HOUSE OF COMMONS

Justice Committee

Oral evidence: Open justice: court reporting in the digital age, HC 596

Tuesday 9 November 2021

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Watch the meeting

Members present: Sir Robert Neill (Chair); Rob Butler; Laura Farris; Kate Hollern; Paul Maynard.

Questions 1 - 74

Witnesses

I: Emily Pennink, Old Bailey correspondent, Press Association; Maeve McClenaghan, Journalist, The Bureau of Investigative Journalism; and Dr Judith Townend, senior lecturer in media and information law, University of Sussex.

Examination of witnesses

Witnesses: Emily Pennink, Maeve McClenaghan and Dr Townend.

Chair: Good afternoon and welcome to the first session of the Justice Committee's inquiry into open justice. We are looking at court reporting in the current digital age. In a moment, I will come to our witnesses—thank you all for coming—but, first, at all meetings Members have to declare their interests. I am a non-practising barrister and formerly a consultant to a law firm.

Paul Maynard: I am a former Minister for the courts who dealt with these issues.

Chair: Welcome to Paul Maynard MP, a new member of the Committee. We are delighted to have you with us.

Laura Farris: I am a practising barrister.

Rob Butler: For the benefit of this circumstance, I was a magistrate for 12 years and a member of the Sentencing Council. I was a broadcast journalist for 15 years and during that time covered lots of court cases in various ways.

Q1 **Chair:** We are hoping that Maria Eagle, a former Minister in the Department, will join us. She is a non-practising solicitor. I get that on the record so she does not have to do it all over again.

Perhaps we can ask our three witnesses to introduce themselves. Two of you are here in person and one is appearing remotely. Emily, do you want to start?

Emily Pennink: I am a court reporter at the Old Bailey for the Press Association.

Maeve McClenaghan: I am a journalist at the Bureau of Investigative Journalism, and most recently I oversaw a project where we reported from possession courts across the country.

Dr Townend: I am senior lecturer at the University of Sussex, where my research concerns the protection of public interest journalism. I have a special interest in open justice and access to justice system data. Most recently, I did a piece of work about justice system data in three different jurisdictions for the Legal Education Foundation.

Q2 **Chair:** That is very helpful. I am very grateful to you for coming. I know that some of you have produced written submissions as well. We are grateful for those. We have seen them, so we will not go through them all, but you may want to refer to them as and when necessary.

We are talking about open justice. A lot of people may ask, "What is that as a concept?" We all think of Lord Hewart's dictum about justice being done but also being seen to be done. That is old enough to be trite law, I

suppose, but what does this actually mean in practice, and why is it important? Judith, do you want to start with that from your point of view?

Dr Townend: I have written quite extensively about that question, looking at how that much-lauded principle translates in practice. That can often be where some of the issues arise that I am sure we will discuss today.

Open justice is very widely understood and hopefully has quite broad public understanding as well as its importance as an accountability check on the functioning of the justice system. It could relate to judicial conduct as well as the content of the cases that are passing through the justice system. Obviously, the media have played a very critical role in that in acting as the eyes and ears of the public in attending courts, as Emily and Maeve are doing in their professions.

Open justice decisions and practice can be rationalised in different ways. That perhaps merits a little more interrogation and thinking about why we want to achieve open justice in different circumstances. It is very important in keeping a check on the functioning of open justice mechanisms themselves, and my interest lies in the practical working of open justice.

Emily Pennink: Thank you very much for inviting me. For me, a good example of open justice working well, but also the reasons why it is so important, is the recent case involving Sarah Everard. If you bear with me, I will explain a little bit why it is such a good example.

When Sarah Everard was abducted and killed earlier this year the case shocked the whole nation. People wanted to know straight away what had happened. When it emerged that a serving police officer was alleged to have been involved in her death, that certainly had the effect of undermining and shaking the foundations of public trust in the Metropolitan police force. Therefore, it was imperative that the case was dealt with as soon as possible, because the general public was demanding answers. They certainly were not prepared to wait a year or more to get those answers and see what had happened and whether anything needed to be done to ensure it did not happen again.

Amidst that crisis of confidence in the police force, as court reporters we had been dealing with court reporting in the pandemic; we had to switch very quickly to video hearings. It was a very difficult struggle for us to get to grips with that and make it work with the court staff. Coming back to the courtroom for the first time, we realised that our press benches had effectively disappeared. The jury was now sitting on those benches because it needed to be socially distanced. It was a very difficult time for the court reporting corps, particularly at the Old Bailey but at courts all over the country, and we were dealing with a lot of the same issues.

When this case came up at the Old Bailey, I and many other journalists ended up having to queue for hours to ensure we had a place in the

courtroom itself, because previously in coming to court you ended up playing a game of musical chairs just trying to ensure you had access.

Q3 **Chair:** I understand that. Perhaps later I will come to the details of some of the things we had to do during covid, but at the moment it is the principle I am trying to get at. You are a court reporter dealing with some of the most high-profile cases that, rightly, as you say tend to go to the Bailey. Why is it important?

Emily Pennink: It was important that the case was fast-tracked because the general public needed answers as soon as possible.

Q4 **Chair:** But that isn't anything to do with the point about open justice, is it?

Emily Pennink: It is an open justice point.

Q5 **Chair:** Why is that?

Emily Pennink: It is a rather long story. Having got into court, it was a good example of open justice. As it turned out, we were able to get 22 people into the courtroom to report the case and many more on the video link and in an overflow court. Therefore, they really pulled out all the stops to ensure that as many people as possible could cover the case.

When Wayne Couzens pleaded guilty, we had already been given access to a case summary and were able to hit the ground running and report a lot of the detail that the public had not been aware of before. At the sentencing hearing, because we were able to sit in the court, we could observe the family of Sarah Everard standing up and giving their very emotional victim impact statements.

Q6 **Chair:** I get that, but what I want to get from you is why it was important that you should be able to do that.

Emily Pennink: Why we should be sitting in court?

Q7 **Chair:** Why is it you should be able to see that? Some people may say, "Does that matter?" People might think it does, but it is worth articulating why.

Emily Pennink: We were the eyes and ears of the public, and to be allowed to sit in court, which is a very privileged position for us as court reporters, we were able to observe what you cannot see on the video link and understand the electric atmosphere as they were giving their victim impact statements and demanding that Wayne Couzens look at them to be able to see his reaction in the dock as he cowered away. We could then put all of that into our court report, which would have been a lot poorer had we not been able to sit in court and observe it first hand.

Q8 **Chair:** I suppose that the germ of the principle behind all that is that justice is done in the public's name, and therefore the public are entitled to have their eyes and ears see and hear what is done in their name. Is that what it really comes down to? You are facilitators of that.

Emily Pennink: I think that was a good example of how open justice works well in very difficult circumstances, but it is one of very many cases that all deserve to be heard and communicated to the general public.

Q9 **Chair:** Perhaps we will come back to the way things have changed in terms of access to the courts.

Maeve, what are your thoughts? Why does open justice matter? Why is that comment of Lord Hewart back in 1924 still relevant, if it is?

Maeve McClenaghan: I would echo much of what Judith said. This is about public confidence in the justice system and the ability to see the process at work. You said that we are the eyes and ears of the public, but justice also happens to the public and they deserve to understand the process. Journalists have a unique position in being able to see trends happening across various courts that you might not see on an individual basis. The courts are not infallible; things do go wrong, and journalists as the fourth estate have a responsibility to be the eyes and ears and watchdogs of the public.

Q10 **Chair:** That is helpful. Accepting all of that, there will be certain instances, I suppose, when it might be necessary to derogate from that principle. The normal proposition is that justice should be done and be seen to be done. Are there circumstances in which it may be necessary to derogate from that under certain circumstances? If so, what do you think they are or should be? Can there be a circumstance where it may be necessary for it not to be in the open, and how do you make sure that is not abused?

Emily Pennink: There are already restrictions on open justice. There are reporting restrictions to protect the identity of youths going through the system and to protect the identity of victims of sexual offences, but there has to be a very good reason for it, and any minor diversion from open justice should be proportionate.

I covered a case this year involving a police officer who was a member of a neo-Nazi organisation. His case was split into two. He had a follow-on case in the offing involving much more minor offences. Because of that, his legal team was able to argue successfully that the entirety of his trial should not be reported at all until the conclusion of the follow-on trial. In instances like that, where cases are of very high public interest, you have to be very careful in balancing the interests. As it happened, approximately five minutes after the jury had been sent out to deliberate he pleaded guilty to the other offences and the reporting restrictions fell away. I think you have to be very careful to consider how a defendant can arguably manipulate the system to avoid public scrutiny. I think it is a really difficult balancing act.

Q11 **Chair:** It is a decision for the judge in every case, is it not?

Emily Pennink: Yes.

Q12 **Chair:** That is probably where it has to be. I suppose the argument used was that you must not prejudice the next case.

Emily Pennink: Yes.

Q13 **Chair:** That is legitimate, is it not?

Emily Pennink: That is a legitimate argument. I am not saying the decision was wrong, but in this case since he pleaded out almost immediately it seemed to observers to be a slightly cynical use of the system.

Q14 **Chair:** The truth is that you do not know how he will plead until he pleads, do you?

Emily Pennink: Exactly so.

Q15 **Chair:** You cannot put him, or any defendant, under pressure.

Emily Pennink: Exactly so, but when you have completely different offences sometimes you have to balance that against whether being convicted of one offence will influence the jury that is considering a completely different type of offence. Arguably, jurors, months down the line, may not remember the earlier case, and in any case it does not affect consideration of the other charges, but I just raise that as an example where a very fine balance has to be struck.

Chair: I imagine the judge would have applied the Times Newspapers *v.* Abdulaziz case, which says that any departure must be on the grounds of necessity.

Q16 **Laura Farris:** To follow that up, some years ago I was involved in practice in a very significant appeal case on open justice. I lost. I was arguing for an anonymity order. The appeal court said in that case that, even when somebody is accused of serious sexual offences against children, it can be appropriate to name them because the public are capable of understanding the difference between an allegation and a conviction.

You have been talking about examples of anonymity. In the criminal field, do any of the witnesses feel that anonymity or restrictive reporting orders are still handed out quite freely? The case I was in set the important and paramount principle of open justice and all the things the Chair has alluded to. Do you think it is given enough weight and seriousness, or are there some judges who are too willing?

Emily Pennink: That is a very good point, and it was one of the matters I had on my list of things to raise. Many of us who operate at the Old Bailey and other courts around the country do discuss these things between ourselves. We have noticed a creeping tendency for more and more anonymity orders to be issued, with people simply not wanting to be associated with a criminal trial and being worried about what people might say about them on social media.

Q17 **Laura Farris:** To make the application?

Emily Pennink: Yes.

Q18 **Laura Farris:** Could any of you give an example, without identifying anyone, of an anonymity order being made that you thought was not properly dealt with, or a context in which it is quite often made?

Emily Pennink: I would not say "not properly dealt with", but in the recent inquests into the London terror attacks there have been lot of applications for the witnesses.

Q19 **Laura Farris:** Which terrorist attacks?

Emily Pennink: The Fishmongers' Hall terrorist attack and the London Bridge terrorist attack. At the inquest level there have been a lot of applications for some of the interested parties to have anonymity; witnesses have anonymity because they have various concerns. In those inquests, some people were given anonymity and were given special measures, which is a separate thing. It is an example where the line is a very fine one. We would certainly argue, as we did but not always successfully, that to have anonymity you must have very serious and real concerns for your personal safety, not just a general worry about giving evidence in court or being associated with a crime, because we think it matters. The bar should be very high, and the interests of open justice should set that bar very high.

Q20 **Chair:** Consistent with the necessity test.

Dr Townend: Going back to the point I made about the practicality of the administration of open justice, it is essential to have transparency around the administration of anonymity orders, but the open justice point is broader than anonymity. We already have automatic restrictions that apply to anonymity for the victims of sexual offences and so on, but there also has to be a concern about closing the court and monitoring it. There has to be a very exceptional circumstance where members of the media and public are not allowed into a court hearing.

A very high-profile example was a terrorism-related case, Incedal, where initially there was no press access to the proceedings. That was very worrying. Eventually, an agreement was reached. I do not think that the set-up was ideal, with only 10 accredited reporters having access to some of the closed proceedings.

That is another area, as well as the anonymity orders, that needs to be scrutinised, thinking about how it is handled and having sufficient transparency.

Q21 **Chair:** That is helpful.

Maeve McClenaghan: To widen it beyond criminal cases, much of our work has been to look at civil courts. There, we saw, interestingly, reporting restrictions being handed down in a very ad hoc and informal

way. In the 683 hearings we sat in, in one case we had official reporting restrictions written up, but many times judges would say to us, quite casually, "Just don't report those names, would you?" or, "Don't report financial details." The casual nature of it left quite a lot of questions for our reporters and was potentially quite dangerous for them in knowing what they could report.

We would hope that open justice is the default position in all courtrooms and, as Emily and Judith have said, it is only in a carefully reasoned and legally sound instance that it would be deviated from.

Q22 **Paul Maynard:** I have a question that hopefully can be dealt with by a simple answer. Is anyone opposed to the idea of open justice other than the criminal? You might have seen the Lord Chief Justice saying the other day that we might have to take a step backwards on open justice after a period of remote hearings. Are we all in violent agreement, or is there a group or sector within the legal establishment that does not want to move in this direction at all?

Dr Townend: It is one of those principles that obviously has widespread agreement on the importance of openness and transparency, but there can be valid questions about how the data is handled in a digital environment. You use the example of criminals wanting anonymity, but there is a serious question to ask about how justice system data continues to be processed in the interests of rehabilitation and so on. There is a stigma that goes beyond a spent conviction, and I do not necessarily have an answer to give you, but that is worthy of policy attention because there is an additional punishment. I think that some of the academic and policy literature around that recognises now that there is an extra stigmatising punishment through the publicity for the individuals involved. Some Australian research has looked at people with very minor offences, even acquittals. There is stigmatisation about having been even involved in the criminal process.

Q23 **Chair:** That is a sort of "mud sticks" argument.

Dr Townend: Yes.

Chair: I understand that.

Q24 **Rob Butler:** I would like to move on to the changing media landscape, so this question is probably directed at you, Emily, but, Judith and Maeve, please chip in as well.

I spent my early career in broadcast journalism. It was a very long time ago. I started in 1990. At that time, even many magistrates courts would have a reporter from the local newspaper sitting in them. As we all know, that no longer happens. Emily, from your perspective working for PA, a news agency that supplies all broadcasters, national newspapers or local newspapers, how would you describe the change in the media landscape over the past 10 or 20 years and, therefore, its impact on the public's awareness of what is going on in the justice system?

Emily Pennink: Digital media has revolutionised the media in this country. On the positive side, I think it has broadened out the audience, made it more diverse and given people access to news who might not otherwise have bought a newspaper. It has also enabled us to tell stories, particularly court cases, and communicate better what they are about, using not only words but a series of pictures and videos. Thanks to the court protocol that we have in place, we are able to gather that kind of material shown to juries so that we can show the general public as well, which I think has been a fantastic step forward.

The other brilliant thing has been the ability to be able to tell stories practically in real time, so it is a lot more dynamic and exciting when you see people blogging on Twitter, for example, a live case that is going on in the court as we speak. It reinvigorates and energises the whole court reporting genre and makes people more interested in it and generates more interest, which is fantastic. You get a lot of feedback as well. Sometimes it is positive feedback; sometimes it is constructive criticism, which is always useful to have.

On the downside, it obviously makes journalists like me, among others, much more vulnerable to online abuse. I was covering the Sarah Everard case. Just before we were about to walk into court for the sentencing, I received a tweet from someone suggesting that as a reporter I should be abducted and murdered as well. You leave yourself open to that sort of thing by the change in the media landscape. We are all unsure—in Parliament, too—about dealing with that much more direct exchange and the vulnerabilities we have.

Q25 **Rob Butler:** I am very sorry to hear that. It is not pleasant when it happens to anybody, especially when you are just doing your job.

You have highlighted in an interesting way what happens in courts such as those you sit in, the Old Bailey—the pinnacle of where the big criminal trials are heard and where there is still a great deal of focus of both traditional and new media. More than 90% of criminal cases in this country are heard in small magistrates courts, which used to have local newspaper reporters in attendance. Those newspapers do not have the money to do that any more, so there is nobody sitting in there tweeting; there is nobody sitting there presenting the evidence that the magistrates have seen immediately afterwards. What is the impact of that lack of local coverage on public awareness of what is going on in our courts—I might turn to Judith for the second part of that—and, therefore, potentially the confidence in the justice system?

Emily Pennink: As you say, confidence in the justice system is important, not just in the big cases. I am dealing primarily with the murders and terrorism cases that come to the Old Bailey. There is only one of me, so I can do only what I can sitting in the Old Bailey.

I recognise that, with fewer reporters on the ground to cover magistrates courts and that kind of thing, very important local stories may not receive

the attention they should. I do not have the answers, but I think you are absolutely right to be concerned about it, because in the absence of hard facts from courts people rely on WhatsApp groups and local chats, which may not have all the information. There is an issue there and I am afraid I do not have the answers to it, but I recognise there is an issue.

Q26 **Rob Butler:** Before I turn to Judith—I know Maeve wants to chip in—you mentioned that you are the only one at the Old Bailey. Has the PA reduced its number of court reporters over the years, or has it stayed stable?

Emily Pennink: I am the only dedicated Old Bailey correspondent for the Press Association. However, when two cases of equal importance need to be covered, I get reinforcements in. I am not making choices as to whether I cover this or that case because I have reinforcements centrally and I have a lot of support from my colleagues who are working across other courts and are doing other types of work. There has been one Old Bailey dedicated correspondent for the PA since I have been there—I have been there for eight years—but historically there were two and, going back a very long way, there were more. Numbers have reduced, but we try to recruit people to help out as and when.

Dr Townend: I am glad you raise that question, because one point I came here to raise today is that it is not just about the media. I think the media plays a central and critical role, but we cannot rely on it wholly as an accountability check because if there is not a news interest, or it does not make usable news copy, or you are asking people to sit in proceedings that are not fully reportable, the media will not necessarily be able to invest in that activity.

Therefore, we need to think of ways of making sure that courts are reported and are attended by other kinds of people. A positive initiative in the family court division has been to allow not only accredited journalists but narrowly defined legal bloggers who fulfil certain criteria, and there is potential to widen that further.

There are people like me, academics, who would like to attend court and report on it. For most courts, we can just turn up and watch them. I did run into a problem during the early part of the first lockdown in trying to get information about the local magistrates court for a research project we were undertaking. It was not set up to remotely supply researchers with information. It had an arrangement with accredited journalists, but that was not available to academic researchers.

Another example I want to give you is a piece of research done by the University of the West of England Bristol. Its research team involved students watching 240 cases in one week at Bristol magistrates court. In that week, they saw only one journalist and just three stories were published of all that case activity. I draw that to your attention.

Q27 **Rob Butler:** As an academic, what do you think that does for confidence

in the justice system? I throw in that sometimes I get correspondence from constituents saying, "I've read in the paper that so-and-so was carrying a knife and was fined only x. How can you possibly justify that?" What is very interesting is that all those journalists have done is pick up the end results of what happened in the court. They have not been there to hear the case; they have not heard the mitigation; they have not heard the magistrate's or judge's sentencing remarks, so there is no context around it. From the perspective of an academic who looks at this in detail, what do you think is the impact on public confidence?

Dr Townend: There is also a role for open justice in terms of the documentation put into the public domain. Going back to your earlier point about the digital environment, one excellent thing that has been facilitated is more digital documentation in the public domain, so more judgments are available directly for the public to look at.

In the criminal space, that is quite poor. We have an issue around sentencing remarks. That was raised by the Lammy review a few years ago and still has not been fully addressed or considered. There is scope for putting more of the raw documents into the public space so that the public can engage with that. There is still an issue about access because a lot of those things need to be translated and explained, but it is part of a broader piece of work on public legal education.

Q28 **Rob Butler:** John Battle is head of legal and compliance at ITN. I worked at ITN and he used to stand over my shoulder and make sure I was not libelling anyone before I went on the air. He wrote a piece in *The Times* last week saying that court reporting needed a reboot for the digital age and proposing a reporters' charter in both civil and criminal courts, which includes a designated place to sit. Emily, you highlighted that that had gone at one stage during the pandemic. He is talking about documents being used in evidence and made available. Is that the sort of thing you are talking about—some formal charter?

Dr Townend: I think so. We are talking about a lot of different contexts here. If you come to this sort of inquiry, you are talking about all the courts and tribunals and there are particularities depending on the jurisdiction, but some basic things should be provided. I would encourage the Committee to look at the transparency review recently undertaken by the family division. In that context it considered a lot of the issues, because I think it reads across to other areas as well. We could look to try to draw up some general basic standards of transparency that would be of benefit to the public.

Q29 **Rob Butler:** Maeve, I know you want to come in as well.

Maeve McClenaghan: I work in the local part of the Bureau of Investigative Journalism. We have a network of more than 1,000 local journalists and assistant journalists across the UK. We tend to work with them on investigations in recognition that the decimation of local journalism means the resources are not there, but more recently we have

been looking at court reporting. As you have said, the issues are about resources and people not being able to attend whole trials and having to be there for sentencing and judgment without getting the context.

In our possession court project we got funding and offered to pay local outlets to backfill spaces so that they could send staff. Even so, we still found it very tricky to get anybody to come and give up the time, because local journalists are being asked to write eight to 10 stories a day. That creates a real deficit for democracy and the information we have out there. As Judith mentioned, great work is being done by the academic Phil Chamberlain in Bristol. They sent out student journalists and found fascinating trends—for example, that a high number of thefts of particularly food and meat were occurring, which speaks to wider societal issues than what is going on in the courts.

In the possession hearings, many judges and lawyers commented that they had never seen a journalist in their courts before. We are not seeing anyone in magistrates courts, or sometimes criminal cases, but in other jurisdictions there has never been anybody there and any scrutiny.

There is the issue local reporters might experience in the more legally contentious cases. I guess you were lucky to have Mr Battle standing over you, but many local journalists would not have that. In an environment where there are potentially increasing risks of libel and issues like that a chilling effect is also happening.

The BBC has its local democracy reporter scheme in acknowledgment that issues happening in council meetings should be reported on. I wonder whether something similar is worth having in local courts as well. If these are indeed places where democracy is tested and the judicial system plays out, perhaps we should be investing in watching what happens there.

Q30 **Rob Butler:** What you have just said takes me to my final point. You talked about citizen journalists and about libel. An important part of training to be a journalist is understanding journalistic law. There is a specific book, which I am sure Emily has ingrained in her head, "McNae's Essential Law for Journalists". There is quite a lot involved in what you can and cannot say at different stages to protect the fairness of a trial, a proceeding or anything else. How concerned are you, if at all, about the fact that a lot of citizen journalists would probably not be aware of all that detail? It is not necessarily their fault. Others attending court proceedings with a phone who can tweet as they are going on and are watching from the public gallery may not be aware of it.

Maeve, I would be interested to hear whether you believe that should be a concern, whether we should be rather more relaxed about the laws around reporting in the social media age, or whether we are in real danger of undermining justice by preventing someone from getting a fair trial and the guilty being let off.

Maeve McClenaghan: I can see why it may be a concern. There are rules and guidance out there and, thanks to the internet, we do not always need a physical copy of McNae's, but it is useful to have those reminders.

There is a slippery slope in saying that only certain accredited journalists would be allowed into courts because it does not reflect the reality of the media landscape at the moment. A lot of the journalists we sent out were local journalists but did not necessarily have press cards, NUJ cards. We gave them some training and guidance, but if you say that it applies to only certain journalists from certain publications, that limits who gets access to this.

More widely, the public should be allowed to sit in on these hearings too and, equally, they can tweet. It is not necessarily the case that we need to clamp down on journalists. Perhaps there needs to be better guidance to the public at the start of big and particularly interesting cases where those rules are set out and made clear both in the courtroom and by the judge.

Dr Townend: There is an obvious role for making sure that the contempt law is clearly communicated to the public. I know that at various points the Attorney General's office has issued campaigns and consultations looking at that question. I believe the last time it looked at the risk of social media it decided that no drastic action was needed, but there has been a recent attempt to provide better education. If you have the benefit of either a law degree or journalistic training you will have encountered and learned about these things, but the public will not necessarily know the fine detail. That is definitely a thing to be tackled and should be part of thinking about transparency policy being more co-ordinated and consistent.

One of my suggestions is that we need some kind of user group involving people from civil society, the media and legal organisations, who, together with the MOJ, HMCTS and the judiciary, can work through some of these issues and devise policy in this area.

Emily Pennink: We have two issues here. When is a journalist a journalist? To address that first, it is a privilege to sit in court and report on cases; it is a privilege to sit on the press bench and have access to confidential information and details of child witnesses and victims of sexual offences. We are privy to a lot of information that should not be in the public domain, and for the courts to trust us with that information we are required to have proper legal training and qualifications to be able to deal with some of it. At the same time, sitting on the press bench is itself a privileged position.

A few years ago we were covering a fairly high-profile contempt of court case. Some people had turned up and gained access to the press bench. They said they were journalists but, if you delved into it a little bit deeper, they were far-right-wing activists. That puts accredited

journalists, or however you want to describe them, into a rather vulnerable position from a security perspective. Anyone can call themselves journalists, but in my opinion not everyone should be sitting on a press bench. If you want to come to court and tweet about it, or gather statistics and details, there is a public gallery. I think there should be a differentiation between the two things because of the sensitive material you are dealing with and because of the security arrangements for journalists, who in recent years have, as I am sure you are aware, come under increasing attack from certain quarters.

Q31 **Rob Butler:** Do you as a professional, fully trained journalist feel there is greater likelihood today than 10 years ago of contempt issues arising because of the change in the media landscape and who can transmit material?

Emily Pennink: The risk is greater, but part of the positive outcome of some of the high-profile cases we have seen is that people are a lot more aware of issues around contempt, particularly with live court cases that have not yet come to trial.

Within the general public at large I think there is a heightened awareness. When you are doing a live court case there is certainly scope for looking at perhaps an advisory at the bottom to remind people that in some instances, with live court reports, one might see online versions that have disabled the commentary function so that people cannot just say whatever they feel like that might influence or affect a jury in the future.

Having said that, I have covered a lot of jury trials. When judges tell juries not to pay any attention to anything they see on social media, or in the general public, they usually follow the instructions to the letter. It is possible to overstate the danger as well.

Q32 **Chair:** That is helpful. You probably know people at the Old Bailey, but you would have your press card to show, would you not?

Emily Pennink: Yes. To get into the Old Bailey you have to show a press card or make arrangements well in advance.

Q33 **Chair:** Maeve, I do not know what your experience has been. If you and your colleagues went to these possession actions, would you be able to produce some form of ID to show you were accredited journalists?

Maeve McClenaghan: We recruited 21 journalists from around the country and some of them, including myself, did have press cards and some did not, but they had a letter from us saying they were employed by the Bureau of Investigative Journalism, but I do think that in the modern age people are creating output on substacks, newsletters, online publications and blogs. The media landscape is much wider than, "I work for *The Sunday Times*", or, "I work for *The Guardian*."

Dr Townend: There is perhaps a nervousness about access to remote proceedings, hence there has been some inconsistency around how you control the context in those settings. As a positive example, I draw your attention to the fact that there has been a Court of Protection reporting project involving academics and filling some of that space not by journalists but maybe by ordinary members of the public watching and reporting the Court of Protection, where very strict reporting restrictions apply, but respecting and understanding those reporting restrictions.

Q34 **Chair:** I understand. I get the sense you also feel that the balance in the president of the family division's latest document is about right.

Dr Townend: At this point it is a positive move and is going in the right direction. I know that some people think that that category of people with automatic access should be widened, but perhaps that is for the next transparency review.

Q35 **Chair:** To go back to some of the practicalities you have encountered recently, from your perspective, Emily, you say there is only you at the Old Bailey now; there used to be more reporters, and normally lots of cases are listed. How do you find out what cases you will decide to report on? Obviously, you need to know in advance, do you not?

Emily Pennink: Yes.

Q36 **Chair:** The list is supposed to be published in advance. Does that actually happen in practice?

Emily Pennink: To work out what is going to happen and when is a very time-consuming process. Generally, I follow cases right from the moment of charge through the system to the preliminary hearings, plea hearings, the trial and, when appropriate, the sentencing hearings. I am following them all the way through. I look through the court list on a daily basis and work with the court staff, who very kindly fill me in on the details of the charges. I can keep abreast of everything that is happening in the building and make choices about what needs to be covered on any particular day. I am always happy to make conversation with barristers outside court to see what they have got coming along. You get a lot of tip-offs as well from people who will tell you about a case that is rather unusual, or particularly serious, or has some element where an issue of high public interest is raised. Those are the kinds of things I am looking for.

Q37 **Chair:** There has to be an element of trust between you and the people you are talking to.

Emily Pennink: Yes.

Q38 **Chair:** I understand that at the Old Bailey the recorder has instituted a system of briefing the press. Perhaps you will tell us how that works.

Emily Pennink: It started when we went through the first lockdown. It was very difficult to gain access to the courts via the new video link

system. Because it was brought in very quickly, nobody really knew how it was going to work. There were technical issues and all sorts of problems we were all dealing with together, not just reporters but the court staff who had to cope with it in the courtroom. I believe it was a positive move. The Recorder of London came to us and we organised to get together every couple of months to raise any issues, so rather than journalists constantly complaining when things do not work properly we could get together and come up with some solutions and make a little more progress.

Q39 **Chair:** Do you do that physically or online?

Emily Pennink: Normally, we meet face to face.

Q40 **Chair:** Within the building?

Emily Pennink: Yes. I think that, when we started off, for about five weeks during the first lockdown only short preliminary hearings and plea hearings were being dealt with because all the trials were put off. We then came back to the courtroom because the video link system was not consistent or reliable enough for us to be able to rely on it.

Q41 **Chair:** I imagine you would like to see that carrying on going forward.

Emily Pennink: There is a balance to be struck. The video links are incredibly useful for certain things, but there is nothing like being in court and getting the whole view of what is going on.

Q42 **Chair:** Maeve, in the project that you and others were involved in, what were the particular challenges about willingness to get access and so on?

Maeve McClenaghan: Starting with the court lists, we were hoping to sit through whole days' worth of hearings at county courts so that all the possession hearings would come up. That became tricky because often the lists would be published only late in the afternoon the day before. That did not give us time in remote hearings to make a request because the request had to be for a specific case number. Therefore, it did not facilitate journalists who just wanted to go and watch everything that happened that day. That was the first challenge.

Then we hit an even more fundamental issue. We sent journalists out to 30 courts on 110 different days or instances over the course of the summer. On six of those days we were stopped completely from going into any hearings by judges who told us, "Possession hearings always happen in private; journalists are not allowed in." The civil procedure rules were changed in 2019 and now possession hearings should be public by default.

There are certain instances where judges can rule that they be private if they feel that is the only way to administer justice, yet we were facing blanket bans. Interestingly, we found that on one day we would have no issue and would sit in a whole day's worth of hearings, and the next day we would turn up and a different judge in the same courtroom would tell

us, "No, no. Journalists are never allowed into these hearings; they are closed to the public." There was a fundamental confusion or misunderstanding about whether we were allowed to be in those hearings. Even when we did get in, we saw lawyers arguing that we should not be allowed to be there.

Q43 **Chair:** Is that because judges and perhaps lawyers did not know about the change to the civil procedure rules?

Maeve McClenaghan: I think, generously, that was what it seemed to be. When we appealed to more senior judges, designated district judges, they would often say, "We are completely for open justice; of course you are allowed in," but that message just had not filtered down. Perhaps it had never been tested because, as I said earlier, a lot of judges and lawyers remarked they had never seen journalists in those courts before.

Dr Townend: I suppose that, if it is uncommon to see journalists, people are not always up to speed on the latest policy. That relates to the point about trying to make things more consistent, working closely with the judiciary, the court service and the MOJ, and involving other groups to a greater extent to devise policies and practice around that.

One other thing I would suggest is thinking about some kind of independent office where you might be able to take issue about open justice or it would be notified of applications for discretionary closures or additional anonymity, and it would act when the media were not inclined necessarily to intervene. I have alluded to that in my written evidence, and I can certainly provide more information on that.

Chair: That is helpful.

Q44 **Kate Hollern:** It is interesting to hear about the inconsistencies in the responses you have been getting from courts. Do you have any examples of where you have seen some good practice in access by both journalists and the public? Are there any particular courts that seem more receptive to journalists and the public gaining access for information?

Maeve McClenaghan: I think it varied. As I said, it was not necessarily the court and depended on the day and one judge or another. I sat in many hearings myself where lawyers tried to get me sent out and said, "This should be in private." Often, the judge would push back and say, "What are the legal reasons? Do you have a submission on that?" At other times another judge would not.

Anecdotally, out of the 30 courts, I know that our reporter who went to Cardiff county court said he had felt very welcomed and supported. In Manchester, the designated district judge was very supportive to us. In our experience, it did not come down to this jurisdiction or this courthouse particularly; it depended on the individual judge, or level of judge, on the day. We have been gratified that the Master of the Rolls has since written to all civil judges reminding them that journalists and the public should be allowed in by default to possession hearings, so

hopefully there has been a positive outcome from that, but it takes some tenacity of spirit on the part of the journalist to keep pushing at those doors even when they are closed.

Q45 **Kate Hollern:** I would be interested to hear in future whether there is any improvement or whether there are still blockages. Judith, do you have any thoughts on that?

Dr Townend: On the Court of Protection, I have written an article. We have mentioned some of the teething problems there in accessing remote hearing details. We had an update after we wrote that saying that things had improved. Maybe the initial emergency measures because of the pandemic and the confusion around how to afford access through remote hearings in that context have now improved.

Chair: That is good to hear.

Emily Pennink: I am very sorry to hear about the experiences that Maeve's reporters have had. I can speak only about my own experiences. Having spoken to my colleagues around the country, I know that access to remote hearings has been patchy at different courts. The Old Bailey has been a fantastic example of giving access to as many people as possible to video links. Like a lot of the courts, there have been problems, but the willingness to collaborate, communicate and work on finding solutions has been fantastic. Outside the Old Bailey, I have been to one of the Nightingale courts up the road. There was a level of surprise to see a reporter turn up there, but I was very happy to see that the system was working quite well there and that we were allowed access. There was just a little bit of surprise, but it was fine.

As for the other areas that have been fantastic with access, I refer to the inquests arranged by the Recorder of London in his capacity as coroner. The Fishmongers' Hall inquests, which were moved from the Old Bailey to a temporary court at the Guildhall, made it possible for a very large number of journalists to attend. The arrangements were absolutely phenomenal. We have never had it so good.

The ongoing inquests at Barking town hall, which is another transfer, into the deaths of the victims of the serial killer Stephen Port have been going on for 10 weeks. Staff who are not used to dealing with journalists suddenly have an influx of journalists, but they are coping admirably. It is worth noting that there are some areas where people have gone beyond the call of duty to make it happen.

Chair: That is helpful.

Q46 **Kate Hollern:** You spoke about access to information. I know that you use barristers and different avenues to get information. How do courts or judges differentiate the information that a journalist should have from that available to a member of the general public or a legal blogger? How would courts differentiate the right to access to information?

Emily Pennink: It is a tricky issue. As we heard from Maeve, there is a bit of a grey area, but journalists with legal and court reporting training are trusted with privileged information about victims who cannot be identified, for example, and access to case summaries, which are fantastically useful. A case summary in the Sarah Everard case enabled us to report straight away the details as soon as the defendant pleaded guilty. Do you give that to someone who is not legally trained or any member of the public who could put that in a blog and does not know anything about the law? You have to be sensible about it. Being a court reporter is a very privileged position and you get access to this material that should not be in the public domain.

There is also a question around reporting restrictions. I am sure Maeve's reporters would very much appreciate knowing whether there is a reporting restriction in a case they are covering, but the reporting restrictions themselves very often carry details of the very thing you cannot report. That is the kind of thing to which accredited journalists have access, but others may not. As a member of the public you cannot necessarily expect to have access to information that is not in the public domain already, although anyone is certainly welcome to sit in the public gallery and watch cases live.

Q47 **Kate Hollern:** And tweet regardless. Maeve, do you have any thoughts on how courts should differentiate the level of detail, whether it is a journalist, blogger or just a member of the public? How would courts decide who can have access, and how can that be facilitated? It goes back to your point that you are getting cases on the day. Obviously, it needs a great deal of thought on what information can be shared by which group of people.

Maeve McClenaghan: I think that is tricky. As I said earlier, for journalists who want to sit in on a day's worth of hearings in magistrates courts, possession courts or employment tribunals, whatever it might be, it is not always necessarily a matter of presenting themselves on a case-by-case or hearing-by-hearing basis. Emily is right. There is information that is highly sensitive and needs to be navigated carefully, but perhaps on the day, at a specific moment when the journalist or blogger could put their case to the judge and explain how that material would be used and why they wanted it, and have a chance to challenge any restrictions that are put upon them. It probably necessitates a dialogue.

Dr Townend: I have perhaps a slightly different perspective from Emily in thinking there is a case for other sorts of people sometimes to have access to that material. I do not disagree that it is a complicated matter to work out. I see the risks involved, but I think that there is a legitimate reason for other people working in the public interest to have access to case documents, whether it be NGOs working in specialist areas of the law, academic researchers or a wider set of people. At the moment we have a lot of inconsistency, coming back to Maeve's point, about a particular judge deciding whether or not to grant access to something,

especially around case documents, finding out the details of reporting restrictions, orders and so on. That is certainly something that needs greater attention and better consistency across the court system.

Q48 **Kate Hollern:** We are here to talk about open justice. It could be quite difficult to justify why a journalist should have information and the general public should not.

Emily Pennink: I think it is quite straightforward. The general public should have information—that is fine—to be published and be in the public domain, but journalists are working with material that is quite sensitive and is not in the public domain to enable them to do their jobs as journalists. If everyone had access to that information, it would be difficult to stop it leaking out into the public domain. There has to be a level of trust that the person who has access to it will deal with it in the right way. I do not know whether press cards are the way forward, or how you define what an accredited journalist is, or how you define whether someone needs the information for academic research, but you have to draw the line between what is a case to be published in a blog or on the news and information that must stay private until such time as it is introduced into the public domain.

It would be difficult to give any member of the public access to some of these documents. If you were, say, the victim of a sexual offence and you were told that any member of the public could find out your details on the court system, or any court material, you would quite possibly not be prepared to proceed with the case, so there has to be a level of trust and protection for some of this material.

Q49 **Kate Hollern:** Why would a journalist be any different? If you cannot use that information, why would you be different from anyone else?

Emily Pennink: Because very often these people's names appear on indictments. As journalists, we know because of our legal training that we cannot report the names, but they are there. For example, I covered a case involving someone who was charged with many different accounts of sexual assault against different women. To enable you to understand the age differentiation between the victims and how many victims there were, if you anonymise it too much you cannot report the case properly. That is just one example of why you need the information, even though it is information that can never go into the public domain.

Kate Hollern: You can understand how difficult it is to explain to the public that you are campaigning for open justice—but only for certain groups. It is a difficult one, Bob.

Q50 **Laura Farris:** I have a question about access for the general public. Sentencing remarks are not uniformly published. Do you believe that inhibits the public's understanding of what happens in criminal trials?

Emily Pennink: I think that publishing sentencing remarks is a good thing. I know that a lot of the sentencing remarks of High Court judges

are published online. That is great for us, but it is also useful for the general public to understand the sentencing and the legal framework behind it.

Q51 **Laura Farris:** Do you think it makes it more difficult, perhaps even impossible, to write to the Attorney General's office and make an application to the unduly lenient sentence scheme if you have not seen the sentencing remarks?

Emily Pennink: It is important to see the sentencing remarks to understand how a judge has arrived at a sentence. These days, I come across a lot of commentary from judges that their sentencing remarks are being uploaded to the digital case system, so there is a record of them somewhere; it is just that they are not necessarily publicly available. Sometimes, you can apply to judges and they will give you the sentencing remarks and sometimes they will not, but they exist in a digital form. There is certainly a debate to be had around access to parts of the digital case system and the ability to apply for that material.

Q52 **Laura Farris:** It seems to me it is the only area of law where you do not get any written reasons unless the sentencing remarks are published, because the jury does not give reasons.

Dr Townend: My understanding of it is that sometimes it is at the discretion of the judges. If they think there is specific media interest, they will release them. This was in the Lammy review. This is an issue not only for the media but defendants wanting to access the raw material of the sentencing remarks and not necessarily being able to access that record. The recommendation in the review was that they should all be published.

That should definitely be looked at as an option. I link it with the earlier point I made about thinking about rehabilitation and managing the data going forward. What is an appropriate mechanism? Is it something to which you have access but is not necessarily published to the open web, for example—thinking about appropriate models for publication—but certainly these things should be routinely archived and available on request?

Laura Farris: Can I ask a question about the civil courts? I do not know which one of you would be best to deal with it.

Chair: Ask the question first and then we will see.

Q53 **Laura Farris:** The data available on the listing documents at the start of the day would often, in some forums, have the cause of action and the name of the parties. What does anyone with experience of reporting civil proceedings need, but perhaps not get immediately, to help determine whether to report a particular case or whether there is a public interest in doing so?

Maeve McClenaghan: I think you are right. I think the court lists are very scant on information. It is interesting that those names are all published, yet sometimes judges or lawyers ask us not to publish the names. We would point out that they are online. We did some work scraping court lists to get a sense of who were the mortgage lenders, for example, bringing cases in possession courts, but there is very little extra information, to the extent that possession lists, in which we were most interested, sometimes were marked as such but often were not. You almost had to guess by the context and the names whether it was likely to be a possession hearing or not. There is very little information there.

Q54 **Laura Farris:** If you were in a position to draw up the basic rules, what do you think should be published on the listing documents that would indicate to a journalist the public interest in the story?

Maeve McClenaghan: You can get a sense from the length of time of the hearing, but just how much detail they are going into is not always explained. What stage we are at is also useful. If it is the first hearing or a trial that has been relisted, that can be useful. Ideally, as a journalist you would get some summary of what is happening, but I understand that that may prove tricky because the nuances of the case might not be well reflected; indeed, the outcomes are not known at that point. I do not know about a wish list of what we want. The more information the better. I refer to judgments in employment tribunals, which are published, for example.

Q55 **Laura Farris:** On employment or industrial tribunals, I think the way they get reported is that, for example, you will see "SD"—sex discrimination—under the case name. If the respondent is, say, a charity it will often be reported because it is a good story. You have a benign organisation that is being sued for something serious. I think that is how the calculation is made, and I just wonder whether that is always the best way for journalists to decide on reporting it.

Maeve McClenaghan: On employment tribunals, I looked through scores and scores of judgments to try to see whether there was a way we could use those published judgments to look at patterns of things happening. There is scant detail because there are no sentencing remarks and there is no explanation of what the case is about. It would sometimes be one or two lines saying it was found in x's favour against y. For a journalist, or anyone, that is not really useful. I think it would be great to have markers on the court listings, but also to have a bit more detail in the write-ups.

Dr Townend: It depends on different courts and tribunals, but the case names are often a guessing game. It is like looking at the coding to try to figure out whether it might be of interest to you. From a journalistic perspective, names are useful, but any more information about the issues of the case would be useful. There is a resource issue, but currently it is very difficult to navigate the court system and lists, and what is available to the general public is very bare bones in the civil and criminal context.

Emily Pennink: I absolutely agree with what you have said. Not just in civil cases but in criminal cases you get names on the list that do not tell you very much. You need to know what you are looking for. There is certainly an argument for including more public information to be able to assess some of these cases and understand what they are about, rather than spending a lot of time talking to court officials, who are already incredibly busy.

Q56 **Laura Farris:** I am sorry to go back to the civil arena, but would it look like the cause of action, the number of the parties and the value of the claim? Would that help journalists?

Dr Townend: One area I have looked at a lot is monitoring and tracking defamation cases. I found it nearly impossible because there was very limited information or tracking, and there were also issues about accessing the court files. There is definitely a piece of work that could be done to make it much more usable to navigate the system.

I slightly step back from thinking about publishing everything to the open web and what a model might look like, because it could be that a better database can be designed and, using that, you can access that information, whether at the court or via an application to access that database. I think that is part of a general consultation exercise that needs to be done on these systems for managing justice system data. I believe this Committee has heard from Dr Natalie Byrom, who has done very important work on the inconsistencies in the management of justice system data. I think this issue sits within that work.

Maeve McClenaghan: Beyond the listings, we were shocked. We submitted freedom of information requests to the Ministry of Justice asking for what we thought were simple things around Covid, the marking of cases and the details of what cases were coming through the possession courts. We were told that the data were either not collected or were not collected in a way that would be easily extractable under the time limits of the Freedom of Information Act. It is more than navigating which cases are interesting to go and look at. There is a wealth of data being missed. It could be collected in these court cases that would give both journalists and policy makers a deeper insight into what is happening.

Q57 **Laura Farris:** My final question is a procedural one. I think I am right in saying that in civil courts you have the right to see the pleadings and witness statements, or do you just have a right to request them?

Chair: Maeve, can you help? You have probably done more work on the civil side.

Maeve McClenaghan: I think you have the right to request it, but I would have to double-check. We were focusing on just possession hearings where there was not that much information even to request.

Q58 **Chair:** Perhaps we could check that out.

Dr Townend: I would want to check it. I was looking at the case of Dring *v.* Cape Intermediate Holdings on access to court data in the civil context and what a non-party was entitled to access. That went all the way to the Supreme Court in establishing how much information should be provided to a non-party. It would probably be worth looking at that, but there is a practical issue. Even if you have that right, how do you go about it? What is the cost of accessing certain documentation, and who supplies it?

Q59 **Laura Farris:** I thought you were going to say yes to witness statements and pleadings, because I am always being asked to hand them over to journalists and have done so. If the answer is that it is variable, would it be right to say it would be better if it was always the witness statements and pleadings? Would they be helpful documents?

Chair: Do you agree or disagree? Would it be helpful to have sight of the pleadings?

Dr Townend: There may be rare examples where they have to be withheld, but, yes, the more information the better.

Chair: I see Maeve nodding in agreement.

Q60 **Paul Maynard:** I wish to return to Maeve and her idea of replicating the BBC's local democracy news reporting service. One of my concerns is that local journalism these days, being so much online, focuses on salacious clickbait. It will trawl what is going on in my local magistrates court and find out about all the badly behaved tourists out for a night on the town in Blackpool. It makes for great copy. How would you avoid incentivising that coverage rather than your own value-added, more considered reporting? I am sure you can illuminate much more Blackpool's social challenges in the magistrates court with your style of journalism than x with a fire extinguisher in the Hotel Clarendon, for example? How would you see your idea working in practice to deliver a good outcome rather than a bad one?

Maeve McClenaghan: I think the clickbait issue is linked to funding. You are trying to get readers to your site because your model is based on an advertising model. If we take that away, you need to find ways of funding this, like the local democracy reporters. Councils are not clickbaited stories; they are not flashy; and they are not often salacious. Sometimes they might be; a parish council might be. Generally, the crucial day-to-day, less flashy work is done, but that scheme recognises that these are absolutely vital places that need to be scrutinised and reported on.

If the court system had a similar scheme set up, perhaps we would be less likely to report only the goriest or most shocking crimes, or the ones involving celebrities, and there would be a wider and more truthful reflection of what is happening in society. Without that, journalists are left to rely on things like press releases from police forces, which, as HuffPost UK revealed in a great investigation, were racially skewed

towards putting out stories about black British people that did not reflect the reality of the stats and what was actually happening.

Q61 **Paul Maynard:** There seems to be a stark choice here. We can go down two paths. One is to recreate a golden era that has gone by. We can subsidise reporting and subscription costs—bring them down, for example. You may have heard of a service that gave evidence to us called Courtsdesk News, which had a nine-week trial run involving 78 journalists, 42 courts and 427 stories published. It all sounds wonderful. That is all trying to recreate the glory days of what went by. The alternative—perhaps this is what Judith promotes—is more radical and disruptive, using machine learning, AI, speech-to-text transcription and looking at what other jurisdictions like Australia and Canada are doing, using disruption and doing something very differently rather than having to recreate what has gone before to pursue open justice. I wonder whether the two of you can compare and contrast those approaches.

Dr Townend: Obviously, within freedom of expression and open justice you have to allow media organisations to choose which task next to focus on, but there is a broader range of reporting that can be done. I like the Bristol study, which was framed not only in terms of the newsworthy stories that had been missed in that week but what they called justice reporting, which is the functioning of the justice system. It will not necessarily always be attractive to an ill-resourced court reporter to be able to report all those aspects.

A policy challenge is to think about how that is done and whether it is via a public subsidy. You mentioned the local democracy reporter scheme, which is focused on council reporting. To date, I think there has been some mention about whether it could be expanded to court reporting. That would definitely be worth exploring. My view is that it should not be just subsidy of corporate media organisations; we should think about how other organisations—for example, the Bureau of Investigative Journalism or academic research projects—could participate.

Emily Pennink: Picking up the comment about clickbait—this is slightly a side issue here—the general public are not just interested in salacious stories or in celebrities speeding down the motorway. To give you an example, one of our biggest public engagement stories very recently was the case of the two police officers who admitted misconduct in public office by taking photographs of the bodies of Ms Henry and Ms Smallman. That story resulted in one of the highest engagements online that we have had all year. Therefore, to say that the public are interested only in salacious, celebrity-led clickbait is probably a disservice to the general public.

Q62 **Paul Maynard:** The business model of my local papers is driven by attracting and driving online readers to the most eye-catching stories. That is their business model. My point is that, if you are to invest public money in incentivising more court reporting, how do you ensure it adds value to the public understanding of justice, as opposed to reinforcing

that business model, which may be of commercial interest but not really of public interest?

Emily Pennink: I appreciate the point you are making. The problem with court reporting is that it is difficult to say this court report is a good one and that one is not a good one. Each is court reporting on issues and cases that deserve to be in the public domain. It is quite difficult to say we approve of this court report but not that one. To a certain extent, I am afraid you have to take the rough with the smooth.

Kate Hollern: On Paul's point, the headline quite often does not reflect the actual story, and that causes problems, does it not? A headline attracts some colourful people—we will call them that, Paul—but the story does not reflect what happened. There is quite a bit of responsibility on journalists to get access to information and present it factually. Clearly, that has to be demonstrated.

Q63 **Rob Butler:** On your point about the stories that people engage with, you probably accept that, as a journalist and the only reporter at the Old Bailey, you exercise some editorial decision making every day. I think there are 12 courts at the Bailey. You have to decide which of those you are going to go to. I do not imply any criticism. I worked in commercial television. We had to get bums on seats to pay for the ads to pay everybody's salaries, but, if you have two different cases and one is a fascinating point of law and one is less fascinating but features somebody who has been on "Love Island", I suspect you will be driven towards the "Love Island" character because that is what people want to read about, not the interesting point of law. Let us pretend that on that day you do not have back-up coming from the office to support you, so you have only one story.

Emily Pennink: To be fair to my colleagues at the Old Bailey, I am the only Press Association reporter at that court. The Old Bailey has a press corps and a lot of journalists are coming and going. Therefore, I am not bearing the entire burden.

Q64 **Rob Butler:** But you take my point.

Emily Pennink: You have to make editorial decisions every day, as I am sure you are aware. We do not see many celebrity stories coming to the Old Bailey, primarily because it deals with very serious criminal offences, such as terrorism. I do not have experience of dealing with celebrity cases.

You have to make editorial choices. I probably cover the vast majority of the murders that come through the Old Bailey and pretty much all the terrorism cases. The seriousness of the offence makes it newsworthy in itself, but I am also looking to focus particularly on cases that have already come into the public consciousness and have a high profile—there is already public interest in following them—and cases that are very unusual and that raise issues of public interest. Sometimes you have to

make hard choices, but those are the kinds of balances we have to deal with every day.

Rob Butler: This is not a criticism. You cannot force somebody to read an article if they are not gripped by it, but I thought it was worth talking it through.

Q65 **Chair:** Finally, I have some topics that I want to talk about. Reference has been made to Sir Andrew McFarlane's report on transparency in the family courts. Maeve, do you take any different view from Judith that this is a step in the right direction?

Maeve McClenaghan: No, only that we are very excited. The Bureau of Investigative Journalism has been part of the discussions. It is hoped that we will be involved in the pilot. We think it is a step in the right direction. I understand that that court in particular necessitates an incredible amount of thinking about the protection of those involved and responsible reporting, but it can only be a good thing that those stories and the wider trends happening there will come to light.

Q66 **Chair:** That is helpful. There are some further matters, initially perhaps more from Emily's perspective, but it varies. We have some proposals going through at the moment. The courts reform programme itself has implications. For example, there are proposals for online guilty pleas. What is your reaction to online pleas?

Emily Pennink: I think that continuing with remote hearings and online pleas has to be a positive thing if it will help to get through the backlog. From my perspective, the greatest challenge and threat to open justice right now is the delay in cases coming to trial. It is probably not something that is talked about enough in the context of open justice, but a lot of these cases are circling in the ether waiting for a slot and we need to bring them forward so they can be reported. Anything that will speed up the system and help us get through the backlog is good, but we need to make sure that there is a robust system in place so that the public and journalists have equal access to anything that is not being done in the traditional way in a courtroom where anyone can turn up and sit in the public gallery.

Dr Townend: I think that in the inevitable move to online systems there is an opportunity for better transparency, but we have to make sure the mechanisms are built into the new functions. It is not just the case itself but the mechanism. Penelope Gibbs of Transform Justice has asked: with an online conviction what is the process? What does that look like? What does the defendant see? Sometimes there is not a dummy run for someone to go through unless you happen to be a direct participant in that process. That point would apply to the civil context as well in terms of online dispute resolution models. The Police, Crime, Sentencing and Courts Bill talks about remote hearings and there are provisions for live streaming, but some of that detail will be in the secondary legislation.

Therefore, it is critical to have scrutiny to look at how these will operate in practice.

Q67 **Chair:** I know your colleague Tristan Kirk from the *Evening Standard*—he covers the Bailey as well—in his evidence to us had some concerns if it becomes a purely administrative function, for example, indicating your plea by email between your solicitors and the court. You are never aware of what that is, or is there some protocol and other means of alerting you to that?

Emily Pennink: If this is the road we are going down to speed up the system, streamline it and use the technology available to us, I am not opposed to that in principle, but I share Tristan's concerns that this material is made available so that if someone pleads guilty other than in a courtroom they do not fall under the radar.

Q68 **Chair:** I do not know whether any of you have come across any issues with the operation of the single justice procedure in the magistrates court. Concerns have been expressed to us. Again, there may not be public access. It is happening in a room behind the scenes—in effect, in chambers. How would you as journalists, or academics studying journalism, find out about the outcomes of single justice procedures?

Emily Pennink: It is not really my area, but I am aware of significant concerns about it.

Q69 **Chair:** Judith, I do not know whether your research has covered any of that.

Dr Townend: There are now online lists for single justice procedure cases, but with very bare information, so I am not sure how easy it would be to understand what was going on without making further applications. I think Tristan Kirk with HMCTS has worked to make some improvements to the protocol, but it may be there are still improvements to be made.

Q70 **Chair:** The Judicial Review and Courts Bill provides a legislative provision for an online procedure rule committee for both civil and criminal. Is that something that your organisations plan to make representations upon in due course when it is set up?

Emily Pennink: I would have to get back to you on that.

Q71 **Chair:** Fair enough; I just raise it. Although it has not yet happened, have any of you thought about automatic online convictions as opposed to pleas? At the moment, there is not very much of it, but under the courts Bill currently going through Parliament there is provision just for cases involving bilking the railway, to use the slang term—travelling without a valid ticket—or fishing without a licensed rod, for some reason that escapes me. They may not be things you would be looking to report on very much, unless it is perhaps a celebrity or prominent person who travels without a train ticket. Is that something which the organisations you represent are concerned about or have addressed at all?

Emily Pennink: The main point is that there needs to be a mechanism to find out about it, whether they are doing it administratively or coming to a court. There is certainly an argument that when somebody has committed a crime it is a serious matter, and coming to the court and sitting in a dock brings it home to whoever is involved in it how serious it is. That can have a positive deterrent effect in the future, but if you have to fill out a form and take your fine that may not be seen as quite as serious a matter. If we are talking about relatively low-level offences and it speeds up the system, I can see the argument for it.

Dr Townend: This is slightly outside my area. Broader access to justice points and points about fair process are raised as well, but Penelope Gibbs and Transform Justice have a lot to say on this.

Q72 **Chair:** Indeed. We have had some evidence on this from Transform Justice.

The final point that I want to raise is clause 166 of the Police, Crime, Sentencing and Courts Bill, which I know Judith is seized of. It seems to be the enabler for broadcasting court proceedings.

Dr Townend: I think it takes what was happening in the interim under the Coronavirus Act 2020 and gives it more permanent form. From what I have looked at, it seems to me that the detail will be in the secondary legislation. The court has discretion, but there seems to be variability as to how that operates in practice and whether at the moment someone would be granted access to remote proceedings.

Going back to earlier questions, it is about having clarity on that and having a bit more consistent policy about whether we limit the types of people or see this as a broad public right.

Q73 **Chair:** Are there any other points on clause 166?

Emily Pennink: If you are talking about broadcasting sentencing remarks, it is a good thing. It helps the general public to understand; it increases engagement and interest in the criminal justice system, which is in everyone's interest. There are certain cases where it is less appropriate if there are issues over identifying people and so on. I sat in on one of the broadcast trials at the Old Bailey. It seems like a long time ago now because it was pre-pandemic, but it worked well. I can see how people would benefit from seeing how the system works.

Q74 **Chair:** Some people may say that, if you do that, why not go the whole hog and broadcast the trial? I am not necessarily advocating that, but what are the pros and cons of that?

Emily Pennink: I think we are moving in that direction. There are issues with complex and serious cases. There are also issues about the reaction of people involved in the trial process and whether witnesses would be put off giving evidence if they knew it was going to be televised. There are real issues around that. You do not have those kinds of issues when

you have an experienced judge who is used to public speaking. There are problems with broadcasting trials, but there is certainly an area of exploration here.

Dr Townend: I would probably reserve judgment on that question, but I would encourage research and user consultation before leaping into that and taking a looking at other jurisdictions where they broadcast trials more routinely, and the detrimental effects as well as the positive ones.

Maeve McClenaghan: I make only one small point on the availability of court transcripts, judgments and accessibility. The language used needs to be understandable, parsable and accessible to the wider public. There is no point broadcasting remarks if they can be misconstrued or misunderstood. There might be some work to be done on making it comprehensible to the wider audience.

Chair: That is very helpful. Unless any of my colleagues have further questions, I thank you all very much indeed for your time and your evidence. It is very much appreciated. If there are bits of follow-up you would like to raise with us on reflection, perhaps you would write via the Committee Clerk's team. We would be very happy to have anything further that might occur to you. We are very grateful to you for coming to give evidence to us today.