

Written evidence from Jacob Atkins – journalist.

Thank you for the opportunity to make a submission to this inquiry.

Between late 2018 and mid-2020 I worked as a reporter in the UK for a publication covering regulation in the payments industry, which naturally required coverage of mainly civil court proceedings in various London courts, but chiefly the Commercial Court. Our coverage of such cases was generally limited, mainly due to the difficulty in obtaining case documents.

Since early 2021 I have worked from Australia for a British publication covering trade finance globally, which also involves court coverage, primarily of civil cases. The ability to observe cases remotely has therefore been of obvious benefit, but difficulty accessing documents persists.

I provide responses below to two of the questions posed in the call for evidence, which primarily concern access to documents, for two reasons. The first is that access to documents is the aspect of court reporting that is particularly backward in the UK compared to some other jurisdictions, the second being that shrinking newsrooms and increasing remote work means that more reliance is placed on reporting based on court filings rather than attendance at in-person hearings.

Q2. What barriers [are there] to the media obtaining information from the courts?

The first barrier I faced when attempting to report on civil cases was a lack of personnel whose job is to deal with the media. When I was able to locate people, they were generally unable to help with matters such as access to documents, and I got the impression their role was dealing with media inquiries relating to the courts as organisations, rather than to help journalists report on court proceedings.

During 2019 and 2020 I had a handful of calls with media staff, from memory mainly the courts housed in the Royal Courts of Justice, but the conversations were never fruitful. I quickly abandoned this method.

In my view, difficulty accessing documents is not only an impediment to media reporting but also the principle of open justice. Most of the hearings I have attended in the London Commercial Court, for instance, are barely comprehensible to non-parties because the judge and the parties have naturally read all the relevant documents so tend to only discuss the legal points of the case, rather than the facts, without which it is almost impossible to write an accurate news story.

Without prior access to those facts, typically found in the particulars of a claim, the respondent's defence and witness statements, a journalist or member of the public will struggle to interpret proceedings. Parties are also rarely forthcoming when asked by journalists to provide substantive details about cases they are involved in.

CEFile

In mid-2020 I became aware of CE File, the electronic filing system which I understand is only available for civil proceedings. At the time CE File required a fee (in the vicinity of £9,

from memory) to even conduct a search for records. A fee is no longer required for searches, but a flat fee of £11 per document applies when requesting access to documents.

CE File could become the basis for an acceptable system (as outlined below), however at present it has the following drawbacks:

- The £11 per document fee quickly leads to prohibitive cumulative costs for newsrooms that require document access even semi-regularly.
- The fee will be an even more significant impediment to freelance journalists, of which there are a large number in the UK.
- This fee applies irregardless of the length of the document. For example, a 30-page particulars of claim is the same price as a two-page order, which seems unlikely to be a fair or accurate reflection of the costs of maintaining the system, especially given it seems most documents are uploaded by the parties themselves.
- In many, even the majority, of civil cases that I have searched for, copies of documents are not even available to request. This may be because they don't exist, but presumably if a case exists in the court system, some kind of originating motion/application/claim/summons must have been filed.
- The case notes only include filed documents, and not any other updates, hearings or directions from judges, in contrast to the US PACER system (outlined below).

Q3. What could be done to make information on court cases more transparent and accessible?

The focus of my answers below is on improvements to access to documents, which have the potential of making reporting on UK courts much more accessible, improve the quality of reporting and also benefit other interested groups and the general public.

I have had experience reporting on court cases in three other jurisdictions: the US (remotely), Israel and Australia. While access to general case information and documents in all three are generally much better than in the British courts, the US system for access to court documents is one that I think is the best model for the UK to emulate and in doing so vastly improve the quality and quantity of court reporting.

PACER

Descriptions of PACER are available elsewhere, but it can be briefly described as an online portal that acts as a one-stop-shop for all US court filings. It is possible to view and download:

- indictments and complaints;
- defences;
- transcripts (subject to a 90 day delay, or an additional charge if earlier);
- pleas;
- all directions/orders handed down by the judge;
- information on dates of hearings, trials etc;
- minutes of discussions between counsel and judges;
- extensions of time for the submission of documents etc;

- the identities and contact details of legal counsel;
- when counsel are appointed/withdrawn;
- audio files.

These documents are generally made available almost immediately after they are filed, unless sealed.

Users sign up to an account and then pay a fee for searches and per page for documents (typically US\$0.10), up to a maximum of \$3 per document. Moreover, if a user spends under \$30 per month, their bill is waived and all documents viewed/downloaded *are free*. Full fee waivers are offered in some instances to users such as researchers and pro-bono lawyers.

Compared to CE File, not only does PACER offer vastly more information and documents, it is possible to access a much greater number of documents at no or little cost. It is also possible to quickly and easily access basic information about cases, such as parties, legal counsel and dates of upcoming hearings. Even getting this rudimentary information in the UK often involves a lengthy hustle.

The creation of a similar system in the UK – the basis of which already exists in CE File – is a sorely needed feature which would dramatically improve transparency of the court system and confidence in it.

To summarise, PACER offers an excellent model to emulate because of: the breadth of information available, the speed at which they are made available, the ease of access and the manageable costs (through the per-page charges, caps and waivers).

Other overseas examples

The Australian model of document access for the media (I can only comment on the Supreme Courts in Victoria and New South Wales (NSW), and the Federal Court) is also much better than in the UK, but may not be possible to emulate due to the greater number of courts in the UK.

The Victorian and NSW Supreme Courts both have dedicated media staff whose main role is to assist journalists gain access to the information they need to report on cases. In my limited dealings with them they have professionally and efficiently facilitated access to documents at no cost, and are generally well-prepared for cases that are likely to gain media attention, and are ready to distribute documents on request.

For example, in my only instance of covering a civil trial in the Victorian Supreme Court, transcripts of each day's hearings were made available to journalists covering the trial at the end of the day. I have never tried to access a transcript in the UK but from what I understand it is difficult.

The Federal Court, which operates in every Australian state, also has a dedicated employee who provides updates on cases and facilitates access to documents for the media, however there is an A\$50 fee for access.

This system of having dedicated media staff works very well for journalists and would greatly improve document access and efficiency at courts such as those at the Royal Courts of

Justice, but implementation across the UK may be expensive. It also seems to me to favour document access to the media, over the general public and others.

I hope this submission has been useful. Please feel free to contact me if you have any further questions.

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