations throughout the data collection process to help achieve a fast type speed. Additionally, the researcher used typed macros in a similar way described by Short and Leight (1972) regarding the concept of chording (also see Pick, 1978). In greater detail, the researcher would press multiple keys at the same time to produce a string of words or full words, speeding up the process. Below is a typical example extract that demonstrates this use of acronyms, abbreviations and typed macros:

10:59:20 - LA1: yeah sure *looks at papers / reads docs* *scrolls through laptop / reads over articles / docs* *typing on computer / laptop*

10:59:25 - CPS1: thankyou *exits court via public entrance*

10:59:28 – {now just me and LA and U}

10:59:34 - LA1: *typing on computer / laptop*

10:59:36 - U1: *stares out / waiting*

10:59:37 - *silence*

To enable the researcher to collect the greatest amount of data possible, the present study tolerated an error rate greater than 3%. This was accepted on the basis that the researcher would correct mistyped words in post. To amend mistyped words, the researcher considered the context of the errors and the bunching of mistyped letters to approximate what words they should have typed. Below is an example extract demonstrating how the researcher amended errors through such context-based inferences:

11:00:21 - M2: erm yea sorry hang on we wil contineue looking atthese pictures and we wil be reay to address you in a moment.

In this example, the researcher replaced the word 'yea' with 'yeah', 'wil' with 'will', 'atthese' with 'at these' and 'reay' with 'ready'. In this way, there is a discrepancy between the data presented in this thesis and the collected raw data that goes beyond replacing acronyms and abbreviations. The researcher accepts that such post-observation amendments may be a site of criticism for this thesis, as data processing is subject to increased researcher error/bias. The researcher takes the view that given the overwhelming accuracy and previously discussed advantages of the stenographic note-taking method, this criticism is tolerable (previously discussed in Section 3.4.1).