

Written evidence from journalist Maeve McClenaghan,
on behalf of the Bureau of Investigative Journalism.

1. Context:

- 1.1. The Bureau of Investigative Journalism is an independent, not-for-profit organisation which collaborates with other media organisations to hold power to account at a local, regional, national and international level. The [Bureau Local](#) team within the Bureau focuses on data-led reporting and collaborates with a network of 1,000 people across the UK – reporters and citizens – to shine a light on local and national issues and tell stories from the ground up.
- 1.2. Over the course of July and August 2021 Bureau Local sent reporters to 683 possession hearings in 30 county courts across England and Wales, to log the details and outcomes of the cases we saw. We also subscribed to various courts' daily court lists, scraping information from those lists to create a dataset of case names over a four month period (June to September 2021). This work revealed whose housing situations were affected by the pandemic, and how.
- 1.3. Our reporters faced numerous challenges accessing county courts and information during the course of this project, many of which will be of interest to this inquiry.

2. Judges and staff refusing entry to courts

- 2.1. Our reporters attempted to attend a day of possession court hearings on 110 occasions over the two months, but on six different days we were turned away by judges who told us all possession hearings were held in private. In fact, possession hearings should be public as default and can only be ruled private in specific cases – see reference below on Civil Procedure Rules (CPR) 39.2.
- 2.2. In multiple other instances, our reporters were only able to enter courtrooms after agreeing to certain conditions or appealing to a more senior judge – which again should not be necessary according to the Civil Procedure Rules.

- 2.3. In many cases we had written to the court and to the Designated District Judges in advance to advise them we were coming. As court sessions should be public, this was merely a courtesy.
- 2.4. In one instance, a judge at a London court said he would not allow our reporter in without a signed and stamped letter from the top regional judge. The same judge suggested we apply for the information we wanted using the Freedom of Information Act.
- 2.5. In some instances (at courts in Stratford, Gateshead, Clerkenwell & Shoreditch) judges would not let reporters attend the hearings without the explicit consent of the defendants. In one case the reporter was told this is because hearings were fundamentally to be held in private. We found that in 69% of hearings no defendants attended.
- 2.6. In Birmingham, our reporter was blocked from sitting in on hearings because Covid precautions meant the size of the room was only suitable for three people other than the judge – a rule that would have been breached if both landlord and tenant had turned up with legal representation.
- 2.7. In Dartford our reporter was stopped from entering the court building by security guards after the judge told them the court was too small and Covid restrictions meant our reporter could not attend. No provisions were made to allow him to watch the hearings remotely.
- 2.8. A reporter in London was also unable to attend two hearings because of the size of the courtroom and Covid-19 restrictions.
- 2.9. In Manchester, one of our reporters missed two hearings because she was stopped from entering the court building by security staff and then the usher who believed all hearings were private and journalists were not allowed to enter.
- 2.10. In many instances judges only allowed reporters into the hearings on the condition that they did not report specific names or financial details – but only one official reporting restriction was ever made.
- 2.11. In some instances, reporters who had been able to attend hearings on one day would return to the same court a different day only to find a different judge who would not let them enter.

- 2.12. Often, we were only allowed into hearings again after appealing to more senior, Designated District judges. One Designated District Judge remarked that a lack of proper oversight of judicial decisions by journalists and others was a “hallmark of despotic regimes”.
- 2.13. Following our project and the issues we encountered, the Master of the Rolls wrote to all civil judges emphasising that the public and press must be able freely to access all public court hearings.
- 2.14. A spokesperson from Her Majesty’s Courts and Tribunal Service told us: “We are committed to the principle of open justice and transparency. Where operational issues are brought to our attention we work swiftly to resolve them.”

3. Lawyers and banks objecting to our presence

- 3.1. Our barriers to listening to hearing proceedings did not end once we were inside the courts. Seventeen of our 23 reporters witnessed lawyers in court hearings asking that we be kept out of hearings. In most cases these requests came from mortgage lenders.
- 3.2. In one instance, a lawyer working for Bank of Scotland told our reporter they had been instructed by the bank to oppose their presence in court. The lawyer then asked the judge to restrict our reporter, and when the judge did not, the lawyer withdrew their cases from the court schedule, aiming to re-list them at a time when they could put in a formal request to have the hearings in private.
- 3.3. Another lawyer for Bank of Scotland handed all witness statements and exhibits to the judge as written documents, rather than mention the details aloud in court.
- 3.4. The response from judges to these requests was mixed. In some cases judges told lawyers that they would need to submit formal objections, and in some occasions the judge weighed up the calls for privacy and rejected them, finding instead that hearings could remain public.
- 3.5. But in other instances we saw judges accepting the arguments by some banks' legal representatives that hearings be in private – without them issuing a specific order, despite that being mandated in the Civil Procedure Rules. The journalists had to leave the courtroom or else were told they could not report specific details like the amount of arrears or names.

- 3.6. Once, the legal representative of a borough council physically blocked our reporter from entering the courtroom. The court usher told him he needed the claimant's (the council's) permission to enter the hearing. The judge at that courtroom only found out the reporter had been prevented from entering after the hearing had concluded, and was angered at the claimants for undermining the authority of the court.
- 3.7. There appeared to be some confusion, from both lawyers and judges, as to what constitutes "confidential information" when it comes to "personal financial matters" that could be damaged by publicity – one of the criteria under which hearings may be designated as private according to CPR 39.2 3c. In some instances lawyers for mortgage providers were arguing that a mortgagor's financial information was private, even when the mortgagor did not object to reporters' presence in court.
- 3.8. Beyond concerns raised by lawyers acting for mortgage lenders in court, UK Finance – a trade body group representing 300 financial firms – contacted the Bureau's funders and top judiciary members. The messages sent towards the end of July, two weeks into our project, asked why reporters were attending possession hearings. They wrote in an email that "media attention on possessions causes nervousness amongst mortgage lenders given the reputational risks".
- 3.9. When we asked them about this they said: "UK Finance did not object to journalists attending court proceedings, nor did we ever seek to have them excluded from court. All the communication we had with either the Bureau of Investigative Journalism or the courts was solely to seek clarification on the nature of the work and to offer our assistance if required."

4. Issues with getting information from administrative staff

- 4.1. Issues around access started from the very beginning of the project, when we began calling courts to find out which days they typically listed possession cases. We waited on hold – in one instance for more than an hour – only to have calls dropped. When we were able to get through on the phone, some court administrative staff told us they did not have the information or that we should approach the Ministry of Justice press office. In several cases we were told incorrectly by court administrative staff that reporters were not allowed to attend possession hearings.

- 4.2. Often the only option to email a court was a generic enquiries email, to which automatic replies told us responses could take 10 days.
- 4.3. The confusion around administration was also felt by tenants who the Bureau spoke to. One woman facing a possession hearing was told her hearing would happen remotely and that she needn't attend. It was only when she phoned the court to find out the outcome of her case that she was told the hearing had not in fact taken place but had been re-listed for a month later.
- 4.4. Another woman was told her case would be a telephone hearing and was never advised that it had been changed to an in-person hearing. She waited at home for the phone call that never came while unbeknownst to her a judge in court was ordering that she should be evicted.

5. Missing data

- 5.1. The Bureau undertook the possession court reporting project after realising that no data is collected on who attends possession hearings, nor what their circumstances might be. Only through our court reporting were we able to get an idea of how often children were impacted, whether defendants had a disability, whether mental health issues were mentioned and if the defendants had had any issues with benefits.
- 5.2. There is no official data collected on ethnicity or other protected characteristics. A Freedom of Information request about those who take up Legal Aid funding for their possession hearings showed that Black people were disproportionately represented.
- 5.3. Beyond exploring those whose housing situation had been most impacted by the Covid-19 crisis, the Bureau also set out to look into how changes made to the legal system to deal with the pandemic were working – specifically the Pre-Action Protocols including Review Hearings, the Rental Mediation Scheme pilot and the practice of Covid-marking hearings. Without the Bureau's on-the-ground reporting and Freedom of Information Act requests, there would be no public data on if and how these new schemes have worked.

6. Remote hearings

- 6.1. We undertook our reporting once we had ascertained that courts were sitting in person again. This is because we did not believe we could get open access to hearings remotely. In order to request access to a remote hearing, most courts ask that you email them with the specific case name and number that you wish to watch. This restricts reporters who might want to cover a day's worth of cases, where specific case names are not known in advance. Should remote hearings continue in the future this issue should be addressed.
- 6.2. In several instances we were in court when a hearing was held on BT Meet or similar telephone conferencing platforms. On these occasions the judges tended to undertake the calls in their chambers and therefore we were not able to witness them.

7. Court listings

- 7.1. Court lists are now published on Courtserve, an online platform. However, lists are only published late in the afternoon the day before hearings, leaving little time to make arrangements or request permission to attend hearings remotely if necessary.
- 7.2. A paid-for subscription email service provides daily lists for each court, but we found those lists arrived in different formats. While all courts generally listed the information in a table, the format of that table varied from court to court. Key pieces of information about individual hearings such as the Case ID, the Plaintiff name or the Defendant name were often listed all together along with additional information in the same column, basically ending up as a free text field. All this meant that extracting that data using a scraper tool – the only realistic way to gather information on large amounts of hearings – was complicated and difficult.
- 7.3. We also found large discrepancies in how courts identified their possession lists. Some were clearly labelled and some did not specify which lists were “possessions”.
- 7.4. We also found spelling mistakes and variations of defendants and claimants' names contained in court lists.

8. Costs of transcripts and accessing records

- 8.1. The cost of court transcripts is prohibitively high. Opus 2 – an official court transcription service company – charges between £216 and £360 for an hour of civil court transcripts (inclusive of VAT), depending on delivery time. We found possession hearings took on average 10 minutes. Therefore, we estimate that a transcript for a hearing of this length could cost between £36 and £60 depending on the deadline. A day-long trial, lasting six hours, to be returned in two days, could cost as much as £2,160.
- 8.2. Journalists would benefit immeasurably from an online court record system – like the PACER system in the United States – where all cases are maintained in a central online searchable system. The current provision in the UK is disjointed and patchy, with some judgments on the British and Irish Legal Information Institute and others on VizLegal. Much is missing.

For reference:

In 2019 changes were made to Civil Procedure Rules for possession hearings. Rule 39.2 states:

- 1) The general rule is that a hearing is to be in public. A hearing may not be held in private, irrespective of the parties' consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).
- (2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected.
- (2A) The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.
- (3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –
 - (a) publicity would defeat the object of the hearing;
 - (b) it involves matters relating to national security;
 - (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
 - (d) a private hearing is necessary to protect the interests of any child or protected party;
 - (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
 - (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
 - (g) the court for any other reason considers this to be necessary to secure the proper administration of justice.

4) The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness.

(5) Unless and to the extent that the court otherwise directs, where the court acts under paragraph (3) or (4), a copy of the court's order shall be published on the website of the Judiciary of England and Wales (which may be found at www.judiciary.uk). Any person who is not a party to the proceedings may apply to attend the hearing and make submissions, or apply to set aside or vary the order.