

## Written evidence from Mr Thomas Cliff

### Parliamentary Evidence Assessment

*Legal proceedings; barriers of obtaining information in a democratic society* by Thomas Cliff

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Writing to the Justice Committee in regard to their select committee on 'Open Justice: court reporting in the digital age'.

#### **1. A Summary of Findings**

- Media has adapted. Only 43% of people use the printed press as their main media source.
- There is a need for a change in the way that courts share information with the public and the media as to increase transparency. This will strengthen the accountability of the judiciary.
- The Criminal Justice Act [1925] which prohibits photography within a courthouse is outdated, unclear, unnecessary and contradicted by other law.
- Courts remain inaccessible for a number of individuals within society- particularly those with mental health issues, physical disabilities and those in rural communities.
- There are clear ways to remedy this issue such as maintaining remote trials, recording and publicising court cases and increasing renovations within court houses as to make more accessible.

#### **2. Increasing digitisation**

An increasingly technology-savvy society has led to more individuals having access to, and expectations of, information in a timely fashion. Ofcom reported within a 2021 study that visual, digital media (television and social media) are by far the favoured methods of news consumption<sup>1</sup>. 79% of individuals gained news from television news sources, and 73% of individuals gained news from social media compared to only 46% and 32% of the public receiving news from the radio and printed press respectively. It would therefore stand to reason that any issues within the reporting of legal proceedings within a modern day would regard the lack of video-visual friendly media within courts.

#### **3. The democratic need for recorded court proceedings**

The right to a free, fair, and open trial in the United Kingdom may be traced back to the Magna Carta of 1215. Article 29 of the Magna Carta provides that a man is not to be arrested 'except by judgement of his peers'<sup>2</sup>. Recently, the Human Rights Act [1998] reinstated the now statutorily legal right to a 'fair and public hearing within a reasonable time'<sup>3</sup>. Despite approximately a century of adaptation of media [and the introduction to the legal right to a public hearing], there has been no recent evolution of the core legislation governing the rights

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<sup>1</sup> OFCOM, *NEWS Consumption Report 2021*

<sup>2</sup> Summerson, H et al, *The Articles of the Barons: Article 29* The Magna Carta Project. Accessible: [https://magnacarta.cmp.uea.ac.uk/read/articles\\_of\\_barons/Article\\_29](https://magnacarta.cmp.uea.ac.uk/read/articles_of_barons/Article_29)

<sup>3</sup> Human Rights Act [1998] A6, S1.

of media and transparency within courts. Reform of the way that trials and courts are reported on would therefore aid greatly in creating a hearing that is involving and accessible to more members of the public.

#### **4. Barriers to accessible information for the media and public.**

There are a number of barriers for the courts and media to overcome before they may evolve into a more consumer-friendly model for processing information.

##### **a) Legal Barriers to the media obtaining information from the courts.**

The Criminal Justice Act [1925]<sup>4</sup> is the main statutory governance regarding filming within courts. The act prohibits any photography within courts. Any individual who takes, or attempts to take, a photo of court will therefore be held in contempt. There are a number of issues with this act, and its relevance to a modern world is uncertain.

##### **i) Legislation is outdated.**

The current legislation governing publications made from a courtroom is archaic and therefore cannot have anticipated the technological progress of a modern world. The Criminal Justice Act [1925] is old to the extent which statute does not make mention of recordings due to handheld lightweight recording equipment not being accessible to the public until 1983<sup>5</sup>. The Criminal Justice Act's successor, the Contempt of Court Act [1981]<sup>6</sup> also predates handheld video recording apparatus (despite admittedly making mention to video recordings) and certainly predates the invention of the modern mobile phone.

##### **ii) Fining is unclear and redundant**

Under a strict reading of The Criminal Justice Act [1925], the maximum fine that may be imposed to an individual who has taken an image within court is £50. A fine being 50 creates a number of implications for the relevance of an offence. One implication of the £50 fine within the act is that guidelines in this act are incorrect or outdated- and therefore subject to a need for amending. Another situation of the fine stated is that an act resulting in contempt at court is worthy of a fine amounting to less than a tenth of weekly earnings at an average hourly wage<sup>7</sup>.

##### **iii) The media is not prohibited from reporting on cases regardless of any recordings.**

It may be argued that there is a clear contradiction and failure within the Criminal Justice Act [1925]. The Criminal Justice Act [1925] (and later the Contempt of Court Act [1981]) aim to prevent imagine within courts- not reporting upon proceeding legal trials. Reporting on legal proceedings will

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<sup>4</sup> Criminal Justice Act [1925] S41 §1

<sup>5</sup> Buckingham, D. Willett, R. Pini, M. (2011) *Home Truths? Video Production and Domestic Life*

<sup>6</sup> Contempt of Court Act [1981] S9 §1A

<sup>7</sup> White, N. (2021) *Employee Earnings in the UK: 2021* Office of National Statistics Para 2

occur regardless of recordings not being accessible- and therefore it would stand the reason that courts would want to reduce opinionated pieces as to assure impartiality in media reports. 70% of jurors<sup>8</sup> are alleged to have viewed media proceedings on the trial they sit on. Empirical recordings of what has happened in court will allow jurors to better review factual evidence when deliberating on trials, instead of biased second-hand recollections.

**iv) The Law Commission has acknowledged the need for adaptation in recognition of evolving forms of media.**

The idea that there is need for legal reform regarding recordings is shared widely within the world of legal academia. The Law Commission has stated that challenges are ‘posed by the new media’<sup>9</sup>. An argument was made by the law commission that an allowance of recording in courts may increase ‘confidence that the [judicial] system works properly’<sup>10</sup>.

**v) There has already been a temporary easement regarding the recording of court cases.**

The Government have provided two types of easements regarding the recording and publications of court proceedings. The first example of recording court cases came with the introduction of the Supreme Court under the Constitutional Reform Act [2005]<sup>11</sup> which specifically exempted the Court from the Criminal Justice Act [1925]. It would logically make sense that judges in charge of cases that attract masses of public attention would be more subject to bias following widely viewed press coverage than juror in a low-profile crown court case however only the former is granted permission to broadcast their trial to the public.

Furthermore, the Government also temporarily allowed for recording and broadcasting (perhaps better referred to as ‘streaming’) of court proceedings following the Covid-19 Pandemic. The Coronavirus Act [2020]<sup>12</sup> opened up a far greater possibility for the laws provided in the Criminal Justice Act [1925] and Contempt of Court Act [1981] to be broken provided the ease of which computer data may be replicated or stolen<sup>13</sup>.

It therefore seems that the government is making laws with the intent for an increase in transparency, and that previous laws have simply not been amended as is intended.

**vi) An assurance against interference**

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<sup>8</sup> Thomas, C. (2010) *Are Juries Fair?* Ministry of Justice Research Series 1/10

<sup>9</sup> Law Commission (20120), *CONTEMPT OF COURT Summary for non-specialists* (Consultation Paper 209) Par 1.2

<sup>10</sup> Law Commission (20120), *CONTEMPT OF COURT Summary for non-specialists* (Consultation Paper 209) Par 2.5

<sup>11</sup> Constitutional Reform Act [2005] S47 §1A

<sup>12</sup> Coronavirus Act [2020]

<sup>13</sup> Bently, P. (2020) *Is hacking getting harder?* BBC Science Focus. August 13<sup>th</sup>2020 Accessible:

<https://www.sciencefocus.com/science/is-hacking-getting-harder/#:~:text=Computer%20security%20is%20becoming%20more,compared%20to%2020%20years%20ago>.

A fear that a trial may be impacted by increased media involvement is valid. In the instance that a trial will be substantially altered by involvement of the media or other viewing parties a judge may dismiss the gallery<sup>14</sup>. There is therefore no reason why a trial that has been recorded (and because of this is having its decorum substantially altered) cannot be subject to a judge's discretion as it is now. Article 6 of the Human Rights Act appears to therefore have already dealt with counterarguments to existing claims of trials become subject to external pressure through the gallery.

## **b) Physical Barriers to the public and media obtaining information from the courts**

Physical Barriers are still present within courts that make trials inaccessible to certain members of the public. Issues regarding disability, both physical and mental, and other health-related concerns within courts have been subject to large amounts of discussion within recent years.

### **i) Covid-19 and the impact of future lockdowns.**

Data regarding the Covid-19 pandemic [accurate at the time of this evidence being submitted] suggests that although large steps have been taken at curtailing the spread of the virus, it will take a substantial amount of time before England and Wales are entirely coronavirus free<sup>15</sup>. In an attempt to prevent the spread of the virus in 2020, courts were almost entirely moved online. This allowed for individuals to remotely access a court. Logic follows that the government would also wish to curb other virus-based flus, and therefore would not want to risk the health through a lack of adequate social distancing<sup>16</sup> of the public as means to witness a trial.

Covid-19 and other viruses provide far greater threat to at-risk individuals who suffer from chronic health conditions or are elderly<sup>17</sup>. Not providing an accessible method of partaking within the legal process would lead to marginalised groups having even less representation that already present within courts. A lack of representation of these individuals, therefore, would be counterintuitive to democratic representative values.

### **ii) Disability Accessibility within existing courts.**

Within a recent report from Bolton Burdon Kemp, it was found that 84% of courts within England, Scotland and Wales are still not wheelchair accessible<sup>18</sup>. Around 2% of society are reliant on mobility aids or a wheelchair<sup>19</sup>

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<sup>14</sup> R v Richards (Randall) Crim L.R 764

<sup>15</sup> BBC (2020) *Covid- Europe faces 700,000 more deaths by March- W.H.O* BBC News 24<sup>th</sup> Nov 2021 Accessible: <https://www.bbc.co.uk/news/world-europe-59397182>

<sup>16</sup> Jones, N. (2020) *How Covid-19 is changing the Cold and Flu Season*. Nature 588, 388 2020

<sup>17</sup> Mallapaty, S. (2020). *The Coronavirus is deadlier if you are older and male- new data suggests*. Nature 585, 16-17 2020X

<sup>18</sup> Bolt Burdon Kemp (2020). *Only 2% of Britain's Civil and Criminal Courthouses are Fully Accessible*.

<sup>19</sup> NHS (2015) *Improving Wheelchair Services*. Accessible: <https://www.england.nhs.uk/wheelchair-services/>

, and therefore courts may be excluding and underrepresenting marginalised groups of disabled peoples within the judicial process. This argument is further backed by the fact that many courts are still not accessible to blind or deaf individuals, due to approximately 23% of courts still not accepting assistance dogs or implementing a hearing-loop system in assistance of blind and deaf individuals<sup>20</sup>.

Furthermore, issues persist in regard to individuals with mental health issues accessing courts. Courts, in an attempt to assure the equity of all, have allowed for very few accommodations for individuals with mental issues such as anxiety. A separate waiting room for individuals with anxiety disorder to calm nerves in ahead of speaking as a witness has been described as ‘invaluable’, and stands only to benefit the quality of evidence presented at trial.

### **iii) Geographic Inequity**

The inequality in access to services provided by geographic area has been subject to discussion numerous times. The Greater London Area (a geographic region spanning approximately 1,572km) currently holds around 17 county courts. Wales, a country of approximately 13 times the size of the Greater London Area, currently holds 20. The sparsity of courts within certain areas of the UK makes long-distance travelling from certain towns necessary as to both be part of, and subject to, the legal system. Long journey toward courts dissuade individuals to be part of the legal process, therefore impeding upon the accessibility of courts and thus their accountable strength lessened.

## **5. Solutions to inaccessibility within courts.**

There are three key recommendations that would aid in remedying the inaccessibility within the court and justice system at this moment. Each recommendation has been listed in order of ‘ease’ to implement based upon the legal processes that must be made to accommodate for them. Each recommendation needn’t be independent of one another, however they may be viewed as this if necessary.

### **a. Keep current court coronavirus regulations in place, and implement a hybrid court system wherein online and in-person methods are used.**

The government has already seen a willingness to adapt to this model from the courts. Although there have been some dissenting opinions about individuals not treating trials as seriously due to their taking place on zoom, largely the criminal and civil justice programs have retained their functionality. Allowing for zoom (and other such video-conferencing software) to play part within the regular trial process would help accommodate for both physical disabilities and mental health issues, and also provide [comparatively] little legal change to the system currently in place. Furthermore, the use of online broadcasting allows for a far easier method for rural communities to bear witness to the justice system in action.

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<sup>20</sup> Bolt Burdon Kemp (2020). *Only 2% of Britain’s Civil and Criminal Courthouses are Fully Accessible.*

## **b. Allow for the recording and streaming of video within courtrooms**

Courtrooms already allow for recording and streaming of video within certain instances, such as within the Supreme Court. Fears that trials may be politicised have, unfortunately, come to fruition regardless of their lack of televised nature<sup>21</sup>. Having a recorded and accessible trial will therefore mitigate the ability for politicised journalists to twist criminal or civil proceedings into a partisan issue. Furthermore, having a court be able to present information in a more stimulating and accessible way (for example, a trial summary through video format) would greatly aid in the ability for information to be digested within an age of increasing digitisation. Repealing the relevant sections of the Criminal Justice Act [1925] and Contempt of Court Act [1981] will allow for a fresh take on the judicial system.

## **c. Continue strides in making courtrooms more accessible**

If the government is to choose to discourage the concept of a remote-accessible trial, then they must therefore make much greater attempts to make courtrooms and courts more accessible. Allowing for accommodations for individuals with mental health issues may be an expensive, yet necessary, process. Allowing all courtrooms access for wheelchairs, guide dogs, and aids for the deaf and hard of hearing community are alterations that have been made in parts of the UK, yet there is no reason they should not have been implemented to all courts. Any inaccessibility based upon the structure a court is made in is in direct violation of the representation of individuals who are already heavily unrepresented and marginalised within society. A more represented and accessible courtroom leads to a more representative and reflective legal system.

## **6. In summary**

In summary, the legislation dictating the current laws of accessibility of court information are problematic. Legislation was (and is)

- Unable to predict technological and cultural advances.
- In conflict and consistently being undermined.
- Unnecessary due to the politicisation of trials regardless, and legally unnecessary due to the powers a judge has to dismiss a public gallery.

Courts also prevent information being accessed through their physical inaccessibility.

- The coronavirus has presented an ability for there to be a safer method of delivering accessibility to trials.
- Courts are still largely inaccessible for a number of individuals within society, leading to issues with representation.
- Geographic sparsity of courts also discourage people living in rural communities from attending court cases they may otherwise have an interest in.

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<sup>21</sup> Swinford, S (2017) *The Brexit Mutineers: At least 15 Tory MPs rebel against leave date with threat to join forces with Labour*. The Telegraph Nov 15<sup>th</sup> 2017.

The three main ways to remedy this would be:

- Allow for courts to proceed further with their remote cases.
- Allow for recording to take place within court
- Increase the renovations needed within physical courts as to accommodate for individuals with specific needs.

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