

Dominic Casciani  
Home and Legal Correspondent  
[dominic.casciani@bbc.co.uk](mailto:dominic.casciani@bbc.co.uk)

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Dear Justice Committee

Please find below some submissions in relation to the inquiry, "Open Justice: Court reporting in the digital age".

As I'm sure you will be aware, BBC journalists are prohibited by our impartiality rules from proposing or supporting one or another policy solution.

I hope however that some of my observations outlined below will assist the Committee to understand the practical challenges of modern-day court reporting.

I have been a BBC national journalist since 1998.

From around 2007 I began working exclusively in the Home Affairs Unit and soon became a Home Affairs Correspondent.

Last year I was appointed Home and Legal Correspondent, a title that reflects the balance of my present responsibilities which encompass reporting the law.

The following experiences fall under the headings two and three of the terms of reference:

- What barriers there are to the media obtaining information from the courts?
- What could be done to make information on court cases more transparent and accessible?

I have confined my comments to one facet of my working life: accessing documents and other material in court.

1) Court cases of all sorts, be they judicial reviews or criminal prosecutions are nowadays driven as much by the documents before the court as the words spoken within it.

- 2) When a barrister invites a judge to read Paragraph 45 on Page Seven, behind Tab C of Bundle Two, and then they both nod in understanding after having done so, the reporters sitting on the press benches are inevitably going to be at a loss to understand what is going on.
- 3) When a jury over the course of a week wades through untold pages of social media communications in a major criminal trial, reporters may not be able to be there for every moment of the case – and we may miss the reason why the full context of the messages proves pivotal to guilt or innocence.
- 4) Therefore one of the most significant obstacles in my work today can be timely access to documents which are the beating heart of a case.
- 5) I should stress from the outset that the provision of documents is far better than it once was. For instance, I and a colleague from the Evening Standard won the legal argument in 2018 to not only name the first person in the UK targeted by an Unexplained Wealth Order – but we then spearheaded a successful cross-media application for the evidence papers, which were of enormous public interest.
- 6) That relatively positive experience aside, the examples I list below illustrate some of the difficulties that regularly confront us.
- 7) The most important case law for present purposes is *Guardian v Westminster Magistrates Court* [2012, EWCA Civ 420]. In a nutshell, the Court of Appeal ruled that if documents have been placed before a judge and referred to during proceedings, the default position should be that journalists should be allowed access to them, unless there is some stronger countervailing reason to withhold them.
- 8) Almost a decade on, we do not have a simple, universal and technical solution for the delivery of documents to journalists that would meet the spirit of the CoA's judgment.
- 9) In the Crown Courts there is a CPS-Media protocol to facilitate provision of documents in a prosecution - but it is applied differently with varying levels of success, depending on the court, the judge, the prosecuting team and the experience of the journalists.
- 10) I and colleagues have been in many situations where we should reasonably expect a document from a trial to be released, but as the clock ticks towards our deadlines, we have no certainty at all how this material is going to reach us or whether it will do so in time.
- 11) In the case of a critical piece of CCTV from a trial showing the culprit running from the scene, the availability of that footage may make-or-break whether the story gets the prominence it deserves on an evening television bulletin.
- 12) We also regularly come up against administrative hurdles as to how we should be provided with documents.

- 13) In one particularly memorable example from a case around a year before the pandemic, I wanted a copy of a document which had been presented to the jury. Nobody disputed I should be given the document. But nobody in court would provide a copy, even though we were all staring at it in the prosecution bundle.
- 14) I suggested that the prosecution photocopy it. That was not possible. I suggested that I take it away and photocopy it. That was not possible. I suggested email or download to a USB stick. Those raised IT security concerns.
- 15) I was ultimately told it would be "released" by the relevant police press office - yet that press office had no role whatsoever in the court process and there was not even a press officer in court. After some hours, I received the document. If the story had been going out that night, I am not sure it would have made it.
- 16) Sometimes reporters have been moved to ask a judge to get involved. Generally speaking, they try to assist - but it often feels to us on the press benches that they would rather not get involved.
- 17) When parties to cases decline to assist with documents that are reasonably in the public domain, I or other journalists must calculate whether to raise the issue in court.
- 18) Given the *Guardian v WMC* case law, an application would probably resolve in our favour - but it may prove to be damaging in a situation where we are going to need a relationship with a particular solicitor or barrister for weeks to come – and we would still potentially expect a bit of a fuff in getting the document.
- 19) Access to documents can worsen after a case has been heard. I recall a civil case that I recently could not attend, but I needed to find out the result. I emailed the judge's clerk to ask for a copy of any judgment or order that resulted from the hearing - public documents.
- 20) I received a message back that declined to confirm if there had even been a result, unless I made an application for access to papers as a non-party and pay the relevant fee. This response wholly failed to appreciate the public right to know the outcome of a case that has taken place in public.
- 21) Sometimes court papers seem to disappear into thin air after cases have been heard. More than two years ago I asked a particular court for papers from a case of national significance that had recently completed. After some too-ing and fro-ing in which I was wrongly told I had no right to the papers, I was ultimately informed that while that right did indeed exist, the court didn't seem to have any copies on file.

- 22) In short, delays or obstacles in accessing material from court influences editorial decision-making and ultimately may mean some cases are less reported than they should be, given their importance to the life of the community.
- 23) High Court reporters can now access some information about some cases through the C-Track database, managed by Thompson Reuters. While it helps us to track down cases, the process of applying for documents is not exactly any quicker. Ordering a document does not mean that it will arrive in good time for it to be newsworthy.
- 24) With that system in mind, I'd like to draw the committee's attention to the PACER online document system for the United States' federal courts.
- 25) It is a transparent and accessible system that allows the public and journalists to look at court documents from cases past and present.
- 26) Its power in assisting open justice is best understood in working through a recent example - the tragedy of the death of Harry Dunn, the teenager killed in 2019 when a car driven by a US citizen hit his motorbike.
- 27) When Mr Dunn's parents began a civil damages action against the driver in the US courts, the process could be followed from the UK easily and efficiently thanks to PACER. Every document - from the allegations and claim form onwards - was available for us to read, often within hours of being lodged in the court. The internal court process of identifying which documents should be automatically available in PACER is clearly swift – no doubt thanks to the USA's First Amendment safeguards of freedom of the press.
- 28) Had the case continued through to trial, PACER would have included all the evidence, unless a particular document was confidential and sealed for a specific reason.
- 29) While the system is a bit clunky at times, it basically works and enhances high quality reporting and the public's understanding of the law in action.