

Written evidence from PA Media

Introduction

This submission draws on the experience of reporters working for PA Media (formerly the Press Association), the national news agency for the UK and Ireland. PA reporters regularly cover courts and tribunals across England and Wales, including magistrates' courts, coroners' courts, crown courts, the employment tribunal, county courts and the senior courts (including the High Court, Court of Appeal and UK Supreme Court). This submission has been prepared by Sian Harrison, PA's Law Editor, in consultation with a number of colleagues. Sian has been a journalist for 15 years and a specialist court reporter for around 11 years. She is also a member of the HMCTS media working group and co-author of McNae's Essential Law for Journalists, the leading text book on media law and court reporting for both trainee and later career journalists from the National Council for the Training of Journalists, published by Oxford University Press.

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

As highlighted by a number of researchers in recent years, there has been a dramatic decline in court reporting across the media landscape. There are a handful of news agencies, including PA, which routinely cover courts. However this will mostly be higher-profile cases which attract significant media attention. Compared to, say, 20 years ago, there are fewer independent court reporting agencies, fewer journalists covering court in general, fewer dedicated court reporters at local newspapers and websites and fewer legal/court correspondents at national titles. There can also be, in an industry run to tight budgets with competing interests to be balanced, a reluctance to send a reporter to cover a lengthy trial which may not produce copy every day, as it does not make economic sense. One PA reporter observed that fewer early career journalists are comfortable covering courts than would have been the case even 10 years ago, and gave an example of a local newspaper editor who had recently been unable to cover a court case of interest to their circulation area because they had no-one working on that particular day who had shorthand – essential for making an accurate record of court proceedings. It is also difficult in these circumstances for younger journalists to receive the kind of on-the-job training which was once commonplace on local newspapers.

This perfect storm of decline has led to a situation described in the Cairncross Review of February 2019 as “particularly stark” in the case of courts – at both local and national levels. The report stated:

“Newspapers have traditionally devoted much space to covering the work of the machinery of government. With the erosion of their revenues, some of that coverage has diminished. The decline appears to have been particularly stark in the case of the courts (at both national and local levels), and of local news.”

Court reporting falls into a category the review described as “the humdrum task of reporting on the daily activities of public institutions” along with council meetings etc. However, while Local Democracy Reporters have been introduced to boost coverage of local politics, there has not been a comprehensive boost of the same sort for court coverage.

Quoting Jeremy Bentham, Lord Justice Toulson stated in *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] [EWCA Civ 420](#):

“Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? ... In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse. Jeremy Bentham said ... ‘Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial’.”

It is difficult to see how the media can continue to perform this important function properly at a time when dwindling resources mean many courts across the country will go uncovered most days. Research has shown that, where courts mostly go uncovered and court staff, judges and magistrates become less used to seeing journalists regularly, there are often more difficulties for journalists when accessing hearings – for example in academic Richard Jones’ recent paper on court reporting¹. As highlighted in the Cairncross Review, a study carried out by Brian Thornton at Winchester University found that court reporting in the four years from 2012 to 2016 had dropped by 30% in the national newspapers and by 40% in regional newspapers. And in 2018, Lord Igor Judge, a former Lord Chief Justice, called this decline a threat to the justice system. Justice needs to be seen to be done, he argued, ideally by those who can accurately and impartially inform the public about the legality of rulings. These comments are unsurprising when considering the role of court reporters as the “eyes and ears” of the public. Court reporting can be a highly specialised area of journalism and having dedicated specialists who are able to properly understand and interpret complex information for the ordinary reader, whilst also being ready to challenge reporting restrictions in the public interest (i.e. representing the public’s right to know and arguing in favour of freedom of expression), is essential. One of the reasons we fight to maintain a PA presence at various courts is that we often advocate on behalf of the whole press. It is falling more and more on individual reporters to deal with legal challenges as budgets are cut and legal expertise are lost with staff who leave.

Press attendance being lower in general is of real concern as it contributes towards a democratic deficit. If Parliamentary business was conducted daily without a single journalist being there to report on it, with no sessions being recorded or broadcast live, it would be obvious to most that there would be something very wrong with that. However, there is much going on in our courts that we are not seeing or hearing about and this is largely unnoticed by the wider public. The fewer cases that are reported, the less aware the public is of the rule of law and the less informed they are as to whether the administration of justice is functioning as it should. Judges and lawyers will sometimes, in the presence of a reporter, highlight a particular difficulty within the justice system. One such example was a Lord Justice of appeal

¹ “It’s the Best Job on the Paper” – The Courts Beat During the Journalism Crisis, Richard Jones (E) <https://www.tandfonline.com/doi/abs/10.1080/17512786.2021.1910980?journalCode=rjop20> The article is behind a paywall but is summarised here: <https://www.thejusticegap.com/court-reporters-typically-have-the-press-bench-to-themselves/> and here: <https://www.transparencyproject.org.uk/court-transparency-academic-and-policy-updates/>

who drew attention to a crisis with the court translators service, which was resulting in translators not being sent to courts at the right time and therefore having an impact in terms of delays and wasted expense across the criminal justice system². Another important aspect of court reporting is to be able to spot wider patterns and to investigate trends in crime/inquests etc.

What barriers there are to the media obtaining information from the courts;

Generally speaking, the main obstacles to obtaining information arise out of a lack of any centralised mechanisms for doing so. As one PA reporter observes, beyond checking the most basic of information (name, age, DOB, charges, names of counsel, judge etc), access to information varies as between respective judges, magistrates, counsel and court staff. Access to documents continues to be a problem for journalists in some courts. In criminal law, there has been a court protocol for access to prosecution evidence put before the jury in place for over 15 years, however Rod Minchin, a reporter for PA in the South West region, said that it can “feel like you start from scratch every time you seek a document”. Rod covered the trial which led to the case of *The Guardian v R v Kingshott et al* [2016] EWCA Crim 58 and was involved in the early stages of the argument for the CCTV footage. However, as his experience as described above demonstrates, this hasn’t resulted in consistent and widespread application of the current rules.

In the higher civil courts, it is almost impossible to report a case without obtaining the documents placed before the judge/s. They contain all the underlying information in a case and counsel will mostly advocate on points of law, knowing the judge/s will have read all of the background ahead of the hearing. However there hasn’t been a formal mechanism of obtaining documents in these courts for more than 10 years. Previously, journalists and law reporters could ask a court clerk or associate to see the skeleton arguments, or claim form and particulars (depending on the type of hearing). But from around 2011 onwards, files were no longer available for court staff to provide them to the press. Currently journalists are reliant on legal representatives to provide skeleton arguments for hearings in the senior courts. In cases where lawyers refuse to supply a skeleton or similar document, journalists must raise the matter with the judge – taking up valuable court time. The most significant ruling on the issue of access to documents is *Cape Intermediate Holdings v Dring* [2019] UKSC 38. The Supreme Court itself has provided skeleton arguments for cases it was hearing on two occasions – in *Miller & Anor v Secretary of State for Exiting the European Union* [2017] UKSC 5 and *Miller v The Prime Minister* [2019] UKSC 41. These two cases were of huge public interest and importance, and it was recognised that the documents should be provided via the court’s website. However, these are the only occasions on which this has happened. On other occasions in high profile cases, including Johnny Depp’s libel claim against News Group Newspapers, which was heard over three weeks in July 2020, PA has obtained documents from legal teams and distributed them to the press. This was no small feat in a case where the documents and exhibits ran to thousands of pages and the list of press representatives grew longer by the day. Urgent consideration should be given to providing access to documents for journalists in a more formal and centralised way. Some documents are available on the e-filing system (for some cases in the Business and Property Courts and Queen’s Bench Division of the High Court). However these are only available for a fee and

² The court translators issue was summarised here: <https://www.bbc.co.uk/news/uk-17009115>

media organisations would not be able to afford to access documents in every case of interest in this way. The only other mechanism for accessing documents filed with the court is to pay a fee of £255 for an application to the relevant court office. Again, this is prohibitively expensive for media organisations wishing to obtain documents for a large volume of court cases and, in any case, should not be charged in situations where journalists are entitled to receive such information in accordance with the law.

Most reporting restriction orders are not routinely or uniformly given out and it is the responsibility of individual journalists to check whether any restrictions are in place in any given case. Some applications for reporting restrictions are distributed to the media via the PA Alerts Service. However, this is not able to distribute orders which have already been made.

What could be done to make information on court cases more transparent and accessible;

A number of reporters who regularly cover Crown courts have expressed their view that there should be a limited area of the Digital Case System available for journalists. Through discussions at meetings of the HMCTS Media Working Group, I understand this is not something currently being considered. However, work needs to be done on finding some way for journalists to access the information they need in a timely manner. There could also be more information on court lists regarding what type of case is involved, time estimates etc. And finding some way to provide access to court documents would be a major step towards improving transparency.

The implications of social media for court reporting and open justice;

One of the issues brought to the fore by social media is that people who don't know enough about media law can potentially breach rules (e.g. the Contempt of Court Act 1981, injunctions, etc) whereas journalists and media organisations must keep abreast of the media law landscape in order to avoid the potential pitfalls. This can sometimes create a sense among some members of the public that journalists are holding information back, when in fact they are reporting responsibly. On a more positive note, social media has enabled wider understanding of the legal system. There are now several legal commentators using Twitter (e.g. Secret Barrister, Joshua Rozenberg) who use social media to explain often complex legal issues for the general public. There are also numerous legal social media accounts discussing issues in the criminal justice system, eg legal aid cuts, lack of court time, length it takes to investigate and charge crimes, etc. Since 2011, the media have been able to live tweet court proceedings (in fact it's wider than Twitter and allows all text-based communications) without requesting permission from the court. Members of the public are also free to live-tweet but must ask permission. There are many examples of journalists utilising social media in a positive way to bring attention to cases of public interest. Also many journalists and media organisations use social media to keep readers and followers updated on what's happening in cases they are covering. Some of the drawbacks include journalists being targeted on social media for reporting court cases, sometimes in unpleasant and intimidating terms. One such example was during the Stephen Yaxley-Lennon contempt of court hearing, where journalists at the Old Bailey were harassed on social media after being identified by acolytes of Yaxley-Lennon.

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

Remote hearings

The fast pace of change necessitated by the lockdown measures introduced to prevent the spread of Covid-19 resulted in a lot of trial and error. A patchwork of video conferencing software including Skype, Zoom and MS Teams was used initially. By about May 2020, the Cloud Video Platform (CVP) was in use in some courts and was being rolled out across the court estate. This is to be replaced soon and it is hoped the new system will provide improved remote facilities. There has been a wide variation in accessibility to remote hearings as between different courts and different judges/clerks etc. So the introduction of more formal arrangements through the two bills currently going through Parliament – Police, Crime, Sentencing and Courts Bill & Judicial Review and Courts Bill – will be welcome provided it does not further impede access.

Court Reform in the Judicial Review and Courts Bill

Expansion of Single Justice Procedure (SJP) – 38

This is the most alarming part of the bill as far as journalists are concerned as there is a lack of transparency already in the majority of court cases as a result of the SJP. Putting more cases into this category will undoubtedly impede the principle of open justice, as journalists have reported that they are currently unable to obtain all of the information they need to report a case in a timely manner about cases using the SJP. Court reporters also often hear information that can be important later in a case at a first appearance, and removing the need for some of these will also result in a lack of transparency.

9C Inquests without a jury to be conducted at a hearing or in writing (amending the Coroners and Justice Act 2009)

Coroners should have to inform members of the press of an intention to conduct an inquest in writing so media organisations can formulate an argument about whether to oppose a written hearing, in order to assist the Coroner to reach a conclusion on public interest matters.

Police, Crime, Sentencing and Courts Bill

167 (Inserts 85A into Courts Act 2003)

85A

2) If the proceedings are specified under subsection (8)(a), the court may direct that images or sounds of the proceedings are to be transmitted electronically for the purpose of enabling persons not taking part in the proceedings to watch or listen to the proceedings. (3) A direction under subsection (2) may authorise only the following types of transmission— (a) transmission to designated live-streaming premises, or (b) transmission to which individuals are given access only having first identified themselves to the court (or to a person acting on behalf of the court).

This is currently done in most courts by contacting court staff (listings, clerks, associates etc) to request links to hearings on a given day. However it should be noted this does not fully

replicate online the ability for any member of the public to attend a particular court on a given day in order to observe proceedings. This is also more restrictive than arrangements currently in place at the Court of Appeal (Civil Division) which permit livestreaming of hearings that are recorded and remain online afterwards, in a similar way to the Supreme Court.

(5) A direction under subsection (2) may include further provision about— 5 10 15 20 25 30 35 40 Police, Crime, Sentencing and Courts Bill Part 12 — Procedures in courts and tribunals 188 (a) the manner of transmission, or (b) the persons who are to be able to watch or listen to the transmission (including provision making that ability subject to conditions, or aimed at preventing persons who are not meant to watch or listen from being able to do so).

This highlighted part appears to give powers to exclude unknown classes of person with no apparent justification. Concern that staff could misinterpret this or apply in a heavy-handed way. Quite often they aren't told what they are allowed to share, or worse are told they can't share things which they can.