

Written evidence from Dr Judith Townend

1. Summary

- 1.1. Advances in digital technology have radically altered the nature and impact of court reporting, and the COVID-19 pandemic led to emergency measures in providing 'remote' and online forms of justice. Given these significant changes, there is need for a review and reform of open justice practice and policy – i.e. the mechanisms that facilitate transparency and observation of the justice process, and therefore contribute to justice system accountability.
- 1.2. There are two main areas in particular need of political and judicial attention: first, the collection and management of justice data within the system; and second, the design of appropriate models for public and media access, that take into consideration a range of competing interests and rights, including but not limited to, those of traditional media organisations. These suggestions are based on my research over several years that has tracked developments in court reporting and 'justice system data' – i.e. the information that is generated by the process of justice. A short-term proposition is for the Ministry of Justice and Judiciary to set up a consultative group on transparency policy, with membership drawn from academia, non-governmental organisations and charities, as well as the legal and media profession.

2. Introduction

- 2.1. This evidence is submitted by Dr Judith Townend, senior lecturer in media and information law, University of Sussex. I am a socio-legal researcher, having originally trained and worked in journalism. I have a longstanding interest in open justice, court reporting, and access to court information and data. Most recently, I authored a working paper advising on a future open justice commitment in the UK's next Open Government National Action Plan¹; and a report for the Legal Education Foundation on 'justice system data' comparing the management of court and justice data in Canada, Ireland and Australia.² Relevant publications are listed at the bottom of this submission. I am a core member of The Transparency Project (registered charity 1161471) and a public interest group representative on the Royal Courts of Justice Media and Communications List User Group Committee (Maclug). I participated in civil society discussions with Government on the drafting of a proposed open justice commitment in the next Open Government Partnership National Action Plan (intended for 2021-23).³
- 2.2. I welcome the committee's inquiry as an excellent opportunity to scrutinise open justice practices and policy that have evolved in a piecemeal fashion over centuries. Most obviously, it is an opportunity to consider access to information and the right to impart and receive information under ECHR Article 10 and the common law open justice

¹ Townend J, 'Towards a National Commitment to Open Justice Data in the United Kingdom' (Spotlight on Corruption / Open Government Network 2019) <<https://www.opengovernment.org.uk/wp-content/uploads/2019/10/Open-courts-final-October-2019-latest.pdf>>

² Townend J and Wiener C, "'Justice System Data' : A Comparative Study' (The Legal Education Foundation 2021) <<https://research.thelegaleducationfoundation.org/research-learning/funded-research/justice-system-data-a-comparative-study>>

³ 'Open Government Action Hub – UK Open Government Network' <<https://www.opengovernment.org.uk/home/take-action/>>

principle. However, factors that should also be considered include, but are not limited to, rights to respect for private and family life; data protection and security; rehabilitation of offenders; contempt of court; and – in different contexts⁴ – citizens’ fair and equal access to justice (including the right to a public hearing under ECHR Article 6). Some of these aspects are often overlooked in policy discussions on the topic of court reporting and open justice.

2.3. The committee should also be aware of the growing interest in the development of machine-learning technology to automate the dissemination and analysis of courts data, which also deserves more detailed policy attention.⁵ I also encourage the committee to think more broadly than media and journalism, in terms of the role and position of other categories of observers: academic researchers, NGOs, and other members of the public who wish to observe court (including those connected to direct court participants – e.g. family members). A final consideration should be the varying administration of open justice in the different jurisdictions (civil, criminal, family, tribunals) and at lower and higher levels, where distinct rules and guidance apply.

3. How the media’s coverage of courts has changed, and what the implications are for open justice

3.1. It is often observed that there has been a decline in court reporting, especially at the local level, implying that the range and volume of court reporting has decreased in recent years, and that there are fewer specialist court reporters attending court. In general, these observations are based on anecdote, in the absence of reliable empirical evidence. No formal public records are kept on public court attendance, so there is no central source with which to verify the claims. However, there have been a number of useful studies which provide evidence for the nature of reporting from English courts.

3.2. These include Professor Leslie Moran’s ‘snapshot’ study of media court reports in a given day in 2012, identifying 82 reports in national and regional newspapers.⁶ The exercise was repeated four years later by Brian Thornton, University of Winchester. On a given day 2016, he identified 57, indicating a decline over the period.⁷ Thornton’s findings were cited by Dame Frances Cairncross in her Government-commissioned review on the future of journalism in 2019.⁸ Additionally, Thornton’s students surveyed 57 newspaper editors, with 56% stating that their publication did not have a dedicated court reporter. These findings are useful, but as Thornton urged in his own summary, should be treated cautiously, as ‘informative’, rather than ‘conclusive’.⁹

⁴ Here, I am primarily thinking of the impact on different court users (or prospective users), for example, criminal defendants and victims, or civil litigants; as well as the impact on civic access to information about courts and the legal process.

⁵ See, for e.g. ‘Unlocking the Potential of Artificial Intelligence for English Law’ (*Oxford Law Faculty*, 20 December 2018) <<https://www.law.ox.ac.uk/unlocking-potential-artificial-intelligence-english-law>>

⁶ Moran LJ, ‘Mass-Mediated “Open Justice”’: Court and Judicial Reports in the Press in England and Wales’ (2014) 34 *Legal Studies* 143

⁷ Thornton B, ‘The Mysterious Case of the Vanishing Court Reporter – The Justice Gap’ (17 April 2017) <<https://www.thejusticegap.com/mysterious-case-vanishing-court-reporter/>>

⁸ Cairncross F, ‘The Cairncross Review: A Sustainable Future for Journalism’ (Department for Digital, Culture, Media & Sport 2019), p.21.

⁹ Thornton B, ‘The Mysterious Case of the Vanishing Court Reporter – The Justice Gap’ (17 April 2017) <<https://www.thejusticegap.com/mysterious-case-vanishing-court-reporter/>>

- 3.3. Two further more studies are also worth noting. In 2017 Richard Jones interviewed 22 court reporters who provided useful insights into the current state of court reporting and the challenges they face.¹⁰ Chamberlain et al undertook a study of Bristol Magistrates' Court in 2018 that identified that of 240 cases observed during their week-long study, 'only three stories appeared in the local press and only one case was attended by a journalist'.¹¹
- 3.4. While these studies are valuable in building a picture of court reporting, and provide some robust empirical evidence, more research is needed to substantiate anecdotal claims. This entails overcoming methodological challenges; particularly in collecting historical data on public court attendance and reporting to compare with contemporary patterns. Further, research findings are always likely to be indicative of a 'snapshot' period in a particular court or jurisdiction; systematic observation is timely and costly to do.
- 3.5. Another aspect worthy of attention is the value of such media reporting and its contribution to justice system transparency and accountability. The traditional media (i.e. newspapers and their websites, broadcasters and their websites) may contribute to justice system accountability but this cannot be assumed. As Paul Magrath and I have argued in a recent paper:

Even if journalists covering the courts are assumed to be the 'eyes and ears of the public', as they are often described, such journalists only cover a tiny proportion of the hearings taking place each day. Further, the decline of court reporting, especially at a local level, is well documented. At a time when many journalists have been laid off or furloughed, this decline in court coverage is likely to be exacerbated (...)

*(...) 'Press reporting from the courts may enhance public scrutiny and accountability, but it is also (and often primarily) aimed at furthering circulation and profitability by finding 'good copy', that is a sensational or human interest story deemed newsworthy, which may be at the cost of other important aspects of justice accountability. Media organisational interests and those of other observers do not always converge.'*¹²

- 3.6. This is not to dismiss the important contribution of media and journalistic reporting. To highlight two important recent examples of public interest reporting from the courts: Nick Wallis's sustained coverage of the Post Office Horizon trial at the High Court (via his blog and other outlets),¹³ and the Bureau of Investigative Journalism's reporting on possession hearings during the pandemic, leading to evictions.¹⁴ Interestingly, both have

¹⁰ Richard Jones (2021) "'It's the Best Job on the Paper" – The Courts Beat During the Journalism Crisis', *Journalism Practice*, DOI: 10.1080/17512786.2021.1910980

¹¹ Chamberlain P and others, 'It Is Criminal: The State of Magistrates' Court Reporting in England and Wales:' (2019) 22 *Journalism* 2404.

¹² Townend J and Magrath P 'Remote trial and error: how COVID-19 changed public access to court proceedings' (2021), *Journal of Media Law*, DOI: 10.1080/17577632.2021.1979844
<<https://www.tandfonline.com/doi/full/10.1080/17577632.2021.1979844?src=>>

¹³ Wallis N, 'Horizon Trial Menu' (*Post Office Trial*, 10 March 2019)
<<https://www.postofficetrial.com/2019/03/horizon-trial-menu.html>>

¹⁴ McClenaghan M, 'Evicted in Less than 10 Minutes: Courts Fail Tenants Broken by Pandemic' (*The Bureau of Investigative Journalism*) <<https://www.thebureauinvestigates.com/stories/2021-09-23/evicted-in-less-than-10-minutes-courts-fail-tenants-broken-by-pandemic>>

relied on alternative funding models including crowdfunding (Wallis) and philanthropic funding (TBIJ).

- 3.7. Finally, it should be emphasised that open justice mechanisms allow for the possibility of observation, even if a public observer is not in fact present for a hearing. It is vital that these mechanisms exist – in order to uphold the common law principle of open justice and meet obligations under Articles 6 and 10 of the European Convention on Human Rights – even if media observation and reporting is, as anecdotally reported, in decline.

4. What barriers there are to the media obtaining information from the courts

- 4.1. Inspired by the study of Bristol Magistrates' Court conducted by Chamberlain et al., my colleague Dr Lucy Welsh¹⁵ and I - with the support of Jon Robins of the Justice Gap website - planned a pilot study of the Magistrates' Court in Brighton. The pilot project, involving student volunteers from the Criminal Justice Law Clinic, began smoothly, with no issues raised in terms of accessing hearings we selected to observe. Our main practical issue was deciding which courtrooms/cases to attend, as we did not have enough student or staff researchers to cover every case in a given week, as they had done in the Bristol research project.
- 4.2. However, during the first lockdown commencing in March 2020, it became impossible to continue with the research, as we were not supplied with any details of hearings (without visiting the court), nor provided with any means to observe remotely. Obviously, this was a unique situation in terms of navigating the rules of a national lockdown (not only in terms of following national law and guidance relating to COVID-19, but also guidance issued by HMCTS and the court, and our own institution's guidance on fieldwork) but it did highlight issues with the management of justice system data. With physical access restricted, there was no way of observing or tracking what was happening at the Magistrates Court in our local area. As our purpose and status was considered to fall outside the HMCTS policy for accredited journalists,¹⁶ we were not permitted to access any listings information remotely, which meant we did not know what cases were being heard during the first lockdown period.
- 4.3. I began collecting examples of other people's experiences during the period and identified many instances of people struggling to observe court hearings during the pandemic period. There were problems pre-dating the pandemic in terms of accessing listings and hearing information but these were exacerbated by the lack of physical access to courts.¹⁷
- 4.4. In 2020, the House of Commons select committee on justice was assured by members of the government, judiciary and court service that open justice continued, despite changes to the nature of physical hearings, and increased use of technology for many types of hearings. While this may have been the case in some courts, journalists and other observers were reporting issues with accessing hearings. To draw attention to

¹⁵ Senior Lecturer in Law, University of Sussex.

¹⁶ 'Protocol on Sharing Court Lists, Registers and Documents with the Media' (Gov.uk, 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869795/HMCTS_Protocol_on_sharing_court_lists-registers_and_docs_with_media_March_2020.pdf>

¹⁷ For more detail see: Townend J and Magrath P 'Remote trial and error: how COVID-19 changed public access to court proceedings' (2021), Journal of Media Law, DOI: 10.1080/17577632.2021.1979844 <<https://www.tandfonline.com/doi/full/10.1080/17577632.2021.1979844?src=>>>

this, I coordinated an open letter reporting the problems and calling for improved access mechanisms.¹⁸ The (then) CEO of HMCTS responded to the letter, promising further action.¹⁹ Since then, I have had several remote meetings with the Ministry of Justice team working on open justice and transparency, but I remain concerned that further review and reform is needed.

4.5. Byrom's report of 2019 provides a detailed overview of the discrepancies and issues with justice system data in England and Wales, where access is made difficult or impossible owing to deficiencies in the system, or costs and management.²⁰ Example data/information types, in need of urgent attention, include:

- Hearing listings
- Hearing outcomes / results
- User data (user characteristics, experience, outcomes)
- Sentencing remarks
- Closed, or unpublished judgments (e.g. for national security reasons)²¹
- Transcripts
- Court documents (e.g. skeleton arguments, claim forms, statements of claim)

4.6. One aspect that should be considered is whether the virtual emergency procedures for providing real-time observation, or information about cases (what Professor Richard Susskind has described as 'information transparency'²²) are affecting practice in the physical courts. If so, they should be scrutinised critically, and subject to independent review. As Magrath and I report in our recent article:

*.... the media specialist barrister Kirsten Sjøvoll reported via Twitter that she had seen 'several people turned away because of "Covid restrictions" and no attempt made to offer alternative access to watching proceedings' ... One was told hearings were "basically in private now". In her view, '[t]his is very concerning from an open justice perspective (...)'.*²³ *The London Evening Standard's court reporter and other court reporters have recounted numerous difficulties in accessing virtual and physical courts during the pandemic period.*²⁴

¹⁸ 'Open Letter from NGOs and Academics on Open Justice in the Covid-19 Emergency' (*The Transparency Project Blog*, 29 May 2020) <<https://www.transparencyproject.org.uk/open-letter-from-ngos-and-academics-on-open-justice-in-the-covid-19-emergency/>>

¹⁹ Townend J, 'HMCTS Response to Letter on Open Justice in the COVID-19 Emergency | The Transparency Project' <<https://www.transparencyproject.org.uk/hmcts-response-to-letter-on-open-justice-in-the-covid-19-emergency/>>

²⁰ Byrom N, 'Digital Justice: HMCTS Data Strategy and Delivering Access to Justice' (The Legal Education Foundation 2019) <<https://research.thelegaleducationfoundation.org/blog/digital-justice-hmcts-data-strategy-and-delivering-access-to-justice>>

²¹ See Dr Lawrence McNamara's important work on this aspect; e.g. McNamara, L (2019) 'Closed judgments: security, accountability and court processes'. UK Human Rights Blog <<https://ukhumanrightsblog.com/2019/01/25/closed-judgments-security-accountability-and-court-processes/>>

²² Susskind R, *Online Courts and the Future of Justice* (Oxford University Press 2019), Ch 19.

²³ Kirsten Sjøvoll (@KirstenSjovoll, 7 June 2021) <<https://twitter.com/KirstenSjovoll/status/1401883446784499713>>

²⁴ See, for example, Kirk T, 'Coronavirus Lockdown Laws: Justice Wasn't Being Seen, so Was It Being Done?' (kirkkorner: Notes from the Old Bailey press bench, 4 May 2020) <<https://kirkkorner.wordpress.com/2020/05/04/coronavirus-lockdown-laws-justice-wasnt-being-seen-so-was-it-being-done/>>

These examples, to which we could add more, raise a question about whether the obstacles for remote access – because of limited or no access to listings or remote hearing details – are being replicated in the physical environment. [footnote numbering altered]²⁵

5. What could be done to make information on court cases more transparent and accessible

5.1. My working report for the organisation Spotlight on Corruption and Open Government Network in 2019 explored some ideas for opening up courts data, with varying levels of access to different users. The report, based on a roundtable discussion of experts, concluded that more research and legal advice was needed before progressing some of the proposals.²⁶

5.2. Dr Natalie Byrom has made a range of recommendations in her detailed report on digital justice in England and Wales, particularly in relation to improving data quality and management, which HMCTS fully responded to in 2020.²⁷ My own recommendations in a follow up report which compared justice system data in Australia, Canada and Ireland include:

- Clearly presented policies, shared publicly, on the differing roles for executive, court service, judiciary and any third-party providers in the management of justice system data.
- Accountability mechanisms for access to justice data: i.e. appropriate routes of application and appeal for accessing justice data that is not readily available in the public domain.
- Consideration of public and court user views and experiences in the design of justice system data processes (especially with regard to the use of personal data).
- Detailed measurement of the impact of data sharing practices on outcomes of the justice system.²⁸

5.3. The Government has agreed to include a commitment to open justice in its next national action plan on open government.²⁹ Currently, this is still at draft stage in consultation between Cabinet Office, the Ministry of Justice and the Open Government Network. This process provides a useful opportunity for reform and to track the implementation of reforms. The Government could do more to publicise its work in this area – as the Canadian Department of Justice has done.³⁰

²⁵ Townend J and Magrath P 'Remote trial and error: how COVID-19 changed public access to court proceedings' (2021), Journal of Media Law, DOI: 10.1080/17577632.2021.1979844 <<https://www.tandfonline.com/doi/full/10.1080/17577632.2021.1979844?src=>>>

²⁶ Townend J, 'Towards a National Commitment to Open Justice Data in the United Kingdom' (Spotlight on Corruption / Open Government Network 2019) <<https://www.opengovernment.org.uk/wp-content/uploads/2019/10/Open-courts-final-October-2019-latest.pdf>>

²⁷ HMCTS, 'Making the Most of HMCTS Data: HMCTS' Full Response and Update to Dr Byrom's Recommendations' <<https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report>>

²⁸ Townend J and Wiener C, "'Justice System Data' : A Comparative Study' (The Legal Education Foundation 2021) <<https://research.thelegaleducationfoundation.org/research-learning/funded-research/justice-system-data-a-comparative-study>>; executive summary here: <<https://research.thelegaleducationfoundation.org/wp-content/uploads/2021/07/WJ21-LEF-V10-16072021-FAW.pdf>>

²⁹ 'Open Government Action Hub – UK Open Government Network' <<https://www.opengovernment.org.uk/home/take-action/>>

6. The implications of social media for court reporting and open justice

6.1. Social media has, inevitably, transformed some aspects of court reporting.

Journalists are generally permitted to report stories on social media, as long as they observe court reporting restrictions and the law on contempt. As identified by the Government in a previous consultation, one problem area has been the commentary that surrounds court reports published on social media channels. High profile examples include the termination of the first trial of the two girls eventually found guilty of the murder of Angela Wrightson, owing to an ‘avalanche’ of prejudicial social media commentary in 2015³¹; and Stephen Yaxley-Lennon filming outside court during an ongoing case subject to reporting restrictions in 2018, for which he was found to be in contempt of court.³²

6.2. It is encouraging to see the Attorney General’s Office draw public awareness to the rules of contempt in a recent campaign³³ (even though an earlier consultation on the impact of social media on the administration of justice concluded that social media did not pose a serious threat³⁴). However, the reach of this campaign may be limited. More can be done through public legal education, including within secondary schools and further/higher education. Further, HMCTS could offer better guidance and resources to court users, explaining that reporting restrictions may apply, and that there are strict rules concerning the reporting of court. One problem is that discretionary reporting restrictions are often difficult to clarify, even for experienced journalists with good knowledge of court practices. The notification of discretionary reporting restrictions is inconsistent between courts, and it is assumed that court users will be aware of the automatic restrictions in law.

6.3. Another impact of digital and social media is the retrieval of justice system data. Historically, an individual convicted of a minor offence (or even acquitted) could hope that their encounter with the court was forgotten over time, allowing (in the case of a conviction), rehabilitation. Research by Hess and Waller has considered the stigmatising effect of Australian media coverage of ‘non-convictions’ or convictions for minor offences, and what they describe as the media or ‘digital pillory’.³⁵ Most recently, Sarah Lageson’s work in the United States explores the ‘digital punishment’ arising from ‘data-driven justice’.³⁶ In the UK, Unlock, a charity that represents people with convictions, has

³⁰ Department of Justice, ‘Open Government at Justice’ <<https://justice.gc.ca/eng/trans/open-ouvert.html>>

³¹ ‘Angela Wrightson Murder: How the Media Fought to Report the Case’ *BBC News* (6 April 2016)

<<https://www.bbc.com/news/uk-england-tees-35977100>>

³² ‘Stephen Yaxley-Lennon Committed to Prison for Contempt of Court’ (*Gov.uk*, 11 July 2019)

<<https://www.gov.uk/government/news/stephen-yaxley-lennon-committed-to-prison-for-contempt-of-court>>

³³ ‘Attorney General Launches New Campaign to Combat Contempt of Court Online’ (*Gov.uk*, 28 June 2021)

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

³⁴ ‘Is Social Media Harming Our Criminal Justice System?’ (*Gov.uk*, 5 March 2019)

<<https://www.gov.uk/government/news/is-social-media-harming-our-criminal-justice-system>>

³⁵ See, e.g., Hess K and Waller L, ‘Media as Pillory: The Power to “name and Shame” in Digital Times’ (*The Conversation*, 8 August 2014) <<http://theconversation.com/media-as-pillory-the-power-to-name-and-shame-in-digital-times-15914>>

³⁶ Lageson SE, *Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice* (Oxford University Press 2020)

run a programme of work drawing attention to the ‘Google Effect’ for people with spent convictions.³⁷

- 6.4. In 2018, I conducted a pilot focus group with people with convictions, facilitated by Unlock to explore the impact of digital publicity and court proceedings. This preliminary research exercise – which I would like to develop with further funding – indicated that digital publicity of crimes (particularly by the media) had substantial knock-on effects for people with even minor convictions, hindering future employment and social relations. It is a complex topic with competing interests at play, and at this stage, I do not offer firm conclusions, but flag it as an area worthy of further investigation.
- 6.5. While increasing court transparency is desirable, the side-effects must also be considered. To date, these tensions are often overlooked. For example, in the Lammy Review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System in 2017,³⁸ there were two interesting but potentially conflicting recommendations: to publish sentencing remarks; and to seal certain criminal records. There would be societal benefits in both initiatives, but the former could potentially undermine the latter, depending on the mechanism and rules for sentencing remark publication. We need to develop mechanisms that maximise societal benefits – enhancing transparency whilst also encouraging rehabilitation and avoiding undue stigmatisation.
- 6.6. Although privacy measures are often portrayed as inimical to open justice, it is possible to respect both transparency and privacy (where justified). As the Transparency Project explained in its submission to the current Family Division Transparency Review:

Our charitable objectives do not require us to abandon important principles of privacy or to support transparency that is unsafe, because the objectives relate to the sound administration of the law. We see our role as one of responsibility, that we should support ways of achieving greater transparency without compromising the core objectives of a family justice system or any individuals. We do not see transparency and privacy as straightforwardly opposed, though they may often be in tension.³⁹

7. The effect of court reform and remote hearings on open justice

- 7.1. As noted in section 6, journalists and other observers struggled to obtain access to remote hearings during the pandemic period, though improvements have since been reported.
- 7.2. A particular overlooked issue is how transparency can be achieved for online conviction processes. Not only is there a concern about accessing specific case information, but it also means the nature of the ‘hearing’ or process is unobserved; the charity Transform Justice has drawn attention to this, observing that for online criminal convictions (currently used for motoring offences), not only is the information about

³⁷ Unlock, ‘“Google-Effect” and Spent Convictions’ <<https://www.unlock.org.uk/policy-issues/specific-policy-issues/google-effect/>>

³⁸ Lammy D, ‘An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System’ (2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf>. See pages 36 and 66.

³⁹ ‘Response of The Transparency Project to the Call for Evidence’ (April 2020) <<https://www.transparencyproject.org.uk/press/wp-content/uploads/transparency-consultation-response-29-April-2020.pdf>> p.5

cases unavailable but ‘the theoretical online process is not accessible for scrutiny. It is only visible to those who have been charged’.⁴⁰

- 7.3. Two Bills currently passing through Parliament are relevant to this topic. As outlined in our Journal of Media law article, the Police, Crime, Sentencing and Courts Bill 2021 will make changes to the accessibility of hearings (via, for example, live streaming) permanent, with the detailed working of provisions to be managed through secondary legislation. Further changes to online procedure can be found in the Judicial Review and Courts Bill 2021.
- 7.4. The potential implication of the proposed changes is hard to judge in the absence of reliable data on court observation, or on user impacts. There has been very limited opportunity for the public to respond to proposed changes relating to hearing access policy, despite the quite significant practical changes in recent years. There has been, opportunity, however, to engage in a review of transparency policy in the Family Division; its final report is due soon, with links to written and oral evidence published here: <<https://www.judiciary.uk/announcements/update-family-divisions-transparency-review/>>. The Ministry of Justice and Judiciary should offer similar opportunities for public and stakeholder engagement in other jurisdictions.

8. Recommendations

- 8.1. There are two main areas in particular need of political and judicial attention: first, the collection and management of justice data within the system; and second, the design of appropriate models for public and media access, that take into consideration a range of competing interests and rights, including but not limited to, those of traditional media organisations. To inform the development of open justice policy and practice, the Ministry of Justice and Judiciary should set up a consultative group on transparency policy with membership drawn from academia, charities and non-governmental organisations, as well as the legal and media profession.
- 8.2. In the longer term, there should be some form of public-facing office within the justice system through which to raise day-to-day or longer term data access or control issues, with independent oversight (especially since the judicial processing of data – not subject to regulatory oversight by the Information Commissioner’s Office if performed in a judicial capacity – has exemptions from specified GDPR provisions on personal data, and the Freedom of Information Act 2000).⁴¹ Jason Bosland and I have previously discussed the establishment of an Open Justice Advocate,⁴² following Bosland’s earlier recommendation,⁴³ but this is just one of different models to explore. More information should be made public about the newly constituted Senior Data Governance Panel, reported as being in ‘shadow mode’ in autumn 2020.⁴⁴

⁴⁰ Transform Justice, ‘Briefing on the Criminal Justice Aspects of the Judicial Review and Courts Bill’ (2021) <<https://www.transformjustice.org.uk/wp-content/uploads/2021/08/Briefing-on-the-criminal-justice-aspects-of-the-Judicial-Review-and-Courts-Bill.pdf>> p.9

⁴¹ ‘Judicial Data Processing Complaints Handling Policy’ <<https://www.judiciary.uk/wp-content/uploads/2019/04/Judicial-data-processing-complaints-handling-policy-June-2021.pdf>>

⁴² Bosland J and Townend J, ‘Open Justice, Transparency and the Media: Representing the Public Interest in the Physical and Virtual Courtroom’ (2018) 23 Communications Law 21 <<https://sro.sussex.ac.uk/id/eprint/80451/3/ARTICLE%201%20December%20issue.pdf>>

⁴³ Bosland J, ‘Suppression Orders vs Open Justice’ (*Pursuit*, 1 March 2017) <<https://pursuit.unimelb.edu.au/articles/suppression-orders-vs-open-justice>>

⁴⁴ HMCTS, ‘Making the Most of HMCTS Data: HMCTS’ Full Response and Update to Dr Byrom’s

8.3. Any review of open justice practice and policy should consider the following factors: rights to respect for private and family life; data protection and security; rehabilitation of offenders; contempt of court, and – in different contexts⁴⁵ – citizens’ fair and equal access to justice. It should take account of advances in machine learning technology and opportunities and risks of automated analysis and dissemination of courts data. Finally, it should consider rights to information beyond the traditional media – for direct court users (including criminal defendants and family members), academic and NGO observers, as well as the general public. It should take into account the differences between the court jurisdictions (civil, criminal, family and tribunals), and at lower and higher level.

Further information

My relevant affiliations include: core member, The Transparency Project; member of the advisory board, Justice Gap. I have been commissioned/funded to undertake research in this area by Spotlight on Corruption (formerly part of Corruption Watch) in 2019 and the Legal Education Foundation in 2020. Relevant publications include:

- Townend J and Magrath P ‘Remote trial and error: how COVID-19 changed public access to court proceedings’ (2021), Journal of Media Law, DOI: 10.1080/17577632.2021.1979844 <<https://www.tandfonline.com/doi/full/10.1080/17577632.2021.1979844?src=>> [open access]
- Townend J and Wiener C, “Justice System Data” : A Comparative Study’ (The Legal Education Foundation 2021) <<https://research.thelegaleducationfoundation.org/research-learning/funded-research/justice-system-data-a-comparative-study>> [open access]; executive summary here: <<https://research.thelegaleducationfoundation.org/wp-content/uploads/2021/07/WJ21-LEF-V10-16072021-FAW.pdf>>
- Townend J, ‘We Must See Them in Court’ (2019) 30 British Journalism Review 35 <https://www.bjr.org.uk/archive+we_must_see_them_in_court> [open access]
- Townend J, ‘Towards a National Commitment to Open Justice Data in the United Kingdom’ (Spotlight on Corruption / Open Government Network 2019) <<https://www.opengovernment.org.uk/wp-content/uploads/2019/10/Open-courts-final-October-2019-latest.pdf>> [open access]
- Bosland J and Townend J, ‘Open Justice, Transparency and the Media: Representing the Public Interest in the Physical and Virtual Courtroom’ (2018) 23 Communications Law 21 <<https://sro.sussex.ac.uk/id/eprint/80451/3/ARTICLE%201%20December%20issue.pdf>> [open access]

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⁴⁵ Here, I am primarily thinking of the impact on different court users (or prospective users), for example, criminal defendants and victims, or civil litigants; as well as the impact on civic access to information about courts and the legal process.

All should be available open access via the links above but please let me know if you require copies. A full list of my academic publications, with published or pre-publication versions, can be found here: <https://profiles.sussex.ac.uk/p373643-judith-townend/publications>

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