



Spotlight on Corruption’s Submission to the Ministry of Justice’s Call for Evidence

“Open Justice: The Way Forward”

7 September 2023

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Introduction

Organisation overview

Spotlight on Corruption (“Spotlight”) is an anti-corruption charity that shines a light on the UK’s role in corruption at home and abroad.¹ We strive to ensure the UK has transparent, accountable institutions that prevent corruption and allow democracy to flourish. To achieve this we highlight corruption and the harm it causes, and campaign to ensure the UK implements and enforces its anti-corruption laws effectively and has strong systems in place to prevent corruption. We also act as policy entrepreneurs, researching and advocating robust and innovative policy recommendations to make the system better.

We have a strong legal focus and expertise, and run a unique court monitoring programme to track corruption-related cases in the courts of England and Wales. This involves checking daily cause lists for a wide range of courts, regularly attending and reporting on hearings, applying for court documents, publishing analyses of cases, providing comment to journalists, and building an evidence base to inform our advocacy for reforms to strengthen the implementation and enforcement of the UK’s anti-corruption laws.

Our interest in open justice

Transparency in court proceedings is essential for us to do our work. We have therefore consistently championed the principle of open justice and advocated for greater transparency in how the courts operate. 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.² In 2019, we produced a report about a national commitment to open justice data in the UK.³ We were involved in discussions about the government’s open justice commitments in the Open Government Partnership National Action Plan 5,⁴ and continue to urge that the government accept, and give effect to, bold open justice commitments as part of the forthcoming National Action Plan 6.

¹ Registration number 1185872. Website: <https://www.spotlightcorruption.org/>

² https://docs.wixstatic.com/ugd/54261c_b5a8c697963841afbb1af7cc10e27e4c.pdf

³ <https://www.opengovernment.org.uk/wp-content/uploads/2019/10/Open-courts-final-October-2019-latest.pdf>

⁴ <https://www.gov.uk/government/publications/uk-national-action-plan-for-open-government-2021-2023/uk-national-action-plan-for-open-government-2021-2023>

We made a submission⁵ to the Justice Committee’s call for evidence on “Open Justice: Court Reporting in the Digital Age”, and were pleased to see many of our concerns and recommendations reflected in their November 2022 report.⁶ As that report found, the present challenge lies in translating the principle of open justice into a practical reality.⁷ We therefore welcome this call for evidence on the way forward for open justice, and urge the government to raise the level of its ambition to tackle the current barriers of access to court hearings and information.

Summary of recommendations

We recommend the following:

- a. Publish a Citizens’ Charter outlining the public access rights which flow from the principle of open justice;
- 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. Law enforcement agencies and regulators should be encouraged or even required to publish a calendar of upcoming hearings when they have been listed.
- d. Continued investment in and development of remote hearings, and technical solutions to support observers in remote hearings to access case documents.
- e. Expansion of livestreaming and broadcasting of court hearings, particularly in the High Courts.
- f. Closer ongoing coordination between the Ministry of Justice, HMCTS, the judiciary and legal supervisory bodies and regular training, including as part of Judicial College courses, to ensure the open justice principle is consistently applied.
- g. Greater ambition on a public database that includes skeleton arguments and other court documents, suitably redacted and filtered to allow for rehabilitation and privacy.
- h. 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 efforts towards ensuring The National Archives promptly publishes and authoritatively stores a complete record of court judgments on “Find Case Law”.
- i. Careful work is needed to develop a system that retains and provides access to sentencing remarks, addressing the tension between rehabilitation and open justice.

⁵ <https://www.spotlightcorruption.org/wp-content/uploads/2021/12/Spotlight-on-Corruption-Submission-to-Justice-Committee.pdf>

⁶ <https://committees.parliament.uk/publications/31426/documents/176229/default/>

⁷ Justice Committee report, para 39

- j. A plan, with clear a timetable, for the introduction of new mechanisms for ensuring court transcripts are more cheaply and easily accessible for litigants and non-parties, including the piloting of digital transcription services and potential use of AI.
- k. 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 which includes representatives from civil society.
- l. A new court user information group should be created with representation from different professional and civil society groups to ensure diverse groups of court observers are included in the development and operation of open justice.

Open justice

1. Please explain what you think the principle of open justice means.

Open justice means that, as a general rule, court proceedings should be held in public and conducted with transparency. It is a long-standing principle about how the courts in England and Wales operate, and is fundamental to the rule of law.⁸ As Lord Reed affirmed in *A v British Broadcasting Corporation (Scotland)* [2014] UKSC 25 at paragraph 23, “*It is a general principle of our constitutional law that justice is administered by the courts in public, and is therefore open to public scrutiny. The principle is an aspect of the rule of law in a democracy*”.

Open justice is essential for maintaining public confidence in the judicial process and enabling the public to understand how it works. Lady Hale elaborated on the purposes of the open justice principle in *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 at paragraphs 42-43:

“The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases — to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly...

But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties’ cases.”

⁸ <https://www.iclr.co.uk/blog/archive/open-justice-and-the-rule-of-law/>

The principle of open justice is therefore the lifeblood that sustains public confidence in the rule of law and the administration of justice. 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. In the specific context of white collar crime, open justice also provides a crucial deterrent effect by ensuring that those who engage in complex economic crime face a reputational cost to doing so.

2. Please explain whether you feel independent judicial powers are made clear to the public and any other views you have on these powers.

An independent and impartial judiciary is essential to the functioning of a constitutional democracy. It is therefore vital that this independence is protected and promoted, including through efforts to enhance public understanding of the role of the judiciary. Based on our observation of court proceedings, judges are careful to emphasise their independence and recognise that it is important the public also perceives them to be independent. However, ensuring the public is aware of the independence of the judiciary as a fundamental principle of the UK's constitutional settlement is also a crucial duty for all those responsible for the justice system, including the Ministry of Justice and the government as a whole.

Open justice plays an important role in enhancing public understanding of the judiciary's role and maintaining public confidence in its independence. This was explained by Toulson LJ in *R (Guardian News and Media Ltd) v Westminster Magistrates' Court* [2013] QB 618 at paragraph 1:

"Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. Quis custodiet ipsos custodes - who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse."

The independent powers of the judiciary are reflected in the fact that all courts have inherent jurisdiction to allow access under the principle of open justice.⁹ It is essential that the court system is

⁹ *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 at para 34.

properly resourced with appropriate infrastructure and adequate staffing to ensure the effective operation of open justice. As detailed later in this submission, the principle of open justice is currently constrained by the practical barriers that members of the public face when seeking to access court hearings and information.

3. What is your view on how open and transparent the justice system currently is?

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.¹⁰ Much of this information is only made available by private companies which charge prohibitively expensive fees. Given that this information is public data which arises out of proceedings and within infrastructure that belongs to and is funded by the public purse, this privatisation of court proceedings is unacceptable in a democracy. In addition, open justice is often conflated (including by judges on occasion) with media access to the courts. We also noted with concern that the Ministry of Justice's written submission to the Justice Committee narrowly focused on media access rights in the context of more general questions about open justice issues.¹¹ The principle of open justice is much broader than media access and including this wider public is especially important in view of the fact that a lot of the media is behind a paywall.

As part of our court monitoring programme, we follow proceedings across a wide range of courts and tribunals – from magistrates' courts right up to the Supreme Court. In our experience, the principle of open justice is unevenly and inconsistently applied across these different courts and tribunals. The Commercial Court stands out for being the most responsive to enquiries about listings, efficiently providing access for remote observation, and issuing clear guidance to ensure copies of skeletons are made available to "any law reporter, media reporter or member of the public" upon request.¹² But this is an outlier compared to our general experience in most other courts – not just in the magistrates' courts but notably also the Southwark Crown Court and some other divisions of the High Court.

As an overarching observation, our experience affirms the Justice Committee's finding that the "*legal and constitutional status of open justice*" is being undermined by "*the practical reality of open*

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

¹¹ <https://committees.parliament.uk/writtenevidence/40597/pdf/>

¹² Commercial Court Guide Eleventh Edition (2011) at J7.3 states that "parties and their legal representatives should be prepared to provide a copy of that party's skeleton argument for the hearing, by email, to any law reporter, media reporter or member of the public who requests it. Unless a party has solid grounds for declining to provide a copy, a party should comply with the request voluntarily, without the need for intervention by the Court." <https://www.judiciary.uk/wp-content/uploads/2022/06/Commercial-Court-Guide-11th-edition-1.pdf>

justice” in the courts of England and Wales, such that the challenge currently lies in “*translating the principle of open justice into reality*”.¹³ While the courts have developed a strong body of case law affirming the rights of access that flow from the principle of open justice, our daily experience confronts a practical reality in which it is difficult to find out even basic information about listings, access remote hearings with any reliability and obtain core court documents such as skeletons and sentencing remarks.

In motivating for access to hearings and information, we find ourselves making similar arguments again and again to different court staff and judges. It should not be necessary to rehearse well-established principles to obtain access to hearings and information that should be publicly available. While we work closely with journalists and media organisations who encounter some of these practical barriers, we have also observed that open justice is often wrongly conflated with media access to the courts. The principle of open justice is much broader and more inclusive, but for the wider public – including civil society organisations, academic researchers and other public interest reporters – a transparent and open justice system is not the daily, lived experience.

4. How can we best continue to engage with the public and experts on the development and operation of open justice policy following the conclusion of this call for evidence?

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. We also note the existing HMCTS public user and media engagement groups.¹⁴ However, we were disappointed by the government’s response to the Justice Committee that there are currently no plans to establish a “court information users’ group”.¹⁵

We urge the government to take up the Justice Committee’s call to strengthen the governance structures on open justice, including by ensuring the interests of groups other than media – such as court observers, NGOs, researchers and law tech can make representations to the SDGP. The SDGP should 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. The SDGP should provide a mechanism for civil society to be consulted on the development and operation of open justice policy.

¹³ Justice Committee report para 39.

¹⁴ <https://www.gov.uk/guidance/hm-courts-and-tribunals-service-engagement-groups#media-engagement-groups>

¹⁵ Para 110, <https://committees.parliament.uk/publications/33518/documents/182166/default/>

Spotlight is an active member of the Courts and Tribunals' Observers Network, an initiative focused on how the public can be supported to observe courts and access court information in digital and physical environments.¹⁶ Through our involvement in this network, other projects like Transform Justice's "CourtWatch London",¹⁷ as well as our own unique court monitoring programme, we are aware of the diversity of stakeholders with an interest in promoting open justice in the courts. Following this call for evidence, we encourage the Ministry to adopt – and formalise – a more inclusive approach to continued engagement on open justice that encompasses the media as well as civil society, academic researchers, other public interest reporters and the broader public.

5. Are there specific policy matters within open justice that we should prioritise engaging the public on?

We are concerned about the rise of unchallenged reporting restrictions and, more specifically, the expansion of anonymity orders in open court proceedings. This trend has been picked up by the Justice Committee, which noted the Chartered Institute of Journalists' concern about "*a growing problem of unchallenged reporting restrictions*".¹⁸ In our experience, this is partly attributable to the inadequacy of the current mechanisms for giving notice to the press, such as by way of a general email to PA media which does not provide advance and sufficiently detailed information about the case or the order sought.

The rise of anonymity orders in particular has also prompted concern from the courts themselves. As Mr Justice Kerr recently observed about an appeal before him:

*"It shows the problems we are experiencing in our justice system with the notion of open justice. We repeatedly stress its importance, yet increasingly undermine it by the creeping march of anonymity and redaction. Parties, witnesses and ordinary workers ... are routinely anonymised without asking the court or giving the matter much thought."*¹⁹

While we recognise that reporting restrictions may be justified in exceptional cases, we are particularly concerned about the use of anonymity orders by wealthy individuals looking to close down public scrutiny of their involvement in alleged wrongdoing. In cases we have followed, deep-

¹⁶ <https://courtoobservers.wordpress.com/2023/08/25/report-courts-and-tribunals-access-and-observation-workshop/>

¹⁷ <https://www.transformjustice.org.uk/focus-areas/courtwatch-london/>

¹⁸ Para 75: <https://committees.parliament.uk/publications/31426/documents/176229/default/>

¹⁹ *Linda Lu v Solicitors Regulation Authority* [2022] EWHC 1729 (Admin) at para 5: <https://www.bailii.org/ew/cases/EWHC/Admin/2022/1729.html>

pocketed individuals with access to top counsel have sought to use anonymity orders to shield themselves from being identified in open court proceedings about issues of significant public interest. In this vein, the Justice Committee referenced the evidence of Martin Bentham, the Home Affairs editor at the *Evening Standard*, about how “those seeking 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”.²⁰ Having made submissions opposing anonymity orders in several cases, Spotlight can confirm how time-intensive and costly it is to ensure the court hears the broader public interest considerations at issue in these anonymity applications.

Individuals seeking to close down public scrutiny of alleged wrongdoing have relied on the Supreme Court’s ruling in *Bloomberg LP v ZXC* [2022] UKSC 5 (“ZXC”) in support of their applications for anonymity orders. The Supreme Court’s central holding was that, as a legitimate starting point, a person under criminal investigation has a reasonable expectation of privacy in relation to information derived from an investigation by a law enforcement body.²¹ As recently confirmed by the Divisional Court, this precedent finds no application in the context of open court proceedings.²² Yet we have observed ZXC being cited on behalf of individuals who are not under investigation seeking to prevent reporting on information which would ordinarily be disclosed in open court proceedings.

Given the inadequate notice and costs exposure that pose barriers to journalists and non-media stakeholders from challenging anonymity orders, we are concerned about the chilling effect of the Supreme Court’s decision in ZXC on court reporting. Through our court monitoring programme, we have noticed a growing reluctance by journalists to report on alleged corruption and economic crime, with many explicitly referencing ZXC as a reason for their caution.

The government,²³ as well as legal sector supervisors like the Solicitors Regulations Authority,²⁴ have recently recognised the need to address Strategic Lawsuits Against Public Participation (SLAPPs) which similarly aim to discourage scrutiny of matters in the public interest. This is a welcome

²⁰ Para 75: <https://committees.parliament.uk/publications/31426/documents/176229/default/>

²¹ See paras 1 and 78.

²² *R (Marandi) v Westminster Magistrates’ Court* [2023] EWHC 587 (Admin) at paragraph 46: “ZXC is a case about the initial step in the Convention analysis, in cases where no legal proceedings have begun; it has no bearing on the balance to be struck between privacy rights and the public interest in transparency and open justice when a person features in a public trial.”

²³ We welcome the government’s amendments to the Economic Crime and Corporate Transparency Bill as a significant first step to cracking down on SLAPPs: <https://www.gov.uk/government/news/crackdown-on-criminals-silencing-critics-to-be-added-to-economic-crime-bill>

²⁴ <https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice/>

development, but anonymity orders are at risk of similar abuse by individuals looking to muzzle journalists and civil society organisations from reporting on matters in the public interest.

Listings

6. Do you find it helpful for court and tribunal lists to be published online and what do you use this information for?

Unrestricted public access to advance court and tribunal listings is a fundamental part of open justice, enabling members of the public, the media, civil society organisations and others to be aware of upcoming cases and the details of those cases. These lists are also essential for us to do our work effectively. As part of our court monitoring programme, we regularly check a wide range of online court lists:

- the daily cause lists for the Royal Courts of Justice²⁵ and the Business and Property Courts;²⁶
- the Court of Appeal (Criminal Division) cases fixed for hearing;²⁷
- the daily lists for the Southwark Crown Court;²⁸
- the daily lists for Westminster Magistrates' Court;²⁹
- the Supreme Court's notice of future judgments;³⁰
- the Upper Tribunal (Tax and Chancery) register of cases;³¹
- the weekly cause lists for the Employment Appeal Tribunal;³²
- the advance listings for the Solicitors' Disciplinary Tribunal.³³

We rely on these online lists to find out about upcoming hearings and judgments, not only in cases we are already actively monitoring but also to identify new cases that might be relevant to our work. In their present form, the public lists provide basic information about the time, venue and case details of a hearing or judgment to enable us to attend (either in person or remotely). However, the current arrangements fall short of providing effective publicity about hearings in several respects.

²⁵ <https://www.gov.uk/government/publications/royal-courts-of-justice-cause-list/royal-courts-of-justice-daily-cause-list#administrative-court-daily-cause-list>

²⁶ <https://www.gov.uk/government/publications/business-and-property-courts-rolls-building-cause-list/business-and-property-courts-of-england-and-wales-cause-list>

²⁷ <https://www.gov.uk/government/publications/court-of-appeal-cases-fixed-for-hearing-criminal-division/court-of-appeal-cases-fixed-for-hearing-criminal-division>

²⁸ <https://www.courtserve.net/courtlists/current/crown/indexv2crowndailies.php>

²⁹ <https://www.courtserve.net/courtlists/current/magistrates/indexv2magistrates.php>

³⁰ <https://www.supremecourt.uk/news/future-judgments.html>

³¹ <https://www.gov.uk/government/publications/upper-tribunal-tax-and-chancery-register-of-cases>

³² <https://employmentappeals.decisions.tribunals.gov.uk/public/causelist.aspx>

³³ <https://www.solicitortribunal.org.uk/>

First, most of the public court lists do not provide sufficient detail to know what a matter is about. Without sufficient information to accurately identify the parties to a dispute and without even a general description of the case, we cannot make an informed decision about the relevance of a hearing to our work. The fuller case details provided by the Court of Appeal (Civil Division)³⁴ and Supreme Court³⁵ stand out as exceptions, ensuring listings enable a member of the public to understand in broad terms what a hearing is about.

Second, most courts and tribunals do not publish information about advance listings and instead only publish daily lists which are finalised by 16:30 the day before a hearing. This makes it more difficult to ensure our availability to attend hearings in person and leaves very little time to seek authorisation for remote observation of a hearing. This not only hinders access to hearings, but also places considerable pressure on court staff. The lack of advance listing information available online means that we regularly email the listing office at a range of courts to enquire about upcoming hearing dates. It would be far more efficient for these resources to be directed at ensuring accurate and advance listing information is available online when hearing dates are fixed.

Third, this listing information has to be sourced from multiple different websites, with only a very limited offering available free of charge on the gov.uk website or through private providers like CourtServe and The Law Pages. More comprehensive and detailed lists are only available to those who pay a fee. On occasion, we have not been able to monitor significant corruption hearings because no adequate public listing was made available.³⁶ This includes a number of civil recovery hearings in the magistrates' courts where matters have been listed using only the Account Freezing Order number rather than the parties' names. There was also no public notice given of a hearing at the Westminster Magistrates' Court at which the Serious Fraud Office brought charges against Glencore Energy UK Plc, in spite of this being the highest-profile prosecution by the agency in 2022.

7. Do you think that there should be any restrictions on what information should be included in these published lists (for example, identifying all parties)?

Published court lists should provide advance and sufficiently detailed information about hearings. At a minimum, this should include:

- the court, date, time, venue and presiding officer;
- the type of hearing (e.g. judgment; plea; bail; application; case management)

³⁴ <https://www.judiciary.uk/the-court-of-appeal-civil-division-live-streaming-of-court-hearings/>

³⁵ <https://www.supremecourt.uk/current-cases/index.html>

³⁶ https://docs.wixstatic.com/ugd/54261c_b5a8c697963841afbb1af7cc10e27e4c.pdf

- the case number;
- the full case name, including the names of the parties and, in criminal proceedings, the public authority or private party bringing the prosecution;
- notice of any reporting restrictions that are in place;
- the details for how to access remote hearings or obtain judgments handed down remotely, including contact details for queries from the press and members of the public.

The court listings should provide sufficient information about what is occurring in the courts for the public and public interest organisations to know whether a matter is of interest and would be worthwhile for them to attend. Too often, it is not possible to identify a party from the details listed, because there are multiple people with the same name (particularly if only a surname is provided). The parties' full names should therefore be given, unless an anonymity order or other reporting restrictions are in place which prohibit the publication of a party's name. While there are good reasons to provide fuller listing details to members of the press as well as other public interest reporters, the published lists should not provide sensitive personal details such as the address of a defendant.

8. Please explain whether you feel the way reporting restrictions are currently listed could be improved.

Based on our regular review of court lists, it is rare for details of reporting restrictions to be provided. Even the weekly warned lists for Southwark Crown Court simply note that a reporting restrictions order has been made under the Contempt of Court Act 1981, with only the occasional further explanation such as "no reporting verdicts". The daily lists we check do not generally note whether reporting restrictions are in place, even in relation to cases where we are aware from attending the proceedings that the court has made a reporting restrictions order.

This lack of detail in the court lists, combined with the absence of a centralised database of reporting restrictions, is counter-productive to the aim of ensuring compliance with reporting restrictions. It makes it difficult for observers and even members of the press to find out about – let alone contest – reporting restrictions orders.

To improve public awareness of, and compliance with, reporting restrictions, we recommend that:

- Court listings indicate whether any reporting restrictions apply and provide a general description of any reporting restrictions order that may be in place, such as an order

postponing reporting under section 4(2) of the Contempt of Court Act, or an anonymity order under section 11 of the the Contempt of Court Act.

- Court listings include links to the latest official guidance on reporting restrictions that may help members of the public understand the nature and implications of both automatic and discretionary reporting restrictions, such as the Judicial College guidance on “Reporting Restrictions in the Criminal Courts”.³⁷
- A centralised database of reporting restrictions on cases should be made available online, as recommended by the Justice Committee.³⁸

9. Are you planning to or are you actively developing new services or features based on access to the public court lists? If so, who are you providing it to and why are they interested in this data?

Given the limitations of the current court lists, we frequently make enquiries directly with the listing office at a range of courts, seeking details and updates about hearing dates that have been fixed. As part of our efforts to promote the accessibility and transparency of the justice system, we publish details of upcoming hearings in major cases we follow based on the information we have obtained from the listing office, the parties’ legal representatives or through enquiries with law enforcement agencies. Our online court calendar is relied on by journalists, civil society and members of the public with an interest in these cases.³⁹

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, but this is unfortunately no longer functional.⁴⁰ We recommend that law enforcement agencies and regulators consider providing a publicly accessible calendar of hearings.

10. What services or features would you develop if media lists were made available (subject to appropriate licensing and any other agreements or arrangements deemed necessary by the Ministry of Justice) on the proviso that said services or features were for the sole use of accredited members of the media?

³⁷ <https://www.judiciary.uk/guidance-and-resources/reporting-restrictions-in-the-criminal-courts-fifth-edition-update/>

³⁸ Para 82, <https://committees.parliament.uk/publications/31426/documents/176229/default/>

³⁹ <https://www.spotlightcorruption.org/court-calendar/>

⁴⁰ <https://www.sfo.gov.uk/court-calendar/>

We disagree that access to fuller listing information – and any services or features developed using this information – should be the exclusive preserve of accredited members of the media. This restrictive approach fails to recognise the important role that many academics, researchers, civil society organisations and other public interest reporters play in promoting the principle of open justice and who may have legitimate interests in accessing this information and any associated services or features. As the High Court recognised in *Privacy International v HMRC* [2014] EWHC 1475 (Admin) at paragraph 76, civil society organisations play a complementary role to the media in promoting open justice and acting as public watchdogs:

“Pressure groups share many similarities with the press. They can act as guardians of the public conscience. As with the press their very existence and the pressure they bring to bear on particular issues and upon those who are responsible for governance of those issues, is one of the significant checks and balances in a democratic society. They have, therefore, a significant role to play.”

This is not to suggest that fuller listing information should be made available to the public at large or that there should not be different levels of access to court data. We recognise that there is a need for safeguards on sensitive personal data relating to court proceedings, but in our view press accreditation should not be used as a proxy for these safeguards. Accreditation is no guarantee that sensitive personal data will not be misused, while it perpetuates a privileging of the press over other public interest reporters who undertake similar or complementary work. At Spotlight, for example, we provide contemporaneous reporting on court proceedings, write blogs and detailed analyses about cases (including for media outlets such as Law360), and regularly provide expert commentary on cases to journalists.

We therefore urge the government to recognise the need for a more nuanced and inclusive approach to regulating access to fuller listing information. In doing so, the government can look to other areas in which similar tensions might arise between public access and privacy rights. For example, after the EU Court of Justice ruled against public access to beneficial ownership data, the EU Parliament has acted swiftly to introduce a suite of progressive measures to ensure not just the media but other stakeholders with legitimate interests, including civil society and academics, can access beneficial ownership information.

11. If media lists were available (subject to appropriate licensing and any other agreements or arrangements deemed necessary by the Ministry of Justice) for the use of third-party

organisations to use and develop services or features as they see fit, how would you use this data, who would you provide it to, and why are they interested in this data?

Access to media lists would greatly enhance our work as a civil society organisation. This fuller listing information would better enable us to identify hearings and new corruption-related cases that are relevant to our work, and to more effectively allocate resources to attending and reporting on these proceedings. We would also share this information with journalists and civil society partners who do not regularly check the court lists and therefore rely on us to bring important developments to their attention. In short, this information would enhance the role we play in promoting public awareness and understanding about the court cases we follow.

We have serious concerns about court information being provided to private sector companies to generate profits while that information is not provided to public interest groups and other public interest reporters, such as researchers.

Accessing courts and tribunals

12. Are you aware that the FaCT service helps you find the correct contact details to individual courts and tribunals?

Yes, we are aware of the online Find a Court or Tribunal (FaCT) service and welcome this resource as a way to help members of the public to locate the contact details and building facilities for a particular court.

13. Is there anything more that digital services such as FaCT could offer to help you access court and tribunals?

While useful, the FaCT service could be improved to meet the needs of first-time or occasional court users, and expanded to better serve regular court users. First, information could be supplemented with details about how to request access to remote hearings. This information is currently provided on some court lists, such as the cause lists for the RCJ and Business and Property Courts, but not for other courts, particularly the Crown Courts or magistrates' courts lists. The FaCT service could identify a dedicated point of contact for members of the press and the public to request remote access to hearings.

Another improvement would be to provide a link to an up-to-date list of judges' clerks, as these contact details are not always available online. The Commercial Court again stands out as a commendable example of best practice by providing these details to the public.⁴¹

Finally, there is no clear channel for raising concerns or making complaints when we encounter difficulties accessing hearings or obtaining court information. In our experience, it has proved unproductive to email the general office or listing office when the problem has arisen within the context of correspondence with these court staff. Where no answer is received to a query or the court staff are not in a position to assist us, it is not clear what formal channels can effectively deal with these kinds of concerns. The FaCT service could be improved by providing a point of contact of members of the press and public to raise accessibility concerns or complaints, as recommended by the Justice Committee.⁴²

Remote observation and livestreaming

14. What are your overarching views of the benefits and risks of allowing for remote observation and livestreaming of open court proceedings and what could it be used for in future?

Remote observation and the livestreaming of proceedings have huge potential to expand public access to court proceedings and advance the aims of open justice in promoting public understanding and scrutiny of the justice system. Remote observation, in particular, can bypass some of the practical barriers to attending hearings in person, including the time and expense of travelling to court. Remote observation can also accommodate members of the public who would otherwise struggle to attend court due to health or other difficulties. These new technologies can therefore yield significant benefits by helping to foster greater interest in, and understanding of, the justice system. However, this potential can only be realised if the mechanisms for remote access do not themselves create new barriers to access. The risk that remote observation might introduce different or additional obstacles to access must be addressed as remote observation is expanded.

As part of our court monitoring programme, Spotlight representatives have requested access to and attended numerous hearings, both during and since the pandemic. Based on our experience, the courts and tribunals do not implement a consistent, principled approach to regulating remote access and the reliability of remote access differs across the court system. Rules and practice directions are

⁴¹ <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/about-the-commercial-court/the-commercial-courts-judges/>

⁴² Para 41, <https://committees.parliament.uk/publications/31426/documents/176229/default/>

also inconsistently applied within the same court. While access has generally been granted to us on request, we have on occasion been refused remote access to open court proceedings by particular judges on the basis that we are not accredited members of the media. When challenging refusals and providing further motivation for our interest in the proceedings, we have generally not received any reply from the court.

The most common obstacles, however, are practical. The lack of advance listing information and overstretched court staff mean we often do not receive any response at all to requests for remote access made, or are provided with details after the start of a hearing. We have also encountered challenges with poor audiovisual quality during remote observation. This has included hearings where the camera is focused on a wall or table, hearings where the microphone relayed the whispering of legal representatives rather than the judges or counsel, and hearings where the audio quality is simply too poor to follow the proceedings at all. These practical barriers mean we cannot currently depend on remote observation as a reliable mechanism for accessing hearings that are particularly important for our work.

Given the huge potential for remote observation to advance the accessibility and transparency of court proceedings, we urge the government to address these practical obstacles by:

- investing in the technological infrastructure and staff capacity needed to ensure reliable and efficient access to remote observation of adequate audiovisual quality, including support to address technical issues that might arise in the course of a hearing;
- ensuring court lists set out clear instructions for requesting remote access, with a dedicated point of contact;
- ensuring courts have dedicated staff and streamlined processes to deal with requests for remote access and provide all observers with guidelines to mitigate the risks of remote observation, including reporting restrictions breaches;
- ensuring court staff and the judges who ultimately have responsibility for decisions over access are aware of, and receive regular training about, the legal framework regulating remote observation and apply these principles consistently;
- ensuring remote observers have a mechanism to access court documents such as skeletons that they would be entitled to obtain when attending a hearing in person.

15. Do you think that all members of the public should be allowed to observe open court and tribunal hearings remotely?

Yes, all members of the public should be allowed to observe hearings remotely. It is absolutely essential that remote observation is not implemented in a way that diminishes – instead of expands – open justice. It would be deeply concerning if remote observation introduced new “gatekeeping” features (such as press accreditation) to exclude members of the public who would in the ordinary course be entitled to attend open court proceedings in person. As the Justice Committee pointed out, the rights of access that flow from the principle of open justice are not exclusively for journalists, and greater attention is needed to ensure inclusive public access.⁴³ Remote observation has the potential to do this, but only if it is used to expand access to all members of the public. We urge the government to implement the Justice Committee’s recommendation that HMCTS publish a citizens’ charter outlining the public’s access rights – including the remote observation of hearings.⁴⁴

16. Do you think that the media should be able to attend all open court proceedings remotely?

Yes, the media should be allowed to attend all open court proceedings remotely where access is also given to members of the public. Access to open court proceedings should not be restricted to certain classes of person, with media given privileged access while others are excluded. We recognise and support the crucial role that journalists play as the “*the eyes and ears of a wider public*”,⁴⁵ but their particular role in promoting open justice is no substitute for the direct access rights of that wider public. To do so would be to lose sight of the ultimate purposes of the open justice principle in enabling public scrutiny and public understanding of the justice system, rather than only scrutiny by a select group of “trusted” intermediaries. We observe with concern that media access is sometimes conflated with open justice, including on occasion by the judiciary itself. For example, Practice Direction 51Y in the Civil Procedure Rules assumes that media access satisfies the requirements of open justice.⁴⁶

Excluding members of the public from remote observation will also increase the likelihood that reporting will be selective, incomplete, inaccurate or inaccessible. Most detailed legal reporting is only accessible through prohibitively expensive subscription, and increasingly more general media reporting is also behind a paywall. Apart from the Guardian and the Evening Standard, all the main national newspapers who cover court cases are paywalled, meaning that potentially selective information is freely accessible to the public.

⁴³ Para 40, <https://committees.parliament.uk/publications/31426/documents/176229/default/>

⁴⁴ Para 40, <https://committees.parliament.uk/publications/31426/documents/176229/default/>

⁴⁵ *Khuja (formerly PNM) v Times Newspapers Limited* [2017] UKSC 49 at paragraph 16

⁴⁶ See: The Transparency Project, ‘Written Evidence from Transparency Project (PCS0252)’ <https://committees.parliament.uk/writtenevidence/35874/html/>.

17. Do you think that all open court hearings should allow for livestreaming and remote observation? Would you exclude any types of court hearings from livestreaming and remote observations?

We recommend the expansion of livestreaming and remote observation across the court system, but suggest that this would best be rolled out in stages with periodic reviews to evaluate the impact and address concerns that arise during implementation. As a first step, livestreaming and remote observation should be consolidated and expanded in the King’s Bench Division and Chancery Division of the High Court, and the Crown Courts. Careful thought is needed when considering the routine use of remote observation or livestreaming in cases where reporting restrictions orders or transparency orders are routinely in place, such as the Courts of Protection, to ensure there are clear guidelines and adequate safeguards in place.

18. Would you impose restrictions on the reporting of court cases? If so, which cases and why?

The fundamental importance of open justice means that derogations from this principle should be exceptional. Both case law⁴⁷ and judicial guidance⁴⁸ emphasise that the open justice principle requires that, as a matter of course, proceedings are fully transparent with no restrictions on fair, accurate and contemporaneous reporting. The leading authorities from the Divisional Court confirm that any restriction departing from this default of full transparency is exceptional, requires clear justification, should only be imposed when strictly necessary, and must be established on the basis of clear and cogent evidence.⁴⁹

Thus the default position cannot be departed from merely because other interests, such as privacy rights or commercial interests, are engaged. As the Supreme Court has been careful to point out, “*the common law principle of open justice remains in vigour, even when Convention rights are also applicable*” (*A v British Broadcasting Corporation (Scotland)* at paragraph 56). In this sense, the open justice principle reflects a default position that already takes account of competing Convention rights as they ordinarily apply in court proceedings. As Lord Sumption stated in *Khuja v Times Newspapers Ltd* [2019] AC 161 at paragraph 34(2), the “*collateral impact*” of publicity on Article 8 rights is part of “*the price to be paid for open justice and the freedom of the press to report fairly and accurately on*

⁴⁷ *A v British Broadcasting Corporation (Scotland)* [2014] UKSC 25; *Khuja v Times Newspapers Limited & Ors* [2017] UKSC 49.

⁴⁸ <https://www.judiciary.uk/guidance-and-resources/reporting-restrictions-in-the-criminal-courts-fifth-edition-update/>

⁴⁹ *R (Rai) v Winchester Crown Court* [2021] 2 Cr App R 20; *R (Marandi) v Westminster Magistrates’ Court* [2023] EWHC 587 (Admin).

judicial proceedings held in public". The result, as Lord Sumption concluded at paragraph 34(3), is that "there is no reasonable expectation of privacy in relation to proceedings in open court".

Thus any restrictions which make an exception to the full transparency of court proceedings must be justified by a *more* important principle or interest on the facts of the particular case. For example, this may be where public reporting would place the administration of justice at risk (such as prejudicing the fairness of a future trial) or where children or vulnerable persons are involved. Importantly, however, restrictions should only be permitted to the extent necessary to protect those countervailing interests.⁵⁰ In many instances, these interests can be adequately protected by restrictions which are limited in time or which postpone reporting of certain information, rather than blanket anonymity orders.

19. Do you think that there are any types of buildings that would be particularly useful to make a designated livestreaming premises?

Consideration could be given to whether the venues which have served as so-called "Nightingale courts" could be used on a more permanent basis as designated livestreaming premises.

20. How could the process for gaining access to remotely observe a hearing be made easier for the public and media?

There must be a clear, reliable and efficient procedure for accessing hearings remotely. Based on our experience, there is currently no consistent, principled approach to regulating remote observation across the court system. Many courts still appear to deal with requests for remote access in an ad hoc manner (such as Southwark Crown Court) while other courts have developed more streamlined processes with court staff dedicated to dealing with remote access (such as the Commercial Court).

As noted in answer to question 14, the lack of advance listing information and overstretched court staff mean we often do not receive any response at all to requests for remote access made, or are provided with details after the start of a hearing. These practical difficulties are aggravated by the inefficient process for obtaining approval for remote access:

- the observer emails the listing office seeking access;

⁵⁰ See *R (Guardian News and Media Ltd) v Westminster Magistrates' Court* [2013] QB 618 at paragraph 4; *A v British Broadcasting Corporation (Scotland)* [2014] UKSC 25 at paragraph 41.

- the listing office usually forwards the request to the clerk, who may then forward it to the judge for consideration;
- the decision on remote access is then relayed from the judge, through the clerk, back to the listing office;
- the listing office communicates this decision to the observer and provides the details for accessing the hearing remotely.

In our experience, it is unlikely that any update will be provided as this inefficient process runs its course, leaving one with little confidence that remote access will be granted in time for the start of a hearing.

To improve the process for gaining access to remotely observe a hearing, we recommend:

- ensuring court lists provide clear instructions for requesting remote access, with a dedicated point of contact;
- ensuring courts have dedicated staff and streamlined processes to deal efficiently with requests for remote access;
- ensuring courts – and the judges who ultimately have responsibility for decisions over access – are aware of the legal framework regulating remote observation and apply these principles consistently.

Broadcasting

21. What do you think are the benefits to the public of broadcasting court proceedings?

Like remote observation and livestreaming, broadcasting has huge potential to advance the principle of open justice. Broadcasting can open up the courts to a much broader and more diverse “virtual gallery”, inviting the wider public to observe, scrutinise and better understand how the justice system works. Fostering greater interest in, and observation of, court proceedings can ultimately promote public confidence in the judiciary and its independence, as members of the public observe first-hand how justice is administered.

One of the main practical benefits of broadcasting for members of the public is that it minimises the administrative barriers to gaining online access. Rather than having to navigate the process of requesting access to remotely observe a hearing or attending a designated livestreaming premises, broadcasting allows the public to easily and quickly follow proceedings. If broadcasts are recorded

and archived, they can also be viewed or revisited at a later stage, thereby substantially opening up the scope for the public to observe court proceedings.

22. Please detail the types of court proceedings you think should be broadcast and why this would be beneficial for the public? Are there any types of proceedings which should not be broadcast?

The Supreme Court and Court of Appeal (Civil Division) offer pioneering examples of how livestreaming and broadcasting (both live and on-demand viewing) can be used to expand access and promote the transparency of proceedings. We recommend building on these successes, as well as the lessons learned, in broadcasting a wider selection of proceedings. We suggest that this would best be rolled out in stages with periodic reviews to evaluate the impact and address concerns that arise during implementation.

In our view, a sensible next stage of expansion would be to broadcast open court proceedings in the High Court, particularly in the Commercial Court and Administrative Court which frequently hear cases of heightened public interest. Further expansion beyond the High Court could include the Crown Courts, particularly the broadcasting of sentencing remarks.

23. Do you think that there are any risks to broadcasting court proceedings?

There may be a heightened risk that reporting restrictions are breached, but this can be mitigated by providing warnings to observers, including links to official guidance on automatic and discretionary reporting restrictions. In our experience, it is rare for mention to be made of reporting restrictions during physical court proceedings, and we therefore suggest that the expanded use of remote observation, livestreaming and broadcasts should be used as an opportunity to systematise and strengthen the way that reporting restrictions are brought to the attention of all observers, whether accessing hearings remotely or in person. Similarly, clear warnings and guidance should accompany broadcasts to inform observers about the prohibition on recording court proceedings.

24. What is your view on the 1925 prohibition on photography and the 1981 prohibition on sound recording in court and whether they are still fit for purpose in the modern age? Are there other emerging technologies where we should consider our policy in relation to usage in court?

N/A

Single Justice Procedure

25. What do you think the government could do to enhance transparency of the SJP?

We do not follow SJP cases and so defer to others more familiar with these transparency challenges.

26. How could the current publication of SJP cases (on CaTH) be enhanced?

We do not follow SJP cases and so defer to others more familiar with these transparency challenges.

Publication of judgments and sentencing remarks

Public access to judgments

27. In your experience, have the court judgments or tribunal decisions you need been publicly available online? Please give examples in your response.

Court judgments are public data and a source of law; public access is essential to meeting the requirements of the rule of law and open justice.⁵¹ 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. Currently, however, public access to case law is severely restricted and we have faced difficulties obtaining copies of judgments, sentencing remarks and court orders in the course of our work.

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. In its current form, the Find Case Law service is far from a complete record although we welcome the government's ambition to expand its coverage. At present, however, comprehensive information is only available through private publishers behind a paywall to those able to pay the substantial fees.⁵²

⁵¹ <https://research.thelegaaleducationfoundation.org/wp-content/uploads/2019/09/DigitalJusticeFINAL.pdf>

⁵² https://docs.wixstatic.com/ugd/54261c_b5a8c697963841afbb1af7cc10e27e4c.pdf

As a result, we have struggled to access important court decisions. It is particularly difficult to get hold of sentencing remarks, even in high-profile cases prosecuted by the Serious Fraud Office. As these are not available online, we have had to approach the Southwark Crown Court or the Serious Fraud Office to request copies, with mixed success. We have also had considerable difficulty obtaining copies of other written rulings and court orders from the Southwark Crown Court, even after attending hearings in person and requesting these copies from the court clerks and general office. In a particularly concerning incident, requests from Spotlight and others for copies of a judgment providing written reasons for one of the biggest-ever confiscation orders (worth £130 million) have gone unanswered, to the point that we have now drafted an application to the court (together with Transparency International UK and Reuters news agency) seeking copies of this judgment.

A more general and recurring challenge we face is that judgments are not available online at the time of hand-down, or even shortly thereafter (with the exception of Supreme Court judgments). On the contrary, many days can pass before decisions are published on Bailii and the National Archives. This hinders our work considerably, as we need to read and analyse a judgment as soon as possible after the official hand-down time in order to (a) post the outcome as breaking news on social media to inform the public; (b) publish a press release with our expert analysis; and (c) respond to requests from journalists for expert commentary on the decision. In the longer term, we rely on these decisions to write blogs, detailed case analyses and prepare briefings for civil servants and parliamentarians.

As a result, we generally email the court or the judge's clerk in advance of a scheduled hand-down to request that we receive a copy of the final judgment at the official time of delivery. While the judge's clerks in the Commercial Court are generally responsive to our requests, we often do not receive a copy as requested. Sometimes we receive a delayed response – for example, recently the Administrative Court sent us a judgment a week after our request. On other occasions, we are directed to Bailii or Find Case Law. When requesting Court of Appeal judgments, we are informed that *“as a small press office, we only have capacity to deal with enquiries from the media”*. This is an unsatisfactory response, not least because our needs are also time-sensitive in reporting on the decision and providing commentary to the press.

28. The government plans to consolidate court judgments and tribunal decisions currently published on other government sites into FCL, so that all judgments and decisions would be accessible on one service, available in machine-readable format and subject to FCL's licensing

system. The other government sites would then be closed. Do you have any views regarding this?

We welcome the new Find Case Law service (FCL) provided by The National Archives, and the government's efforts to ensure this is a comprehensive and authoritative record of judgments. This includes the consolidation of judgments in one centralised and authoritative database of court judgments. This initiative also avoids the inherent risks of putting the data exclusively in private hands, imposes a duty on the state to send the data to The National Archives, and puts publication on a statutory footing under the Public Records Act. However, the new FCL service will only work effectively if the concerns we raised in answer to question 27 are addressed, including ensuring that judgments are promptly published online.

29. The government is working towards publishing a complete record of court judgments and tribunal decisions. Which judgments or decisions would you most like to see published online that are not currently available? Which judgments or decisions should not be published online and only made available on request? Please explain why.

We welcome the government's ambition to ensure a comprehensive and complete record of court judgments and tribunal decisions, and encourage swift progress towards this goal. As noted in answer to question 27, we currently find it particularly difficult to obtain copies of sentencing remarks from the Crown Courts. We recommend that Find Case Law be developed to enable access to sentencing remarks, recognising that this should be done in a way that addresses the tension between rehabilitation and open justice.

30. Besides court judgments and tribunal decisions, are there other court records that you think should be published online and/or available on request? If so, please explain how and why.

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.

31. In your opinion, how can the publication of judgments and decisions be improved to make them more accessible to users of assistive technologies and users with limited digital capability? Please give examples in your response.

As a minimum, all judgments and decisions published online should be available in a structured and machine-readable format.

32. In your experience has the publication of judgments or tribunal decisions had a negative effect on either court users or wider members of the public?

In the course of our experience, we have yet to encounter an example where the publication of judgments or tribunal decisions has negatively affected other court users or members of the wider public.

The computational reuse of judgments on Find Case Law and licensing

33. What new services or features based on access to court judgments and tribunal decisions are you planning to develop or are you actively developing? Who is the target audience? (For example, lawyers, businesses, court users, other consumers).

We are currently developing a corruption cases database which will contain detailed case studies of major corruption cases that we have monitored in the courts of England and Wales. This database, which we hope to launch in late 2023, will be publicly accessible and searchable. It will include relevant judgments and other court documents that can be made publicly available, in order to promote open justice and greater transparency about how the courts operate in corruption cases.

The database will consolidate, expand and leverage the impact of our existing case studies,⁵³ which are widely relied on by journalists, civil society organisations, academics, policymakers and members of the public interested in the corruption-related cases that we follow.

34. Do you use judgments from other territories in the development of your services/products? Please provide details.

N/A

⁵³ See, for example, <https://www.spotlightcorruption.org/enrc-corruption-and-litigation/>; <https://www.spotlightcorruption.org/petrofac-a-systemic-serious-and-grave-corruption-scheme/>; <https://www.spotlightcorruption.org/sham-litigation-or-legitimate-investor-claims-the-extraordinary-case-of-pid-v-nigeria/>; <https://www.spotlightcorruption.org/the-unaoil-bribery-scandal/>; <https://www.spotlightcorruption.org/mozambique-and-the-tuna-bond-scandal/>

35. After one year of operation, we are reviewing the Transactional Licence. In your experience, how has the Open Justice and/or the Transactional Licence supported or limited your ability to re-use court judgments or tribunal decisions. How does this compare to your experience before April 2022? Please give examples in your response.

N/A

36. When describing uses of the Transactional Licence, we use the term 'computational analysis'. We have heard from stakeholders, however, that the term is too imprecise. What term(s) would you prefer? Please explain your response.

N/A

Tribunal decisions published on gov.uk

37. Have you searched for tribunal decisions online and if you have, what was your experience, and for what was your reason for searching?

Yes. We occasionally follow cases in the Employment Tribunal, Employment Appeal Tribunal and the Upper Tribunal (Tax and Chancery) where these are relevant to our work. As with our court monitoring programme more generally, we track and analyse corruption-related cases to inform our recommendations for policy reform and broader advocacy around the enforcement of anti-corruption law.

38. Do you think tribunal decisions should appear in online search engines like Google?

Yes, tribunal decisions that are published online should also appear in online search engines.

39. What information is necessary for inclusion in a published decisions register? What safeguards would be necessary?

N/A

Public access to sentencing remarks

40. Do you think that judicial sentencing remarks should be published online / made available on request? If that is the case, in which format do you consider they should be available? Please explain your answer.

Judicial sentencing remarks should ideally be published online so they are readily accessible to members of the public. They should be published in written form, but ideally a recording of the sentencing should also be available. Sentencing remarks are of significant public interest, as they may be the only overview or record of a long and important trial. Ensuring sentencing remarks are readily accessible is essential both for deterrence and for enabling public understanding of the offending and the factors that played a role in the sentencing exercise.

As set out in answer to questions 27 and 30, we have found it particularly difficult to get hold of sentencing remarks, even in high-profile cases prosecuted by the Serious Fraud Office.⁵⁴ In our experience, the avenues for requesting access are ineffective – we have seldom received a response let alone a copy of sentencing remarks when requesting them from the Crown Courts. Our requests to the Serious Fraud Office in relation to cases they prosecuted have been more successful, but the response time is slow and places an additional burden on overstretched law enforcement agencies.

In light of these difficulties, we recommend that sentencing remarks be published online but recognise that careful consideration is needed to address the tension between rehabilitation and open justice. It may be appropriate, for example, to remove sentencing remarks from Find Case Law after a specified period to allow for rehabilitation, after which time those remarks could be made available upon request.

Access to court documents and information

41. As a non-party to proceedings, for what purpose would you seek access to court or tribunal documents?

Our court monitoring programme is a core part of the work we do as a charity in tracking the enforcement of the UK's anti-corruption laws. We closely follow corruption and economic crime cases to see how these laws are working in practice and to identify ways they could be improved. Access to court documents is essential for enabling us to do this work effectively:

⁵⁴ A welcome exception was the recent prosecution of Glencore Energy UK Plc for bribery offences, where Mr Justice Fraser's sentencing remarks were published on the judiciary.uk website: <https://www.judiciary.uk/judgments/the-serious-fraud-office-v-glencore-energy-uk-ltd/>

- they help us understand and analyse the issues in dispute and the arguments raised;
- they help us understand what evidence is before the court and therefore to scrutinise judicial decision-making as well as the handling of a prosecution by economic crime enforcement agencies like the Serious Fraud Office;
- they help us to report fairly and accurately on the proceedings in social media commentary, press releases, blogs, and detailed case analyses which draw out the key issues, arguments and policy implications;
- they help inform our expert commentary to journalists and other media reporting on the case;
- they contribute to an evidence base that informs our policy recommendations and broader advocacy for reforms to strengthen the implementation and enforcement of the UK's anti-corruption laws.

42. Do you (non-party) know when you should apply to the court or tribunal for access to documents and when you should apply to other organisations?

As we follow cases in a range of courts, from the magistrates' courts right up to the Supreme Court, we have become more familiar with the rules, guidance, and practice directions applicable in these various jurisdictions. Yet these principles are not consistently applied and the processes are hard to navigate for non-parties, even for us as regular court observers.

We often request copies of court documents on the court file, particularly to obtain statements of case that non-parties are entitled to access under Civil Procedure Rule 5.4C. We also frequently make applications to the court for access under the court's inherent jurisdiction to further court documents (and on occasion even the full trial bundle), often by way of a joint application with journalists and civil society partners. While we are usually successful in gaining copies of documents we request, these applications are time-consuming to make while the parties and courts are often slow to respond.

43. Do you (non-party) know where to look or who to contact to request access to court or tribunal documents?

Through our court monitoring programme, we have learned more about where to look and who to contact for access to court documents but these processes lack transparency and are highly

inefficient. In particular, we have found that official channels for seeking access are often unresponsive or ineffective in providing access.

For example, when requesting skeleton arguments from the CPS, we are referred by counsel for the Crown to the CPS press office. On emailing the CPS press team, we are informed that they only deal with enquiries from the press and recommend we contact their counsel directly. We then return to counsel, but it often takes several follow-up emails and interventions to get hold of skeletons that should have been provided to us on request at the hearing. This pattern has repeated itself in a number of cases.

We have encountered similar difficulties with cases involving the National Crime Agency (NCA), being told by their counsel that their skeletons can only be provided through the court. In one high-profile case in the Westminster magistrates' court, we received a copy of the NCA skeleton argument through the court almost a year after the hearing in which the District Judge directed that we be provided with it. This entailed numerous emails to the NCA press office and counsel (who had no objection to our access) and several emails and phone calls to the court office.

In navigating these processes, we rely on the good relationships we have built through regular engagement with law enforcement agencies, court staff and counsel to assist us with access to court documents, but this is unsatisfactory as a system for non-party access. There needs to be a formal, clear and efficient mechanism for non-parties (whether press or other members of the public) to request skeletons and other court documents.

Finally, it is worth noting that even if a non-party knows who to contact to obtain access, it can be very difficult to get that person's contact details. This challenge frequently arises when seeking skeleton arguments, as we do not always have the email address for counsel or those of their instructing solicitors.

For example, in a recent Supreme Court case we followed, it took weeks to get hold of the government's Case while we have still not received the respondent's Case because our emails to the general enquiries email of the law firm and chambers went unanswered.⁵⁵ While the Supreme Court advises non-parties to request these documents from the parties' legal representatives,⁵⁶ we were informed that we would need to make a formal application for disclosure of the instructing

⁵⁵ <https://twitter.com/EndCorruptionUK/status/1671500960705724416>

⁵⁶ <https://www.supremecourt.uk/faqs.html#5i>

solicitor's contact details and pay the relevant fee of £350. This is highly unsatisfactory and goes against the aspirations of open justice in our apex court, including the recent suggestion by Lord Briggs that members of the public should have access to the same court documents that are before a judge during a hearing.⁵⁷

44. Do you (non-party) know what types of court or tribunal documents are typically held?

As regular court observers, we are familiar with the general types of court or tribunal documents that are typically filed in cases. In our experience, however, it can be very difficult to ascertain what specific documents are in fact held in a particular case, particularly in the early stages of litigation. We rely on CE-file to see what documents have been filed in cases we follow, but these records are not complete and provide insufficient information to identify what a document is about. To pay £11 for a court order that may simply be a postponement when we seek a significant disclosure ruling is simply not sustainable for non-parties including charities like ourselves and members of the public.

It is also more difficult to find out what documents are held in certain courts. For example, it is surprisingly difficult to ascertain what is on the court file in the Administrative Court, given these matters are not included on CE-file and without a case number and full case name the court staff are reluctant to assist us.

45. What are the main problems you (non-party) have encountered when seeking access to court or tribunal documents?

It can be very difficult to obtain skeleton arguments and other documents that have been filed in court for both criminal and civil cases. In our experience, courts are not always 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.

There needs to be much closer, ongoing coordination between the Ministry of Justice, HMCTs, the judiciary and legal supervisory bodies like the Bar Council and Law Society. This is necessary not only

⁵⁷ <https://www.legalfutures.co.uk/latest-news/supreme-court-to-put-documents-online-in-transparency-push>

to ensure the guidance provided by these different stakeholders is consistent, but also to ensure that the open justice principle is consistently applied and processes are efficiently implemented.

We welcome the guidance issued in the Commercial Court Guide that “parties and their legal representatives should be prepared to provide a copy of that party’s skeleton argument for the hearing, by email, to any law reporter, media reporter or member of the public who requests it. Unless a party has solid grounds for declining to provide a copy, a party should comply with the request voluntarily, without the need for intervention by the Court.”⁵⁸ We have first-hand experience of how this guidance has helped non-parties like ourselves to more easily obtain skeleton arguments in the Commercial Court: in most commercial trials we attend, the parties’ legal representatives come prepared with hard copies on hand for any member of the public attending the hearing, and are happy to send copies by email too. On occasions when there has been a reluctance or delay in providing copies on request, we have observed judges express their displeasure at having to intervene to ensure parties comply with their duties to provide these skeletons.

It is also encouraging that the Bar Council has recently reviewed its guidance on the provision of documents to non-parties, shifting from an approach that emphasised confidentiality over the open justice principle⁵⁹ to a greater appreciation of the rights and interests of non-parties to certain documents.⁶⁰ In practice, however, our experience has been that many barristers (and their instructing solicitors) are reluctant, unresponsive or even refuse to share their skeleton arguments so it is clear that this revised guidance has not been embedded.

46. How can we clarify the rules and guidance for non-party requests to access material provided to the court or tribunal?

There is currently a range of different sources which address the issue of non-party requests for court materials – from case law authorities and the Civil Procedure Rules 5.4 to guidance issued by particular courts and legal supervisory bodies. We urge the government to work with the courts and legal sector stakeholders to ensure there is clear guidance about non-party access which upholds consistent principles across the court system.

⁵⁸ Commercial Court Guide Eleventh Edition (2011) at J7.3: <https://www.judiciary.uk/wp-content/uploads/2022/06/Commercial-Court-Guide-11th-edition-1.pdf>

⁵⁹ See the 2019 version of the Bar Council guidance: <https://www.barcouncilethics.co.uk/wp-content/uploads/2019/10/Journalists-law-reporters-and-other-non-parties-provision-of-documents.pdf>

⁶⁰ See the latest version of the Bar Council guidance issued in June 2023: <https://www.barcouncilethics.co.uk/wp-content/uploads/2019/10/Provision-of-Documents-to-journalists-law-reporters-and-other-non-parties-June-2023.pdf>

47. At a minimum, what material provided to the court by parties to proceedings should be accessible to non-parties?

At a minimum, skeleton arguments (or Case, in the Supreme Court) of the parties should be readily accessible to non-parties. We note that this is reflected in current guidance,⁶¹ but in our experience is not consistently or readily complied with by parties' legal representatives. In the context of criminal proceedings, non-parties should also be provided copies of the indictment or charge sheet, as well as any case summary.

As set out in Civil Procedure Rule 5.4C, non-parties should also – as a matter of right – be able to obtain from the court file “*a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it*”. While these documents are currently available on request, including through CE-file, the costs of this access (at £11 a document) is prohibitive for charities and others like ourselves who follow a large number of cases.

Finally, non-parties public should be able to access transcripts of hearings on request. We note that 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 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.

48. How can we improve public access to court documents and strengthen the processes for accessing them across the jurisdictions?

There needs to be much clear guidance setting out the access rights and interests of the public to court documents. As a start, we urge the government to act on the Justice Committee's recommendation to publish a Citizens' Charter which outlines the public's rights to access court information including court documents.⁶² This should not only set out the circumstances in which non-parties can access certain documents as a matter of *right* (such as statements of case, judgments, court orders, skeletons and witness statements) but also affirm the importance of public

⁶¹ See, for example, the Commercial Court Guide Eleventh Edition (2011) at J7.3: <https://www.judiciary.uk/wp-content/uploads/2022/06/Commercial-Court-Guide-11th-edition-1.pdf>

⁶² Para 40, <https://committees.parliament.uk/publications/31426/documents/176229/default/>

access to court documents more broadly for advancing the principle of open justice. While the courts have given strong affirmation of the importance of public access to court documents and their inherent jurisdiction to grant such access,⁶³ a Citizens' Charter embodying these principles would help embed these in practice and provide members of the public with accessible guidance to rely on when seeking access.

At a practical level, there needs to be a formal mechanism – with a single point of contact for both press and the public – to seek access to court documents. The current system is inaccessible and inefficient, with varying processes for different courts, different groups of users and different law enforcement agencies and prosecutors. We therefore strongly support the recommendation of the Justice Committee that the government and HMCTS “*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*”.⁶⁴

49. Should there be different rules applied for requests by accredited news media, or for research and statistical purposes?

We strongly reject an approach which conflates open justice with access by accredited news media. While we recognise and support the important role that the media play as the “*the eyes and ears of a wider public*”,⁶⁵ the principle of open justice is broader and far more inclusive. We therefore caution the government against adopting rules that would grant accredited journalists privileged access above others whose access to court documents would also advance the principle of open justice. To do so would be to lose sight of the ultimate purposes of the open justice principle in enabling public scrutiny and public understanding of the justice system, rather than only scrutiny by a select group of “*trusted*” intermediaries.

This exclusionary approach will also increase the likelihood that reporting will be selective, incomplete, inaccurate or inaccessible. Most detailed legal reporting is only accessible through prohibitively expensive subscription, and increasingly more general media reporting is also behind a paywall. Apart from the Guardian and the Evening Standard, all the main national newspapers who cover court cases are paywalled, meaning that potentially selective information is freely accessible to the public. We also observe a worrying trend in which there is increasing reliance on PR firms to disseminate one side of a dispute. Public access to authoritative, written documents in a case is

⁶³ *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38

⁶⁴ Para 72, <https://committees.parliament.uk/publications/31426/documents/176229/default/>

⁶⁵ *Khuja (formerly PNM) v Times Newspapers Limited* [2017] UKSC 49 at paragraph 16

therefore essential not just for fair and accurate reporting but also so that the public can relate directly to the material that was before the judge in making the decision.

The courts have frequently recognised the importance of providing public access to court documents.⁶⁶ This has yielded the following default position, articulated in *R (Guardian News and Media Ltd) v Westminster Magistrates' Court* [2013] QB 618 at paragraph 85:

"In a case where documents have been placed before a judge and referred to in the course of proceedings ... the default position should be that access should be permitted on the open justice principle".

Upholding this default position in *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 (see paragraph 38), the Supreme Court provided further guidance at paragraph 44:

"It follows that it should not be limited to those which the judge has been asked to read or has said that he has read. One object of the exercise is to enable the observer to relate what the judge has done or decided to the material which was before him."

While the courts have recognised that *"where access is sought for a proper journalistic purpose the case for allowing it will be particularly strong"*,⁶⁷ they have also recognised that civil society organisations play a complementary role to the media in promoting open justice. In *Privacy International v HMRC* [2014] EWHC 1475 (Admin) at paragraph 76, the High Court noted:

"Pressure groups share many similarities with the press. They can act as guardians of the public conscience. As with the press their very existence and the pressure they bring to bear on particular issues and upon those who are responsible for governance of those issues, is one of the significant checks and balances in a democratic society. They have, therefore, a significant role to play."

As part of our court monitoring programme, we frequently make joint applications with journalists and media organisations requesting access to court documents. In doing so, we highlight the complementary roles of journalists and civil society organisations like ourselves whose work as public watchdogs helps advance the principle of open justice.

⁶⁶ See, for example, *SmithKline Beecham Biologicals SA v Connaught Laboratories Inc* [1999] 4 All ER 498 at 512

⁶⁷ *R (Guardian News and Media Ltd) v Westminster Magistrates' Court* [2013] QB 618 at paragraph 85

50. Sometimes non-party requests may be for multiple documents across many courts, how should we facilitate these types of requests and improve the bulk distribution of publicly accessible court documents?

In our view, the best and most efficient way to improve the bulk distribution of publicly accessible court documents is to establish a central digital portal, modelled after PACER in the US, for accessing court documents, as recommended by the Justice Committee based on the wealth of evidence it heard about the need for this.⁶⁸ This should include skeleton arguments, judgments and court orders, witness statements, charge sheets or the indictment in criminal cases, reporting restrictions orders, and further documents that can be made publicly accessible (suitably redacted, where necessary).

Data access and reuse

51. For what purposes should data derived from the justice system be shared and reused by the public?

N/A

52. How can we support access and the responsible re-use of data derived from the justice system?

N/A

53. Which types of data reuse should we be encouraging? Please provide examples.

N/A

54. What is the biggest barrier to accessing data and enabling its reuse?

N/A

55. Do you have any evidence about common misconceptions of the use of data by third parties? Are there examples of how these can be mitigated?

⁶⁸ Para 72, <https://committees.parliament.uk/publications/31426/documents/176229/default/>

N/A

56. Do you have evidence or experience to indicate how artificial intelligence (AI) is currently used in relation to justice data? Please use your own definition of the term.

N/A

57. Government has published sector-agnostic advice in recent years on the use of AI. What guidance would you like to see provided specifically for the legal setting? In your view, should this be provided by government or legal services regulators?

N/A

Public legal education

58. Do you think the public has sufficient understanding of our justice system, including key issues such as contempt of court? Please explain the reasons for your answer.

N/A

59. Do you think the government are successful in making the public aware when new developments or processes are made in relation to the justice system?

N/A

60. What do you think are the main knowledge gaps in the public's understanding of the justice system?

N/A

61. Do you think there is currently sufficient information available to help the public navigate the justice system/seek justice?

N/A

62. Do you think there is a role for digital technologies in supporting PLE to help people understand and resolve their legal disputes? Please explain your answer.

N/A

63. Do you think the government is best placed to increase knowledge around the justice system? Please explain the reasons for your answer.

N/A

64. Who else do you think can help to increase knowledge of the justice system?

N/A

65. Which methods do you feel are most effective for increasing public knowledge of the justice system e.g., government campaigns, the school curriculum, court and tribunal open days etc.?

N/A