

**i** Opinions expressed in this report are those of the author and should not be taken to be those of The Legal Education Foundation.



## Automatic online conviction

In 2016, the government sought views<sup>1</sup> on whether people might be convicted – and punished – by computer. Defendants would be able to log on to an online system and view the evidence against them. They would be offered a pre-determined penalty (plus costs and compensation if appropriate) in exchange for a plea of guilty with 21 days. If defendants accepted, they would be convicted and fined immediately – without the involvement of a magistrate.

In February 2017, the government announced<sup>2</sup> that these plans would go ahead with a somewhat eclectic group of offences, described slightly vaguely as railway fare evasion, tram fare evasion and possession of an unlicensed rod and line. These turned out to be failure to produce a ticket for travel on a train,<sup>3</sup> failure to produce a ticket for travel on a tram<sup>4</sup> and fishing with an unlicensed rod and line.<sup>5</sup> Other offences would follow, ministers promised, if the pilot proved to be successful.

The scheme was to be called automatic online conviction. It would apply only to defendants aged 18 or over at the time of the offence who chose to plead guilty, who offered no mitigating circumstances and who opted into the automated process. It would also be limited to summary offences – ones that can be tried only by magistrates – and would exclude offences punishable with imprisonment. These cases can already be decided by a single magistrate, without the need for a public hearing, through the what is called the single justice procedure.

An individual convicted through this procedure would not be “sentenced by a computer or algorithm”, the government insisted. “The detail of the penalty will be set out in secondary legislation and the amount of the standard penalty to be imposed on an offender will be specified for each offence. The total penalty will include a victim surcharge imposed, as now, as a percentage of the fine; a standardised amount of prosecution costs; and may include an amount to cover simple compensation for financial loss, where appropriate (e.g. unpaid ticket revenue) up to a specified level.”<sup>6</sup>

Commenting on the original consultation paper, the campaigner Penelope Gibbs said that defendants should be told, clearly, about the possible consequences of a guilty plea. “Unfortunately,” she added, “spelling out the real-life implications of having a criminal record... will probably put most users off pleading guilty.”<sup>7</sup> Her research suggested that unrepresented

defendants did not understand the difference between a defence and mitigation.<sup>8</sup> And she quoted an example of a businessman who – because it seemed the simplest thing to do – pleaded guilty to bus fare evasion even though he had a complete answer to the charge. He appealed only when a court ordered him to pay a penalty of £755 in addition to the fare.<sup>9</sup>

The government promised that the system would be designed to prevent users from pleading guilty without a full understanding of their decision and the potential consequences. Defendants would be presented with all the relevant evidence against them when considering whether to choose the automatic online conviction procedure. Part of the process would be a “decision tree”, which will require users to accept that they had understood the information presented to them. “The potential consequences of a criminal conviction, such as the disclosure regime, will be clearly explained.”

What about defendants with mental health problems or learning difficulties? The government’s answer is that officers enforcing unpaid penalties would look out for defendants who had not understood what they were doing. They could be advised how to reopen a case.

There were concerns that individuals might intercept communications aimed at a suspect and plead guilty in that person’s name. As a result, an individual might be convicted and punished without having admitted a crime. In response, the government promised high levels of security. “The defendant will be required to enter personal data to confirm that they are the intended user,” it said. “This is likely to include their date of birth, prosecution unique reference number and national insurance number.”

Critics also argued that it would allow defendants to plead guilty without the embarrassment of a court appearance. But, replied the government, the scheme would apply only to offences for which a defendant may already plead guilty by post.

I argued that there should be an unequivocal cooling-off period of a few days, along the lines of consumer credit agreements. It will be all too easy for people to accept an online conviction when they get home in the evening, tired and perhaps even emotional. Defendants should not have their fines debited straight away and should be no worse off as a result of changing their minds during that period than somebody who had rejected the offer outright.

This suggestion was not taken up by the government when it published the Prisons and Courts Bill<sup>10</sup> later in February 2017. Under the bill, magistrates would be allowed to set aside online convictions, but only if they were “unjust”. That would apply, I suppose, in cases where the defendant had failed to mention a valid defence. But I can’t see that it would apply to defendants who decide, after pleading guilty, that they would prefer to try their chances at getting off.

A broader question – which the bill did not address – is whether a defendant who pleads guilty online should receive a lower penalty than one who pleads guilty in court.

In principle, there should be no difference. But I take a pragmatic view. At present, a defendant who pleads guilty at the earlier opportunity can expect to receive a discount of as much as one-third on the sentence that would be passed after a contested trial. Traffic penalties are also reduced if paid quickly. In my view, it is only fair to allow lower penalties for those who save court time and ensure that justice is done by pleading guilty online.

Magistrates were concerned about the risks of secret justice but Lord Thomas of Cwmgiedd insisted that convictions, even for speeding offences, would have to be made public.<sup>11</sup>

And that was how things were left when all progress on the Prisons and Courts Bill came to an end in April 2017.

## References

1. <https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement>

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2. <https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/results/transforming-our-justice-system-government-response.pdf>

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3. Under s5(1) Regulation of Railways Act 1889. The maximum fine is £500.

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4. Contrary, for example, to byelaws made under Croydon Tramlink Act 1994, s46. The maximum fine is £1000.

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5. Contrary to s27(1)(a) Salmon and Freshwater Fisheries Act 1975. The maximum fine is £2500.

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6. <https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/results/transforming-our-justice-system-government-response.pdf> paragraph 21(f).

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7. <https://www.linkedin.com/pulse/conviction-trivial-flaw-online-guilty-pleas-penelope-gibbs>

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8. [http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL\\_Singles.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf)

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9. <http://www.standard.co.uk/news/london/mayfair-businessman-slapped-with-750-bill-after-being-allowed-to-ride-bus-for-free-by-the-driver-a3384966.html>

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10. <http://services.parliament.uk/bills/2016-17/prisonsandcourts.html>

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11. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/lord-chief-justice-annual-report-2016/oral/43679.pdf>