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Summary

Open justice is the principle that court proceedings are conducted in public. Open justice is being transformed by the digital age. This inquiry focused on how the digitisation of the courts and the media is changing the way in which the public access court proceedings. Open justice is a principle that defines how our legal system operates and is a core component of the rule of law. Despite the constitutional status of the principle, there are many legal and practical limitations on how the public and the media access court proceedings.

There has been a significant decline in coverage of the courts in the media, particularly in the local press. This is concerning as the media plays a vital role in communicating the work of the courts to the public. The digitisation of the media and the courts has been positive for some aspects of court reporting, for example by enabling reporters to follow proceedings remotely and to use social media to give live updates on cases.

Our report highlights evidence from journalists about the practical difficulties they encounter reporting on the courts. Journalists and members of the public often have to overcome significant barriers to identify, attend and follow court proceedings. Across the justice system there are additionally significant variations in the accessibility and quality of information available on ongoing court proceedings. Witnesses to the inquiry stressed that it is often very difficult to follow and report on proceedings without access to the documents submitted to the court by the parties. HMCTS has made some progress in this area, but overall we find that there is much more that could be done to ensure that the media and the public can access the information they need to follow court proceedings. We recommend that HMCTS develops a single digital portal which the media and the public can use to access information on court proceedings, court documents and other relevant information.

Court reform has led to some challenges for open justice. Online procedures introduced in the criminal and civil courts have been designed to increase efficiency but some have argued that they have had a negative impact on transparency. In particular, the Single Justice Procedure has long been criticised for being insufficiently transparent. We recommend that HMCTS should review the procedure and ensure that it is as transparent as proceedings in open court.

Finally, we support the work being done by the President of the Family Division, Sir Andrew MacFarlane, to enhance the transparency of the Family Court without compromising the confidentiality of the children involved. The Family Court now deals with a large volume of cases, which directly affects a significant number of families, and as a result the public has a legitimate interest in having a better understanding of how the Court works. We recommend that the legislative framework governing the reporting on family proceedings should be reviewed and reformed, as it is no longer fit for purpose. We look forward to seeing the results of the piloting of the changes recommended by the President of the Family Division's Transparency Review. However, we stress that their success will depend on HMCTS providing sufficient resources to ensure that more information can be published on the work of the Family Court.

1 Introduction

1. We launched this inquiry in September 2021 to consider two open justice issues. The first was how the changing nature of the media was affecting court reporting. The second was how the court reform programme was affecting the public and the media's ability to access information on court proceedings. The unifying theme between the two issues is the increasing digitisation of both the courts and the media and the implications of this for the public's ability to access information on court proceedings. The evidence submitted to this inquiry has suggested that open justice in England and Wales is facing an important turning point in its history. This jurisdiction has a tradition of open justice dating back centuries. However, the advent of the digital age has profoundly changed how information on court proceedings is accessed and communicated. Digitisation of the courts and the media presents opportunities and risks for open justice and raises fundamental questions over the correct balance between transparency and justice.

2. We thank all those who submitted written evidence and provided oral evidence to our inquiry. The Committee would also like to thank the Judicial Office for facilitating visits to Manchester Crown Court, the Monument Nightingale Court, the Holborn Nightingale Court and the East London Family Court, all of which helped to inform this inquiry. We would also like to thank the staff at these courts for hosting us and for allowing us to observe proceedings. The visit to East London Family Court on 24 February 2022 was particularly helpful to this inquiry because of the limited publicly available information on proceedings in the Family Court. We are very grateful to the judges and staff from the Court for hosting us and answering our questions. **We would encourage every family court in England and Wales to invite their local MPs to visit so that they can hear accounts of the issues facing the family justice system from those who are responsible for delivering justice on a daily basis.**

3. This report is structured as follows. In this Chapter we examine the meaning of open justice, the different elements of open justice, its purpose and how it is defined in law including some of the main legal limitations to the principle. In Chapter 2 we look at how the media's coverage of the courts has changed and the implications of this for open justice. In Chapter 3 we examine the barriers to the media and to the public of obtaining information from the courts. We also propose some solutions for addressing those barriers. Chapter 4 focuses on the court reform programme and its implications for open justice. Finally, Chapter 5 considers the President of the Family Division's proposals to improve transparency in the Family Court.

Defining open justice

4. Put simply, open justice is the principle that justice should be administered in public. However, there can be some confusion over the precise definition of the principle and how it works in practice. In this section we break down the principle of open justice.

The elements of open justice

5. The Judicial College's *Guide to Reporting Restrictions* explains that the general rule that justice must be administered in public can be broken down into the following elements:

- Proceedings must be held in public.
- Evidence must be communicated publicly.
- Fair, accurate and contemporaneous media reporting of proceedings should not be prevented by any action of the court unless strictly necessary.[1]

6. These elements reflect Lord Diplock's statement in *Attorney General v Leveller Magazine Ltd*:

> As respects proceedings in the court itself it requires that they should be held in open court to which the press and public are admitted and that, in criminal cases at any rate, all evidence communicated to the court is communicated publicly. As respects the publication to a wider public of fair and accurate reports of proceedings that have taken place in court the principle requires that nothing should be done to discourage this.[2]

Going beyond not merely discouraging, a number of judgments of the Supreme Court, and its predecessor, have set out that the freedom of the press to report on what is said in open court is part of the principle of open justice. Lord Reed, in *A v BBC*, put it in the following terms:

> The connection between the principle of open justice and the reporting of court proceedings is not however merely functional. Since the rationale of the principle is that justice should be open to public scrutiny, and the media are the conduit through which most members of the public receive information about court proceedings, it follows that the principle of open justice is inextricably linked to the freedom of the media to report on court proceedings.[3]

Lady Hale, in the Supreme Court case of *R (C) v Secretary of State for Justice* in 2016 described the two elements of the open justice:

> The first is that justice should be done in open court, so that the people interested in the case, the wider public and the media can know what is going on. […] The second is that the names of the people whose cases are being decided, and others involved in the hearing, should be public knowledge.[4]

In *Khuja (formerly PNM) v Times Newspapers Limited* [2017] UKSC 49, a case which concerned media reporting of a criminal trial, Lord Sumption set out the place of media reporting within the concept of open justice:

> It has been recognised for many years that press reporting of legal proceedings is an extension of the concept of open justice, and is inseparable from it. In

1 Judicial College, Reporting Restrictions in the Criminal Courts April 2015 (2016) p4
2 *Attorney General v Leveller Magazine Ltd* [1979] AC 440, 449–450
3 *A v British Broadcasting Corporation* [2014] UKSC 25 para 26
4 *R (on the application of C) v Secretary of State for Justice* [2016] UKSC 2

> reporting what has been said and done at a public trial, the media serve as the eyes and ears of a wider public which would be absolutely entitled to attend but for purely practical reasons cannot do so.[5]

The courts have stated that open justice also encompasses the publication of judgments and the need to ensure that information communicated to a court is available to the public.[6]

7. A number of submissions to this inquiry define the principle of open justice to include elements of information transparency, including:

- The transparency of the administration of the courts;
- The quality of the data collected and published by HMCTS;
- Accessing court hearings and court documents;
- The accessibility of judgments; and
- How the courts communicate with the media and the public.[7]

These points are based on a broader view of open justice, which extends beyond the justiciable questions on which the courts are regularly asked to decide. On this broader view, the institutional and administrative practices that affect the accessibility of court hearings and the information produced by the judicial process are also caught by open justice.

The purpose of open justice

8. Many of the most well-known judicial pronouncements on open justice concern the purpose of the principle. In *Scott v Scott*, a House of Lords case from 1912, Lord Atkinson summarised the purpose of open justice as follows:

> The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect.[8]

In short, open justice is a means of ensuring the best quality of justice and securing the confidence of the public. Sir Andrew McFarlane, the President of the Family Division, in giving evidence to us also emphasised both as reasons for increasing the transparency of the Family Court.[9]

5 *Khuja (formerly PNM) v Times Newspapers Limited* [2017] UKSC 49 para 16
6 *R (Mohammed) v Foreign Secretary* [2011] QB 218; *R (Guardian News & Media) v City of Westminster Magistrates Court* [2013] QB 618
7 For example: Dr Judith Townend (Senior Lecturer at School of Law, Politics and Sociology, University of Sussex) (OPJ0024); The Legal Education Foundation (OPJ0042)
8 *Scott & Anor v Scott* [1913] UKHL 2 (5 May 1913)
9 Q110 Sir Andrew MacFarlane

9. The Lord Chief Justice summarised the importance of open justice in the following terms in 2018:

- it enables the public to know that justice is being administered impartially;
- it can lead to evidence becoming available which would not have been forthcoming if reports are not published until after the trial has completed or not at all;
- it reduces the likelihood of uninformed or inaccurate comment about the proceedings; and
- it deters inappropriate behaviour on the part of the court (and we would add others participating in the proceedings).[10]

10. The Legal Education Foundation's evidence to us outlined the following goals of open justice:

- Public legal education: ensuring that the public are accurately informed about what is happening in the courts; and are able to follow the way that law is applied and developed. This is vital to support effective scrutiny and debate of existing legal frameworks and processes;
- Judicial accountability: assuring that the law is being applied correctly by the courts, and to guard against the exercise of arbitrary or partial decision making;
- Democratic accountability: facilitating the accountability of parties to the public, especially where the matter is between the executive and the citizen;
- Promoting public trust and confidence: in the administration of justice and the authority of the judiciary.[11]

11. A core theme of many accounts of the purpose of open justice is to facilitate public scrutiny of justice. Dr Judith Townend described the purpose of open justice to us as "an accountability check on the functioning of the justice system".[12] As Lord Sumption noted in 2017, we live in an age where the public rightly "attaches growing importance to the public accountability of public officers and institutions and to the availability of information about the performance of their functions".[13] In other words, the purpose of open justice is to ensure that the public can reach its own judgment on whether the courts are delivering justice. It is axiomatic that the public cannot assure itself of having confidence in the courts if it does not have access to court proceedings or to information on those proceedings. However, this overriding purpose of open justice, to facilitate public scrutiny, does not determine how the principle should operate in practice or what the limits on the principle should be. Ed Owen, former head of communications at HMCTS, suggested in his evidence that given the dramatic changes brought about by the digital age the Lord Chancellor and Lord Chief Justice should issue a joint White Paper that redefines

10 *R v Sarker* [2018] 1 WLR 6023, per Lord Burnet CJ, at §29(iv)
11 The Legal Education Foundation (OPJ0042)
12 Q2 (Dr Judith Townend)
13 *Khuja v Times Newspapers Ltd* [2017] 3 WLR 35, per Lord Sumption, at §13

open justice for the 21st century.[14] ***The Lord Chancellor and the Lord Chief Justice should consider producing a White Paper that clarifies and publicises the right of the public to attend court hearings and access information on court proceedings in the digital age.***

The limits of open justice and the law

12. The parameters of open justice in England and Wales are shaped by the limits imposed on it by Parliament and the courts. Whilst it is widely acknowledged that open justice is vital for ensuring public confidence in the administration of justice, as Lord Sumption noted in Khuja, "the principle of open justice has, however, never been absolute".[15] Indeed, there is a long-established tradition in case law in favour of privacy where the court's role is essentially parental, such as when dealing with children or people who are mentally incapacitated.[16] This is also the case for situations where aspects of a case are commercially sensitive or concern national security, such that allowing reporting would undermine the case itself.

13. As Lord Justice Toulson explained in *Guardian v Westminster*, the courts and the common law can impose limits on open justice when openness "would put at risk the achievement of justice which is the very core purpose of the proceedings".[17] He also added that it was for the courts "to determine the requirements of open justice, subject to any statutory requirements".[18] In other words, open justice operates as a presumption that proceedings and the reporting of them will be permitted unless there is an objective justification in law to the contrary.[19]

14. There are a number of notable statutory restrictions on open justice.[20] Protecting national security and the rights of children are two of the most prevalent grounds for such restrictions. For example, section 12 of the Administration of Justice Act 1960 limits the ability to report on cases held in private involving children, which we discuss in Chapter 5. Section 47 of the Children and Young Persons Act 1933 bars the public, subject to some exceptions, from attending Youth Court proceedings. Section 49 of the Children and Young Persons Act 1933 and section 45 of the Youth Justice and Criminal Evidence Act 1999 restrict the reporting of information that would lead to the identification of children "concerned in" criminal proceedings.[21] In the national security context, section 8 (4) of the Official Secrets Act 1920 provides that a court has the power to exclude the public from proceedings for offences under that Act. More recently, the Justice and Security Act 2013 expanded the use of closed material proceedings in civil proceedings. Closed material proceedings enable all or part of a claim to be heard in closed proceedings in order for the court to consider material which, if disclosed would risk harming national security.[22]

14 Ed Owen (OPJ0021)
15 *Khuja v Times Newspapers Ltd* [2017] 3 WLR 35, per Lord Sumption, at §13
16 *Scott & Anor v Scott* [1913] UKHL 2 (5 May 1913)
17 *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court (Article 19 intervening)* [2012] EWCA Civ 420; [2013] QB 618 para 4
18 *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court (Article 19 intervening)* [2012] EWCA Civ 420; [2013] QB 618 para 69
19 *Clibbery v Allen* [2002] EWCA Civ 45 at para 16
20 See Lord Sumption's judgment in *Khuja v Times Newspapers Limited and others* [2017] UKSC 49 para 14
21 *Khuja v Times Newspapers Limited and others* [2017] UKSC 49 para 18
22 The statutory review of the operation of sections 6–11 on closed material procedure (CMP) in the Justice and Security Act 2013, which is being undertaken by Sir Duncan Ouseley is due to be published in 2022

15. The Contempt of Court Act 1981, as Lord Sumption sets out below, provides an important limit on what can be reported in court proceedings:

> The Act makes it a contempt of court to publish anything which creates a substantial risk that the course of justice will be seriously impeded or prejudiced, but is subject to an important exception for fair, accurate and contemporaneous reports of legal proceedings held in public.[23]

16. The public's right to access information on the courts is also limited by section 41 of the Criminal Justice Act 1925, which prohibits the taking of photographs "in a court, or in or around a court building, and an offence to publish any such photograph".[24] Serious breaches of this rule can also amount to contempt of court in common law. In *Finch*, the court set out that "[o]pen justice is a fundamental principle of the common law, but it has never required the Court to let third parties take or publish pictures, or film, or audio recordings of a hearing".[25] Lady Justice Andrews and Mr Justice Warby added that: "[t]here was, and remains, justified concern that public depictions of people taking part in court proceedings may pose risks to the administration of justice more generally".[26]

17. Finally, it is worth noting the significance of the European Convention on Human Rights in relation to open justice. Article 6 of the Convention provides that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The European Court of Human Rights has set out that public trials are a fundamental principle enshrined by Article 6, which by rendering the administration of justice transparent contributes to the achievement of the aim of Article 6(1): the right to a fair trial.[27] Article 8, the right to a private family life, and Article 10(1), the right to freedom of expression, which are both qualified rights are both relevant to the application of open justice.

18. In the Supreme Court's case of *Bloomberg LP v ZXC*, it was held that a person under criminal investigation has, prior to being charged, a reasonable expectation of privacy in respect of information relating to that investigation.[28] The judgment of Lord Hamblen and Lord Stephen explained that by contrast "whenever a person is charged with a criminal offence the open justice principle generally means that the information is of an essentially public nature so that there can be no reasonable expectation of privacy in relation to it".[29] In *Khuja*, Lord Sumption made the point that Article 8 is becoming increasingly significant in this context "because the resonance of what used to be reported only in the press and the broadcasting media has been greatly magnified in the age of the internet and social media".[30]

23 *Khuja v Times Newspapers Limited and others* [2017] UKSC 49 para 18
24 *Finch v Surrey County Council* [2021] EWHC 170 (QB) para 5
25 *Finch v Surrey County Council* [2021] EWHC 170 (QB) para 41
26 *Finch v Surrey County Council* [2021] EWHC 170 *(QB)* para 63
27 *Riepan v. Austria* [2000] ECHR 575
28 *Bloomberg LP v ZXC* [2022] UKSC 5
29 *Bloomberg LP v ZXC* [2022] UKSC 5 para 77
30 *Khuja v Times Newspapers Limited and others* [2017] UKSC 49 para 15

Conclusion

19. **Open justice is a common law principle, and it is for the courts to determine its requirements in particular cases. However, responsibility for deciding how the principle should operate should not be left to the courts alone. Deciding the proper limits of open justice can often give rise to significant policy questions that Government and Parliament can only tackle through legislation.**

20. **The internet and social media are changing the way that the public access court proceedings, which is making the work of the courts more accessible; but this also presents dangers for the administration of justice. In the digital age, it is vital the Government, Parliament and the Judiciary work together to ensure that a balanced approach to open justice is achieved so that public scrutiny of justice can be secured without damaging the quality of the justice administered in the courts.**

2 Court reporting in the digital age

21. The reporting of court proceedings in the media is a crucial part of the operation of open justice. The media are the "eyes and ears of the public" in court proceedings.[31] Journalists play a vital role in ensuring that the public receive accurate information on the workings of the justice system. Accredited journalists are trusted with information by the courts and are required to have a certain level of legal training to be able to deal with that information.[32] However, the evidence submitted to our inquiry has shown that the radical changes to the media landscape since the development of the internet have had a significant effect on the way that the news media approaches court reporting. In this Chapter, we set out how court reporting has changed and consider the implications for open justice.

The decline of court reporting

22. In 2019, the Cairncross Review, commissioned by the Department for Digital, Culture, Media and Sport, was asked to look at the sustainability of the production and distribution of high-quality journalism in the light of rapid changes to the media landscape brought about by digital technology. The Review noted that the erosion of the revenues of newspapers had led to a "particularly stark" decline in the coverage of courts.[33] The Government's response to the Cairncross Review said: "DCMS, the Ministry of Justice and HMCTS are working together to identify what more can be done to facilitate journalists' access to and reporting of court proceedings".[34]

23. Dr Richard Jones, an academic from the University of Huddersfield, provided written evidence to our inquiry based on a research project on court reporting, which involved interviews with 22 local newspaper reporters. His research found that there had been a drop in the number of journalists covering courts, noting that "Court reporters say they will often go weeks or even months without seeing a journalist from any other news organisation or agency in court with them".[35] Lizzie Dearden, home affairs editor at the Independent, said that in her experience "the greatest change has been shrinking staffing in local papers and court reporting agencies".[36]

24. Dr Judith Townend, an academic from the University of Sussex, set out in her written evidence a number of studies over the past decade that have provided snapshots of the state of court reporting.[37] For example, a 2018 study of Bristol Magistrates' Court, by Chamberlain et al, found that of the 240 cases observed during the week only three stories appeared in the local press and only one case was attended by a journalist.[38] The News Media Association point out that County Courts and tribunals are rarely covered due to a lack of resources.[39] The National Union of Journalists' evidence stated that certain major

31 Media Lawyers Association (OPJ0026)
32 Q30 Emily Pennink
33 Department of Media and Culture, Cairncross Review: a sustainable future for journalism (2019) p 21
34 Government response to the Cairncross Review: a sustainable future for journalism (2020) para 61
35 Richard Jones (Subject Area Leader: Media, Journalism and Film at University of Huddersfield) (OPJ0004)
36 Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014)
37 Dr Judith Townend (Senior Lecturer at School of Law, Politics and Sociology, University of Sussex) (OPJ0024)
38 Chamberlain P and others, 'It Is Criminal: The State of Magistrates' Court Reporting in England and Wales:' (2019) 22 Journalism 2404.
39 The News Media Association (OPJ0030)

regional dailies have not covered Magistrates' courts at all for more than 10 years.[40] It also highlighted that during the pandemic, Crown Court proceedings were "wholly unreported for months at a time".[41] They add that while there is some good court reporting, "the lower courts are not well covered".[42]

25. PA Media's evidence to us summarised the decline of court reporting as follows:

> 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.[43]

26. The Independent Press Standards Organisation's written evidence stated that the decline in circulation numbers and increasing share of advertising captured by technology platforms had led to fewer news publishers and fewer designated court reporters.[44] In their view this "has major implications for the principle of open justice".[45]

27. Guardian News & Media told us that the lack of court reporting can be partly explained by the amount of time required and the cost of providing that time.[46] Courtdesk news, a legal intelligence company, pointed out that the digital age has shortened the news cycle, and the multiplicity of news channels and social media channels has increased the number of articles that journalists are expected to produce.[47] At the same time, they noted that the number of cases going through the courts continues to increase. However, despite these changes, the system for delivering courts' information to journalists has not changed significantly. Lizzie Dearden, home affairs editor at the Independent, told us that the internet has changed the way that media outlets commission stories, noting that it "is possible that editors' prioritisation of court coverage has been affected by their perception of its value in terms of traffic, readership and revenue".[48] However, the National Union of Journalists told us that court stories scored well on news websites.[49] Richard Jones also highlighted the importance of photographs for sharing stories online, and the difficulty of obtaining photos of defendants due to the decline in the number of in-house photographers and the ban on photography within the precincts of court buildings.[50] Emily Pennink, Old Bailey Correspondent at PA Media, noted that court reporting has been enhanced through the access to picture and video evidence through the Crown Prosecution Service (CPS).[51] The News Media Association also stressed that the digital age has brought about

40 National Union of Journalists (OPJ0041)
41 National Union of Journalists (OPJ0041)
42 National Union of Journalists (OPJ0041)
43 PA Media (OPJ0043)
44 Independent Press Standards Organisation (IPSO) (OPJ0013)
45 Independent Press Standards Organisation (IPSO) (OPJ0013)
46 Guardian News & Media (OPJ0044)
47 Courtsdesk News (OPJ0017)
48 Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014)
49 National Union of Journalists (OPJ0041)
50 Richard Jones (Subject Area Leader: Media, Journalism and Film at University of Huddersfield) (OPJ0004)
51 Ms Emily Pennink (Old Bailey Correspondent at PA Media) (OPJ0009)

some benefits for court reporting. Online news, through websites and social media, can enable the public to access instant updates from hearings, enhancing the "eyes and ears" function of the media.[52]

The effect of the decline of court reporting

28. In evidence to us, the Lord Chief Justice raised his concerns over the implications of the decline in the number of court reporters:

> The loss of expertise and understanding is a source of concern, as it could lead to a loss of accuracy in reporting and impair public understanding of the workings of the justice system. In addition, the casual, inexpert or inexperienced reporter is less likely to be aware of legal constraints on reporting such as (for example) the prohibition on reporting information that would tend to identify the complainant in a case of sexual assault, modern slavery, and FGM.[53]

The Independent Press Standards Organisation's (IPSO) written evidence set out that the digitisation of news had led to a greater risk of prejudicing court proceedings as well as the spread of misinformation and greater difficulty in correcting inaccuracies.[54]The IPSO's evidence also drew attention to the growing number of complaints it had received relating to inaccurate or misleading claims that originated in police press releases, indicating that news organisations are increasingly reliant on these as the sole source of information about court proceedings.[55] News Media Organisation pointed out that press releases from prosecuting authorities often aim to present the relevant organisation in a favourable light.[56]

29. Ed Owen, former Director of Communications at HMCTS, told us that the decline of court reporting has eroded the personal relationships between media and court staff, particularly at a local level.[57] This deterioration has led to "frequent complaints to HMCTS from media organisations claiming that journalists were prevented from gaining access to court hearings or information".[58] This same point was made by a number of media organisations.[59] Ed Owen set out that HMCTS should establish a regional network of trained communication and information officers to support media access to hearings and documents.[60] He told us they could work collaboratively with court officials to promote the work of courts and tribunals as part of a wider initiative to enhance public confidence and understanding of the justice system. For example, their contact details could be provided next to listing information for the court in question.

52 The News Media Association (OPJ0030)
53 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)
54 Independent Press Standards Organisation (IPSO) (OPJ0013)
55 Independent Press Standards Organisation (IPSO) (OPJ0013)
56 The News Media Association (OPJ0030)
57 Ed Owen (OPJ0021)
58 Ed Owen (OPJ0021) ; a point also made by National Union of Journalists (OPJ0041)
59 National Union of Journalists (OPJ0041) Guardian News & Media (OPJ0044)
60 Ed Owen (OPJ0021)

30. PA Media noted that one of the reasons it maintains a presence at various courts was because it often falls on individual reporters to advocate for the whole press when legal challenges arise.[61] They point out that the presence of specialist court reporters is often vital in order to challenge reporting restrictions that are not in the public interest.[62]

31. PA Media also argued that the decline in the attendance of the press at court hearings has contributed to a "democratic deficit":[63]

> 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.[64]

The Legal Education Foundation argues that the decline in court reporting makes the need for "representative, authoritative data" more acute.[65] If the media is no longer able to report on a broad range of cases, it is vital the public can access information that can contextualise the cases that are reported.[66] The quality of information on the justice system has a direct bearing, the Legal Foundation argues, on the quality of public debate on the justice system. They cite the example of the issue raised by a Channel 4 documentary on domestic abuse and the Family Court and explain that the limited data on the issues raised hindered the quality of public debate.[67]

32. **The well-documented decline in the news media's coverage of the courts, particularly the Magistrates' courts, is concerning. In acting as the eyes and ears of the public, the media perform a vital role in keeping the public informed on the operation of the justice system.**

33. **The decline in court reporting has had a negative effect on open justice in England and Wales.** ***As the public receives less information through the media on the work of the courts, HMCTS should do more to enable the courts to communicate information on court proceedings directly to the public. In addition, HMCTS needs to use technology and organisational reform, building on the work done with Courtsdesk News, to provide the media with the information it needs in a consistent manner, as soon as possible, to facilitate court reporting. HMCTS should also pilot the use of regional communication and information officers to support media and public access to hearings. Furthermore, the decrease in the media's coverage of the courts also strengthens the case for the re-establishment of a courts' inspectorate, which could help to identify wider issues within the justice system, particularly in the Magistrates' courts and the Family Court, which are not well covered by the media.***

61 PA Media (OPJ0043)
62 PA Media (OPJ0043)
63 PA Media (OPJ0043)
64 PA Media (OPJ0043)
65 The Legal Education Foundation (OPJ0042)
66 The Legal Education Foundation (OPJ0042)
67 The Legal Education Foundation (OPJ0042)

3 The barriers to open justice

34. Evidence to our inquiry set out numerous barriers that impede public and media access to the courts, the reporting of court proceedings, and access to the decisions made by courts. This Chapter outlines some of the practical issues identified and sets out some recommendations in response.

Accessing court hearings

35. A number of media organisations told us they have experienced difficulties accessing hearings which they were entitled to attend. The Bureau of Investigative Journalism's evidence outlined some of the practical difficulties for its journalists in accessing court proceedings.[68] Over the course of July and August 2021 the Bureau Local sent reporters to 683 possession hearings in 30 county courts. They explained that:

> 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.[69]

Their evidence also outlined that on other occasions access was only granted on certain conditions, or after appealing to a more senior judge. The evidence highlighted a number of instances where significant hurdles were put in front of reporters seeking to attend hearings. Maeve McCleanaghan, a journalist from the Bureau of Investigative Journalism, told us that "there was a fundamental confusion or misunderstanding about whether we were allowed to be in those hearings".[70] She added that the experience of the journalist depended on the individual judge rather than the jurisdiction or courthouse.

36. The Master of the Rolls responded to these incidents by writing to civil judges to remind them that journalists and the public should be allowed in by default to possession hearings.[71] We raised the evidence from the Bureau of Investigative Journalism with the Lord Chief Justice who said: "Possession hearings are public hearings, so I am disturbed to hear that those problems were encountered".[72]

37. In recognition of the need to promote journalists' awareness of their rights and obligations in respect of the reporting of court proceedings, in May 2022 HMCTS published a Reporters' Charter in conjunction with the Media Lawyers Association and the Society of Editors.[73] The evidence we received, which preceded the publication of the Charter, advocated the creation of such a document.[74] The Charter sets out the rights and obligations of journalists across a range of areas, including:

- Attendance: The media are entitled to attend and observe all open court and tribunal proceedings, including those with reporting restrictions.

68 The Bureau of Investigative Journalism (OPJ0031)
69 The Bureau of Investigative Journalism (OPJ0031)
70 Q42 Maeve McCleanaghan
71 Q44 Maeve McCleanaghan
72 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q34
73 HMCTS, Reporters' Charter, May 2022
74 Media Lawyers Association (OPJ0026)

- Identifying the media: HMCTS accepts a valid UK Press Card as verification of an accredited journalist.
- Reporting proceedings: The media are entitled to publish and include in a broadcast report details of what happens in open court and tribunal proceedings unless a statutory restriction applies, or a court order prevents this.[75]

It is hoped that by setting out the existing rights of reporters in one place this will help the media enforce their rights. It could, for example, help to overcome some of the issues faced by the Bureau of Investigative Journalism, by providing an official document which journalists, court staff and judges can refer to.[76]

38. The difficulties in accessing court proceedings are not limited to journalists. The evidence we received suggested that it can also be difficult for members of the public to attend hearings. For example, Transform Justice pointed out that online information on Magistrates' courts does not encourage the public to visit.[77] Information on future cases is very hard to find and the public cannot access information on the outcome of cases.[78] They also reported that members of public observing cases often encounter "resistance to their presence" from judges and court staff, which indicates that they are not aware of the guidance or the principle of open justice.[79]

39. **The evidence from the Bureau of Investigative Journalism on its experience of attempting to access possession hearings presents a concerning picture of the practical reality of open justice in England and Wales. The legal and constitutional status of open justice is immaterial if journalists face the sort of hurdles experienced by the Bureau of Investigative Journalism. Those barriers have the potential to create a chilling effect for journalists and the public by discouraging them from exercising their right to attend hearings. Everyone working within the justice system, especially judges and court staff, has a role to play in translating the principle of open justice into reality.**

40. **We welcome the publication of the Reporters' Charter, which for the first time sets out the rights and obligations of journalists reporting on court proceedings. We note, however, that the rights of access that flow from the principle of open justice are not exclusively for reporters'—it is vital that members of the public are also aware of their right to attend proceedings and access information. *HMCTS should publish a citizens' charter that outlines the public's rights to access information on the courts.***

41. **The Reporters' Charter helpfully directs the media to the MOJ press office and the Judicial Press Office to deal with enquiries and issues on accessing court proceedings and information. There should be a single point of contact for all accessibility and open justice inquiries from the media and from the public. The Lord Chief Justice told us that, if a journalist encounters an issue accessing a court, he or she should "get in touch with their local court and ask why".[80] In reality, at present there is no formal official mechanism for the media or the public to raise accessibility enquiries or complaints in relation to the courts. The creation of regional communication and information**

75 HMCTS, Reporters' Charter, May 2022
76 Media Lawyers Association (OPJ0026)
77 Transform Justice (OPJ0006)
78 Transform Justice (OPJ0006)
79 Transform Justice (OPJ0006)
80 Justice Committee, The work of the Lord Chief Justice, 16 November 2021, Q35

officers within HMCTS could provide that point of contact for reporters and the public. The courts' inspectorate, as we proposed in our report on court capacity, could have a specific remit to examine the operation of open justice.

42. ***HMCTS should institute a programme of open days to encourage the public to visit their local courts, for example during Justice Week. This programme should be used to improve the awareness of both the public and HMCTS staff of the public's right to attend court proceedings. Furthermore, there should be a programme to encourage schools to organise visits to their local courts to improve public legal education.***

Accessing and observing remote hearings

43. Remote hearings have become an integral part of the justice system in England and Wales since the pandemic. One of the consequences of this shift is that it has changed the way that the media and the public can access and observe court proceedings. A number of witnesses raised the inconsistency of approach to facilitating access to remote hearings to court proceedings for the media and public, particularly during the early stages of the pandemic.[81] This issue is also addressed in Chapter 4 in the context of recent changes to the legislative framework that regulates public access to remote hearings.

44. The Public Law Project's evidence highlighted some practical problems in getting access to remote hearings in the First-tier Tribunal (Immigration & Asylum Chamber) and for judicial review proceedings. In relation to the latter, they were unable to attend hearings because a request to the listing office email address was not responded to or the response was too late.[82] They also pointed out that the Royal Courts of Justice daily case list currently states that: "if a representative of the media wishes to attend a remote hearing they should contact the listing office", omitting reference to the fact that members of the public may also attend such hearings.[83] ***Every court should list an email address on its website to enable the media and the public to request access to remote hearings.***

45. APPEAL's evidence pointed out that while the media was able to access remote hearings during the pandemic, the public often found it much harder, requiring special permission which was given inconsistently between courts.[84] The News Media Association told us feedback from court reporters had been "generally positive", but they noted that the Journalism Matters Editors Survey had found that 42% of editors felt that obtaining access to court hearings or documents had become more difficult over 2021.[85]

46. A number of witnesses told us the ability to attend hearings remotely makes court reporting easier and therefore enhances open justice.[86] Lizzie Dearden explained that the Cloud Video Platform (CVP), a secure digital network that gives HMCTS and the judiciary the ability to manage and conduct cases digitally with other trial and hearing participants,

81 Q33 Dr Townend; Q45 Emily Pennink; Transform Justice (OPJ0006) Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023) PA Media (OPJ0043)

82 Public Law Project (OPJ0007)

83 Royal Courts of Justice daily cause list 13 June 2022 - GOV.UK (www.gov.uk)

84 APPEAL (OPJ0008)

85 The News Media Association (OPJ0030)

86 Dr George Julian (Knowledge Transfer Consultant and Journalist at Self-employed) (OPJ0010) Independent Press Standards Organisation (IPSO) (OPJ0013) Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014) Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023)

had enabled her to attend hearings in Bristol Crown Court and the Old Bailey on the same day.[87] A group of academics from the University of West of England explained that CVP had the following benefits for court reporting:

- Reporters could cover several courts simultaneously whilst at home or in the office.
- This resulted in being able to produce more copy.
- Being able to write up stories remotely without disturbing the Court meant copy could be turned around faster.[88]

However, the group also identified the following problems caused by using CVP to report on court proceedings:

- The technology did not always work, meaning reporters missed some cases altogether or could not hear or see certain parties to the proceedings.
- There were difficulties in obtaining information remotely.[89]
- The ability to 'chance' upon cases by being in court was lost.
- The loss of face-to-face witnessing of proceedings meant reporters could not 'look the defendant in the eye', which enabled better insight into the proceedings.[90]
- Loss of relationships with others involved in cases such as lawyers, court staff, probation staff etc–all of whom aid journalists' work.
- Journalists were concerned whether open justice was operating sufficiently, with only journalists being allowed to join digital courts.

47. Several submissions identified further problems with accessing remote hearings. The Transparency Project explained that when compared to observing in person, remote hearings made it more difficult to check whether there were any reporting restrictions and to request documents.[91] The Bureau of Investigative Journalism pointed out that if you did not know the specific case name you wanted to attend it was difficult to request remote access.[92] Lizzie Dearden, Home Affairs and Security Correspondent at The Independent, noted that one limitation of CVP was that court screens were not shared on the platform, which meant that unless an electronic schedule of evidence was shared, the ability of journalists to report on a case was impaired.[93] Tristan Kirk, Courts Correspondent at the London Evening Standard, pointed out that, when a journalist dropped out of a

87 Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014)
88 Dr Sally Reardon (Senior Lecturer in Journalism at University of the West of England); Dr Bernhard Gross (Associate Professor of Journalism at University of the West of England); Dr Tom Smith (Senior Lecturer in Law at University of the West of England); Marcus Keppel-Palmer (Senior Lecturer in Law at University of the West of England) (OPJ0016)
89 A point also made by: the Media Lawyers Association (OPJ0026) The News Media Association (OPJ0030)
90 Dr Sally Reardon (Senior Lecturer in Journalism at University of the West of England); Dr Bernhard Gross (Associate Professor of Journalism at University of the West of England); Dr Tom Smith (Senior Lecturer in Law at University of the West of England); Marcus Keppel-Palmer (Senior Lecturer in Law at University of the West of England) (OPJ0016)
91 The Transparency Project (OPJ0025)
92 The Bureau of Investigative Journalism (OPJ0031)
93 Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014)

hearing because of a connection problem, it could be very difficult to be re-admitted.[94] He suggested this was the equivalent of inadvertently shutting journalists out of the court room.

48. The Media Lawyers Association argued that there should be a presumption that journalists are allowed to access virtual hearings where the parties are themselves attending by virtual link.[95] Tristan Kirk stated that there should be a national protocol on media and public access to CVP.[96] The News Media Association argued that there should be continuing option for journalists to participate in a hearing remotely, even after the end of the pandemic.[97]

49. **Remote hearings are still a relatively new and innovative feature of the justice system in England and Wales. The evidence to our inquiry suggests that there is a problem with a lack of coherence and consistency in relation to the ability of the media and the public to access remote court hearings. *We recommend that HMCTS gathers and publishes data on requests to observe proceedings remotely. In particular, it would be useful to know the number of requests received and the number of requests granted by jurisdiction.***

Court lists

50. One of the major themes of the evidence we received was the need to improve the court lists. Court listings are crucial to open justice as reporters and any other court observers rely on these to know what cases are being heard and when judgments are due to be given.[98] The Ministry of Justice's evidence explained that the sharing of Magistrates' court lists is an important part of facilitating media coverage.[99] They are provided to the media rather than the public because they include personal information, such as the addresses of defendants.[100] During the pandemic HMCTS took steps to publish all court and tribunal lists (including magistrates' lists) online for the first time.[101]

51. Maeve McClenaghan, investigative journalist for the Bureau of Investigative Journalism, told us that court lists are "very scant on information".[102] The Bureau of Investigative Journalism's project on possession hearings raised concerns over the adequacy of listing, the inconsistency of approach and the timing of the release of information.[103] Richard Jones, an academic, told us that the journalists he had interviewed wanted Crown Court lists to be more detailed.[104] Richard Jones recommended that as a minimum, the name, age and address of each defendant, and the charges they are facing, ought to be freely available for every case in both the Crown and Magistrates' court. That detail should be available not just on request, but as part of the court lists typically provided electronically,

94 Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023); Media Lawyers Association (OPJ0026)
95 Media Lawyers Association (OPJ0026)
96 Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023)
97 The News Media Association (OPJ0030)
98 Incorporated Council of Law Reporting for England and Wales (OPJ0012)
99 Ministry of Justice (OPJ0034)
100 Ministry of Justice (OPJ0034)
101 Ministry of Justice (OPJ0034)
102 Q53 Maeve McClenaghan
103 The Bureau of Investigative Journalism (OPJ0031)
104 Richard Jones (Subject Area Leader: Media, Journalism and Film at University of Huddersfield) (OPJ0004)

as well as in paper form within courts.[105] Martin Bentham, Home Affairs Editor at the Evening Standard, stated that listing was an "enduring problem".[106] He noted that account freezing order cases were generally not listed. He argued that lists should be published in advance and should give the names of respondents (rather than just the initials) and that it should give an indication of the nature of the case.[107]

52. The Public Law Project stated that lists needed to be updated in sufficient time so that an observer could contact the listed email and receive a response.[108] They also pointed out that the case lists should have a point of contact that is ready to respond to observation requests. Lizzie Dearden also said that more detailed court lists, which contained a comparable level of information to the indictments, would help journalists decide which cases to cover.[109] A group of academics from the University of West of England argued that court lists needed to be published online for all courts with sufficient information for reporters and members of the public.[110] Courtdesk News explained that the established process for distributing information about forthcoming Magistrates' Court cases involved advance lists and registers of outcomes being sent by email by individual administrative offices to a locally approved list of email recipients.[111] Each operates its own approach of how and when to send lists and registers, and in many instances the processes used result in delays that make it difficult for journalists and the public to attend.[112]

53. There is an HMCTS protocol on Magistrates' court lists, which Ed Owen, former Head of Communications at HMCTS, told us has led to greater consistency.[113] The protocol explains that only accredited journalists are able to access listings information remotely.[114] The News Media Association's evidence stated that the practice of sharing court lists is variable.[115]

54. The organisation, Spotlight on Corruption, told us there is limited listing information available free of charge. There are some paid-for services that provide more comprehensive and detailed lists. They recommend that there should be "an enhanced listing service that provides unrestricted public access to advance, sufficiently detailed court listings and information about reporting restrictions".[116] Jonathan Hall KC, a barrister, set out in his written evidence that case lists for all courts should be published online.[117] He also argued that attention should be paid to what information is included in the lists and in particular whether cases that are listed anonymously at first should then be listed with more information if they are re-listed.[118]

105 Richard Jones (Subject Area Leader: Media, Journalism and Film at University of Huddersfield) (OPJ0004)
106 Martin Bentham (Home Affairs Editor at Evening Standard) (OPJ0005)
107 Martin Bentham (Home Affairs Editor at Evening Standard) (OPJ0005)
108 Public Law Project (OPJ0007)
109 Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014)
110 Dr Sally Reardon (Senior Lecturer in Journalism at University of the West of England); Dr Bernhard Gross (Associate Professor of Journalism at University of the West of England); Dr Tom Smith (Senior Lecturer in Law at University of the West of England); Marcus Keppel-Palmer (Senior Lecturer in Law at University of the West of England) (OPJ0016)
111 Courtsdesk News (OPJ0017)
112 Courtsdesk News (OPJ0017)
113 Ed Owen (OPJ0021) ; HMTCS, Protocol on sharing court lists, registers and documents with the media (2022)
114 Dr Judith Townend (Senior Lecturer at School of Law, Politics and Sociology, University of Sussex) (OPJ0024)
115 The News Media Association (OPJ0030)
116 Spotlight on Corruption (OPJ0032)
117 Jonathan Hall (KC at 6KBW College Hill) (OPJ0003)
118 Jonathan Hall (KC at 6KBW College Hill) (OPJ0003)

55. Tristan Kirk, Courts Correspondent at the London Evening Standard, stated that lists are also sometimes incomplete. A recent change to the presentation of listings, arising from the introduction of the Common Platform, now presents "results registers" in Excel spreadsheets, which makes them "utterly unusable for reporters who need to be able to be able to skim-read lists".[119] The News Media Association made the same point, stating that among Newsquest staff, for example, "the general opinion is that the Common Platform court lists/registers are difficult to use". The Media Law Association recommended that the Ministry of Justice should modernise the system of providing court lists and provide a centralised repository modelled on that provided by Companies House.[120] The News Media Association made the same point that a centralised repository was needed.[121] Ed Owen recommended that HMCTS should be funded to create an accessible one-stop, digital portal containing essential information relating to the daily operation of the courts in England and Wales.[122]

56. Courtsdesk News told us they had developed a service that helps reporters access information on cases using technology.[123] Their service has been facilitated through an agreement with HMCTS that enables access to the sharing of Magistrates' courts information. They explained that a news organisation commissioned a pilot of their service to help facilitate reporting of the Magistrates' courts. The pilot produced a significant increase in reporting and led to 437 stories being published during the nine-week trial.[124] Courtdesk News noted that the current protocol on sharing court lists, registers and documents with the media demands that all information is deleted after six months.[125] They told us this rule should be reconsidered as the Magistrates' court information is a key source of information on Crown Court cases for journalists and the requirement to delete that information makes it difficult for journalists to know what is being heard in the Crown Court, as it often takes more than six months before a case is heard.

57. A number of witnesses raised the issue of the publication of court decisions (as opposed to judgments) and its effect on court reporting. Ed Owen, the former director of communications at HMCTS, recommended the creation of a complete written record of Crown Court judgments.[126] The News Media Association also argued that the press should have access to the outcome of all criminal cases in the Magistrates' court and the Crown Court.[127] Courtdesk News suggested that Crown Courts should provide the same level of information to journalists as the Magistrates' court did, and in particular provide the results of cases and when they are resolved.[128] ***HMCTS should ensure that the Crown Court provides the same level of information to journalists on the outcome of cases as is currently provided by the Magistrates' court.***

58. The Ministry of Justice told us its current Publications and Information Project will digitise the publication of court and tribunal lists and make them available online and nationwide to the public and the media.[129] Media and legal professionals will be given

119 Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023)
120 Media Lawyers Association (OPJ0026)
121 The News Media Association (OPJ0030) Guardian News & Media (OPJ0044)
122 Ed Owen (OPJ0021)
123 Courtsdesk News (OPJ0017)
124 Courtsdesk News (OPJ0017)
125 Courtsdesk News (OPJ0017)
126 Ed Owen (OPJ0021)
127 The News Media Association (OPJ0030)
128 Courtsdesk News (OPJ0017)
129 Ministry of Justice (OPJ0034)

enhanced access to the service.[130] The Ministry of Justice also explained that it had been piloting enhanced listing information with Courtsdesk News and that this has been a success.[131] The Ministry of Justice states it will explore how enhanced listing services can be supported in the future.[132]

59. **We welcome the planned digitisation of the publication of court and tribunal lists and the consolidation into a single service in one location.** ***We request further information on when this service will go live and what improvements are planned to the level of information on the lists and the accessibility of the service. We recommend that HMCTS considers whether the proposed digital portal should be expanded to include all court information, including results, reporting restrictions and court documents.***

Court documents

60. It is an established principle that access to court documents is a key part of open justice. The increasing reliance on written documents in court proceedings has led to calls for improved access for the media and the public. In 2012, the Court of Appeal's judgment in *Guardian News and Media v City of Westminster Magistrates' Court* considered the issue of a third party's right to access to court documents. Lord Justice Toulson set out the Court's position in the following terms:

> In a case where documents have been placed before a judge and referred to in the course of proceedings, in my judgment the default position should be that access should be permitted on the open justice principle; and where access is sought for a proper journalistic purpose, the case for allowing it will be particularly strong.[133]

Lord Justice Toulson also explained that each application should be considered on its merits, and the court would need to engage in a proportionality exercise that was fact-specific.[134]

61. In the 2019 case *Cape v Dring*, which concerned a non-party's access to court documents, Lady Hale set out why access to court documents is now a fundamental element of open justice:

> In the olden days, as has often been said, the general practice was that all the argument and the evidence was placed before the court orally. Documents would be read out. The modern practice is quite different. Much more of the argument and evidence is reduced into writing before the hearing takes place. Often, documents are not read out. It is difficult, if not impossible, in many cases, especially complicated civil cases, to know what is going on unless you have access to the written material.[135]

130 Ministry of Justice (OPJ0034)
131 Ministry of Justice (OPJ0034)
132 Ministry of Justice (OPJ0034)
133 *Guardian News and Media Ltd, R (on the application of) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420
134 *Guardian News and Media Ltd, R (on the application of) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420
135 *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 para 43

Despite the importance of access of court documents to open justice, submissions to this inquiry have outlined that in practice it can be very difficult to secure access.

62. In their evidence, the Incorporated Council of Law Report for England and Wales echoed this point and argued that it was no longer sufficient to provide access to a hearing to secure open justice—the increasing reliance on written submissions and digitised documentations meant that the rules on provision of these documents needed to change.[136] The Media Lawyers Association explained that without access to the documents before a court, proceedings quickly become meaningless to journalists.[137] Tristan Kirk, Courts Correspondent at the London Evening Standard, argued that the gradual increase in the courts' reliance on documents in the digital case system has resulted in journalists being "left behind".[138] He gave an example of an Old Bailey case where the prosecution's submissions were made by a written note and no points were made orally, but that written note was not made available to journalists reporting on the case.[139] He recommended that HMCTS should consider allowing journalists to access the digital case system on the Common Platform.[140] Lady Hale's judgment in *Cape v Dring* called on the bodies responsible for framing court rules to give consideration to the "questions of principles and practice" raised by the case.[141]

63. The Civil Procedure Rules set out the rules on a non-party's right to access documents in civil proceedings. The general rule, set out at 5.4C, is that a person who is not a party can obtain a statement of case and a judgment or order made in public. For all other court documents, 5.4C stipulates that a non-party can be granted access if the court gives permission. As Lady Hale explains in *Cape v Dring*, it is for the court to conduct a fact-specific balancing exercise to decide whether permission should be granted, balancing open justice on the one hand against any risk of harm arising from the disclosure to the judicial process or to the legitimate interest of others.[142] 5.4D in the Civil Procedure Rules stipulates that the person wishing to obtain a document must pay any prescribed fee.

64. The published minutes of the Civil Procedure Rule Committee indicate that a Sub-Committee has been established to consider the matters raised by Lady Hale in *Cape v Dring*. ***The Committee would welcome an update on the work being undertaken by the Civil Procedure Rule Committee to improve access to documents in civil proceedings.***

65. The Transparency Project told us the lack of access to documents for court reporters had a negative effect on a reporter's ability to:

- select a hearing of interest;
- follow and understand a hearing in real time;
- make an appropriate request for permission to report a private hearing; and
- produce an accurate and balanced report of a hearing.[143]

136 Incorporated Council of Law Reporting for England and Wales (OPJ0012)
137 Media Lawyers Association (OPJ0026)
138 Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023)
139 Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023)
140 Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023)
141 *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 para 51
142 *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 para 45–46
143 The Transparency Project (OPJ0025)

The Transparency Project argued that there should be a streamlined process for access to documents that provides for the default provision of documents to an attending journalist on provision of ID and written confirmation of understanding of restrictions on publication.[144]

66. One of the main problems with access to court documents is that it can be practically difficult and also expensive to obtain the material.[145] Documents are rarely provided in advance and are often only released after a formal application to the court, even when the rules provide automatic access to the relevant documents. When such applications succeed, there is no system in place to allow the documents to be provided to journalists. The Media Lawyers Association argued that, as a result, HMCTS should use a digital system to enable documents to be requested and provided to journalists.[146] Spotlight on Corruption explained that courts are often unresponsive to requests to documents from third parties and that they normally rely on a party's barrister to share documents.[147] The Guardian News & Media emphasised that access to court documents was particularly difficult in courts outside London.[148]

67. PA Media also reported that it can be difficult to get access to prosecution evidence in line with the CPS Media Protocol, which sets out which prosecution materials will normally be provided to the media. 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".[149] In relation to the civil courts, PA Media said that at present journalists are reliant on legal representatives to provide skeleton arguments for hearings in the senior courts. They argued that: "Urgent consideration should be given to providing access to documents for journalists in a more formal and centralised way".[150]

68. Dominic Casciani, a journalist at the BBC, also drew attention to the lack of a simple, universal and technical solution to enable the delivery of documents to journalists.[151] In relation to Crown Court trials, he said that journalists rely on the CPS-Media protocol to allow the provision of prosecution documents to the media, although it is inconsistently applied. Often the problem is a practical one, and it can take several attempts to get access to a document to which the media is entitled. Mr Casciani drew attention to the PACER online document system used in the United States' federal courts, which he explained was of great assistance in enabling journalists to follow the civil proceedings instigated by the parents of Harry Dunn.[152]

69. Jacob Atkins, a journalist, submitted evidence to us which detailed his difficulties in accessing documents in the civil courts.[153] Court staff were not able to assist with access to documents and the lack of access made hearings at the London Commercial Court "barely comprehensible" to non-parties.[154] He noted the existence of CE File, the HMCTS

144 The Transparency Project (OPJ0025)
145 Media Lawyers Association (OPJ0026) Guardian News & Media (OPJ0044) Incorporated Council of Law Reporting for England and Wales (OPJ0012)
146 Media Lawyers Association (OPJ0026)
147 Spotlight on Corruption (OPJ0032)
148 Guardian News & Media (OPJ0044)
149 PA Media (OPJ0043)
150 PA Media (OPJ0043)
151 Dominic Casciani (Home and Legal Correspondent at BBC News) (OPJ0027)
152 Dominic Casciani (Home and Legal Correspondent at BBC News) (OPJ0027)
153 Jacob Atkins (Reporter at Global Trade Review) (OPJ0040)
154 Jacob Atkins (Reporter at Global Trade Review) (OPJ0040)

E-Filing Service, which charges £11 per document, but explained that, for many cases, copies of documents are not available to request. He also noted that CE File offers much less than PACER, the system used in the United States' federal courts, and recommended that England and Wales use PACER as a model to develop a more comprehensive system.

70. The Public Law Project's evidence says that remote observers need to be able to access the same court documents that they would at an in-person hearing.[155] The Incorporated Council of Law Report for England and Wales suggests that for online hearings it is important that either documents are made available electronically or they are displayed visually online.[156] ICLR submit that online filing would enable better access for reporters, including law reporters, to court documents and skeleton arguments for forthcoming and ongoing hearings.[157] Jonathan Hall KC submits that it should be possible to establish a record of what documents are before a court, so that the media is able to request access to them, whether or not they are referred to in open court.[158]

71. The Chartered Institute of Journalists recommend statutory clarification of the rights of media organisations to documents quoted in evidence and submitted to a jury or an adjudicating judicial panel as part of the evidence.[159] Spotlight on Corruption recommend that HMCTS shows greater ambition and aims to create a public database that includes skeleton arguments and other court documents, suitably redacted and filtered.[160]

72. ***The Government and HMCTS should establish a streamlined process for accessing court documents, including courts lists, using a digital portal modelled on Public Access to Court Electronic Records (PACER) in the United States. This should also be used to inform the media of reporting restrictions, including automatic restrictions and notice of applications for reporting restrictions.***

73. ***The Government and HMCTS should conduct, or ask the Law Commission to conduct, a comprehensive review on access to documents referred to in open court and propose legislation if necessary to clarify the position.***

Reporting restrictions

74. A number of submissions to our inquiry raised the issue of reporting restrictions imposed by the courts and the way that information on them is communicated. John Battle, Head of Legal and Compliance, ITN, and Chair of the Media Lawyers Association, told us on 11 January 2022:

> [I]t does not seem to me right that in 2022 it is very difficult for a reporter to find out what reporting restrictions they are supposed to be following.[161]

75. Martin Bentham, Home Affairs Editor at the Evening Standard, detailed his own experience of challenging reporting restrictions in cases concerning account freezing and forfeiture procedures.[162] He raised concerns over how, in his experience, those seeking

155 Public Law Project (OPJ0007)
156 Incorporated Council of Law Reporting for England and Wales (OPJ0012)
157 Incorporated Council of Law Reporting for England and Wales (OPJ0012)
158 Jonathan Hall (KC at 6KBW College Hill) (OPJ0003)
159 The Chartered Institute of Journalists (OPJ0028)
160 Spotlight on Corruption (OPJ0032)
161 Q135 John Battle
162 Martin Bentham (Home Affairs Editor at Evening Standard) (OPJ0005)

anonymity can engage in litigation tactics in order to "frustrate openness" in those proceedings, and that it can require a significant amount of time and money to make repeated challenges to restrictions. As a result, he submits that many of these restrictions will succeed because the media cannot afford to challenge them. The Chartered Institute of Journalists told us there is a growing problem of unchallenged reporting restrictions and raised concern that there is no central record of how many restrictions have been issued.[163]

76. The News Media Association set out that in their experience they find that courts are unaware of the guidance given by the Judicial College on reporting restrictions.[164] They set out that "a familiarity among all participants in the judicial process with this guidance alone would avoid or resolve a considerable proportion of the difficulties reporters experience in relation to access and reporting restrictions, together with specific training that points to open justice as an objective, not an impediment".[165]

77. Transform Justice's evidence raised concerns over the breaching of reporting restrictions online, noting that, in Crown Court cases involving child defendants, the names of the children are often available online.[166] It argues that the Government and the courts need to promote understanding of reporting restrictions.[167]

78. Lizzie Dearden, Home Affairs and Security Correspondent at the Independent, suggested that the communication of reporting restrictions needs to be improved.[168] Courtdesk News pointed out that under the current protocol HMCTS only needs to ensure that court registers contain details of a reporting restriction when it is first made.[169] They therefore ask that HMCTS attaches standardised press warnings when restrictions are first made and all subsequent documents pertaining to the case. They also raised the current policy of deleting all information after six months in the context of these restrictions as the cases they relate to often go on for longer than six months.

79. Dr Judith Townend's written evidence argued that HMCTS could offer better guidance to court users on reporting restrictions and that notification of the restrictions is inconsistent.[170] She also said that discretionary reporting restrictions are "often difficult to clarify" even for experienced journalists. The Media Lawyers Association also raised concerns over the lack of consistency in how restrictions are communicated, noting that some courts post orders on websites without clear information as to what is being restricted and why, while other courts, notably Crown Courts, rely on physically posting a reporting restriction order outside a court room.[171]

80. The Media Lawyers Association raised concerns over the use of reporting restrictions by courts to limit the risk of social media commentary:

> Even if there is a risk of such social media commentary, the answer to such a problem is not to place further restrictions to the media's ability

163 The Chartered Institute of Journalists (OPJ0028)
164 The News Media Association (OPJ0030)
165 The News Media Association (OPJ0030)
166 Transform Justice (OPJ0006)
167 Transform Justice (OPJ0006)
168 Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014)
169 Courtsdesk News (OPJ0017)
170 Dr Judith Townend (Senior Lecturer at School of Law, Politics and Sociology, University of Sussex) (OPJ0024)
171 Media Lawyers Association (OPJ0026)

> to report proceedings openly. There is an increasing trend in first-instance criminal trials for judges to make reporting restriction orders against media organisations with the aim of trying to regulate social media comment by members of the public. Such orders are often unworkable, disproportionate, and in breach of the open justice principle.[172]

The same point was made by PA Media, who argued that restrictions to limit social media commentary are "highly counterproductive".[173]

81. Guardian News & Media recommended the creation of a centralised database of reporting restrictions, which was previously recommended by the Law Commission in 2014.[174] PA Media told us that such a centralised repository of reporting restriction orders would assist the enforcement of those orders by social media companies and also facilitate effective court reporting.[175]

82. **Reporting restrictions play a key role in securing the fairness of the justice system. However, it is clear that there is inconsistency in the courts' approach to notifying the media when restrictions are in place, and they are often not effective at ensuring compliance, particularly on social media. This is an important example of where the modernisation of the infrastructure of open justice is long overdue**. ***The proposed new digital portal should also enable access to a centralised database of reporting restrictions on cases.***

Accessing transcripts

83. In a common law system, accessing an accurate record of what was said in court is an important part of court reporting. In England and Wales, HMCTS contracts private companies to transcribe court proceedings that are recorded. The Government currently pays these companies to transcribe judgments in the Senior Courts.[176] It is important to note that not all court proceedings are recorded. For example, hearings in the Crown Court, High Court and the County Court are recorded but those in the Magistrates' court are not. Parties and non-parties do not have a right to access the recording of court proceedings, but they can request a transcript if the hearing was recorded. The usual starting point is that the person requesting the transcript will pay for it. Natalie Byrom, Director of Research at The Legal Education Foundation, described the cost of transcripts as one of the "big barriers" to reporting on cases, which she says can cost up to £20,000 for a trial.[177] For criminal cases, APPEAL argued that the high cost of Crown Court transcripts is an impediment to identifying whether there has been a miscarriage of justice.[178] They drew attention to the remarks of the Vice-President of the Court of Appeal Criminal Division who said: "the absence of relevant court records can make the task of this court markedly difficult when assessing—which is not an uncommon event—whether a historical conviction is safe."[179] APPEAL gave an example of a transcript for a trial of a man whom they represent that would cost over £10,000 as the trial lasted over 60 hours

172 Media Lawyers Association (OPJ0026)
173 PA Media (OPJ0043)
174 Guardian News & Media (OPJ0044); Law Commission, Contempt of Court (2): Court Reporting (2014)
175 PA Media (OPJ0043)
176 Submission by JUST: Access Sophie Walker (CEO at JUST: Access Ltd) (OPJ0011)
177 Q129 Natalie Byrom
178 APPEAL (OPJ0008)
179 *R v Warren & others (Shrewsbury 24)* [2021] EWCA Crim 413,

and the hourly rate is £157.74.[180] They recommended that HMCTS should deploy the use of automated speech to text technology to reduce the cost of court transcripts, citing the example of Australia where this technology is already in use.

84. We received evidence from JUST: Access, a social enterprise focused on using technology to make justice more accessible, which makes the case for using their AI-enabled transcription tool to reduce the cost and increase the availability of transcripts.[181] The submission points out that the vast majority of cases do not lead to a published judgment and therefore transcripts offer an important means of making courts accessible to reporters and to the public. However, at present the costs of such transcripts make them very difficult to access. JUST: Access argue that court proceedings could be made more transparent by making audio/video recordings of hearings more accessible.[182] At present a small number of UK Supreme Court hearings from 2010–11 are available on the National Archives website and access is unrestricted. JUST: Access argue that, as many hearings now take place using remote hearings, it is much more straightforward to make a recording. In relation to automatic transcription, even though there are concerns over its accuracy in some conditions, JUST: Access submit that in some situations, for example the Family Court, participants could be given the judgment as an audio file with the automatically recorded transcript alongside to assist.

85. The Bureau of Investigative Journalism's evidence also drew attention to the costs of court transcripts, noting that Opus 2, a court transcription service, charges between £216 and £360 for an hour of civil court transcription.[183] BAILLI describe the costs of transcripts as "prohibitive".[184]

86. Guardian News & Media asked that, when transcripts are produced for parties contemporaneously, these are made available to journalists reporting on the case.[185] The Legal Education Foundation argued that the Ministry of Justice should reduce the cost of transcripts and reform existing contracts to ensure that copies of judgments delivered orally are sent to the new repository of judgments hosted by the National Archives.[186] The evidence of the Lord Chief Justice and the President of Tribunals raised concerns over the resource implications of publishing more transcripts, in particular because it is common for transcripts when first produced to contain significant errors and omissions.[187]

87. **The current situation on court transcripts is unsatisfactory.** ***HMCTS should explore whether greater use of technology, such as AI-powered transcription, could be piloted to see whether it can be used to reduce the cost of producing court transcripts. HMCTS should also consider whether the sentencing remarks in the Magistrates' courts could be routinely recorded and transcribed on request. HMCTS should also review its existing contracts for transcription services to ensure that transcripts are more accessible to the media and the public.***

180 APPEAL (OPJ0008)
181 Submission by JUST: Access Sophie Walker (CEO at JUST: Access Ltd) (OPJ0011)
182 Submission by JUST: Access Sophie Walker (CEO at JUST: Access Ltd) (OPJ0011)
183 The Bureau of Investigative Journalism (OPJ0031)
184 British and Irish Legal Information Institute (BAILII) (OPJ0001)
185 Guardian News & Media (OPJ0044)
186 The Legal Education Foundation (OPJ0042)
187 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)

Accessing judgments

88. In a common law system, which operates with a system of binding precedents, access to court judgments is vital to public understanding of the law and to open justice. As Natalie Byrom said to us: "To put it plainly, if you want to know what the law is and how it affects you, you need access to the judgments and decisions from courts".[188] The Ministry of Justice's evidence stated: "judgments are a primary source of law and access to them is a fundamental right, central to the rule of law and the principle of open justice".[189]

89. Until recently, free access to judgments was only available through the British and Irish Legal Information Institute (BAILII), a charity founded in 2000 at the initiative of a judge, Sir Henry Brooke, which provides free online access to British and Irish primary legal materials.[190] BAILLI receives its judgments directly from judges. It is a well-used service, but operates on a small budget and is not comprehensive in its coverage. Their evidence to us states that there "needs to be a more comprehensive feed of judgments available to the media and to individuals".[191] Outside of this service, the only way to access a database of judgments in England and Wales was through a commercial provider.

90. In June 2021, the Government announced that for the first time court and tribunal judgments would be available through the National Archives. In April 2022, the new service, Find Case Law, was launched on the National Archives website. The service is in its early stages of development, and so is not currently comprehensive. It includes all judgments and tribunal decisions from the Upper Tribunals, High Court, Court of Appeal and Supreme Court from 19 April 2022, as well as a large number of court judgments dating back to 2003, and tribunal decisions dating back to 2016. The Government has indicated that coverage will be expanded over time.[192]

91. Despite this positive step forward, at present, the public and the media are only able to access a small fraction of judgments delivered in England and Wales. Natalie Byrom set out the position to us on 22 January 2022:

> There is no public, centralised system at present for collecting judgments at the point they are made, storing them and making them available for publication. That means that things like publishing a sample of 10% is really difficult. There is no central complete record of the decisions that are made in our courts, and there are no publicly agreed criteria for which judgments should be published. Instead, we have allowed the task of preserving these judgments, which are part of our law, to be delegated to private actors and restricted-access publishers who charge large fees for access to their content.[193]

Natalie Byrom explained the current situation on the collection of judgments has the following adverse effects:

188 Q36 Natalie Byrom
189 Ministry of Justice (OPJ0034)
190 British and Irish Legal Information Institute (BAILII) (OPJ0001)
191 British and Irish Legal Information Institute (BAILII) (OPJ0001)
192 Gov.uk, 'Court judgments made accessible to all at The National Archives'
193 Q136 Natalie Byrom

- The Government does not hold and is not able to access a complete record of the judgments of courts in England and Wales and therefore has to pay for access from commercial providers;
- Not-for-profit advice agencies and charities cannot access case law and struggle to pay for access to commercial providers;
- It limits the capacity for research on judgments; and
- It limits the public's ability to assess the quality of justice.[194]

92. JUST: Access point out the current approach to transcription means that the Government pays commercial providers to transcribe judgments in the Senior Courts and the Judiciary then pay commercial providers to access those judgments via commercial legal publishers.[195] Spotlight on Corruption support the National Archives Find Case Law Service and suggest that there needs to be a model that "retains and delivers free and comprehensive access to all court judgments in a structured and machine-readable format".[196] The Legal Education Foundation's evidence draws attention to research which suggests there is a significant disparity between the quantity of judgments available for free and those behind a paywall, with commercial sites providing more comprehensive coverage than BAILLI.[197]

93. **We welcome the establishment of the National Archives Find Case Law Service. However, this service should represent the first step in improving the public accessibility of judgments.** ***HMCTS should reform the way that judgments are collected, stored and published so that there is less reliance on commercial legal publishers. The judgments of courts are the product of a publicly funded justice system and the public, the media and the legal sector should not have to pay significant sums for access.***

Accessing sentencing remarks

94. At present, a small number of Crown Court sentencing remarks which are of particular public interest are published online in written form. The submission we received from the Lord Chief Justice and the President of the Tribunals explains that currently it would not be practicable for sentencing remarks in every Crown Court case to be written down and published because of the impact it would have on the pace of work in the Crown Court.[198] Their submission also explains that sentencing remarks often contain information that cannot be published, for example material that could identify the victim of a sexual crime. Ensuring that information is removed, and that the transcripts were a verbatim record, would require significant resources.

95. In 2017, David Lammy's review of the Criminal Justice System recommended that as part of the court modernisation programme all sentencing remarks in the Crown Court should be published in audio and/or written form.[199] Dr Natalie Byrom told us there needed to be action to implement this recommendation.[200]

194 Q136 Natalie Byrom
195 Submission by JUST: Access Sophie Walker (CEO at JUST: Access Ltd) (OPJ0011)
196 Spotlight on Corruption (OPJ0032)
197 The Legal Education Foundation (OPJ0042)
198 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)
199 The Lammy Review (2017) Recommendation 13
200 Q154 Natalie Byrom

96. Lizzie Dearden explains that when sentencing remarks are published in high profile cases they are very helpful for the media to enable them to explain the sentence to the public.[201] She notes that, when remarks are not published and are requested, she is told that obtaining the transcript is the only way of obtaining them.[202]

97. ***All Crown Court sentencing remarks should be published in audio and/or written form. HMCTS should ensure that the necessary resources are made available to enable sentencing remarks to be published.***

98. ***We are concerned over whether the Ministry of Justice has allocated sufficient funding to ensure that the court reform programme can overcome some of the barriers to public and media access to information on courts. We ask the Government to provide a status update on any ongoing projects that are designed to enhance open justice, outlining how much funding has been allocated to deliver them and providing a date by which they will be completed.***

201 Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014)
202 Lizzie Dearden (Home Affairs and Security Correspondent at The Independent) (OPJ0014)

4 Court reform and open justice

99. In September 2016, the Government and judiciary jointly launched the court reform programme.[203] The paper, Transforming Our Justice System, issued by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals promised "to modernise and upgrade our justice system so that it works even better for everyone".[204] To deliver this pledge, at the time, the Government committed to invest £700 million to modernise courts and tribunals, and over £270 million of additional funding for the criminal justice system. The Ministry of Justice's evidence to us stated that the Government is investing £1.3 billion to modernise HMCTS.[205] Part of the court reform programme's aims is to use digital technology to improve and enhance the justice system. The promised reforms present a number of opportunities and risks for open justice in England and Wales. Historically, the practical arrangements for ensuring open justice have centred on the physical facilities to allow judicial proceedings to take place in public, so that the media and the members of the public can be present to observe and report on court proceedings. As more processes and information on court process shift online, the challenge facing HMCTS is to ensure that the open justice principle is maintained so that the courts are as, if not more, accessible and transparent than they were before.

100. Our predecessor Committee's report on the court reform programme concluded that public and media access to courts and tribunals was a "secondary consideration" within the Government's drive for modernisation and there was a risk that open justice "may fall by the wayside because of competing priorities in delivering the reform programme".[206] That Committee recommended that HMCTS should focus on developing "effective and accessible technical solutions supporting open justice" that ensure open justice keeps pace with the increasing use digital and video-enabled processes.[207]

101. The Covid-19 pandemic saw a dramatic increase in the use of digital technology in courts and tribunals, through the rapid shift to remote hearings. Our report on the impact on the pandemic on the courts, published in 2020, reflected concerns that the shift to remote hearings had led to the public being excluded from hearings, or facing severe obstacles in accessing hearings, particularly in the lower courts.[208] Our report recommended that HMCTS commission research to determine how the principle of open justice should apply to remote hearings. We also noted that the rapid pace of change could lead to the principle's role within the justice system being eroded by accident.[209]

102. For this inquiry, we asked witnesses to provide evidence on the effects of court reform and remote hearings on open justice. Our principal concern was whether the Government was taking advantage of the opportunities presented by the court reform programme to preserve, and to expand, open justice. This includes ensuring that the media and the public has access to the information to observe justice being done. However, it also extends to capturing and publishing the data as a result of the digitisation of the justice system. Natalie Byrom told us it would be "an act of extreme negligence" to miss the opportunity

203 Ministry of Justice, Transforming Our Justice System (2016)
204 Ministry of Justice, Transforming Our Justice System (2016)
205 Ministry of Justice (OPJ0034)
206 Justice Committee, Second Report of Session 2019, Court and Tribunal reforms, HC 190, para 167
207 Justice Committee, Second Report of Session 2019, Court and Tribunal reforms, HC 190, para 168
208 Para 68
209 Para 70

to capture data through the reform programme, as once the digital systems are launched "it becomes too expensive and too difficult to retrofit the data collection that is needed".[210] The Ministry of Justice's evidence to our inquiry sets out a number of important elements of the reform programme that will have an effect on open justice, and this Chapter examines each of these in light of the other evidence received.

Remote observation and the Police, Crime, Sentencing and Courts Act 2022

103. Although not part of the original court reform programme, the dramatic increase in the use of remote hearings and the consequent acceleration of the modernisation programme caused by the pandemic has meant that there is now a permanent legislative framework to enable the remote observation of court proceedings. The Police, Crime, Sentencing and Courts Act 2022 received Royal Assent in April 2022. Part 13 of the Act contains provisions that allow specified courts and tribunals to make video or audio transmissions to individuals who wish to observe court proceedings.[211] This power was originally enacted through the Coronavirus Act 2020 on a temporary basis. The 2020 Act also created a new offence to prohibit the unauthorised recording and re-transmission of these hearings by those observers.[212] The Ministry of Justice's evidence explains that, as the powers in the 2020 Act worked well during the pandemic, they were included in the Police, Crime, Sentencing and Courts Act 2022 to make them permanent. However, the provisions in the 2022 Act are different in the following ways:

- In the Coronavirus Act 2020 the powers only apply to wholly remote hearings. In the PCSC Act 2022 these powers are expanded so all types of hearing (wholly remote, in person, and hybrid) may be in scope, subject to the relevant provisions being enacted via secondary legislation which would require the concurrence of the Lord Chancellor, and the Lord Chief Justice, Senior President of Tribunals, or both (as appropriate).

- The scope of these powers has also been expanded so they may be used in all courts across England and Wales and all UK tribunals, except for devolved tribunals in Wales, Scotland, and Northern Ireland, subject to guidance and judicial discretion. This will, for example, more clearly facilitate the remote observation of proceedings in employment tribunals, the Employment Appeal Tribunal, and Coroners' courts.

The Ministry of Justice's evidence emphasised that these provisions will not allow the broadcasting of proceedings.[213] Instead they will allow the direct transmission of proceedings to identified individuals that have requested access to a hearing. The new legislative framework for remote observation of court hearings was commenced on 28 June 2022 through the Remote Observation and Recording (Court and Tribunals) Regulations 2022. Under this framework judges remain responsible for the decision as to whether to allow remote observation of proceedings. One of the main safeguards included in the Regulations is that a person can only watch proceedings remotely if they identify themselves to the court by providing their full name and their email address.

210 Q134 Natalie Byrom
211 Ministry of Justice (OPJ0034)
212 Ministry of Justice (OPJ0034)
213 Ministry of Justice (OPJ0034)

The only exception to this rule is the direction to allow remote observation at designated live-streaming premises. The Regulations stipulate that a judge can only allow remote observation if they are satisfied it would be in the interests of justice to do so and if there is the capacity to enable transmission without creating an unreasonable administrative burden. The Regulations also set out a number of factors that a judge must consider when deciding whether to allow remote observation of proceedings, these include:

- The need for administration of justice to be, as far as possible, open and transparent;
- The extent to which the technical, human and other resources necessary to facilitate effective remote observation are or can be made available;
- Any issues which might arise if persons who are outside the United Kingdom are among those watching or listening to the transmission.

Guidance issued by the Lord Chief Justice and the Senior President of Tribunals states:

> Decision-makers must give due weight to the importance of open justice. This is a mandatory consideration. Open justice serves the key functions of exposing the judicial process to public scrutiny, improving public understanding of the process, and enhancing public confidence in its integrity. Remote observation can promote all those purposes. Access for reporters, legal commentators and academics is likely to do so. Judicial office holders may take as a starting point that remote access for other observers is desirable if they would be entitled in principle to have access to a courtroom in which the hearing was taking place, and giving them remote access is both operationally feasible and compatible with the interests of justice.[214]

The Guidance draws attention to the particular risks of remote observation, noting that "Remote observers may be more likely than someone watching in a court room to breach a reporting restriction or the ban on filming or photography or to engage in witness intimidation".[215] The Guidance also adds that when a court is deciding whether to facilitate remote it must consider whether to do so "would not unreasonably burden the court or its staff".[216]

104. This Guidance reflects a number of points made to us in the evidence submitted by the Lord Chief Justice and the President of the Tribunals for this inquiry. They highlighted that remote observation during the pandemic "placed considerable demands on resources and […] experience has shown that this way of giving access to court proceedings can pose some fresh challenges".[217] Their evidence drew attention to the fact that remote access in high profile hearings such as *Duchess of Sussex v Associated Newspapers* required very careful preparation and therefore placed significant demands on court staff and judges.

214 Lord Chief Justice of England and Wales and Senior President of Tribunals, Practice Guidance on Remote Observation of Hearings – New Powers (28 June 2022) para 17

215 Lord Chief Justice of England and Wales and Senior President of Tribunals, Practice Guidance on Remote Observation of Hearings – New Powers (28 June 2022) para 21

216 Lord Chief Justice of England and Wales and Senior President of Tribunals, Practice Guidance on Remote Observation of Hearings – New Powers (28 June 2022) para 21

217 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)

Even beyond these high-profile cases, remote access has put additional demands on the judiciary and its support staff. They note that even with the additional HMCTS staff recruited recently, it remains a "struggle". They conclude:

> Remote access by the media will be constrained in practical terms unless government makes the financial resources available to have a sufficient number of staff to provide the time needed to make the arrangements.[218]

105. In relation to the new powers to facilitate remote observation in the Police, Crime, Sentencing and Courts Act 2022, the Lord Chief Justice and the Senior President of the Tribunal welcomed the additional flexibility the powers will provide, but they also set out two areas of concern that require attention. First was the impact of remote participation on participants and particularly witnesses:

> Many vulnerable witnesses have to give evidence of painful events in their lives, and many are very reluctant to do so. Doing this under the eyes of innumerable unseen remote observers is liable to exacerbate the stress, and perhaps deter the witness from giving evidence altogether. There are established ways of mitigating stress for witnesses in traditional in-court hearings, by "special measures", but these may not be enough or as easy to deploy in a case where there is a "virtual public gallery". Pre-recording of evidence may well not be enough to reassure a witness, if she has to contemplate the prospect that her evidence will be seen not only by those in the courtroom but also by any member of the public who chooses to attend remotely.[219]

106. The second issue raised by the Lord Chief Justice and the Senior President of the Tribunals was the risk of misconduct in the "virtual public gallery".[220] The examples of misconduct they raised are: interruption, disruption or unauthorised recording or broadcasting.[221] In relation to these forms of misconduct when they occur in the public gallery, they can be dealt with on the spot. By contrast, with remote observers it is more difficult, as they cannot in practice be observed or controlled.[222] They note that disruption by intervention has occurred during the pandemic. However, their main concern is unauthorised recording and broadcasting:

> It is capable of seriously undermining the administration of justice, disrupting or prejudicing a trial in a variety of ways, for example by someone publishing a photograph of a vulnerable witness, or the details of legal argument heard in the absence of the jury. The risk that exists, even with experienced reporters, is increased when persons with no media training or responsibilities are allowed remote access.[223]

The Lord Chief Justice and the Senior President of the Tribunals note that there are limited technological means of preventing unauthorised recording or broadcasting. It will be

218 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)
219 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)
220 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)
221 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)
222 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)
223 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)

vital, they submit, for observers to be identified, which raises the question of how this will be done. The courts, they note, can do very little if the offenders are outside the courts' jurisdiction.

107. In relation to the potential requirement to provide ID in order to access a remote hearing, the Magistrates' Association raised concerns that it might deter some from observing.[224] However, they also raised concerns over the potential effect on witnesses of having unknown numbers of people observing online.[225]

108. The Chartered Institute of Journalists highlighted that during the pandemic there was only one incident of a media organisation using an unauthorised clip of High Court proceedings. BBC South East Today recorded audio-visual footage of a hearing and selected a short clip to illustrate a news report.[226] The BBC accepted it had breached the statutory provisions and committed criminal offences, and was fined £28,000 for contempt of court. In their judgment, Lady Justice Andrews and Mr Justice Warby set out some the reasons why the prohibition on the creation and access to images and sound recordings of court proceedings, as set out in section 41 of the Criminal Justice Act 1925, remains important: "the creation and publication of images taken in or near the courtroom might have deterrent effects, or other harmful impacts, on parties and witnesses or potential witnesses in a case, thereby poisoning the process".[227] Further, they also cite other relevant factors in favour of the restriction, including that access to such images could lead to: "(1) unwarranted intrusion into the private lives of participants and others, (2) disrespect for human dignity, and (3) insult or harm to the dignity and authority of the court process itself". Their judgment also made the following important observation:

> Open justice is a fundamental principle of the common law, but it has never required the court to let third parties take or publish pictures, or film, or audio recordings of a hearing. None of those activities is necessary to allow effective scrutiny of the administration of justice, or enable fair and accurate reporting.[228]

109. **We welcome the new legislative framework for remote observation of court proceedings. The combination of this framework and improvement of the technological facilities of courts has the potential to enhance open justice by making it easier for the public and the media to observe proceedings.**

110. **It is right that judges are in control of the decision as to whether to allow remote observation. In some cases, judges will find these decisions difficult to make. It is crucial therefore that the effect of this new framework is evaluated. The concerns raised by the Lord Chief Justice and the Senior President of Tribunals, in particular in relation to the impact on court resources and the potential for unauthorised transmissions, will need to be followed up by an evaluation of how this new framework is operating in practice. *HMCTS should commission an evaluation in June 2023 to examine how the new framework has worked in its first year of operation.***

224 Magistrates Association (OPJ0045)
225 Magistrates' Association (OPJ0045)
226 The Chartered Institute of Journalists (OPJ0028)
227 *Finch v Surrey County Council* [2021] EWHC 170 (QB) para 62
228 [2021] EWHC 170 (QB) para 59

111. **The power to allow the transmission of proceedings to designated livestreaming premises has great potential to enable more people to observe court proceedings and enhance open justice. If students were able to observe cases in classrooms and lecture halls, or if community centres could host livestreams of court proceedings, the accessibility of court proceedings would be greatly enhanced.**

Broadcasting of court proceedings

112. Although not formally part of the court reform programme, a number of witnesses advocated greater progress in the broadcasting of court proceedings. At present, appeals in the Supreme Court are broadcast by default and the Civil and Criminal Divisions of the Court of Appeal also broadcast some proceedings.[229]

113. In January 2020 the Crown Court (Recording and Broadcasting) Order 2020 was made to enable cameras to broadcast sentencing remarks in the Crown Court.[230] On 28 July 2022, Crown Court sentencing remarks were broadcast for the first time. Judge Munro KC decided to permit the broadcasting of the sentencing of Ben Oliver from the Central Criminal Court in London. The remarks of Judge Munro were broadcast with a twenty second delay on Sky News. The recorded sentencing remarks were then uploaded to a dedicated YouTube channel hosted by Sky News. The Lord Chief Justice said "I think it's an exciting development, because it will help the public to understand how and why criminals get the sentences that they do in these very high-profile cases".[231]

114. For the Court of Appeal and the Crown Court, the regulations permitting broadcasting have been made through the power in sections 31 and 32 of the Crime and Courts Act 2013. The Ministry of Justice's evidence drew attention to the recent use of this power to allow the Competition Appeals Tribunal (CAT) to broadcast its proceedings via a link on its website.[232] This power has now been made permanent through the Competition Appeal Tribunal (Recording and Broadcasting) Order 2022.

115. The Media Lawyers Association's evidence argues that other proceedings would be suitable for broadcast: filming in the High Court, sentencing in Magistrates' courts and filming some areas of a coroner's inquest–for example, recommendations made by the coroner.

116. The Chartered Institute of Journalists' evidence noted that its members are divided on how far the broadcasting of court proceedings should go:

> 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

229 Ministry of Justice (OPJ0034)
230 Gov.uk, 'Cameras to be broadcast from the Crown Court for the first time', 16 January 2022
231 Judiciary, Broadcasting of sentencing remarks in the Crown Court, 29 July 2022
232 Ministry of Justice (OPJ0034)

> 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.[233]

Their evidence does recommend that the practice of broadcasting and archiving of cases, as currently done by the Supreme Court and the Court of Appeal, should be extended to the other divisions of the Court of Appeal, High Court and Upper Tribunal chambers.[234]

117. John Battle, Head of Legal and Compliance, ITN, and Chair of the Media Lawyers Association, told us that he envisaged a point where it might be possible to broadcast "the opening of the case by prosecution or an image of the defendant in the court".[235] He also emphasised that it was important to remember that whatever legislative changes permit, ultimately the decision on whether court proceedings can be broadcast would be down to the judge in charge.[236]

118. **We welcome the broadcasting of Crown Court sentencing remarks. It is a positive step for both open justice and the public understanding of sentencing.**

119. ***More widely, we recommend that HMCTS and the Judiciary commission research to determine which civil and criminal proceedings could be suitable for broadcast and video archiving. In principle, we would support the extension of broadcasting and recording to civil trials that do not involve oral evidence. In the criminal context, the broadcast and recording of sentencing in Magistrates' courts could also be beneficial. However, we do not support the broadcasting of any elements of criminal trials other than the sentencing remarks of the judge.***

The Judicial Review and Courts Act 2022

120. The Judicial Review and Courts Act 2022 contains a number of provisions that are designed to modernise court processes and improve efficiency by updating procedures. Section 6 of the Act enables a plea in either-way cases to be conducted in writing, including online via the Common Platform, which will remove the need for a hearing in the Magistrates' court.

121. In their evidence APPEAL argued that the entering of a plea should be subject to the same open justice principles as later stages of criminal proceedings: "Witnesses, alleged victims, the public and the press should be able to witness a plea being entered in open court, as well as any discussion in court about the plea".[237] Transform Justice have also criticised the measures in the Act to introduce online pleas, arguing that "the plea hearing is a critical moment in any case and is currently an open hearing, accessible to victims, witnesses, the press and the public". They argued that putting pleas online "will close down justice".[238] The Chartered Institute of Journalists also raised concerns

233 The Chartered Institute of Journalists (OPJ0028)
234 The Chartered Institute of Journalists (OPJ0028)
235 Q133 John Battle
236 Q142 John Battle
237 APPEAL (OPJ0008)
238 Swipe right to plead guilty - Transform Justice

over online pleas stating: "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".[239]

122. Tristan Kirk, courts correspondent at the Evening Standard, raised the following concerns over the shift to online pleas:

> The proposal to allow 'first appearances' in either way offences to sometimes be scrapped would, in theory, make the system more efficient. What may have been overlooked is the effect that would have on open justice. Those hearings are often a journalist's gateway into covering the case, hearing for the first time what the allegations are, often the defendant's indicated plea, and details of how the case is to progress in the future. Taking those hearings behind closed doors, making them administrative functions involving emails between lawyers, would be damaging to the media's ability to pick up on and report criminal cases.[240]

123. Dr Rebecca Helm, an academic from the University of Exeter, argues that the shift to online pleas should be carefully monitored:

> Research suggests that moving justice procedures online has the potential to lead defendants who would otherwise have exercised their right to a full trial to plead guilty. Any move towards online justice should consider the harmful effects for both open justice and defendant rights when large numbers of defendants feel pressure to plead guilty, particularly where evidence against them is weak. For the reasons below, it is necessary to consider and monitor guilty pleas and representation rates in this context, to ensure that online resolution via plea does not become a "black box" in which innocent defendants are convicted unrepresented based on weak evidence, without engaging with the justice process and without scrutiny of the evidence against them.[241]

124. The Judicial Review and Courts Act 2022 also introduces a new online process for summary offences that adults who plead guilty to the most straightforward uncontested cases can opt to have their case dealt with online. The Ministry of Justice's evidence explains that: "if defendants choose this option, they can be convicted, sentenced, and pay their fine quickly online, without the involvement of a magistrate, or the need to attend court in-person".[242] The procedure is currently limited to three offences: failure to produce a ticket on a train, on a tram and fishing with an unlicensed rod and line. The Chartered Institute for Journalists state that they are opposed to automatic online convictions as set out in the 2022 Act which they say "liquidates open justice".[243] Transform Justice describe the process as a development of the Single Justice Procedure and describe it as enabling convictions to be processed "behind closed doors".

239 The Chartered Institute of Journalists (OPJ0028)
240 Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023)
241 Dr Rebecca Helm (Director, Evidence Based Justice Lab at University of Exeter) (OPJ0036)
242 Ministry of Justice (OPJ0034)
243 The Chartered Institute of Journalists (OPJ0028)

125. ***The changes to criminal procedure in the Judicial Review and Courts Act 2022 should be carefully monitored. After one year of their operation, the Ministry of Justice should initiate an evaluation of how the changes are operating in practice, including their impact on open justice.***

126. ***The potential effect of these changes on open justice might also be mitigated by ensuring that the relevant information that would have otherwise been said in open court is documented and published online in a timely fashion.***

Single Justice Procedure

127. In our report on Covid-19 and the criminal law, which was published in September 2021, we acknowledged the concerns raised in relation to the transparency of the Single Justice Procedure.[244] We recommended that the Ministry of Justice should "review the transparency of the single justice procedure and consider how the process could be made more open and accessible to the media and the public".[245]

128. APPEAL argued that the Single Justice Procedure is an "inherently closed procedure". They criticised the lack of oversight, in particular as the prosecutions are not subject to oversight by the CPS Inspectorate. They also stated that "there should be regularly published statistics on how many people are being prosecuted under the SJP, for which offences, including the number that have pleaded guilty, not guilty or entered no plea".[246] The Chartered Institute of Journalists said that changes to the Criminal Procedure Rules have led to the supply of information to the media on the Single Justice Procedure which has made the process more accessible.[247] Tristan Kirk suggested that Notices of Prosecution could be disclosed to the media automatically, alongside regular listings.[248]

129. The Magistrates' Association's evidence raised concerns over the Single Justice Procedure, explaining that their concerns have not been satisfactorily addressed by HMCTS or the Ministry of Justice. They pointed out that transparency of the process cannot be achieved by just publishing outcomes and that "public confidence is linked to public scrutiny of the process".[249] Public scrutiny of the process is not possible, in their view, under the current approach to the Single Justice Procedure.

130. **We remain concerned by the Single Justice Procedure's lack of transparency. *The Government should review the procedure and seek to enhance its transparency by ensuring that any information that would have been available had the cases been heard in open court is published in a timely fashion.***

Governance of open justice

131. Examining the effect of court reform on open justice draws attention to the fact that the operation of open justice is split between several institutions and actors. Dr Natalie

244 Justice Committee, Covid-19 and the criminal law, Fourth Report of Session 2021–22, HC 71, 24 September 2021, para 90

245 Justice Committee, Covid-19 and the criminal law, Fourth Report of Session 2021–22, HC 71, 24 September 2021, para 90

246 APPEAL (OPJ0008)

247 The Chartered Institute of Journalists (OPJ0028)

248 Mr Tristan Kirk (Courts Correspondent at London Evening Standard) (OPJ0023)

249 Magistrates Association (OPJ0045)

Byrom, in her evidence to us, drew attention to the fact that open justice "falls awkwardly between the judiciary and the MOJ", which means that joint working and resourcing is needed to deliver reforms.[250]

132. We received evidence on the positive impact of the HMCTS Media Access Working Group, established in 2018, which enables officials to work with media organisations and serves to develop HMCTS' media guidance for HMCTS staff.[251] The Ministry of Justice's evidence states that the Working Group is "focused on continuously improving how we all work together and removing barriers to effective and appropriate access".[252] Dr Judith Townend's evidence recommends the establishment of an equivalent group on transparency policy in the justice system with membership drawn from academia, charities and non-governmental organisations, as well as the legal and media profession.[253]

133. The growing importance of open justice as an issue, especially in relation to the need to improve the quality of data that is available, and to encourage timely research on the justice system, merits a re-examination of the governance structures in place to oversee open justice. In 2020, a new Senior Data Governance Panel was established to provide advice to the Lord Chancellor and Lord Chief Justice on "novel or contentious" applications to access and use of data held by the courts. Spotlight on Corruption recommend that the Senior Data Governance Panel should be placed on a statutory footing with a public mandate and a transparent recruitment process.[254] The Legal Education Foundation's evidence describes the governance structures on data as "underdeveloped":

> Much of the data and information relevant to delivering the goals of open justice is generated by the courts acting judicially and stored by the court service, whilst policy is developed by the Ministry of Justice (in consultation with the senior judiciary). The existing framework agreement which sets out the aims and objectives of the court service, and crucially, who is responsible for decision making (between the Judiciary, Ministry of Justice and HMCTS) is silent on issues of data and information flows. This can lead to decisions on data sharing with repercussions for open justice being taken in a piecemeal and uncoordinated fashion. In addition, decisions which have a direct bearing on the availability of documents and data relevant to the delivery of open justice goals (such as the cost of transcripts, and the terms of their supply to publishers) are siloed. There is a need to review the way decisions are taken as part of a coherent data strategy which is jointly owned by the Ministry of Justice and the Judiciary and executed by HMCTS.[255]

134. ***The Government should clarify and strengthen the governance structures on open justice. The Senior Data Governance Panel should be formalised and its powers and remit should be defined and published. It is vital that the decisions made by the Panel are as transparent as possible. The positive work of the Media Working Group should be built upon and it should be empowered to make recommendations that are then considered and decided upon by the Senior Data Governance Panel. A separate***

250 Q155 Natalie Byrom
251 Ed Owen (OPJ0021)
252 Ministry of Justice (OPJ0034)
253 Dr Judith Townend (Senior Lecturer at School of Law, Politics and Sociology, University of Sussex) (OPJ0024)
254 Spotlight on Corruption (OPJ0032); The Legal Education Foundation (OPJ0042)
255 The Legal Education Foundation (OPJ0042)

court information user group should be established to represent the interests of groups other than the media, such as court observers, NGOs, researchers and law tech that can also make recommendations that are considered and decided upon by the Senior Data Governance Panel.

5 The Family Court

135. The Family Court is one of the most significant, but worst understood, elements of the justice system in England and Wales. It deals with over 200,000 cases a year and considers some of the most challenging disputes, including local authority interventions to protect children, parental disputes over the upbringing of children and forced marriage protection. The majority of family proceedings take place in private, with members of the public not allowed to be present to observe proceedings. Accredited journalists can attend, but because of the restrictions that limit what can be reported, they rarely do.[256] The policy questions arising from the application of the principle of open justice to family law cases are often particularly difficult because the courts have to give due weight to the need to protect the rights and interests of the children involved. The current President of the Family Division, Sir Andrew McFarlane, has resolved to increase transparency in the Family Court, and in October 2021, his report, Confidence and Confidentiality: Transparency in the Family Courts (the Transparency Review) was published which set out proposals for change. In this Chapter we examine recent attempts at increasing transparency in the Family Court, the current situation and the President of the Family Division's proposals for change.

Recent attempts at reform

136. The application of the open justice principle in proceedings in the Family Court is a difficult issue that has been debated for decades. In 2004, a predecessor of this Committee, the House of Commons Constitutional Affairs Committee, called for a "greater degree of transparency" in the family courts.[257] That Committee recommended allowing the press and the public into family courts, under the appropriate reporting restrictions and subject to the judge's discretion to exclude the public.[258] It also recommended that the family courts should move to anonymised judgments given in public unless a judge makes an order to the contrary, and also urged the Government to remove any legal restriction on parents discussing their cases so that they could discuss their case with supervisory bodies, support services and to facilitate research.[259]

137. In 2006, the Department of Constitutional Affairs consulted on a set of proposals to improve transparency and privacy in the family courts.[260] The proposals included allowing the media to attend family proceedings as of right.[261] Following consultation, the Ministry of Justice produced a new set of proposals, which did not include allowing the media to attend as of right.[262] However, in 2009, the Family Procedure Rules were changed to allow for 'duly accredited' media representatives to be present during family proceedings,

256 The Transparency Project (OPJ0025)
257 House of Commons Constitutional Affairs Committee, Family Justice: the operation of the family courts, Fourth Report of Session 2004–05, HC 116-I, para 144
258 House of Commons Constitutional Affairs Committee, Family Justice: the operation of the family courts, Fourth Report of Session 2004–05, HC 116-I, para 144
259 House of Commons Constitutional Affairs Committee, Family Justice: the operation of the family courts, Fourth Report of Session 2004–05, HC 116-I, para 148
260 Department of Constitutional Affairs, Confidence and confidentiality Improving transparency and privacy in family courts (2006)
261 Department of Constitutional Affairs, Confidence and confidentiality Improving transparency and privacy in family courts (2006) p8
262 Ministry of Justice, Confidence & confidentiality: Consultation Paper Code Number CP 10/07 Published on 20 June 2007 p3–4

subject to the judge's power to exclude them on a number of specified grounds.[263] In 2010, Parliament agreed a set of changes to media access and openness in the Children, Schools and Families Act 2010. However, after the provisions were enacted, they were widely criticised, including by our predecessor Committee, which recommended that they should not be implemented.[264] They were never implemented and were eventually repealed.

138. In 2011, our predecessor Committee considered the issue of transparency in the family courts.[265] It noted that witnesses were strongly divided. A number of witnesses advocated for greater transparency in order to facilitate public scrutiny of the decisions made in family proceedings. This was necessary, it was argued, to improve public confidence. On the other side, witnesses argued that the current rules limiting transparency should be preserved to protect children's right to privacy and so as to prevent publicity discouraging children from contributing to proceedings. That Committee concluded: "We believe the underpinning principle of the family court system, that all decisions must be made in the best interests of the child, must apply equally to formation of Government policy on media access to the family courts".[266]

139. In 2014, the then President of the Family Division, Sir James Mumby, issued guidance to encourage the publication of judgments in the Family Court and the Court of Protection. The evidence submitted by the Transparency Project, a charity that advocates for improved public understanding of the family justice system, stated that this led to a temporary increase in the rates of publication but in recent years this has declined for a number of reasons, including workload levels and concerns over anonymisation failures.[267] They noted that the initial increase in judgments did lead to more media coverage but that the quality of the coverage was "very superficial and tended to create distortion by focus on one small aspect of a judgment that was very much more complex".[268]

The present legal framework and court reporting

140. The current legal framework limits the ability of the media, or anyone else, to report on the Family Court. Section 12 of the Administration of Justice Act 1960 provides that:

> (1) the publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—
>
> (a) where the proceedings—
>
> (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;

263 Family Proceedings (Amendment) (No.2) Rules 2009 SI 2009 No. 857

264 House of Commons Justice Committee, Operation of the Family Courts, Sixth Report of Session 2010–12, HC 518-I

265 House of Commons Justice Committee, Operation of the Family Courts, Sixth Report of Session 2010–12, HC 518-I

266 House of Commons Justice Committee, Operation of the Family Courts, Sixth Report of Session 2010–12, HC 518-I, para 293

267 The Transparency Project (OPJ0025)

268 The Transparency Project (OPJ0025)

> (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002;
>
> or (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor; […]

141. This provision applies to the Family Court as it sits in private. Section 97 of the Children Act 1987 makes it a criminal offence to publish any material which would, or is likely to, identify a child as involved in proceedings in the Family Court. The Family Procedure Rules permit the media to attend private hearings.[269] Following a pilot scheme in 2018, duly authorised lawyers who are attending for journalistic or research purposes ("legal bloggers") are also now allowed to attend.[270] However, section 12 of the Administration of Justice Act 1960 means that court reporters and legal bloggers cannot publish information on proceedings if it concerns children.[271] As Sir Andrew MacFarlane explained to us: "when a court sits in private dealing with matters to do with children, it is a contempt of court to publish any information about those proceedings".[272]

142. The Transparency Project explained that in practice there are three main barriers that limit court reporting of the Family Court:

- journalists find it very hard to identify cases of interest;
- even if they attend, s12 Administration of Justice Act 1960 ('s12 AJA') means that they cannot report anything unless they successfully make an application for permission to report, which is daunting and time-consuming and may well be opposed and ultimately refused;
- even if they get permission, publication of anything which is said to inadvertently go beyond that permission could result in a fine or imprisonment.[273]

They also note that statistical information is still "very patchy".[274] As a result they conclude that Family Court proceedings are "unique in their lack of transparency both in respect of individual cases and in respect of the bigger system-wide picture".[275]

143. In 2016 the Court of Protection began to sit in public, which meant that section 12 of the Administration of Justice Act 1960 no longer applied. A number of witnesses referred to the Open Justice Court of Protection Project, run by Professor Celia Kitzinger and Gill Loomes-Quinn, which has led to an "explosion in the numbers of lay observers attending and blogging about their observations of Court of Protection hearings".[276]

144. It is worth noting in this context that academic researchers have been granted access to the Family Court; for example, the Nuffield Family Justice Observatory has recently

269 The Family Procedure Rules 2010 Rule 27.11
270 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 12
271 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 13
272 Q76 Sir Andrew MacFarlane; The recent case of *Gallagher v Gallagher* (No.1) (Reporting Restrictions) [2022] EWFC 52 provides a summary of the how principles of open justice apply to certain family law cases
273 The Transparency Project (OPJ0025)
274 The Transparency Project (OPJ0025)
275 The Transparency Project (OPJ0025)
276 The Transparency Project (OPJ0025)

undertaken invaluable work on the use of remote hearings in the Family Court. The Observatory submitted valuable evidence to us based on three consultations, held in April 2020, September 2020 and June 2021, on the use of remote hearing in the Family Court.[277] Their submission argues that open justice is not just about court reporting or access to the public, but also includes access to academic researchers and NGOs in order to facilitate research.[278]

A review of section 12

145. Sir Andrew MacFarlane's Transparency Review described section 12 of the Administration of Justice Act 1960 as "a somewhat opaque provision" that acts as a major disincentive on journalists reporting on family cases.[279] The report noted that although the provision was designed to protect the administration of justice, it now "has the contrary effect of undermining confidence in the administration of Family justice to a marked degree".[280] Giving evidence to the Committee, Sir Andrew McFarlane highlighted how family justice system had changed since the provision was enacted, he pointed out that the nature and volume of the cases being dealt with by the family court has fundamentally changed since 1960: "the impact of its work is now felt by many, in a way which will have been beyond the contemplation of legislators over 60 years ago in 1960".[281] Sir Andrew MacFarlane told us that today the Family Court is a major part of the justice system and that the public has a legitimate interest in having "a much better and more accurate understanding" of its work.[282] Sir Andrew MacFarlane's Transparency Review concluded that:

> Whether s 12 should be repealed and replaced by a provision that is more fit for purpose is a matter for Parliament and not the judiciary. I do however support calls for urgent consideration to be given by government and Parliament to a review of this provision.[283]

We agree with the President of the Family Division that there should be a review of section 12 of the Administration of Justice Act 1960. In our view section 12 of the Act should be reviewed and reformed so that it can replaced with a much more targeted measure that respects the principle of open justice. The Government should ask the Law Commission to produce a proposal for the reform of section 12 of the Administration of Justice Act 1960 that provides a better balance between transparency and confidentiality.

The Transparency Review's proposals for reform

146. Sir Andrew MacFarlane explained to us that there is much that can be done to improve transparency in the Family Court without changing section 12 of the Administration

277 Nuffield Family Justice Observatory (OPJ0038)
278 Nuffield Family Justice Observatory (OPJ0038)
279 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 38
280 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 38
281 Q82
282 Q75 & Q110 Sir Andrew MacFarlane
283 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 38

of Justice Act.[284] The Transparency Review set out a number of proposals to reform transparency in the Family Court, which the President of Family Division said are aimed at achieving a major shift in culture and process in order to increase transparency within the family justice system.[285]

The main recommendation

147. The Transparency Review's overall conclusion and main recommendation was that media representatives and legal bloggers should be able to report publicly on the proceedings that they are able to observe.[286] However, it was stressed that reporting should be subject to clear rules to preserve the anonymity of the children and family members involved in the relevant proceedings. Sir Andrew Macfarlane told us that it was possible to maintain confidentially while increasing transparency, adding: "it is not tenable to say that solely to protect the identity of the individuals everything has to be kept out of the public gaze and cannot be reported".[287] This was a point echoed by the Transparency Project, who told us that they "do not see transparency and privacy as straightforwardly opposed, though they may often be in tension".[288] However, the Transparency Review did not recommend any change to the public's right to attend proceedings in the Family Court. Sir Andrew Macfarlane stressed in evidence to us that that he was not persuaded by the case for moving to a system of full public access to observe the Family Court, as is the case in Australia.[289]

148. Sir Andrew MacFarlane set out that one of the reasons increased transparency is needed is to challenge negative reporting of the Family Court:

> For the public to receive negative report after negative report about what the judiciary, the Family Court and social workers are doing on behalf of society is a highly unsatisfactory state of affairs. It means that individuals generally may not have confidence in what happens and that, if you are yourself drawn into proceedings before the Family Court, you start off with the mindset that it is not a good place and that it is a place that does not conduct itself properly. I would say this, but it is my genuine view that we conduct ourselves professionally and properly. We have an extremely thorough and fair process, but that is not the perception that the public have. I feel the time has come for a change in that and that the way forward is to be open.[290]

Sir Andrew MacFarlane also suggested that increased openness would be beneficial for the quality of justice, stating: "where judges are used to sitting in private it might encourage less good practice", adding that "[s]itting in a system that is more open is a healthy thing for justice".[291]

284 Q75 Sir Andrew MacFarlane
285 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 22
286 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 39
287 Q76 Sir Andrew MacFarlane
288 The Transparency Project (OPJ0025)
289 Q93 Sir Andrew MacFarlane
290 Q100 Sir Andrew MacFarlane
291 Q110 Sir Andrew MacFarlane

149. In favour of maintaining anonymity and a degree of privacy, Sir Andrew MacFarlane also drew attention to the fact that research has consistently shown that children involved in these proceedings do not want to be identified and that it was important for those giving evidence to feel "as comfortable as they can". The proposal to allow reporting of cases is subject to the following safeguards:

- Judges will retain the discretion to exclude non-parties;
- Reporting must respect the anonymity of the children and the family concerned;
- The change will be piloted; and
- The change is subject to ministerial approval.

150. The Transparency Review also stressed that reporting will be monitored and that misreporting will be taken up with the relevant editors.[292] The Transparency Review set out that guidance will be produced to inform journalists on what identifying data and other information cannot be published.[293] To encourage dialogue between the media and the Family Justice System, the Transparency Review proposes the establishment of a Media Liaison Committee.

151. In relation to the pilots of the new approach, the Transparency Review explains that it is being trialled in two local authority areas and will be monitored by the Transparency Implementation Group. The Family Justice Young People's Board will also monitor the views of the young people involved in the cases affected by the pilots. The pilots will last 12 months and are expected to be launched in Autumn 2022.

152. **In broad terms, we support the Transparency Review's principal recommendation that media representative and bloggers should be able to report, subject to the relevant restrictions, on the cases they observe in the Family Court. We would caution, however, that given the decline in the number of court reporters in recent years, it is unclear whether media outlets will necessarily dedicate greater resources to reporting on the family courts as a result of these changes. We look forward to seeing the results of the pilots.**

Listing

153. On the listing of cases, the Transparency Review indicated that lists will be made available to journalists and legal bloggers and should contain sufficient information to enable them to make an informed decision on attendance.[294] The Transparency Project's evidence described Family Court lists as "highly encoded and singularly uninformative".[295] They also raised concerns with the timing of the publication of the lists, which is normally after 2pm on the day prior to the hearing.[296] They also suggested that the lists should provide contacts details for a person that can facilitate access and receive requests for

292 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 40
293 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 44
294 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 60
295 The Transparency Project (OPJ0025)
296 The Transparency Project (OPJ0025)

documents. **We welcome the commitment to produce more informative family court lists. The success of the proposed pilot will depend on journalists and bloggers being able to identity cases that will generate wider public interest.**

Publication of judgments

154. At present only a very small proportion of the judgments handed down in the Family Court are published. In his evidence, Sir Andrew MacFarlane said that around 200 Family Court judgments get published in a year, because judges are "overburdened by the volume of work in the system".[297] The Transparency Review recommended that all Family Court judges should publish anonymised versions of at least 10% of their judgments each year.[298] He described this target as "realistic".[299] The principal difficulty in reaching this target is the need to ensure that the judges are anonymised to prevent identification of those involved. Judgments would not include details of abuse suffered by a child.[300] Sir Andrew MacFarlane told us that:

> I have come to understand that when a judgment contains a significant amount of detail, perhaps of sexual matters, that, awfully, has a currency of its own. I do not see that judgments should be published at all that feed into that.[301]

Sir Andrew stressed that the quality of anonymisation of court reports and judgments was important, as research received by the Transparency Review had shown the need to go beyond the removal of names: "It showed that it is one thing not to put the name in, but you could leave lots of little tell-tale tags in the story of the evidence that would allow jigsaw identification to take place".[302] He added that it can take two to three hours to go through and anonymise a judgment, which is time that judges do not have.[303] The Magistrates' Association's evidence to our inquiry highlighted that the pressures on the Family Court system meant that the Transparency Review's proposals would need to be funded to work.[304] They also raised the practical question of who would be responsible for inputting judgments in a form suitable for publication, and that HMCTS would need to tackle the shortage of legal advisors.[305] In the Transparency Review Sir Andrew MacFarlane stated that he would press HMCTS for the establishment of an Anonymisation Unit to undertake this work.[306]

155. **We welcome the Transparency Review's proposal to set a target of every judge publishing 10% of their judgments. If achieved, this would make a significant contribution to the transparency of the Family Court and to open justice. It is crucial that the public and the media are able to access a greater number of judgments**

297 Q95 Sir Andrew MacFarlane
298 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 53
299 Q95 Sir Andrew MacFarlane
300 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) paras 46–53
301 Q86 Sir Andrew MacFarlane
302 Q83 Sir Andrew MacFarlane
303 Q95 Sir Andrew MacFarlane
304 Magistrates Association (OPJ0045)
305 Magistrates Association (OPJ0045)
306 President of the Family Division, Confidence and Confidentiality: Transparency in the Family Courts (2021) para 53

from the Family Court. However, we share the concern raised by witnesses as to whether sufficient resources will be allocated to enable the proposed anonymisation unit to function as effectively as it needs to in order to ensure that a consistent and representative number of judgments are published and to minimise the number of anonymisation errors. ***His Majesty's Court and Tribunal Service should ensure that the requisite resources are provided to enable the establishment of an anonymisation unit that facilitates the publication of at least 10% of Family Court judgments without the risk of identification of the parties involved.***

Conclusions and recommendations

Introduction

1. We would encourage every family court in England and Wales to invite their local MPs to visit so that they can hear accounts of the issues facing the family justice system from those who are responsible for delivering justice on a daily basis. (Paragraph 2)

2. *The Lord Chancellor and the Lord Chief Justice should consider producing a White Paper that clarifies and publicises the right of the public to attend court hearings and access information on court proceedings in the digital age.* (Paragraph 11)

3. Open justice is a common law principle, and it is for the courts to determine its requirements in particular cases. However, responsibility for deciding how the principle should operate should not be left to the courts alone. Deciding the proper limits of open justice can often give rise to significant policy questions that Government and Parliament can only tackle through legislation. (Paragraph 19)

4. The internet and social media are changing the way that the public access court proceedings, which is making the work of the courts more accessible; but this also presents dangers for the administration of justice. In the digital age, it is vital the Government, Parliament and the Judiciary work together to ensure that a balanced approach to open justice is achieved so that public scrutiny of justice can be secured without damaging the quality of the justice administered in the courts. (Paragraph 20)

Court reporting in the digital age

5. The well-documented decline in the news media's coverage of the courts, particularly the Magistrates' courts, is concerning. In acting as the eyes and ears of the public, the media perform a vital role in keeping the public informed on the operation of the justice system. (Paragraph 32)

6. The decline in court reporting has had a negative effect on open justice in England and Wales. (Paragraph 33)

7. *As the public receives less information through the media on the work of the courts, HMCTS should do more to enable the courts to communicate information on court proceedings directly to the public. In addition, HMCTS needs to use technology and organisational reform, building on the work done with Courtsdesk News, to provide the media with the information it needs in a consistent manner, as soon as possible, to facilitate court reporting. HMCTS should also pilot the use of regional communication and information officers to support media and public access to hearings. Furthermore, the decrease in the media's coverage of the courts also strengthens the case for the re-establishment of a courts' inspectorate, which could help to identify wider issues within the justice system, particularly in the Magistrates' courts and the Family Court, which are not well covered by the media.* (Paragraph 33)

The barriers to open justice

8. The evidence from the Bureau of Investigative Journalism on its experience of attempting to access possession hearings presents a concerning picture of the practical reality of open justice in England and Wales. The legal and constitutional status of open justice is immaterial if journalists face the sort of hurdles experienced by the Bureau of Investigative Journalism. Those barriers have the potential to create a chilling effect for journalists and the public by discouraging them from exercising their right to attend hearings. Everyone working within the justice system, especially judges and court staff, has a role to play in translating the principle of open justice into reality. (Paragraph 39)

9. We welcome the publication of the Reporters' Charter, which for the first time sets out the rights and obligations of journalists reporting on court proceedings. We note, however, that the rights of access that flow from the principle of open justice are not exclusively for reporters'—it is vital that members of the public are also aware of their right to attend proceedings and access information. (Paragraph 40)

10. *HMCTS should publish a citizens' charter that outlines the public's rights to access information on the courts.* (Paragraph 40)

11. The Reporters' Charter helpfully directs the media to the MOJ press office and the Judicial Press Office to deal with enquiries and issues on accessing court proceedings and information. There should be a single point of contact for all accessibility and open justice inquiries from the media and from the public. The Lord Chief Justice told us that, if a journalist encounters an issue accessing a court, he or she should "get in touch with their local court and ask why". In reality, at present there is no formal official mechanism for the media or the public to raise accessibility enquiries or complaints in relation to the courts. The creation of regional communication and information officers within HMCTS could provide that point of contact for reporters and the public. The courts' inspectorate, as we proposed in our report on court capacity, could have a specific remit to examine the operation of open justice. (Paragraph 41)

12. *HMCTS should institute a programme of open days to encourage the public to visit their local courts, for example during Justice Week. This programme should be used to improve the awareness of both the public and HMCTS staff of the public's right to attend court proceedings. Furthermore, there should be a programme to encourage schools to organise visits to their local courts to improve public legal education.* (Paragraph 42)

13. *Every court should list an email address on its website to enable the media and the public to request access to remote hearings.* (Paragraph 44)

14. Remote hearings are still a relatively new and innovative feature of the justice system in England and Wales. The evidence to our inquiry suggests that there is a problem with a lack of coherence and consistency in relation to the ability of the media and the public to access remote court hearings. (Paragraph 49)

15. *We recommend that HMCTS gathers and publishes data on requests to observe proceedings remotely. In particular, it would be useful to know the number of requests received and the number of requests granted by jurisdiction.* (Paragraph 49)

16. *HMCTS should ensure that the Crown Court provides the same level of information to journalists on the outcome of cases as is currently provided by the Magistrates' court.* (Paragraph 57)

17. We welcome the planned digitisation of the publication of court and tribunal lists and the consolidation into a single service in one location. (Paragraph 59)

18. *We request further information on when this service will go live and what improvements are planned to the level of information on the lists and the accessibility of the service. We recommend that HMCTS considers whether the proposed digital portal should be expanded to include all court information, including results, reporting restrictions and court documents.* (Paragraph 59)

19. *The Committee would welcome an update on the work being undertaken by the Civil Procedure Rule Committee to improve access to documents in civil proceedings.* (Paragraph 64)

20. *The Government and HMCTS should establish a streamlined process for accessing court documents, including courts lists, using a digital portal modelled on Public Access to Court Electronic Records (PACER) in the United States. This should also be used to inform the media of reporting restrictions, including automatic restrictions and notice of applications for reporting restrictions.* (Paragraph 72)

21. *The Government and HMCTS should conduct, or ask the Law Commission to conduct, a comprehensive review on access to documents referred to in open court and propose legislation if necessary to clarify the position.* (Paragraph 73)

22. Reporting restrictions play a key role in securing the fairness of the justice system. However, it is clear that there is inconsistency in the courts' approach to notifying the media when restrictions are in place, and they are often not effective at ensuring compliance, particularly on social media. This is an important example of where the modernisation of the infrastructure of open justice is long overdue (Paragraph 82)

23. *The proposed new digital portal should also enable access to a centralised database of reporting restrictions on cases.* (Paragraph 82)

24. The current situation on court transcripts is unsatisfactory. (Paragraph 87)

25. *HMCTS should explore whether greater use of technology, such as AI-powered transcription, could be piloted to see whether it can be used to reduce the cost of producing court transcripts. HMCTS should also consider whether the sentencing remarks in the Magistrates' courts could be routinely recorded and transcribed on request. HMCTS should also review its existing contracts for transcription services to ensure that transcripts are more accessible to the media and the public.* (Paragraph 87)

26. We welcome the establishment of the National Archives Find Case Law Service. However, this service should represent the first step in improving the public accessibility of judgments. (Paragraph 93)

27. *HMCTS should reform the way that judgments are collected, stored and published so that there is less reliance on commercial legal publishers. The judgments of courts are the product of a publicly funded justice system and the public, the media and the legal sector should not have to pay significant sums for access.* (Paragraph 93)

28. *All Crown Court sentencing remarks should be published in audio and/or written form. HMCTS should ensure that the necessary resources are made available to enable sentencing remarks to be published.* (Paragraph 97)

29. *We are concerned over whether the Ministry of Justice has allocated sufficient funding to ensure that the court reform programme can overcome some of the barriers to public and media access to information on courts. We ask the Government to provide a status update on any ongoing projects that are designed to enhance open justice, outlining how much funding has been allocated to deliver them and providing a date by which they will be completed.* (Paragraph 98)

Court reform and open justice

30. We welcome the new legislative framework for remote observation of court proceedings. The combination of this framework and improvement of the technological facilities of courts has the potential to enhance open justice by making it easier for the public and the media to observe proceedings. (Paragraph 109)

31. It is right that judges are in control of the decision as to whether to allow remote observation. In some cases, judges will find these decisions difficult to make. It is crucial therefore that the effect of this new framework is evaluated. The concerns raised by the Lord Chief Justice and the Senior President of Tribunals, in particular in relation to the impact on court resources and the potential for unauthorised transmissions, will need to be followed up by an evaluation of how this new framework is operating in practice. (Paragraph 110)

32. *HMCTS should commission an evaluation in June 2023 to examine how the new framework has worked in its first year of operation.* (Paragraph 110)

33. The power to allow the transmission of proceedings to designated livestreaming premises has great potential to enable more people to observe court proceedings and enhance open justice. If students were able to observe cases in classrooms and lecture halls, or if community centres could host livestreams of court proceedings, the accessibility of court proceedings would be greatly enhanced. (Paragraph 111)

34. We welcome the broadcasting of Crown Court sentencing remarks. It is a positive step for both open justice and the public understanding of sentencing. (Paragraph 118)

35. *More widely, we recommend that HMCTS and the Judiciary commission research to determine which civil and criminal proceedings could be suitable for broadcast and video archiving. In principle, we would support the extension of broadcasting and recording to civil trials that do not involve oral evidence. In the criminal context, the broadcast and recording of sentencing in Magistrates' courts could also be beneficial. However, we do not support the broadcasting of any elements of criminal trials other than the sentencing remarks of the judge.* (Paragraph 119)

36. *The changes to criminal procedure in the Judicial Review and Courts Act 2022 should be carefully monitored. After one year of their operation, the Ministry of Justice should initiate an evaluation of how the changes are operating in practice, including their impact on open justice.* (Paragraph 125)

37. *The potential effect of these changes on open justice might also be mitigated by ensuring that the relevant information that would have otherwise been said in open court is documented and published online in a timely fashion.* (Paragraph 126)

38. We remain concerned by the Single Justice Procedure's lack of transparency. (Paragraph 130)

39. *The Government should review the procedure and seek to enhance its transparency by ensuring that any information that would have been available had the cases been heard in open court is published in a timely fashion.* (Paragraph 130)

40. *The Government should clarify and strengthen the governance structures on open justice. The Senior Data Governance Panel should be formalised and its powers and remit should be defined and published. It is vital that the decisions made by the Panel are as transparent as possible. The positive work of the Media Working Group should be built upon and it should be empowered to make recommendations that are then considered and decided upon by the Senior Data Governance Panel. A separate court information user group should be established to represent the interests of groups other than the media, such as court observers, NGOs, researchers and law tech that can also make recommendations that are considered and decided upon by the Senior Data Governance Panel.* (Paragraph 134)

The Family Court

41. *We agree with the President of the Family Division that there should be a review of section 12 of the Administration of Justice Act 1960. In our view section 12 of the Act should be reviewed and reformed so that it can replaced with a much more targeted measure that respects the principle of open justice. The Government should ask the Law Commission to produce a proposal for the reform of section 12 of the Administration of Justice Act 1960 that provides a better balance between transparency and confidentiality.* (Paragraph 145)

42. In broad terms, we support the Transparency Review's principal recommendation that media representative and bloggers should be able to report, subject to the relevant restrictions, on the cases they observe in the Family Court. We would caution, however, that given the decline in the number of court reporters in recent years, it is unclear whether media outlets will necessarily dedicate greater resources to reporting on the family courts as a result of these changes. We look forward to seeing the results of the pilots. (Paragraph 152)

43. We welcome the commitment to produce more informative family court lists. The success of the proposed pilot will depend on journalists and bloggers being able to identity cases that will generate wider public interest. (Paragraph 153)

44. We welcome the Transparency Review's proposal to set a target of every judge publishing 10% of their judgments. If achieved, this would make a significant

contribution to the transparency of the Family Court and to open justice. It is crucial that the public and the media are able to access a greater number of judgments from the Family Court. However, we share the concern raised by witnesses as to whether sufficient resources will be allocated to enable the proposed anonymisation unit to function as effectively as it needs to in order to ensure that a consistent and representative number of judgments are published and to minimise the number of anonymisation errors. (Paragraph 155)

45. *His Majesty's Court and Tribunal Service should ensure that the requisite resources are provided to enable the establishment of an anonymisation unit that facilitates the publication of at least 10% of Family Court judgments without the risk of identification of the parties involved.* (Paragraph 155)

Formal minutes

Tuesday 25 October 2022

Members present:

Sir Robert Neill, in the Chair

Maria Eagle

Paul Maynard

Dr Kieran Mullan

Karl Turner

Declaration

The following declarations of interest to the inquiry were made.[307]

Open justice: court reporting in the digital age

Draft Report (*Open justice: court reporting in the digital age*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 155 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

Adjournment

Adjourned till Tuesday 1 November 2022 at 2.00 pm

307 For a full record of interests in relation to this inquiry see the formal minutes for the inquiry pertaining to meetings on 9 November 2021 and 11 January 2022.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 9 November 2021

Ms Maeve McClenaghan, Journalist, The Bureau of Investigative Journalism; **Dr Judith Townend**, Senior Lecturer in media and information law, University of Sussex; **Ms Emily Pennink**, Old Bailey Correspondent, Press Association — Q1–74

Tuesday 11 January 2022

Sir Andrew McFarlane, President, Family Division — Q75–117

John Battle, Chair, Media Lawyers Association, Head of Legal and Compliance, ITN; **Dr Natalie Byrom**, Director of Research, Legal Education Foundation — Q118–155

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

OPJ numbers are generated by the evidence processing system and so may not be complete.

1 APPEAL (OPJ0008)

2 Atkins, Jacob (Journalist) (OPJ0040)

3 Bellamy, His Honour Clifford (OPJ0037)

4 Bentham, Martin (Home Affairs Editor, Evening Standard) (OPJ0005)

5 British and Irish Legal Information Institute (BAILII) (OPJ0001)

6 Casciani, Dominic (Home and Legal Correspondent, BBC News) (OPJ0027)

7 Cliff, Mr Thomas (OPJ0039)

8 Courtsdesk News (OPJ0017)

9 Dearden, Lizzie (Home Affairs and Security Correspondent, The Independent) (OPJ0014)

10 Flude, Dr Royston (President, CSPOC) (OPJ0046)

11 Gee QC, Steven (Barrister, Monckton Chambers) (OPJ0047)

12 Gardham, Duncan (Journalist, Freelance) (OPJ0022)

13 Guardian News & Media (OPJ0044)

14 Hall QC, Jonathan (OPJ0003)

15 Helm, Dr Rebecca (Director, Evidence Based Justice Lab, University of Exeter) (OPJ0036)

16 Incorporated Council of Law Reporting for England and Wales (OPJ0012)

17 Independent Press Standards Organisation (IPSO) (OPJ0013)

18 JUST: Access Ltd) (OPJ0011)

19 Jones, Richard (OPJ0004)

20 Julian, Dr George (OPJ0010)

21 Kirk, Mr Tristan (Courts Correspondent, London Evening Standard) (OPJ0023)

22 Lord Chief Justice of England and Wales and Senior President of Tribunals (OPJ0035)

23 Magistrates Association (OPJ0045)

24 Media Lawyers Association (OPJ0026)

25 Ministry of Justice (OPJ0034)

26 National Union of Journalists (OPJ0041)

27 Nuffield Family Justice Observatory (OPJ0038)

28 Owen, Ed (former head of communications, HMCTS) (OPJ0021)

29 PA Media (OPJ0043)

30 Pennink, Ms Emily (Old Bailey Correspondent, PA Media) (OPJ0009)

31 Public Law Project (OPJ0007)

32 Reardon, Dr Sally (Senior Lecturer in Journalism, University of the West of England); Gross, Dr Bernhard (Associate Professor of Journalism, University of the West of England); Keppel-Palmer, Marcus (Senior Lecturer in Law, University of the West of England); and Smith, Dr Tom (Senior Lecturer in Law, University of the West of England) (OPJ0016)

33 Sarwar, Mr David (OPJ0002)

34 Scrutiny (OPJ0015)

35 Spotlight on Corruption (OPJ0032)

36 The Bar Council (OPJ0033)

37 The Bureau of Investigative Journalism (OPJ0031)

38 The Chartered Institute of Journalists (OPJ0028)

39 The Legal Education Foundation (OPJ0042)

40 The News Media Association (OPJ0030)

41 The Transparency Project (OPJ0029)

42 The Transparency Project (OPJ0025)

43 Townend, Dr Judith ((OPJ0024)

44 Transform Justice (OPJ0006)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2022–23

Number	Title	Reference
1st	Women in Prison	HC 265
2nd	Pre-legislative scrutiny of the draft Victims Bill	HC 304
3rd	IPP sentences	HC 266
4th	Fraud and the Justice System	HC 12
1st Special	Court capacity: Government Response to the Committee's Sixth Report of Session 2021–22	HC 548
2nd Special	Covid-19 and the criminal law: Government Response to the Committee's Fourth Report of Session 2021–22	HC 644
3rd Special	The Future of Legal Aid: Updated Government Response to the Committee's Third Report of Session 2021–22	HC 698
4th Special	Women in Prison: Government Response to the Committee's First Report	HC 802

Session 2021–22

Number	Title	Reference
1st	The Coroner Service	HC 68
2nd	Rainsbrook Secure Training Centre	HC 247
3rd	The Future of Legal Aid	HC 70
4th	Covid-19 and the criminal law	HC 71
5th	Mental health in prison	HC 72
6th	Court capacity	HC 69
1st Special	The future of the Probation Service: Government Response to the Committee's 18th Report of 2019–21	HC 475
2nd Special	Rainsbrook Secure Training Centre: Government Response to the Committee's Second Report of 2021–22	HC 565
3rd Special	The Coroner Service: Government Response to the Committee's First Report	HC 675
4th Special	The Future of Legal Aid: Government Response to the Committee's Third Report	HC 843
5th Special	Mental health in prison: Government Response to the Committee's Fifth Report	HC 1117

Session 2019–21

Number	Title	Reference
1st	Appointment of Chair of the Office for Legal Complaints	HC 224
2nd	Sentencing Council consultation on changes to magistrates' court sentencing guidelines	HC 460
3rd	Coronavirus (COVID-19): The impact on probation services	HC 461
4th	Coronavirus (Covid-19): The impact on prisons	HC 299
5th	Ageing prison population	HC 304
6th	Coronavirus (COVID-19): The impact on courts	HC 519
7th	Coronavirus (COVID-19): the impact on the legal professions in England and Wales	HC 520
8th	Appointment of HM Chief Inspector of Prisons	HC 750
9th	Private prosecutions: safeguards	HC 497
10th	Sentencing Council consultation on sentencing guidelines for firearms offences	HC 827
11th	Sentencing Council consultation on the assault offences guideline	HC 921
12th	Children and Young People in Custody (Part 1): Entry into the youth justice system	HC 306
13th	Sentencing Council: Changes to the drugs offences definitive guideline	HC 751
14th	Appointment of the Chair of the Independent Monitoring Authority	HC 954
15th	Appointment of the Chief Inspector of the Crown Prosecution Service	HC 955
16th	Children and young people in custody	HC 922
17th	Rainsbrook Secure Training Centre	HC 1266
18th	The future of the Probation Service	HC 285
1st Special	Prison Governance: Government Response to the Committee's First Report of Session 2019	HC 150
2nd Special	Court and Tribunal Reforms: Government Response to the Committee's Second Report of Session 2019	HC 151
3rd Special	Transforming Rehabilitation: Followup: Government Response to the Committee's Nineteenth Report of Session 2017–19	HC 152
4th Special	Coronavirus (COVID-19): The impact on probation systems: Government Response to the Committee's Third Report	HC 826
5th Special	Coronavirus (Covid 19): The impact on the legal professions in England and Wales: Government Response to the Committee's Seventh Report	HC 898
6th Special	Ageing prison population: Government Response to the Committee's Fifth Report	HC 976

Number	Title	Reference
7th Special	Court and Tribunal reforms: Further Government response to the Committee's Second Report of Session 2019 and Coronavirus (Covid-19): The impact on courts: Government response to the Committee's Sixth Report of Session 2019–21	HC 1008
8th Special	Coronavirus (Covid-19): The impact on prisons: Government Response to the Committee's Fourth Report of Session 2019–21	HC 1065
9th Special	Children and Young People in Custody (Part 1): Entry into the youth justice system: Government Response to Committee's Twelfth Report of Session 2019–21	HC 1185
10th Special	Private prosecutions: safeguards: Government Response to the Committee's Ninth Report	HC 1238
11th Special	Children and Young People in Custody (Part 2): The Youth Secure Estate and Resettlement: Government Response to the Committee's Sixteenth Report of Session 2019–21	HC 1357