

Spotlight on Corruption's Submission to the Justice Committee's Call for Evidence on 'Open Justice: Court Reporting in the Digital Age'

Organisation overview

Spotlight on Corruption is an anti-corruption charity (registration number 1185872) that works to end corruption within the UK and wherever the UK has influence.¹ We advocate for strong, transparent and accountable institutions that hold corruption in check, for robust enforcement of anti-corruption rules and laws, and for evidence-based reforms to those rules and laws.

Introduction

1. We welcome this call for evidence on open justice and court reporting. Open justice is fundamental to the rule of law.² It increases transparency, enables more effective oversight of corporations and public authorities, enhances democratic accountability, deters misconduct, improves the fairness and efficacy of the justice system, and provides a foundation for increased access to justice, enabling the public to better understand and use the law.
2. Court listings, documents, judgments and other information from the justice system should be publicly available, but provision is partial, inconsistent and not subject to a common standard or approach.³ Much of this information is only made available by private companies which charge prohibitively expensive fees. In addition, open justice is often conflated with media access to the courts, but the principle of open justice is much broader and a lot of the media is behind a paywall. We would like to see the government take a more inclusive approach to open justice that encompasses the media as well as the public, civil society, academic researchers and others.
3. A significant part of our work involves monitoring and scrutinising cases in the courts of England and Wales: we track the implementation and enforcement of anti-corruption (and other economic crime) laws to ensure they are working effectively, and produce research and analysis on ways that the laws and their enforcement could be improved. Open justice is therefore crucial for our efforts to improve law enforcement and the wider criminal justice system, and to increase public and policymakers' understanding of the system, impact of corruption and areas for reform.

¹ For more information, please visit our website <https://www.spotlightcorruption.org/>

² <https://www.iclr.co.uk/blog/archive/open-justice-and-the-rule-of-law/>

³ <https://www.opengovernment.org.uk/2019/10/10/why-we-need-a-national-commitment-to-open-justice-data/>

4. We have actively sought to advance the principle of open justice given its particular significance to anti-corruption enforcement. In 2018, our predecessor organisation, Corruption Watch, published a report about the impact of the lack of open justice data on the fight against corruption.⁴ In 2019, we produced a report about a national commitment to open justice data in the UK.⁵ We have been involved in discussions about the government's open justice commitments in the forthcoming Open Government Partnership National Action Plan. The government should be urged to accept, and give effect to, bold open justice commitments as part of that process.
5. We have outlined below the main barriers to transparency and accessibility of justice data based on our court monitoring programme and our broader interactions with the justice system.

Recommendations

6. We recommend the following:
 - a. The government should be urged to accept, and give effect to, bold open justice commitments in its forthcoming National Action Plan through the Open Government Partnership.
 - b. There needs to be an enhanced listing service that provides unrestricted public access to advance, sufficiently detailed court listings and information about reporting restrictions.
 - c. Noting the Serious Fraud Office's court calendar, other law enforcement agencies should consider publishing a calendar of upcoming hearings when they have been listed.
 - d. Continued investment in and development of remote hearings during and after the pandemic, and technical solutions to support observers in remote hearings to access case documents.
 - e. Closer ongoing coordination between the Ministry of Justice, HMCTS, the judiciary and legal supervisory bodies to ensure that they consistently apply the open justice principle.
 - f. Greater ambition on a public database that includes skeleton arguments and other court documents, suitably redacted and filtered to allow for rehabilitation and privacy.
 - g. There needs to be a model that delivers free and comprehensive access to all case law in a structured and machine-readable format. To that end, we support the government's proposal for The National Archives to be responsible for storing and publishing case law.
 - h. Careful work is needed to develop a system that retains and provides access to sentencing remarks, addressing the tension between rehabilitation and open justice.

⁴ https://docs.wixstatic.com/ugd/54261c_b5a8c697963841afbb1af7cc10e27e4c.pdf

⁵ <https://www.opengovernment.org.uk/wp-content/uploads/2019/10/Open-courts-final-October-2019-latest.pdf>

- i. Consideration of the ways in which court transcripts can be made cheaper and more easily accessible for litigants and non-parties, and the piloting of digital transcription services.
- j. The Senior Data Governance Panel should be placed on a statutory footing with clear terms of reference and a public mandate, and a transparent recruitment process for civil society.

Court listings

7. Court listings are a fundamental part of open justice, but the current arrangements mean that court lists do not have sufficient detail and are not provided far enough in advance to enable informed decisions to be made about attending. Limited listing information is available free of charge from some courts and on CourtServe and The Law Pages, but more comprehensive and detailed lists are only available to those who pay a fee. On occasion, we have not monitored significant corruption hearings because no public listing was made available.⁶
8. Unrestricted public access to advance court listings is a priority need, in order to ensure that members of the public, the media, civil society organisations and others are aware of upcoming cases and the details of those cases. This should be accompanied by increased access to information about whether reporting restrictions apply. The Serious Fraud Office introduced a court calendar in 2016 which made information about corruption cases and upcoming hearings more accessible for the media, civil society, researchers and the public.⁷ We recommend that other law enforcement agencies consider providing a publicly accessible calendar of hearings.

Court proceedings

9. In a statement dated 5 January 2021, the Lord Chief Justice emphasised that the number of people in courts should be kept to a minimum due to the then increased incidence of Covid-19 and rates of transmission.⁸ The Civil Justice Protocol Regarding Remote Hearings similarly identified that the *“pandemic necessitates the use of remote hearings wherever possible.”*⁹ You will be aware that the Justice Committee’s report on Covid-19 and the courts recommend that *“the government continues to invest in and develop the technology for remote hearings and the guidance to support it, learning the lessons from its use during the pandemic.”*¹⁰

⁶ https://docs.wixstatic.com/ugd/54261c_b5a8c697963841afbb1af7cc10e27e4c.pdf

⁷ <https://www.sfo.gov.uk/court-calendar/>

⁸ <https://www.judiciary.uk/announcements/message-from-the-lord-chief-justice-latest-covid-19-restrictions/>

⁹ https://www.judiciary.uk/wp-content/uploads/2020/08/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1.pdf

¹⁰ <https://publications.parliament.uk/pa/ld5801/ldselect/ldconst/257/257.pdf>

10. Some judges permitted us to remotely monitor hearings during the pandemic, but in other cases our applications were refused, with judges insisting that those who wish to follow a hearing must attend court in person. Requiring attendance in person increases the likelihood that observers will be unable to attend and that reports will be selective, incomplete, inaccurate or inaccessible, particularly given that the most detailed legal reporting is behind paywalls.
11. Accordingly, we support continued investment in and development of remote hearings both throughout and after the pandemic. The Police, Crime, Sentencing and Courts Bill would make provision for remote observation of court and tribunal proceedings by replacing the temporary modifications in the Coronavirus Act 2020.¹¹ The Bill's Explanatory Notes say that the measures facilitating the remote observation of proceedings would "*uphold the principle of open justice*" and "*enable the public to remotely observe proceedings by the direction of the judge in any of the courts listed, in order to satisfy the principle of open justice.*"¹² Technical solutions should be developed to support observers in remote hearings to access case documents.

Court documents

12. It can be very difficult to obtain skeleton arguments and other documents that have been filed in court for both criminal and civil cases. Closing / opening written submissions and skeletons enable us to better analyse and report on the implications of cases. In our experience, though, courts are not responsive when dealing with third-party applications for court documents and we usually need to rely on a party's barrister to share documents. This is an unpredictable and unsatisfactory way to obtain documents, and can result in a misleading and one-sided impression of a case. Indeed, we are increasingly seeing parties to litigation engage public relations companies, with the result that one side may be proactively distributing its interpretation of a dispute.
13. The Bar Council's guidance on the provision of documents to non-parties emphasises confidentiality over the open justice principle;¹³ although we understand that this guidance may be subject to review. There should be much closer, ongoing coordination between the Ministry of

¹¹ Section 166 of the Police, Crime, Sentencing and Courts Bill
<https://bills.parliament.uk/publications/41453/documents/192>

¹² Police, Crime, Sentencing and Courts Bill – Explanatory Notes
<https://bills.parliament.uk/publications/41454/documents/193>

¹³ <https://www.barcouncilethics.co.uk/wp-content/uploads/2019/10/Journalists-law-reporters-and-other-non-parties-provision-of-documents.pdf>

Justice, HMCTS, the judiciary and legal supervisory bodies like the Bar Council and Law Society, to ensure that they consistently apply the open justice principle.

14. We suggest greater ambition on a database that includes skeleton arguments and other court documents, suitably redacted and filtered to allow for rehabilitation and privacy. HMCTS should look at best practice and develop a model that enables comprehensive, structured access to court documents to everyone, free of charge. The database could supplement proposed measures in the Police, Crime, Sentencing and Courts Bill around remote access to hearings.

Court judgments

15. Court judgments are public data, and public access is essential to meeting the requirements of the rule of law and open justice.¹⁴ But access to case law is severely restricted and the judgments made available on the website of the British and Irish Legal Information Institute (BAILII) are selective and not structured, which can result in a misleading impression of the law. In addition, BAILII does not publish sentencing remarks. Comprehensive information is only available through private publishers behind a paywall to those able to pay the substantial fees.¹⁵
16. 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. We support the government's proposal to develop a scheme overseen by The National Archives.¹⁶ This would avoid the inherent risks of putting the data exclusively in private hands, impose a duty on the state to send the data to The National Archives, and put publication on a statutory footing under the Public Records Act. As noted above, careful work is needed to develop a system that enables access to sentencing remarks and addresses the tension between rehabilitation and open justice.

Court transcripts

17. The Ministry of Justice has contracts with companies to provide transcripts of hearings. However, court transcripts are prohibitively expensive, particularly for longer hearings. We recommend that there should be consideration of the ways in which court transcripts can be made cheaper and

¹⁴ <https://research.thelegaleducationfoundation.org/wp-content/uploads/2019/09/DigitalJusticeFINAL.pdf>

¹⁵ https://docs.wixstatic.com/ugd/54261c_b5a8c697963841afbb1af7cc10e27e4c.pdf

¹⁶ <https://www.lawgazette.co.uk/news/government-considers-plans-to-create-national-hub-for-court-judgments/5108426.article>

more easily accessible for litigants and non-parties, including appropriate access models and redaction mechanisms, and the piloting of digital transcription services to reduce costs.

Civil society engagement

18. We welcome the Ministry of Justice setting up a Senior Data Governance Panel (SDGP) with senior representatives from the Ministry, judiciary, HMCTS and civil society. However, we understand that the SDGP is still in shadow mode and that there has been a slow move to formalisation. The SDGP needs to be put on a statutory footing with clear terms of reference and a public mandate for its work, particularly around issues like allowing private companies to access justice data. To increase its legitimacy and transparency, there should be an open recruitment process that gives civil society a meaningful role. It is not clear at this stage when that recruitment process will start or what it will look like. The SDGP should provide a mechanism for civil society to be consulted on open justice reforms, including those proposed in the Police, Crime, Sentencing and Courts Bill.