



House of Commons
Justice Committee

**Open justice: court
reporting in the digital
age: Government
Response to the
Committee's Fifth
Report of Session
2022–23**

**Seventh Special Report of Session
2022–23**

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicectee and in print by Order of the House.

Committee staff

The current staff of the Committee are Robert Cope (Clerk), Philip Jones (Second Clerk), Anna Kennedy-O'Brien (Committee Specialist), Tanya Lightfoot-Taylor (Committee Specialist), Su Panchanathan (Committee Operations Officer), George Perry (Committee Media Officer), Jack Simson Caird (Deputy Counsel), and Melissa Walker (Committee Operations Manager).

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Seventh Special Report

The Justice Committee published its Fifth Report of Session 2021–2022, [Open justice: court reporting in the digital age](#) (HC 339), on 1 November 2022. The Government's Response and a covering letter were received on 9 January 2023 and are appended to this report.

Appendix 1: Letter from Mike Freer MP to Sir Bob Neill MP

Dear Sir Bob,

The Government welcomes the Justice Select Committee's report on Open justice: court reporting in the digital age, and we are grateful to those who contributed to this inquiry. We have carefully considered the conclusions and recommendations made by the Committee and have provided our response in a memorandum attached to this letter.

The Government remains committed to upholding the principle of open justice. We are confident that the steps we have taken, and continue to take, strengthen the accessibility and transparency of the justice system.

The £1.3bn HM Courts and Tribunals Service reform programme aims to create a court and tribunal system which is just, proportionate, and accessible to everyone. It has progressed several pilot projects that underpin and expand openness and transparency. This includes the Publications and Information project which will digitise the publication of court and tribunal hearing lists and make them available online, and the Video Hearings service which facilitates remote hearings.

In recent years the Government has also facilitated the broadcasting of proceedings in the Court of Appeal (Civil), the Competition Appeal Tribunal and, in a limited capacity from Summer 2022, judges' sentencing remarks from the Crown Court.

Furthermore, in April 2022 The National Archives became responsible for the storage and publication of judgments and decisions from courts and tribunals in England and Wales, increasing access to case law. Court judgments and tribunal decisions are being made available to the public through the 'Find Case Law' service. The service currently prioritises judgments and decisions from a limited number of courts and tribunals, but the final aim is to provide a complete record of judgments and decisions.

In addition to this, in June 2022 we enabled provisions in the Police, Crime, Sentencing and Courts (PCSC) Act 2022 that allow the media and public to request access to remotely observe any open court and tribunal hearing across England and Wales, subject to judicial discretion and where doing so will not create an unreasonable administrative burden.

Finally, I am pleased to say that in 2023 the Ministry of Justice will launch a wide-ranging call for evidence exploring the themes of open justice, access to information and data, and transparency across our courts and tribunals. In this open policymaking exercise, we will gather stakeholders' views on how we can support and strengthen openness, transparency,

and the accessibility of our court and tribunal services. Recognising the challenging fiscal environment, this exercise will help us target our limited resources where they can have the biggest impact.

I am delighted to have taken on ministerial responsibility for court and tribunal transparency in the department and, in taking this important work forward, I will draw on the valuable learning and insights gained through the Committee's review of open justice.

Mike Freer MP

Appendix 2: Government Response

Introduction

1. The Government is grateful to the Justice Select Committee (JSC) for its Open justice: court reporting in the digital age¹ report.
2. His Majesty's Government is committed to the principle of open justice, commonly defined by the axiom 'justice must not only be done, but must be seen to be done'.² This principle is underpinned by Article 6 of the European Convention on Human Rights³, and in common law.
3. As outlined in our written evidence from November 2021, our efforts to ensure the justice system is open and transparent are embedded into the working cultures, procedures, and practices of our courts and tribunals, and within our ambitions for reforming the justice system. It is a shared endeavour between the Ministry of Justice⁴ (MoJ) (which sets the policy and legislative framework), the judiciary⁵ (who carefully balance the need for open justice against ensuring the proper administration of justice), and HM Courts and Tribunals Service⁶ (HMCTS) (which administers our courts and tribunals).
4. Part of our commitment to open justice is our ongoing commitment to facilitating and supporting court reporting. We recognise the vital role court reporters and the wider media play in chronicling what transpires in our courts and tribunals, and how this reporting strengthens the public's understanding of our justice system and faith in the rule of law.
5. The Government is confident that the steps it has taken, and continues to take, strengthen the accessibility and transparency of the justice system. We will outline this work in response to the JSC's conclusions and recommendations below.

Response to conclusions and recommendations

JSC1: We would encourage every family court in England and Wales to invite their local MPs to visit so that they can hear accounts of the issues facing the family justice system from those who are responsible for delivering justice on a daily basis.

6. Court and tribunal hearings in England and Wales usually take place in public and, as such, we encourage everyone in our society – including journalists, academics, and Members of Parliament (MPs) – to visit our courts and tribunals to see justice being delivered.
7. In October 2021, the President of the Family Division (PFD) published his review of transparency in the family courts.⁷ The review advocates for a paradigm shift that allows

1 <https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/339/summary.html>

2 Based on Lord Chief Justice Hewart's remarks in *R v Sussex Justices* 1924.

3 https://www.echr.coe.int/documents/convention_eng.pdf

4 <https://www.gov.uk/government/organisations/ministry-of-justice/about>

5 <https://www.judiciary.uk/about-the-judiciary/>

6 <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about>

7 <https://www.judiciary.uk/guidance-and-resources/transparency-in-the-family-courts-report-3/>

for fewer reporting restrictions so the work of the family courts can be better understood. This will enhance public confidence in the family justice system while, importantly, maintaining the privacy of court users.

8. In this review, the PFD encouraged District Family Judges to write to local MPs inviting them to visit their local family courts to aid their understanding of this vital part of the justice system.⁸ HMCTS will, of course, support this endeavour and facilitate visits where MPs take up this offer.

9. The Government recognises the important role MPs undertake in their constituencies and local communities. We welcome MP visits to all our court and tribunal buildings so they can better understand how the justice system works and see our hard-working judges and court staff in action.

JSC2: The Lord Chancellor and the Lord Chief Justice should consider producing a White Paper that clarifies and publicises the right of the public to attend court hearings and access information on court proceedings in the digital age.

10. The Government has taken considerable steps to improve access to court hearings and information on court proceedings. Some of this recent work is outlined below and expanded on throughout this document.

Before a hearing:

11. Court and tribunal lists were traditionally only pinned to notice boards inside court buildings. This may have worked well in a pre-digital age, when there was a greater number of dedicated court reporters who spent much of their time effectively stationed inside our court and tribunal buildings, but the public and media now expect to be able to access such information instantaneously on their phones and laptops.

12. In July 2022⁹, HMCTS launched the first phase of its new Court and Tribunal Hearings service (CATHs) on GOV.UK.¹⁰ This new online service will digitise, consolidate, and standardise hearing lists for courts and tribunals across England and Wales.

13. CATHs will make hearing lists more accessible by simplifying and streamlining how the public and media find information on upcoming court and tribunal hearings. This new service can be freely accessed by anyone, but HMCTS will allow professional users (including accredited journalists) to subscribe and receive lists by email. This will allow these professional users to choose how to view lists and plan which hearings to attend and report on.

14. This new service is being developed iteratively. HMCTS will continue to work with its various engagement groups to understand users' needs, gather feedback, and develop functionality based on their needs and suggestions where feasible.

8 Ibid, Paragraph 57.

9 <https://www.gov.uk/government/publications/hmcts-reform-infrastructure-and-enabling-services-fact-sheets/fact-sheet-court-and-tribunal-hearings-service>

10 <https://www.court-tribunal-hearings.service.gov.uk/>

During a hearing:

15. Attendance to observe court and tribunal hearings has traditionally been in person via the provision of public galleries or allowing members of the media to sit in the well of the court (where space allows). During the pandemic we passed emergency legislation¹¹ to allow for the remote observation of wholly remote proceedings so that the principle of open justice could be maintained. This worked well so the Government took the decision to expand remote observation and make it a permanent feature of the justice system.

16. Consequently, in June 2022, we enabled¹² provisions in the Police, Crime, Sentencing and Courts (PCSC) Act 2022¹³ that allow the media and public to request access to remotely observe any open court and tribunal hearing across England and Wales. Remote access is subject to judicial discretion and it must not create an unreasonable administrative burden (this means HMCTS need to have the necessary technology in place and adequate staff availability to facilitate access).

17. At the same time, we updated GOV.UK¹⁴ to reflect these changes and updated guidance on how the media and public can attend court and tribunal proceedings in-person or remotely.

18. These remote observation changes are transformative for the accessibility and transparency of our justice system. They will especially support court reporting and those who are unable or uncomfortable observing a court or tribunal hearing in person.

19. In May 2022, HMCTS published a Reporters' Charter which brings together and summarises practical guidance for journalists attending court and tribunal hearings.¹⁵

After a hearing:

20. In April 2022¹⁶, The National Archives¹⁷ (TNA) became responsible for the storage and publication of judgments and decisions from courts and tribunals in England and Wales. Court judgments and tribunal decisions are being made available to the public for free through the 'Find Case Law' (FCL) service.¹⁸ This online platform currently prioritises judgments and decisions from a limited number of courts and tribunals, but our longer-term ambition is to provide a complete record of judgments and decisions.

Information on court proceedings and accessing court documents:

21. Procedure rules set out what information must be made available to the public and media. Information is usually available upon request from the court or tribunal.

11 <https://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>

12 <https://www.legislation.gov.uk/uksi/2022/705/contents/made>

13 <https://www.legislation.gov.uk/ukpga/2022/32/part/13/crossheading/transmission-and-recording-of-court-and-tribunal-proceedings/enacted>

14 <https://www.gov.uk/guidance/observe-a-court-or-tribunal-hearing>

15 <https://www.gov.uk/government/news/new-charter-to-improve-media-access-to-courts>

16 <https://www.gov.uk/government/news/boost-for-open-justice-as-court-judgments-get-new-home>

17 <https://www.nationalarchives.gov.uk/>

18 <https://caselaw.nationalarchives.gov.uk/>

Accredited journalists are, however, proactively provided with additional information that helps them in their work. For example, in magistrates' courts lists are circulated and contain more detail than would be widely available to the public.¹⁹

22. The HMCTS' Data Access Panel²⁰ is increasing access to justice data. In particular, the Panel is supporting research proposals and its position is to approve wherever possible all research projects which further the MoJ's Areas of Research Interest, in particular the important Data First and Better Outcomes through Linking Data (BOLD) initiatives.²¹ The Panel is also supportive of proposals exploring machine learning and other novel methods to apply quantitative research methods to information which, to date, has not been compiled and approved for such uses. This work will support academic research and the development and evaluation of policy and services.²²

Call for evidence:

23. In 2023, the MoJ will launch a wide-ranging call for evidence exploring the themes of open justice, access to information and data, and transparency across our courts and tribunals.

24. In this open policymaking exercise, we will gather stakeholders' views on how we can support and strengthen openness, transparency, and the accessibility of our court and tribunal services. Recognising the challenging fiscal environment, this exercise will help us target our limited resources where they can have the biggest impact.

25. We will use the call for evidence as an opportunity to clearly set out how we adhere to the principle of open justice, our recent projects to strengthen accessibility and transparency, and outline our future ambitions. We will signpost to the relevant guidance on GOV.UK and promote the daily hard work of judges and court staff to deliver open justice day in and day out.

26. This call for evidence will clarify and publicise the right to attend court hearings and access information on court proceedings in the digital age, as well as inform our decision making on how we progress this work in the years ahead.

JSC3: Open justice is a common law principle, and it is for the courts to determine its requirements in particular cases. However, responsibility for deciding how the principle should operate should not be left to the courts alone. Deciding the proper limits of open justice can often give rise to significant policy questions that Government and Parliament can only tackle through legislation.

27. The principle of open justice is very well established as a common law principle, and to the extent that any underpinning in statute is required, we feel that to be amply provided by Article 6 of the European Convention on Human Rights, as embodied in the Human Rights Act 1998.²³ Further reinforcement and adjustment is provided in case law

19 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057171/HMCTS314_Protocol_on_sharing_court_lists-registers_and_docs_with_media_Jan_22.pdf

20 <https://www.gov.uk/guidance/access-hmcts-data-for-research>

21 Data First and BOLD are cross-departmental initiatives to bring together data from different sources, make links, and prepare datasets which provide research insights and evidence for policy of much greater utility than data held in isolation. The Panel has made positive decisions in support of these initiatives and will continue to do so.

22 <https://www.gov.uk/guidance/access-hmcts-data-for-research>

23 <https://www.legislation.gov.uk/ukpga/1998/42/contents>

and rules of court, which allows for flexibility where necessary. This approach helps to strike the balance between the principle of open justice and the privacy and wellbeing of court users. In certain instances, however, this balance is brought into question and it is valuable that common law allows for the interpretation of open justice to adapt. This gives the judiciary useful flexibility in its application case-by-case. Therefore, we see no clear need to legislate in this area.

28. It should be noted that open justice is already guided by statute. This includes the ban on photography introduced in the Criminal Justice Act 1925²⁴ and the prohibitions on sound recording introduced in the Contempt of Court Act 1981.²⁵ This can and is disapplied in certain circumstances, e.g. the Supreme Court,²⁶ Court of Appeal (Civil Division),²⁷ Crown Court broadcasting,²⁸ and broadcasting in the Competition Appeal Tribunal.²⁹ Numerous pieces of other primary and secondary legislation, including procedure rules, also exist that help strike the balance between the principle of open justice and the privacy and wellbeing of court users.

29. As outlined, from time to time this balance is brought into question. The most pertinent recent example is that of *Cape v Dring* (2019) in the Supreme Court.³⁰ The Court noted that the Rules do not explain what documents should be kept by courts, nor was there any statutory definition of the term ‘records of the court’, and nor was there any satisfactory guidance from any other source.³¹

30. The Government notes, in particular, paragraph 51 of the judgment where Lady Hale said: “We would urge the bodies responsible for framing the court rules in each part of the United Kingdom to give consideration to the questions of principle and practice raised by this case. About the importance and universality of the principles of open justice there can be no argument. But we are conscious that these issues were raised in unusual circumstances, after the end of the trial, but where clean copies of the documents were still available. We have heard no argument on the extent of any continuing obligation of the parties to co-operate with the court in furthering the open justice principle once the proceedings are over. This and the other practical questions touched on above are more suitable for resolution through a consultative process in which all interests are represented than through the prism of an individual case.”³²

31. The *Cape v Dring* case raises interesting considerations. Court records contain documents retained by the court for its own purposes. Those purposes are not the same as the purpose for which non-parties may properly be given access to court documents, which is to promote the principle of open justice. In modern litigation, where much that was previously read out in court is now submitted in writing, it may be necessary to have access to some documents, such as written submissions and witness statements, to make sense of the proceedings. The Civil Procedure Rules Committee³³ (CPRC) established

24 <https://www.legislation.gov.uk/ukpga/Geo5/15-16/86/section/41>

25 <https://www.legislation.gov.uk/ukpga/1981/49/section/9>

26 <https://www.legislation.gov.uk/ukpga/2013/22/section/31>

27 <https://www.legislation.gov.uk/uksi/2013/2786/contents/made> and <https://www.legislation.gov.uk/uksi/2020/631/contents/made>

28 <https://www.legislation.gov.uk/uksi/2020/637/contents/made>

29 <https://www.legislation.gov.uk/uksi/2022/156/contents/made>

30 <https://www.supremecourt.uk/cases/uksc-2018-0184.html>

31 Aside from Practice Direction 5A, paragraph 4.2A

32 <https://caselaw.nationalarchives.gov.uk/uksc/2019/38>

33 <https://www.gov.uk/government/organisations/civil-procedure-rules-committee>

a sub-committee to consider this, but progress has been affected by the pandemic and broader issues which are likely to go beyond the confines of rules of court, as well as the cross-jurisdictional dimension. This has resulted in a change of direction, whereby the CPRC is seeking the formation of a working group with a wider membership beyond the civil jurisdiction. The Government will continue to support this work as it progresses and will encourage the other jurisdictional rules committees to consider similar work where relevant and where it is not already underway.

JSC4: The internet and social media are changing the way that the public access court proceedings, which is making the work of the courts more accessible; but this also presents dangers for the administration of justice. In the digital age, it is vital the Government, Parliament, and the Judiciary work together to ensure that a balanced approach to open justice is achieved so that public scrutiny of justice can be secured without damaging the quality of the justice administered in the courts.

32. When formulating the remote observation provisions in the PCSC Act 2022³⁴, the Government engaged with the senior judiciary, within appropriate constitutional parameters, to consider the practical implications of the legislation for the administration of justice.

33. In our view, this legislation is a good example of the careful balance that needs to be struck to ensure our courts are more open and accessible, while being mindful of the potential dangers posed by social media. The remote observation framework uses technology in a positive way to enable the remote observation of court proceedings (subject to judicial discretion) while, at the same time, building in safeguards to protect court users against misuse. The legislation makes it an offence to record or transmit any transmissions made from a court without the authorisation of the court. Perpetrators may be charged either with contempt of court and face up to two years in prison, or a summary offence (a fine of up to £1,000). This should discourage any such behaviour.

34. We will continue to work closely with the judiciary to monitor the impact of this remote observation legislation (please also refer to paragraph 97), and the impact of technology and social media more broadly. It is our view that judges are best placed to decide, on a case-by-case basis, how and when technology could and should be used, carefully balancing the principle of open justice and the need to ensure justice is administered properly. We will bring forward measures, including legislation, should it be required in order to safeguard the proper administration of justice.

JSC5: The well-documented decline in the news media's coverage of the courts, particularly the Magistrates' courts, is concerning. In acting as the eyes and ears of the public, the media perform a vital role in keeping the public informed on the operation of the justice system.

JSC6: The decline in court reporting has had a negative effect on open justice in England and Wales.

JSC7a: As the public receives less information through the media on the work of the courts, HMCTS should do more to enable the courts to communicate information on court proceedings directly to the public.

34 <https://www.legislation.gov.uk/ukpga/2022/32/part/13/crossheading/transmission-and-recording-of-court-and-tribunal-proceedings/enacted>

35. Our response to **JSC2** outlines some of the steps we are taking to make information about what happens in our courts and tribunals more accessible, including directly to the public.

36. Further to this, in July 2022,³⁵ the Government, working closely with the judiciary, implemented historic legislation which allows judges' sentencing remarks to be recorded³⁶ and broadcast live from our Crown Courts. Allowing television cameras into these courtrooms will help the public understand how our justice system works and see justice being delivered to those found guilty of serious criminal offences.

37. We have built important safeguards into this broadcasting policy. Only approved media parties³⁷ can request access to broadcast sentencing remarks, and this request must be approved by the relevant judge. Only the judge's sentencing remarks may be filmed – not the whole trial – and no other court user will be filmed. Broadcast footage is subject to reporting restrictions. This is an important step forward and we will monitor its impact closely before considering any further changes.

38. In relation to HMCTS communicating information on court proceedings directly to the public, it is important that HMCTS and the independent judiciary facilitate access to the proceedings that take place in our courts and tribunals in a way that is neutral and treats every court user equally. It is also important to recognise that the state cannot replace the separate role undertaken by a free and fair media. HMCTS provides guidance and information about coming to court in the form of direct communications to parties involved in cases; and to the general public through its online channels and information provided at courts and tribunals. A number of partners, who work directly with the public, also play an important role in communicating with specific groups (such as victims and witnesses) about the experience of coming to court.

JSC7b: In addition, HMCTS needs to use technology and organisational reform, building on the work done with Courtsdesk News, to provide the media with the information it needs in a consistent manner, as soon as possible, to facilitate court reporting.

39. In 2020, HMCTS started working with the Caerphilly Observer³⁸ and Courtsdesk³⁹ to evaluate the effect of an enhanced provision of magistrates' court lists and registers. The purpose of these pilots was to explore the benefits of providing listing and register information in a form that makes it easier to search, sort, and filter, and include alerts on topics of interest, with the aim of measuring any change in the quantity and/or quality of court reporting.

40. Courtsdesk is currently undertaking an evaluation of this pilot. It will assess how successful the pilot has been at improving and increasing court reporting. HMCTS will carefully consider this evaluation when assessing how it distributes lists and when determining wider service improvements.

35 <https://www.gov.uk/government/news/crown-court-sentencing-remarks-to-be-broadcast-for-first-time>

36 You can see videos of sentencing remarks being delivered here: <https://www.youtube.com/@SkyNewsCourts>

37 The BBC, Sky News, ITN, and the Press Association.

38 <https://caerphilly.observer/about/>

39 <https://www.courtsdesk.com/?redirect=no>

41. As outlined in paragraphs 12 to 14, HMCTS has designed and built the CATH service which will make listing information available to the public and media in one place. Future functionality will allow sort, search, and filtering of information on hearing lists.

JSC7c: HMCTS should also pilot the use of regional communication and information officers to support media and public access to hearings.

42. As part of its reform programme⁴⁰, which includes changes to ways of working for court and support staff, HMCTS will continue to consider how it can make it easier for journalists to contact the courts and improve consistency and efficiency when it comes to accessing the information they need. The creation of regional communication and information officers is not a part of these reforms.

43. HMCTS staff already facilitate extensive access to court and tribunal hearings and information, resulting in widespread media coverage of our justice system. HMCTS recognises, however, that the application of guidance can, at times, be inconsistent across more than 330 courts and tribunals across England, Wales, and Scotland. Where issues are brought to HMCTS's attention, it works hard to swiftly resolve these.

44. HMCTS has developed bespoke training for its frontline staff and mandated that relevant teams regularly familiarise themselves with HMCTS media guidance⁴¹ as part of their development and capability training. Supporting the media is also a standard element of the training provided to court ushers.

JSC7d: Furthermore, the decrease in the media's coverage of the courts also strengthens the case for the reestablishment of a courts' inspectorate, which could help to identify wider issues within the justice system, particularly in the Magistrates' courts and the Family Court, which are not well covered by the media.

45. In 2010, the Government took the decision to abolish HM Inspectorate of Court Administration. This reflected various developments since the Inspectorate was established, including the establishment of a single, unified executive agency (HMCTS); and the greater transparent, independent, and effective framework of scrutiny and audit around it. Combined with high levels of parliamentary scrutiny, this significantly reduced the need for (and benefit of) independent inspection of court administration systems. A decision was made at the time that continuing to fund the body was unjustified, and it was closed at the end of December 2010.

46. The work of HMCTS is scrutinised by numerous parliamentary committees and inspectorate reports, with HMCTS being governed under a clear constitutional framework that is overseen by Ministers and the senior judiciary. We have assurance provided by expert bodies looking at the courts and their administration, which crucially do not cut across the important constitutional principles of judicial independence, safeguarding rather than undermining the principle of the rule of law. The criminal courts are already

40 <https://www.gov.uk/guidance/the-hmcts-reform-programme>

41 <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>

subject to an inspection regime that reflects the unique constitutional position of the courts, including the Criminal Justice Joint Inspectorate⁴² and His Majesty's Inspectorate of Probation.⁴³

47. Furthermore, the work of HMCTS is overseen by the HMCTS Board,⁴⁴ which includes non-executive and judicial members, headed by an independent chair. The Board is supported by an Audit and Risk Sub Committee. Additionally, the HMCTS Annual Report⁴⁵ covering performance and accountability, is published annually and is scrutinised by an Independent Board and audited by the National Audit Office.⁴⁶ HMCTS publishes monthly Management Information⁴⁷ on workload and timeliness for criminal, civil and family courts and tribunals.

48. Therefore, HMCTS has robust audit methods and management information processes in place and is subject to parliamentary scrutiny. This provides effective oversight of the administrative processes of HMCTS and negates the need for independent inspection. The case for re-establishing a courts' inspectorate is therefore not clear. It is not necessary for purely administrative systems to be subject to inspection by an independent body and we need to focus available resources on delivering frontline services and reducing outstanding caseloads to deliver swifter justice.

JSC8: The evidence from the Bureau of Investigative Journalism on its experience of attempting to access possession hearings presents a concerning picture of the practical reality of open justice in England and Wales. The legal and constitutional status of open justice is immaterial if journalists face the sort of hurdles experienced by the Bureau of Investigative Journalism. Those barriers have the potential to create a chilling effect for journalists and the public by discouraging them from exercising their right to attend hearings. Everyone working within the justice system, especially judges and court staff, has a role to play in translating the principle of open justice into reality.

JSC9: We welcome the publication of the Reporters' Charter, which for the first time sets out the rights and obligations of journalists reporting on court proceedings. We note, however, that the rights of access that flow from the principle of open justice are not exclusively for reporters—it is vital that members of the public are also aware of their right to attend proceedings and access information.

JSC10: HMCTS should publish a citizens' charter that outlines the public's rights to access information on the courts.

49. In 2023, we will develop and publish a charter for members of the public that summarises the existing rules that facilitate public access to court and tribunal hearings and information. It will sit alongside the Reporters' Charter which HMCTS published in May 2022⁴⁸ and was well received. It is important to note that the charter itself would not create new or different rights and responsibilities but will be a quick reference guide and signpost to more detailed guidance.

42 <https://www.justiceinspectorates.gov.uk/cjji/>

43 <https://www.justiceinspectorates.gov.uk/hmiprobation/>

44 <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/our-governance>

45 <https://www.gov.uk/government/collections/hmcts-annual-reports-and-plans>

46 <https://www.nao.org.uk/about-us/>

47 <https://www.gov.uk/government/collections/hmcts-management-information>

48 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074233/HMCTS702_Reporters_Charter_A4P_v4.pdf

JSC11a: The Reporters' Charter helpfully directs the media to the MOJ press office and the Judicial Press Office to deal with enquiries and issues on accessing court proceedings and information. There should be a single point of contact for all accessibility and open justice inquiries from the media and from the public. The Lord Chief Justice told us that, if a journalist encounters an issue accessing a court, he or she should "get in touch with their local court and ask why". In reality, at present there is no formal official mechanism for the media or the public to raise accessibility enquiries or complaints in relation to the courts. The creation of regional communication and information officers within HMCTS could provide that point of contact for reporters and the public.

50. Please refer to paragraph 42 to 44 in relation to the JSC's proposal to create regional communication and information officers.

51. Our online Find a Court or Tribunal (FCT) service⁴⁹, and the new CATH service, help people swiftly find the correct contact details for individual courts. Where issues are brought to HMCTS's attention, it works swiftly with its frontline staff to address these and ensure guidance is being adhered to.

52. Through its reform programme, HMCTS will continue to consider how it can make it easier for the public and media to contact court officials and support staff, and improve consistency and efficiency when it comes to accessing information and services. It is right and proper, however, that the Government and judiciary maintain separate press offices.

JSC11b: The courts' inspectorate, as we proposed in our report on court capacity, could have a specific remit to examine the operation of open justice.

53. Please refer to paragraphs 45 to 48 above.

JSC12: HMCTS should institute a programme of open days to encourage the public to visit their local courts, for example during Justice Week. This programme should be used to improve the awareness of both the public and HMCTS staff of the public's right to attend court proceedings. Furthermore, there should be a programme to encourage schools to organise visits to their local courts to improve public legal education.

54. Judges and HMCTS staff working in our courts and tribunals undertake locally led community outreach work, hosting visits from schools, colleges, and universities – including 'mock trials' for young students – and occasional open days for the general public.

55. Nationally, HMCTS awards an annual grant to an educational charity, to support its running of a 'Magistrates' Mock Trial 'Competition'.⁵⁰ Furthermore, our courts have orientation services to support victims and witnesses before their hearings. We also engage with social mobility outreach and have delivered over 400 work experience placements this year.⁵¹

56. There is an established judicial outreach programme too. For example, the Schools Engagement Programme, undertaken by the independent judiciary, is an initiative which aims to provide primary and secondary school students with a greater understanding

49 <https://www.gov.uk/find-court-tribunal>

50 <https://smartlaw.org.uk/mock-trials/magistrates-court-mock-trials-teachers/>

51 <https://www.gov.uk/guidance/social-mobility-outreach-opportunities>

of the judiciary's work. This involves interactive judge visits to schools, 'Question Time' events, the facilitation of learning materials, and more. Equipped with knowledge about the justice system, it is important that pupils from all walks of life feel a sense of empowerment to speak on fundamental constitutional principles and, should they wish, pursue a career in the law.⁵² The Magistrates' Association⁵³ also has a 'Magistrates in the Community' programme.⁵⁴

57. The Attorney General's Office⁵⁵ (AGO) holds the broader portfolio for Public Legal Education (PLE) and is considering what can be done to improve public awareness of the justice system. How the Government supports PLE, and how we can work with others to facilitate it, may form part of the aforementioned call for evidence later in 2023.

JSC13: Every court should list an email address on its website to enable the media and the public to request access to remote hearings.

58. As of April 2021, more than 350,000 people were using HMCTS's FCT service⁵⁶ each month. Built using public and professional user research, alongside insight and feedback, this digital service enables users to search for a court or tribunal and provides the address, contact details (including email addresses and telephone numbers), travel information, what areas of law the court or tribunal covers, and what facilities are available for users with additional or complex needs, including disabled access. The service also provides signposting to online services and groups information for professional users together, making the 'area of law' section clearer with sub-pages and help text.

59. Furthermore, the new CATH service⁵⁷ provides the relevant contact details for the media and the public to request access to observe remote hearings. As outlined in response to JSC30–32 (paragraph 97), we will undertake an assessment of the remote observation legislation in 2023.

JSC14: Remote hearings are still a relatively new and innovative feature of the justice system in England and Wales. The evidence to our inquiry suggests that there is a problem with a lack of coherence and consistency in relation to the ability of the media and the public to access remote court hearings.

JSC15: We recommend that HMCTS gathers and publishes data on requests to observe proceedings remotely. In particular, it would be useful to know the number of requests received and the number of requests granted by jurisdiction.

60. Partly as a legacy of the pandemic, HMCTS currently utilise a number of video hearing platforms, including Microsoft Teams, the Cloud Video Platform,⁵⁸ and the Video Hearing (VH) service.⁵⁹ Consequently, it is unable to gather reliable data on the

52 <https://www.judiciary.uk/about-the-judiciary/diversity/schools-engagement/>

53 <https://www.magistrates-association.org.uk/>

54 <https://www.magistrates-association.org.uk/What-we-do/Magistrates-in-the-Community>

55 <https://www.gov.uk/government/organisations/attorney-generals-office>

56 <https://www.gov.uk/find-court-tribunal>

57 <https://www.court-tribunal-hearings.service.gov.uk/>

58 <https://www.gov.uk/government/publications/how-to-join-a-cloud-video-platform-cvp-hearing/how-to-join-cloud-video-platform-cvp-for-a-video-hearing>

59 <https://www.gov.uk/government/publications/hmcts-reform-infrastructure-and-enabling-services-fact-sheets/fact-sheet-video-hearings-service>

total number of requests or actual observers at hearings that utilise video conferencing technology. In a similar manner, HMCTS does not routinely collect data on the number of people who visit public galleries.

61. However, it is HMCTS's intention to make the VH service its sole platform for all remote and hybrid hearings, and to facilitate remote access to in-person hearings. As the service is developed, it will have the in-built functionality to automatically collect (anonymised) data on the number of observers at each hearing.

JSC16: HMCTS should ensure that the Crown Court provides the same level of information to journalists on the outcome of cases as is currently provided by the Magistrates' court.

62. The Criminal Procedure Rules⁶⁰ concerning the publication of hearing lists and the supply of information to parties, the public, and the media are the same for magistrates' courts and the Crown Court (and, indeed, for the criminal division of the Court of Appeal).

63. In terms of HMCTS practice, however, at present magistrates' lists and registers are proactively provided to the media, whereas information is provided reactively in the Crown Court. This is described in our media guidance.⁶¹ The Government will keep this under review and consider how the Crown Court may be brought in line with practice in the magistrates' courts in the future.

JSC17: We welcome the planned digitisation of the publication of court and tribunal lists and the consolidation into a single service in one location.

JSC18: We request further information on when this service will go live and what improvements are planned to the level of information on the lists and the accessibility of the service. We recommend that HMCTS considers whether the proposed digital portal should be expanded to include all court information, including results, reporting restrictions and court documents.

64. Information on the new CATH service is outlined in paragraphs 12 to 14. The new service is already live and publishing Single Justice Procedure (SJP) lists for both the press and public. The SJP press list is available to accredited members of the media who sign into a verified part of the service. The information contained in the public list will replicate what is already published in traditional listings.

65. We anticipate CATHs publishing lists for civil and family courts by April 2023, with Social Security and Child Support Tribunal lists following shortly after. Other hearing lists will be published during 2023 and beyond – as soon as those remaining courts and tribunals start using the HMCTS reform programme's scheduling and listing solution called List Assist.⁶²

66. However, the aforementioned call for evidence will ask for stakeholders' views on listings and what would be most useful for a range of court users and observers. We will carefully consider this feedback and share it with the independent judiciary (recognising that listing is a judicial function).

60 <https://www.gov.uk/guidance/rules-and-practice-directions-2020>

61 <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals> (see the criminal jurisdictional guidance).

62 <https://www.gov.uk/guidance/hmcts-services-scheduling-and-listing-project>

67. As outlined above, the CATH service will publish all court and tribunal lists in one place. At this stage, we do not have plans to publish results, reporting restrictions, or court documents via this service, although the service is being futureproofed by including this functionality in its design. This will require careful consideration due to the varying rules and practices in each jurisdiction and the implications for information and data management. Enabling this functionality, especially the storage and sharing of case files, would require considerable resources which is not within the scope of the HMCTS reform programme.

JSC19: The Committee would welcome an update on the work being undertaken by the Civil Procedure Rule Committee to improve access to documents in civil proceedings.

68. Please see our response to JSC3 above (paragraphs 29 to 31).

JSC20: The Government and HMCTS should establish a streamlined process for accessing court documents, including courts lists, using a digital portal modelled on Public Access to Court Electronic Records (PACER) in the United States. This should also be used to inform the media of reporting restrictions, including automatic restrictions and notice of applications for reporting restrictions.

69. As outlined earlier in our response, we have well-developed plans to improve access to court lists and judgments. While some court documents are already published, we do not, at this stage, have plans to create a digital portal for access to all court documents. There is a large variety and volume of documents and many, either in part or whole, are not suitable for release. The creation of a portal would require considerable resources which is not within the scope of the HMCTS reform programme. The release of different court documents is governed by a range of rules. Requests for documents are therefore considered by staff (and where necessary the judiciary) on a case-by-case basis.

70. However, we plan to explore the theme of access to case files and other court documents in the aforementioned call for evidence which we plan to launch in 2023. We will carefully consider the responses to the call for evidence, alongside the conclusions and recommendations in the JSC's open justice report, before making any future decisions.

JSC21: The Government and HMCTS should conduct, or ask the Law Commission to conduct, a comprehensive review on access to documents referred to in open court and propose legislation if necessary to clarify the position.

71. As outlined above, we plan to consult on this topic via the aforementioned call for evidence. We will carefully consider stakeholders' views, alongside the conclusions and recommendations in the JSC's open justice report, before making any future decisions.

JSC22: Reporting restrictions play a key role in securing the fairness of the justice system. However, it is clear that there is inconsistency in the courts' approach to notifying the media when restrictions are in place, and they are often not effective at ensuring compliance, particularly on social media. This is an important example of where the modernisation of the infrastructure of open justice is long overdue.

JSC23: The proposed new digital portal should also enable access to a centralised database of reporting restrictions on cases.

72. The Judicial College⁶³ publishes guidance, updated in September 2022,⁶⁴ setting out the recommended approach to take when making decisions to exclude the media or prevent it from reporting proceedings in the courts. This guidance aims to distil and explain the relevant legal provisions and principles when considering reporting restrictions, so they are clearly understood and properly applied in practice.

73. In addition, HMCTS publishes guidance,⁶⁵ which was developed with representatives of the media, to help court and tribunal staff provide the best possible service to the media and uphold the long-standing principle of open justice. Alongside this is a protocol on sharing court lists, registers, and documents with the media⁶⁶ which has been agreed by HMCTS, the Society of Editors,⁶⁷ and the News Media Association.⁶⁸ This was approved by the Lord Chancellor for the purposes of conforming to the relevant Criminal Procedure Rules and came into effect in April 2020.

74. Sometimes automatic (via legislation) or discretionary reporting restrictions (decided by the judge) must be put in place. Automatic reporting restrictions are in addition to the media's own responsibility for compliance with the Contempt of Court Act 1981⁶⁹ (which includes specific defences to enable fair, accurate, contemporaneous court reports, and discussion of public affairs or other matters of general public interest). With discretionary reporting restrictions, the Criminal Procedure Rules require the media to be given advanced notification of any application for reporting restrictions by the applicant, and an opportunity to make representations about discretionary reporting restrictions. Parties seeking reporting restriction orders should put them in writing as soon as possible and the media should be put on notice as to the existence and terms of the order. Once an order is in place, HMCTS relays this information to the media through various channels (such as notices in press rooms and entries on court lists) which are set out in the published guidance for court and tribunal staff. HMCTS are looking at making processes for notifying restrictions more consistent and will keep its guidance under review. It was last updated in September 2022.⁷⁰

75. It is important to remember that, even with reporting restrictions in place, information about a case or hearing can still be given to the media. As outlined, it is the media's responsibility to ensure that what is published conforms to their legal obligations.

76. The AGO recently ran the 'Think Before You Post' PLE campaign, complete with examples of social media posts which could prejudice court proceedings.⁷¹ Following on from the success of this campaign, the AGO has updated its guidance on the Law Officers' approach to contempt of court referrals.⁷² The new guidance provides greater

63 <https://www.judiciary.uk/about-the-judiciary/training-support/judicial-college/>

64 <https://www.judiciary.uk/guidance-and-resources/reporting-restrictions-in-the-criminal-courts-4th-edition-update/>

65 <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>

66 <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/protocol-on-sharing-court-lists-registers-and-documents-with-the-media-accessible-version>

67 <https://www.societyofeditors.org/about/>

68 <https://newsmediauk.org/about/>

69 <https://www.legislation.gov.uk/ukpga/1981/49>

70 <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>

71 <https://www.gov.uk/government/news/attorney-general-launches-new-campaign-to-combat-contempt-of-court-online>

72 <https://www.gov.uk/guidance/the-law-officers-approach-to-contempt-of-court-referrals>

clarity regarding referrals to their office. When reviewing possible contempt of court issues, the Law Officers act independently of Government and in their roles as Guardian of the Public Interest.

77. HMCTS recognises that practice can, at times, be inconsistent. As ever, where issues are brought to HMCTS' attention, it works hard to swiftly resolve these. HMCTS is committed to embedding greater consistency in its practices and continuously improving the service it provides to the media in their day-to-day dealings with courts and tribunals. HMCTS has developed bespoke training for its operational staff and mandated that relevant teams familiarise themselves with HMCTS media guidance as part of their development and capability training. Supporting the media is also a standard element of the training provided to court ushers.

JSC24: The current situation on court transcripts is unsatisfactory.

JSC25a: HMCTS should explore whether greater use of technology, such as AI-powered transcription, could be piloted to see whether it can be used to reduce the cost of producing court transcripts.

78. We recognise that transcripts of court proceedings⁷³ are not routinely accessible and there are a number of reasons for this. Not all court proceedings are recorded, therefore transcripts are simply not available in all courts (e.g. magistrates' courts). In courts where it is possible to record and subsequently transcribe proceedings, this is done manually which incurs public expense to the applicant. Transcripts may also be made available at public expense at the discretion of a judge, when, for example, one of the parties does not have the financial means to pay for it. Transcripts are automatically made available only in certain types of serious criminal cases.

79. Even where transcripts are available, the fact that proceedings are a matter of public record does not obviate the need for judicial discretion in authorising access to them. They may contain sensitive information and details which would be justifiably confidential, and the judge needs to exercise this control, in addition to quality control over the transcript itself. This discretion is ultimately aimed at protecting vulnerable parties and maintaining confidence in the justice system which could be undermined by the unrestricted disclosure of sensitive information. It is therefore appropriate that requests for transcripts, even when funded by members of the public, be subject to judicial determination.

80. Automated transcription has the ability to lower the cost of transcription, but only when it can match the required level of accuracy that manual transcription currently offers. HMCTS undertook a pilot of speech-to-text software at Westminster Magistrates' Court in 2020. This provided good insight as to the accuracy of technology and how it can be best utilised. Subject to future funding decisions, and in collaboration with the judiciary, the MoJ and HMCTS intend to run further pilots to understand how the technology works in different courtroom environments.

JSC25b: HMCTS should also consider whether the sentencing remarks in the magistrates' courts could be routinely recorded and transcribed on request.

81. Hearings in magistrates' courts are not currently recorded. Consequently, large capital investment would be needed to add the required technology to courtrooms across

73 <https://www.gov.uk/apply-transcript-court-tribunal-hearing>

England and Wales. Careful consideration would also have to be given to how HMCTS would resource this. Given these implications, we consider the routine recording and transcription of magistrates' courts hearings to be disproportionate.

82. However, we will seek stakeholders' views on this during our aforementioned call for evidence later in 2023 and consider those, alongside the conclusions and recommendations in the JSC's open justice report, before making any future decisions.

JSC25c: HMCTS should also review its existing contracts for transcription services to ensure that transcripts are more accessible to the media and the public.

83. Please see paragraphs 78 to 82 above.

JSC26: We welcome the establishment of the National Archives Find Case Law Service. However, this service should represent the first step in improving the public accessibility of judgments.

JSC27: HMCTS should reform the way that judgments are collected, stored, and published so that there is less reliance on commercial legal publishers. The judgments of courts are the product of a publicly funded justice system and the public, the media and the legal sector should not have to pay significant sums for access.

84. The recently launched FCL service⁷⁴ provides free public access to court judgments and tribunal decisions once they have been handed down and released for publication by the court/tribunal.

85. The service is operated, funded, and being developed by TNA, working with the MoJ, HMCTS, and Judicial Office.⁷⁵

86. As of December 2022, over 2,700 judgments have been published since launch in April 2022. The service is currently in the early stages of development and incremental improvements are being made in response to user testing and feedback. We share the ambition to ensure greater equality in access to judgments and decisions, which are a product of the publicly funded justice system. We will use the call for evidence in 2023 to gauge public views on expanding the service further.

87. FCL currently prioritises judgments and decisions from a limited number of courts and tribunals, but our longer-term ambition is to provide a complete record of judgments and decisions.

JSC28: All Crown Court sentencing remarks should be published in audio and/or written form. HMCTS should ensure that the necessary resources are made available to enable sentencing remarks to be published.

88. The MoJ is working collaboratively with TNA, the judiciary and HMCTS to expand the scope of the FCL service. One of the options we will explore is to incorporate Crown Court sentencing remarks into the service. We are monitoring how the service is being used in Alpha mode to inform our thinking and future decisions.

74 <https://caselaw.nationalarchives.gov.uk/>

75 <https://www.judiciary.uk/about-the-judiciary/training-support/judicial-office/>

JSC29: We are concerned over whether the Ministry of Justice has allocated sufficient funding to ensure that the court reform programme can overcome some of the barriers to public and media access to information on courts. We ask the Government to provide a status update on any ongoing projects that are designed to enhance open justice, outlining how much funding has been allocated to deliver them and providing a date by which they will be completed.

89. The £1.3bn HMCTS reform programme⁷⁶ was launched in 2016 with the overall aim of a courts and tribunals system which is more straightforward, accessible, and efficient. This ambitious programme is designed to improve courts and tribunals for both those who use them and for those working in them. As HMCTS move into the final phase of delivery, it will complete some projects and develop and extend others, such as Common Platform, Single Justice service, CATH service, and VH service. These are outlined in more detail below.

Court and Tribunal Hearings service.⁷⁷

90. As also outlined in paragraphs 12 to 14, the CATH service is a new online service that will initially publish hearing lists for courts and tribunals in England and Wales. It also provides the foundation for publishing more court and tribunal information in the future. Our aim is to modernise and improve the way people find hearing information and provide it in a consistent and accessible way. We want to make the information easy to use for people who need it, in line with our commitment to open justice. We have already enabled accredited media representatives to subscribe to receive lists by email so they can choose how to view lists and plan which hearings to attend and the cases they report on. The service is currently publishing SJP lists and, by April 2023, will be publishing hearing lists for the civil and family courts. CATHs is available for anyone to use on GOV.UK.

Video Hearings service.⁷⁸

91. The VH service is HMCTS's strategic solution for remote and hybrid hearings. VH is a bespoke platform, designed in partnership with the judiciary in order to replicate the gravitas of a hearing that takes place in person at a court or tribunal building. The design of VH was considered with users in mind and has the look-and-feel of a GOV.UK layout. This provides familiarity and confidence in the service. It is internet based, so it removes the need for users to download specialist software. The prototype of VH was first tested in October 2017, with pilots in different jurisdictions over the years, and it will be rolled out nationally over 2023 and 2024. The onset of the pandemic increased the urgency to provide a platform for participants and observers to attend hearings remotely, and the lessons-learned over these past few years have fed into the enhancement and improvement of the service.

Single Justice service.⁷⁹

92. The Single Justice Service allows magistrates' courts to deal with minor offences in a way that is quicker, more straightforward, and more efficient, all while still being fair,

76 <https://www.gov.uk/guidance/the-hmcts-reform-programme>

77 <https://www.gov.uk/government/publications/hmcts-reform-infrastructure-and-enabling-services-fact-sheets/fact-sheet-court-and-tribunal-hearings-service>

78 <https://www.gov.uk/government/publications/hmcts-reform-infrastructure-and-enabling-services-fact-sheets/fact-sheet-video-hearings-service>

79 <https://www.gov.uk/government/publications/hmcts-reform-crime-fact-sheets/fact-sheet-single-justice-service>

transparent, and rigorous. A key element is the SJP, whereby a single magistrate, supported by a legal adviser, can decide adult, summary-only, non-imprisonable, and victimless offences (such as speeding, fare evasion and not having a TV Licence). The defendant always has the option to choose to attend a hearing in court in person.

93. Previously, all parties in a minor offence case would be expected to attend in person at the magistrates' court. This adds to the demands on the court and increases the stress and time commitment for the defendant, which could interfere with their employment. The SJP means that minor cases — where the defendant pleads guilty or fails to respond to the charge — can be resolved without the need for a court hearing. It is possible for defendants to plead online, including details of any mitigating circumstances they would like the court to consider. The plea can be added to the case the same day it is entered. This reduces the length of time it takes for the case to be resolved. HMCTS' new case management system, Common Platform, automates processes and significantly reduces the administrative tasks necessary on each case. The outcomes are recorded digitally and are immediately available to prosecutors and other parties.

94. Under the SJP, the media receive more information about these cases than they would if the cases were dealt with at hearings in court – which historically the media have rarely attended.

Common Platform.⁸⁰

95. Common Platform is a digital case management system. It allows all parties involved in a case secure access to case information in one place, including the judiciary, police, solicitors and barristers, the Crown Prosecution Service, court staff, and other criminal justice partners. It reduces the need for manual document handling and improves how criminal cases are accessed, managed, and processed.

96. HMCTS are currently implementing Common Platform in all criminal courts across England and Wales. It is now live in 173 courts — 58 Crown Courts and 115 magistrates' courts. This means 76% of criminal courts are now using the system. The remaining courts will go live in early 2023.

JSC30: We welcome the new legislative framework for remote observation of court proceedings. The combination of this framework and improvement of the technological facilities of courts has the potential to enhance open justice by making it easier for the public and the media to observe proceedings.

JSC31: It is right that judges are in control of the decision as to whether to allow remote observation. In some cases, judges will find these decisions difficult to make. It is crucial therefore that the effect of this new framework is evaluated. The concerns raised by the Lord Chief Justice and the Senior President of Tribunals, in particular in relation to the impact on court resources and the potential for unauthorised transmissions, will need to be followed up by an evaluation of how this new framework is operating in practice.

JSC32: HMCTS should commission an evaluation in June 2023 to examine how the new framework has worked in its first year of operation.

80 <https://www.gov.uk/government/publications/hmcts-reform-crime-fact-sheets/fact-sheet-common-platform>

97. In 2023, the MoJ will undertake a light-touch qualitative review with court and tribunal staff and the judiciary to understand the impact of remote observation on our services. We will complement this by working with HMCTS' Media Working Group (MWG) to understand whether remote observation has supported court reporting and the wider media, and tease out any teething problems encountered as the legislation beds in. Finally, we will include the remote observation framework in our call for evidence to, to be launched in 2023, to ensure the wider public can also contribute. Depending on the volume and quality of this feedback we will consider publishing our findings and/or writing to the JSC with an update.

JSC33: The power to allow the transmission of proceedings to designated livestreaming premises has great potential to enable more people to observe court proceedings and enhance open justice. If students were able to observe cases in classrooms and lecture halls, or if community centres could host livestreams of court proceedings, the accessibility of court proceedings would be greatly enhanced.

98. We agree. This is already possible via the remote observation enabling legislation but is yet to be used in practice.⁸¹ We will explore the appetite for this in the aforementioned call for evidence.

JSC34: We welcome the broadcasting of Crown Court sentencing remarks. It is a positive step for both open justice and the public understanding of sentencing.

JSC35: More widely, we recommend that HMCTS and the Judiciary commission research to determine which civil and criminal proceedings could be suitable for broadcast and video archiving. In principle, we would support the extension of broadcasting and recording to civil trials that do not involve oral evidence. In the criminal context, the broadcast and recording of sentencing in magistrates' courts could also be beneficial. However, we do not support the broadcasting of any elements of criminal trials other than the sentencing remarks of the judge.

99. As outlined in paragraphs 36 to 37, we will carefully monitor the impact of the Crown Court broadcasting changes we introduced in the summer of 2022 before deciding whether to make any further interventions.

100. We may use the aforementioned call for evidence to gather stakeholders' views on expanding the current broadcasting regime and, if so, where this would be best targeted. We would consider this evidence alongside the conclusions and recommendation made in the JSC's open justice report.

JSC36: The changes to criminal procedure in the Judicial Review and Courts Act 2022 should be carefully monitored. After one year of their operation, the Ministry of Justice should initiate an evaluation of how the changes are operating in practice, including their impact on open justice.

101. The Judicial Review and Courts Act 2022⁸² (JRCA) aims to remove unnecessary hearings and allow some procedures to be done online where defendants choose to do so. It is entirely optional. Defendants charged with either-way offences will be given the option of indicating a plea and deciding allocation online. Under the SJP, in a limited range of

81 <https://www.legislation.gov.uk/ukxi/2022/705/contents/made>

82 <https://www.legislation.gov.uk/ukpga/2022/35/contents>

low-level summary-only offences (e.g. travelling on a train or tram without a ticket and fishing with an unlicensed rod and line) defendants may be offered the additional option of having the whole case dealt with online without the need to attend court in person.

102. These changes form part of the HMCTS reform programme and will be subject to a review in line with the public commitment by HMCTS to evaluate the impact of reform measures once the changes have been in operation for a reasonable amount of time.

JSC37: The potential effect of these changes on open justice might also be mitigated by ensuring that the relevant information that would have otherwise been said in open court is documented and published online in a timely fashion.

103. Information about cases dealt with outside of a traditional courtroom hearing via any of the new criminal procedures in the JRCA 2022, including details of cases due to be considered and outcomes, will be made available to the media and other interested parties in line with the Criminal Procedure Rules.

JSC38: We remain concerned by the Single Justice Procedure's lack of transparency.

JSC39: The Government should review the procedure and seek to enhance its transparency by ensuring that any information that would have been available had the cases been heard in open court is published in a timely fashion.

104. While the Criminal Procedure Rules require all courts to give certain additional information on individual cases upon request from the media and other interested third parties, courts are currently obliged to give more information on cases prosecuted under the SJP. This includes the prosecution statement of facts and the defendant's statement in mitigation.

105. In addition, a list of pending SJP cases is published online each day and is available to the public. The media also receive a more detailed list of these cases so that they can report on them if they so wish. The media can therefore receive more information about cases dealt with under this procedure than traditional proceedings in open court, where they only receive such information if they actually attend the hearing.

106. The SJP may be one of the themes we will explore via the call for evidence we will be launching in 2023. We will carefully consider stakeholders' views, alongside the conclusions and recommendations in the JSC's open justice report, before making any future decisions.

JSC40: The Government should clarify and strengthen the governance structures on open justice. The Senior Data Governance Panel should be formalised, and its powers and remit should be defined and published. It is vital that the decisions made by the Panel are as transparent as possible. The positive work of the Media Working Group should be built upon and it should be empowered to make recommendations that are then considered and decided upon by the Senior Data Governance Panel. A separate court information user group should be established to represent the interests of groups other than the media, such as court observers, NGOs, researchers, and law tech that can also make recommendations that are considered and decided upon by the Senior Data Governance Panel.

107. As of December 2022, the Senior Data Governance Panel (SDGP) has met 14 times. We can confirm that the SDGP has now been formalised and will continue delivering the advisory remit given to it by the Lord Chancellor, Lord Chief Justice, and Senior President of Tribunals. In early 2023 we will publish its terms of reference and membership, and we will start to publish information about the SDGP's work. This will provide a greater level of transparency.

108. HMCTS has an established MWG which is chaired by its Director of Communications. It meets every six months (or more regularly if there is a pressing need). Its role is to support ongoing engagement between representatives of the media and HMCTS, to discuss media access to courts and tribunals, and providing information to the media. It does not have a policy function. However, the relevant officials from MoJ policy are also members of the MWG. They listen to feedback and update MWG members on the department's activity and latest thinking.

109. HMCTS facilitate a number of engagement forums⁸³ to make sure it is collaborating with professional and public user groups on proposals, developments and services within its reform programme, and to better understand users' needs. This work has helped to shape the future landscape of the courts and tribunals services to achieve the best possible outcomes for all. The groups are not specifically set up to discuss open justice issues, but the topic may be raised as part of wider discussions.

110. Currently, we do not have plans to establish a 'court information users' group'. Assessing our current approach to external stakeholder engagement mechanisms is likely to be one of the themes we will explore in the call for evidence we will be launching in 2023. We will carefully consider stakeholders' views, alongside the conclusions and recommendations in the JSC's open justice report, before making any future decisions.

JSC41: We agree with the President of the Family Division that there should be a review of section 12 of the Administration of Justice Act 1960. In our view section 12 of the Act should be reviewed and reformed so that it can be replaced with a much more targeted measure that respects the principle of open justice. The Government should ask the Law Commission to produce a proposal for the reform of section 12 of the Administration of Justice Act 1960 that provides a better balance between transparency and confidentiality.

111. We have been working alongside the PFD as part of the Transparency Implementation Group (TIG), which is chaired by PFD and attended by MoJ and HMCTS officials, to understand the impact of the recommendations from his recent report on transparency. We remain committed to increasing transparency in family justice and the principles of open justice.

JSC42: In broad terms, we support the Transparency Review's principal recommendation that media representative and bloggers should be able to report, subject to the relevant restrictions, on the cases they observe in the Family Court. We would caution, however, that given the decline in the number of court reporters in recent years, it is unclear whether media outlets will necessarily dedicate greater resources to reporting on the family courts as a result of these changes. We look forward to seeing the results of the pilots.

83 <https://www.gov.uk/guidance/hm-courts-and-tribunals-service-engagement-groups>

112. In relation to media representation and legal bloggers at family court hearings, as well as producing court listings and family court judgments, these are for the judiciary to ultimately decide. We are working alongside the PFD to establish media reporting pilots and progress any work to support these recommendations via the TIG and its sub-groups.

JSC43: We welcome the commitment to produce more informative family court lists. The success of the proposed pilot will depend on journalists and bloggers being able to identify cases that will generate wider public interest.

113. Family court lists are currently available on CourtServe.⁸⁴ In 2023, family court lists will also be available on the new CATH service (outlined in paragraphs 12 to 14 above) which will help ensure all lists are published in a consistent way.

JSC44: We welcome the Transparency Review's proposal to set a target of every judge publishing 10% of their judgments. If achieved, this would make a significant contribution to the transparency of the Family Court and to open justice. It is crucial that the public and the media are able to access a greater number of judgments from the Family Court. However, we share the concern raised by witnesses as to whether sufficient resources will be allocated to enable the proposed anonymisation unit to function as effectively as it needs to in order to ensure that a consistent and representative number of judgments are published and to minimise the number of anonymisation errors.

JSC45: His Majesty's Court and Tribunal Service should ensure that the requisite resources are provided to enable the establishment of an anonymisation unit that facilitates the publication of at least 10% of Family Court judgments without the risk of identification of the parties involved.

114. We have been working alongside the PFD to understand the impact of the recommendations from his recent report on transparency. We remain committed to increasing transparency in family justice and the principles of open justice.

115. As per our response to similar recommendations above, delivering this recommendation would require considerable resources which must be carefully considered and balanced against existing Government's commitments and priorities. We are working with the PFD to explore what other options might be available.

116. Our main focus must be on reducing the family court backlog, recognising the adverse impact these delays have on families.

Conclusion

117. The Government is grateful to the JSC for its report. As outlined in this response, we have delivered, or are delivering, a number of initiatives that strengthen the principle of open justice and support the transparency and accessibility of our justice system.

118. We are committed to facilitating and supporting court reporting. We recognise the vital role the media play, and will continue to play, as our justice system is modernised to make it more straightforward, accessible, and efficient in the digital age. Our vision is to deliver a world-class justice system that works for everyone in society.

84 <https://www.courtserve.net/>