

Written evidence from Ed Owen, former Director of Communications, HMCTS

Summary

Both the media and the courts have a shared interest in promoting and enhancing open justice. Yet a reduction in court reporting as a result of changes in the former combined with the latter's ambivalent commitment to open justice risk undermining public confidence in the justice system at a critical time.

HMCTS has made considerable effort to improve media access to courts over recent years. But it is managing an outdated, underfunded and often incoherent system of legal rules, practice directions and custom that causes confusion and inconsistency and reflects the low priority placed on matters relating to open justice.

In this submission I argue that Ministers and the senior judiciary need to commit to a comprehensive and strategic review of the current system to establish greater legal clarity and consistency in the rules relating to access to hearings and documents. They also need to move from a "reactive" to a "proactive" approach that recognises the importance of open justice to building public confidence and improving the performance of the justice system.

I also argue that the media and Government need to work together with others to support an increase in court reporting as part of its commitment to public interest journalism and to develop communications and information systems to create a "Hansard" moment to enable HMCTS to provide a more open, accessible and engaged court system in line with what is expected of a 21st century public service.

Background

I was HMCTS's Director Communications between July 2017 and July 2020. In January 2018, I set up and chaired the Media Access Working Group to increase media access to courts and promote court reporting.

The working group brought together a range of journalists, including full-time court reporters and representatives of the Society of Editors and News Media Association, with HMCTS officials.

It focused on four tasks:

- To help HMCTS produce operational guidance to HMCTS staff to support and promote media access to court hearings and documents
- To resolve concerns raised by the media relating to open justice and access to courts
- To explore how HMCTS's Reform Programme could support greater media access to courts
- To improve relationships between court staff and the media at local and national levels

It also became the primary forum for discussing arrangements put in place as a result of the pandemic to provide the media with remote access to hearings and proceedings.

Work of the HMCTS Media Access Working Group

The group was established as a result of increasing concerns about the decline in court reporting as a result of the changes in the media industry over two decades. I felt this was an issue that HMCTS could no longer be neutral about as it raised considerable issues in terms of the public visibility of the work of courts and public confidence in the wider justice system.

Public confidence in our courts and justice system is essential. Without it, the system would fail to function and the media remains the primary means by which the public receives information about its work. Yet in large parts of the country the vast majority of court work goes unreported and unnoticed. A recent study by the University of the West of England found that over a full week of hearings in Bristol Magistrates Court, only one case was attended by a reporter from local media (<https://uwe-repository.worktribe.com/output/1492517>).

The decline in court reporting is well documented, including in the Cairncross Review into the sustainability of journalism (<https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>), and it has a further consequence too. It has eroded the routine personal relationships between media and court staff – particularly at a local level – which, in the past, were often an essential part of making a complex system work. In many local courts, staff have little experience of dealing with the media and low understanding of their requirements and needs.

As a consequence, staff have often, in recent years, been unprepared for dealing with the media resulting in frequent complaints to HMCTS from media organisations claiming that journalists were being prevented from gaining access to court hearings or information.

A significant additional driver was a highly complicated array of legal rules, practices and conventions built up over decades that caused confusion among the media and staff alike and resulted in significant inconsistencies in the way that different courts in the same jurisdiction handled media requests and provided information to the media.

As a result of the working group's discussions, HMCTS developed:

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

This was an updated and user-friendly guide to support court staff in their work to assist the media in reporting on proceedings. As well as providing detailed information by jurisdiction, the guide was endorsed by the Society of Editors and News Media Association and, for the first time, made publicly online to assist local understanding and relationships between court staff and reporters.

HMCTS protocol on magistrates' court lists

This provided greater consistency in how Magistrates' Courts provided court lists to media organisations, and what information should be provided. This is an essential tool for the media and yet was previously subject to informal and outdated arrangements. The protocol is underpinned by changes to Criminal Procedure Rules

Guidance for high-profile hearings

This provides courts with advice regarding managing court hearings where there is high media demand to attend. This reinforces the need for courts to insist on journalists to produce appropriate accreditation to benefit from the privileges provided to media in courts.

Initiatives to design new ways to enhance media access to information

HMCTS has been working with Courtsdesk, a company supported by Nesta's Future News Fund (established by the DCMS in the wake of the Cairncross Review into the sustainability of journalism), to develop software to generate and disseminate court information such as court lists to established media outlets.

Regional meetings between court staff and media organisations

HMCTS and the Society of Editors organised a series of regional meeting to bring together operational staff and court reporters to discuss issues of mutual concern and to help promote local relationship-building.

Pandemic response

In response to the pandemic, HMCTS moved quickly to help facilitate remote media access to hearings, where possible, and provided support and guidance to journalists and the public to support the introduction of the Cloud Video Platform (CVP) in criminal hearings.

Reflections and lessons learned

The arrangements developed as a result of the discussions within the Media Working Group have helped improve media access and improve relationships between HMCTS and the media for mutual benefit. I hope it will continue to do so.

There have also been other positive developments such as the decision to televise Crown Court judgements in certain courts. Yet progress is painfully slow and changes are made on ad hoc basis rather than in a systematic way. I have nothing but admiration for HMCS staff and the judiciary for their extraordinary work in challenging circumstances. But the commitment to open justice in many areas of the system – no doubt reinforced by a range of financial and other pressures – can often be lukewarm.

This is perhaps inevitable, not least because its application is in danger of becoming practically meaningless given the significant reduction of journalists now routinely attending court hearings as a result of the profound changes occurring in the media industry.

If open justice is to mean something more than a reactive obligation to support a right rarely exercised then we need a significant system-wide approach requiring a broader and more comprehensive commitment from the Government, judiciary and the media industry itself. The current Reform Programme together with the way the system responded to the challenges of the pandemic presents a unique opportunity to do so.

Some recommendations

1. The Lord Chancellor and Lord Chief Justice should issue a joint White Paper that redefines open justice for the 21st century away and signals a commitment to move from its current state as a passive, reactive obligation (patchily and inadequately applied) to one that has positive and meaningful value to the wider justice system and society.

The White Paper would establish a workable definition of open justice that celebrates transparency and access to data and information, and sets out clearly how it can:

- encourage public understanding of and confidence in the justice system
 - empower the public and the media to access the system more easily and efficiently
 - foster insight, improvement and innovation
 - increase visibility and accountability
 - enhance the system's wider reputation as a professional and efficient service
2. The Lord Chancellor and Lord Chief Justice should also ask the Law Commission to undertake a comprehensive review of open justice arrangements and make proposals to consolidate and codify the myriad of laws, rules and conventions governing public and media access to court hearings, documents and wider data and information. This review would also explore the opportunities presented by the Court Reform Programme to increase remote media access to hearings and help reconcile the application of open justice with competing priorities such as data protection, privacy and the rehabilitation of offenders.
 3. HMCTS should be funded and empowered to design, create and manage an accessible one-stop, digital portal containing essential information relating to the daily operation of the courts in England and Wales. This would consolidate the current, fragmented system of data sources and include a commitment to provide a written record of all Crown Court judgements for the first time. It would also provide privileged access to accredited media professionals to ensure information not available to the public such as defendants' addresses contained in court lists was available on request.

This portal would be modelled on Parliament's website and providing accessible, up-to-date information about the operation of courts would represent a "Hansard moment" that would bring our courts and tribunals system into line with Parliament and other essential public institutions and services. The current Court Reform Programme and the digitisation of court lists and judgements provides a unique opportunity to do this in a comprehensive and effective way.

4. HMCTS should be supported to establish a regional network of trained communication and information officers to support media access to hearings and documents. They would work collaboratively with court officials to promote the work of courts and tribunals as part of a wider initiative to enhance public confidence and understanding as would any other 21st public service.
5. The Government should work with the BBC to extend the funding of the Local Democracy Reporting Service to cover court reporting to increase the media's access to content produced by properly trained and accredited journalists. Established media outlets would make a commitment to covering court news more routinely as a result. There are wider recommendations to support public interest journalism in the Cairncross Review and Nesta's report into the Pilot News Fund (https://media.nesta.org.uk/documents/Nesta_Future_News_Pilot_Fund_End_Of_Prog.pdf)

6. HMCTS should continue to work with the media, judiciary and digital engineers to develop innovative solutions to provide information relating to court hearings (eg listings and judgements) to the media in order to encourage greater reporting and enhanced visibility of the work of local courts.