Written evidence from The Chartered Institute of Journalists

The Chartered Institute of Journalists (CIoJ) is the world's oldest professional association of journalists and operates under a Charter granted in 1890 by HM Queen Victoria.

The Institute prides itself in being non-party political and expresses opinions only on matters that relate directly to our profession and industry or to our members.

We represent staff and freelance journalists across all sectors of the media, including local and national newspapers, periodicals, broadcasting and electronic publishing.

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

The key, generational changes include the collapse in print circulation, changes in employment infrastructure for local and regional newspapers, the collapse in retainers and freelance budgets for court reporting, and the closure of magistrates and crown courts, thus reducing the scope and geographical range of court reporting coverage.

There are also fewer legal affairs correspondents and court reporting specialists employed by national news publishers than in previous decades.

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

Positive steps have been taken in recent years by HMCTS and the judiciary to improve the quality and flow of information to accredited and professional journalists including access to court hearings; particularly by remote hearings during the pandemic.

The Institute believes the HMCTS guidance briefings for managing high profile cases, sharing magistrates' court lists, registers and documents, criminal court guide, civil court guide, family court guide, tribunals guide, and supporting media access to courts and tribunals have all contributed to improved facilities, liaison, relations and access to the courts. They also provide helpful reference and consultation documents.

This is also true of the Lord Chief Justice's 2011 Twitter Practice Direction, Criminal Procedure rules at parts 5 and 6, the ruling of the Court of Appeal: Criminal Division in R v Sarker 2018 and the Judicial College's Reporting Restrictions in the Criminal Courts. Individually and together these can clarify many issues or misunderstandings.

The supply of necessary information, arising from the Single Justice Procedure set out by the latest Criminal Procedure rules, assist in countering the trend for open justice proceedings to become closed administrative processes at the summary jurisdictional level.

There is, however, the growing problem of unchallenged reporting restrictions and closed hearings not being collated in any centralised way. In 2014 The Law Commission recommended an online directory of orders affecting reporting under the

1981 Contempt of Court Act and the Scottish Legal System has provided this since the year 2000.

Earlier this year the Institute made an FOI request for reporting restrictions and closed court hearing data during 2020 and the Ministry of Justice refused to comply, citing Section 12 on the grounds of cost. This, despite the fact all judges and courts are obliged by law to keep a written record of reporting restrictions or denial of access to their proceedings and any challenges to them.

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

We have written to both the Lord Chief Justice and the Lord Chancellor to recommend an annual audit of decisions that restrict open justice. We would suggest this proposal be extended to operate as an updated and published online resource to widen the dissemination and knowledge of court reporting instead of compounding such restrictions.

i: All courts properly make a formal record of reporting restrictions and decisions to exclude the media and public, the nature of the order, whether it was challenged and any decision arising.

ii: The Judicial Office/Ministry of Justice makes publicly available an online and daily updated record of the data and information on Open Justice decisions under established categories of restrictions set out in the current Criminal Procedure rules.

iii: We would recommend statutory clarification for media reporting access to documents quoted in evidence and submitted to a jury or an adjudicating judicial panel as part of the evidence. The Institute believes that what juries and judges see should also been seen by journalists reporting on behalf of the public; subject of course to legitimate reporting restrictions.

As there is a growing practice of police forces publishing media releases at the conclusion of criminal cases where there has not been any court reporting presence, we would recommend that HMCTS/Judicial Office make jury verdict information and the scripts of sentencing by judges more accessible to accredited reporters or for publishing online, contemporaneously at the end of trial and sentencing decisions.

Professional journalists and their publishers will have qualified privilege in relation to libel for police media release content but there is no protection for contempt of court or the breaching of any reporting restrictions that may prevail. Access to the court record and Judge's sentencing would ensure a more responsible and qualitative form of retrospective reporting of a court case.

iv: The coronavirus pandemic has transformed much of the judicial experience into a digital and remote, online screen, participation process. As the legal system, along

with the rest of society, returns to the methodology of court hearing and access which operated before COVID, the Institute has the following recommendations:-

a: That the legal system, at all levels, offers remote CVP (Cloud Video Platform) or other audio-visual methodology access in the future to accredited journalists as an option for reporting any kind of court hearing.

It would also mitigate the travelling and accommodation costs for reporters where court closures and centralisation require distant, and more expensive journeys, from newsrooms or home locations. This also offers an option to journalists fearful of threats and intimidation from hostile parties connected to court cases who object to their involvement in court hearings being publicised. This has been a growing and disturbing trend in recent years.

b: That access to remote CVP coverage be extended to accredited media law and court reporting trainers/educators and their students at Universities and Colleges providing specialist journalism courses.

As with accredited journalists, this would also offer a practical option where accommodation in court for large numbers of trainee reporters/journalism students when distancing from the court would hinder engagement.

c: Take inspiration and build on the excellent practice and multimedia facilities of promotion, access and archiving of UK Supreme Court cases and live YouTube streaming of the Appeal Court: Civil Division. We would recommend these good practices were expanded to the other divisions of the Appeal, High Court and Upper Tribunal chambers.

d: Full audio-visual CVP remote access to Coroners' courts needs to be an available option for reporting by accredited professional journalists. The Institute believes the system of Coroners' courts should be synchronised to the rest of the legal system and permit full audio-visual remote access. It would appear that Clause 166 of the Police, Crime, Sentence and Courts Bill, by adding a new section 85A to the Courts Act 2003, would achieve this necessary reform.

e: Televising and multimedia broadcasting of the courts. The Institute is fully aware that the Crown Court (Recording and Broadcasting) Order 2020 now permits the televising/filming of judges passing sentences only for murder, sexual offences, terrorism and other serious high-profile criminal cases in the Crown Court in England and Wales, although up until the present, the judiciary have not agreed to put this measure into actual and regular practice.

The House of Lords Digital and Communications Committee in its October 2021 report 'Breaking News? The Future of UK Journalism' considered enabling more multimedia coverage of legal proceedings: in paragraphs 104 to 109.

Institute members are divided on how far multimedia reporting access should develop in terms of publication rights. Some members with direct professional appreciation of the trauma and pressures experienced by criminal court protagonists such as defendants, witnesses and other trial participants, fear relaxation of current broadcasting rules in the criminal courts could undermine the necessary privacy and protection required in many cases.

Other members are conscious of how television, filming and multimedia coverage of court proceedings in other legal jurisdictions have improved public understanding and respect for the criminal justice process, the rule of law and the importance of an independent judiciary. We are, however, agreed that new generations of media consumers in a multimedia digital information age may already be demanding and expecting a more modern, high 'tech-conscious' representation of the open justice phenomenon in court reporting.

At present, there has only been one reported instance of a news organisation breaching Schedule 25 of the Coronavirus Act 2020 in making or attempting to make (a) an unauthorised recording or (b) an 'unauthorised transmission' of any kind of remote hearing in terms of video or audio. The BBC's transgression was a mistake and apologised for in Finch, R (On the Application Of) v Surrey County Council EWHC 170 (QB) (2021) and that transgression has not been repeated by any other news publisher.

Rather than being amplified for what can go wrong when professional media connect with judicial proceedings using digital multimedia technology, the Institute suggests Parliament considers why, at that time in 'the collective brain freeze,' a generation of BBC journalism practitioners and technicians thought there was nothing unusual in recording audio-visual footage of a High Court hearing and selecting a short clip to illustrate a news report.

Perhaps this is an indication of the future? When audio-visual illustration of recorded live proceedings becomes the norm in everyday reporting with judges, and indeed coroners, reserving discretion on [whether to permit recording or otherwise] for broadcast and publication and broadcast coverage of criminal proceedings is statutorily restricted to judges' sentencing and lawyers' opening and final speeches as a first graduated step.

v: Open Justice and identification of individuals arrested for crimes.
Litigation in the courts has introduced a disruptive and problematic compromise of the open justice principle in identifying crime suspects, even when formally arrested. The Institute believes this is a matter for Parliament to legislate on and preserve the open justice rule of identification without the jeopardy of actions for privacy.

vi: Open Justice and the Investigatory Powers Act 2016.
The Institute remains acutely concerned about the lack of open justice and transparency in state interception, interference, and surveillance of digital communications set up by the 2016 Investigatory Powers Act and scrutinised by the

Investigatory Powers Commissioner and Office for Communications Data Authorisations.

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

The Institute acknowledges that journalistic coverage of court cases has to operate on 'social media' platforms but we believe the same professional values of adherence to media law, fair, accurate and ethical reporting must prevail in terms of content and that all forms of potential prejudice or inappropriate public commentary have to either be excluded by 'switching off' reply and comments' or strictly pre-moderated.

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

We believe these issues have been fully addressed in our response under question headings 3 and 6.

6. Potential effect of Police, Crime, Sentencing and Courts Bill, and Judicial Review and Courts Bill on open justice.

We are very concerned about the proposals in the Judicial Review and Courts Bill to replace open justice hearings and procedures with administrative decisions or what could be described as 'office justice.' This would conceal so many aspects of criminal and civil justice process and decisions.

The Institute supports the making of the remote hearing process and, in particular, journalistic access to them; permanent, as outlined in Clauses 166 to 169 and Schedule 19 of the Police, Crime, Sentencing and Courts Bill. However, we implacably oppose what we see as a fundamental change in the very nature of our open, adversarial and fair trial system into bureaucratic processing in the many provisions of the Judicial Review and Courts Bill.

The roots of open justice lie in the physical existence and ritual of a court hearing and the access of the public and its reporting and scrutinizing representatives on the part of professional reporters working for news publishers. When you remove and dispose of the court hearing, this renders the point of *habeas corpus* and the verification of justice meaningless.

Franz Kafka did not write his satirical novel *The Trial* to amuse himself and his friends. It has always been an ominous warning of how the administrative bureaucratization of justice, in his case during the Austro-Hungarian Empire, can be dehumanizing, undemocratic, unaccountable and open to corruption and abuse of power and a grave source of injustice.

These proposals cut away and destroy the foundations of English Open Justice culture.

Single Justice Procedure cases are already highly problematic. They are dealt with behind closed doors. Anything said between a magistrate and legal advisors will never be known. The paper record of the outcome will be inadequate when SJP is the forum for non-custodial criminal penalties applying to laws that are or may become politically, culturally and socially controversial.

This has clearly been the case with prosecutions and fines for breaching COVID 19 regulations. Any judicial method of criminalisation has to be more open and accessible to the media and the public.

At the very least, we strongly advocate statutory obligations and requirements for full journalistic access and publication rights to all the written records of any administrative justice process replacing physical court hearings. These do not appear to be present in the current versions of both bills now before Parliament.

We are opposed to building on and providing an alternative to the existing 'single justice procedure' decided on the paper submissions in the proposed form of automatic, online convictions. The Bill liquidates open justice and offers no facility to sufficiently enable that in relation to the procedure envisaged.

The key principles of open justice and the vital constitutional need for journalistic scrutiny means we are opposed to and concerned about:

a: Clause 4 of the Judicial Review and Courts Bill, which extends the existing "pleading guilty by post" scheme in s12 of the Magistrates' Courts Act 1980, by enabling it to apply to defendants who have been charged with a summary offence at a police station.

b: Clause 23 of the Police, Crime, Sentencing and Courts Bill enables a new 'written information procedure', which will allow persons 'charged with offences' to choose to give specified information to the court in writing. People charged with more serious offences should not be communicating written indications of their plea in secret. If the written provision is enabled, there must be media and public reporting access to such information.

c: Clause 5 of the Judicial Review and Courts Bill, amending section 16A of the Magistrates' Courts Act 1980, enables the single justice procedure to be used to prosecute corporations as well as individuals. Corporations and private companies breaching criminal laws should always be subject to the scrutiny of the open justice process.

d: Clauses 6 to 9 of the Judicial Review and Courts Bill eliminate vital preliminary court hearings at the Magistrates Courts before deciding the mode of trial for 'either way' offences. The Institute strongly opposes the reduction of these critical judicial processes to administrative writing on a digital case management system called 'the Common Platform', which is inaccessible to either the public or the media.

Allocation decisions, allocation proceedings, decisions to reject summary trial, decisions to proceed in the absence of a defendant and similar decisions affecting youths appearing in the adult courts should remain open court matters.

e: Clauses 10 to 12 of the Judicial Review and Courts Bill propose written administrative justice for 'transfer of case' hearings between the magistrates' court and the Crown Court. The first appearance of accused persons facing charges for indictable crimes at the Magistrates Court is a vital and necessary event in the criminal justice process. It is part and parcel of justice not only being done but manifestly and undoubtedly being seen to be done.

Sending a defendant charged with an indictable only or either-way offence to the Crown Court is an important and significant public event in the criminal justice narrative. It would be utterly wrong for this to take place without the need for a court hearing.

f: Our concerns and arguments on open justice are also fully engaged in our opposition to Clause 14 of the Judicial Review and Courts Bill to enable Crown Court procedural hearings to be decided 'on the papers.'

g: Chapter 2 of Part Two of the Judicial Review and Courts Bill between clauses 18 and 26 offers no provision to guarantee public and journalistic access and reporting of a wide range of proposals for online civil justice procedure.

h: The Institute is greatly concerned about clauses in Chapter 4, Part Two of the Judicial Review and Courts Bill which will enable Coroners to hold inquests without public hearings and determine many more decisions about deaths in the community on paper only; and without any statutory guarantees of media and public access to the records, documents and evidence collected when these decisions have been made behind closed doors.

We recommend full reporting access to decisions to discontinue an investigation following a post-mortem examination revealing the cause of death under clause 37; full reporting access to any pre-inquest review and any inquest held via audio or video link under clause 39. Additionally, we would oppose the holding of any inquest wholly in writing under clause 38. If such a procedure is allowed, we believe it is vital that journalists, on behalf of the public, should have statutory rights to all the evidence and documentation used to determine such 'paper inquests.'

The Government and Chief Coroner have discussed the advantages of 'documentary inquests' into non-contentious deaths where witnesses are not required to attend and give oral evidence. However, the Institute is reminded that the notorious Dr Harold Shipman case, and others, have highlighted how seemingly non-contentious deaths in the community can become matters of great public interest when journalists and members of the public have access to information and can ask important questions.

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