

Report: Courts and Tribunals Access and Observation Workshop

Introduction / Summary

This initiative funded by the Sheila Kitzinger Programme at Green Templeton College, University of Oxford (SKP@GTC),¹ focused on Open Justice and Courts and Tribunals Observation and Access, building on UK civil society and legal policy work on technological changes to the justice system. The convenor was Dr Judith Townend, University of Sussex.

The starting prompt for the initiative was this: how can the public be supported to observe courts and access court information in digital and physical environments? Answering this requires us to consider whether certain categories of observers (such as journalists) should enjoy special privileged access (as can sometimes be the case); and how we minimise the detrimental impacts on people from vulnerable and marginalised backgrounds at particular risk of systemic bias. In addressing these points, the project was guided by the work of the late social anthropologist and activist Sheila Kitzinger, who questioned ‘accepted truths’ in the pursuit of social justice; and sought ‘to seek justice for those who were marginalised and oppressed’.

To address these questions, a group of specialists were invited to Green Templeton College, University of Oxford, on 3 May 2023, for a day-long workshop. The agenda considered the practical detail of doing ‘open justice’ (that is, observing and reporting the work of courts), as well as the broader legal and ethical landscape. Our group included civil society campaigners involved in justice data projects and courts monitoring work; lawyers with expertise in access to justice, equalities and human rights; and academics studying court design and process, and open justice and journalism.

Many of the participants had been sharing over several years – by correspondence and social media – their experiences of watching and reporting court and a number of us had submitted evidence to the House of Commons Justice Committee inquiry on open justice in 2021-22. This was the first time, however, that we had come together as a group in this way to share our experiences and knowledge. Although our group had expertise in different parts of the English and Welsh justice system, and open justice procedure varies between court types in civil, criminal, and family jurisdictions, and tribunals, we discovered many commonalities in our experiences and perspectives.

Our final session of the May workshop considered ways in which we might take our ideas forward, such as establishing a stakeholder network on Courts and Tribunals Observation and Access that would inform the UK Government and Judiciary and other relevant bodies about access problems in the justice system; and help develop better policies and law. At a follow up remote meeting on 14 June 2023 we discussed the open consultation on open justice,² confirmed since our first meeting, and first steps for establishing the network.

¹ <https://www.gtc.ox.ac.uk/academic/health-care/sheila-kitzinger-programme/>

² <https://www.gov.uk/government/consultations/open-justice-the-way-forward>

This report summarises the key themes emerging in our discussions in May and June 2023. Further reading and a list of participants can be found at the end of the report.

Experiences of accessing and observing court

Our discussion was informed by myriad perspectives, across professional background (legal practice, civil society / not-for-profit organisations, journalism, academia, legal information and publishing) as well as jurisdictional interest within England and Wales: Civil, Criminal, Family (including Court of Protection). This meant participants knew more about some sets of rules and procedures than others, even if these rules are all guided by the over-arching principle of open justice, which in general permits members of the public to observe and report court hearings held in open court (whether remote/virtual or in physical court).³ Participants with court observation experience were united in describing practical difficulties in obtaining the information they needed to follow and report a court case. However, as well as experiences varying between court types and legal jurisdiction, experiences could vary even within a particular court type, depending on the court personnel. This first section describes some of the specific issues reported by participants.

Court lists and hearing details

Despite the technological advances and investment in digital reform by the HM Courts and Tribunals Service HMCTS),⁴ participants reported that the current process to locate case hearing details was cumbersome and time-consuming (this is well-documented in previous reports: see Appendix). It is a predominantly manual effort of checking different online sites and making inquiries by email and phone to enable an observer to attend a remote or physical hearing.

One civil society participant described how each court type (of the civil and criminal courts in which they were interested) had a different system. Every day, they had to check six or seven court lists on different platforms to see if a case was listed. Finding out about the case in the first place often relies on information from the prosecuting authorities/agencies, the courts, judges, legal representatives, as well as journalists. It is important to build relationships with court staff to access listings information; they were conscious that they add to the administrative burden when they ask questions about a case, but since that information is not readily available, they have no choice. Regular observers of a particular court become accustomed to what certain details in a listing means, in terms of the content and issues of a case. However, to a layperson, the listing information would not be clear. Further, participants reported inaccuracies in listings information which could be difficult to get corrected on the third-party listing service and frustrated efforts to attend. A further obstacle is that listings are not always made public in sufficient time to attend a hearing.

Typically, the joining details for a remote hearing must be requested by email. This, according to the same civil society observer, entails a laborious process of emailing the listing officer, who then emails the judges: it is a 'tedious process' to get the link. It was likely that the administration was 'swamped with access requests' with some courts responding

³ For further explanation and analysis of the concepts in this report, such as the nature and application of the open justice principle, please see the further reading listed in the Appendix.

⁴ <https://www.gov.uk/guidance/the-hmcts-reform-programme>

more efficiently than others. If a judge's clerk is listed online, then that can be a route to getting the hearing details. However, some courts do not provide this information, and the court does not seem to have the resource to deal with all the requests. As has been reported via social media since the introduction of remote hearings, it can be the case that a would-be observer does not receive the joining details in time for the hearing: not because they are being refused access, but because of the resource and process issue.

In terms of who is permitted access, there are different systems in place which are ad hoc in many courts. It was the experience of the civil society observer, that responses may be 'according to the whims of the various judges', some judges grant access to anyone who asks; other judges are more restrictive. Similar problems had been encountered by other participants including during the pandemic period when more hearings were held remotely. In the Court of Protection, which has been generally open to members of the public to observe since 2016,⁵ practice varies; in a rare example (praised by one participant), the full joining details were listed on CourtServe (a commercial court listing service which provides some basic list information for some courts free of charge to registered users). More usually, the observer would need to email to request joining details.

New online tools for listings and facilitating hearings are due to be launched by the Ministry of Justice / HMCTS, although one participant queried how access requests would be administered under the new system, and whether further barriers would be introduced. They were concerned that 'more outreach for access' was required.

Overall, several participants noted that it was currently a highly inefficient system for accessing details of physical and remote hearings to facilitate attendance. One participant noted that we need advanced and sufficiently detailed listing information and a more efficient method of information sharing, than emailing individual courts on an ad hoc basis.

Accessing physical hearings

Once listing information is confirmed for a physical hearing, it should be possible to attend the hearing at the court. However, participants had encountered obstacles here. Notable difficulty had been encountered at the Central Criminal Court (Old Bailey), where it has more onerous rules than in other criminal courts – including that observers are not permitted to bring in any electronic device, even if switched off. This is likely to deter many observers. Further, one participant was refused entry to a hearing because they were told they were not allowed to leave early and must stay for a minimum of 30 minutes. 'It is the most important criminal court in the country, but it's a terrible experience just to try and go in and observe', noted one participant. In an immigration tribunal, one participant was asked to supply a copy of their passport before being allowed to attend: they refused to do so, but this would be a 'huge barrier that shuts down interaction' for some potential observers.

Technological and physical barriers to participation

Once inside a hearing, whether remote or physical, further obstacles are encountered. Audibility and visibility issues were reported by participants: both for hybrid hearings where the observer may be remotely joining, with other participants in a physical room; or a fully

⁵ <https://transparencyproject.org.uk/how-to-observe-remote-hearings-in-the-court-of-protection/>

virtual or physical hearing. This could be due to ill-functioning technology (it was said that Cloud Video Platform (CVP) for remote hearings did not function as well as MS Teams) or the layout within a physical courtroom. Microphones and cameras could be inappropriately placed/focused within a court room preventing those observing remotely (in a hybrid court) effectively hearing and seeing the court proceedings; this was described by one participant as an issue of ‘stage management’. Additionally, in the physical setting there may be insufficient seating for members of the public and media, or situated in a way that makes it difficult to see participants and follow proceedings.

Taking notes and reporting

As has also been documented via social media, issues have been encountered where observers (in the case of one participant, their students visiting court) have been told they are not permitted to take notes, despite it being permitted by court rules to do so in most circumstances.⁶ Further, there is some confusion about the rules on live-tweeting and blogging: who constituted a ‘legal commentator’ in court guidance issued in 2011 on live text-based communications from court?⁷ This status implied that an individual did not need to seek special permission from the Judge to live-report a case via social media in the criminal and civil courts (unless prohibited by an order). The latest version of the Criminal Practice Directions takes a more restrictive approach, however, only explicitly permitting ‘accredited journalists’ to live-report without additional permission.⁸

Accessing documents

As well as court lists, participants reported their frustrations with accessing court documents physically and virtually. These include witness statements and skeleton arguments, as well as statements of case. One issue for observers is that documents are not always read out in court, making it impossible or difficult to follow proceedings, when legal representatives refer to documents to which they have no access. Some courts – such as the Commercial Court – has guidance which stipulates that members of the public can access skeleton arguments, which is helpful for observers. The group also discussed issues around accessing reporting restriction orders. In the Court of Protection, a Transparency Order⁹ sets out what *cannot* be reported in a given case, which is essential to its reporting. However, the TO is not always made available.

There were also concerns when too much information was made available: when a case was insufficiently anonymised, a name wrongly included in a listing, or surplus information in a schedule to the reporting restriction supplied which is not necessary for the reporting of the case for civil society observers (though the media may request it). This was described by one participant as ‘leaky data’ where those involved in a case may share documents or

⁶ See: McNae’s Essential Law for Journalists 26th edition, 2022, chapter 15; also ‘HMCTS Media Guidance (Accessible Version)’ (GOV.UK) <<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/hmcts-media-guidance-accessible-version>>; also see: <https://www.iclr.co.uk/blog/commentary/case-law-ewing-v-cardiff-crown-court-the-taking-of-notes-in-court-does-not-require-judicial-permission-hugh-tomlinson-gc/>

⁷ <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/lbcb-guidance-dec-2011.pdf>

⁸ <https://www.judiciary.uk/wp-content/uploads/2023/04/Criminal-Practice-Directions-2023-1.pdf>

⁹ <https://openjusticecourtofprotection.org/2020/06/23/transparency-orders-reflections-from-a-public-observer/>

information with observers that is inappropriately anonymised (where the circumstances require it).

Archiving

Archiving practice varies across court types, with judgments more routinely published from the higher courts.¹⁰ One notable concern is that there is no routine recording of Magistrates' courts' hearings, meaning that if a case is not observed, much of the detail is lost.

A small selection of sentencing remarks are televised in some Crown Court cases, and held on a Sky News YouTube channel, linked to from the MOJ site.¹¹ Written versions can be accessed on the Judiciary.uk site. However, this accounts for a tiny proportion of all Crown Court cases: only 33 videos had been uploaded by Sky News in the first 12 months of the scheme with 89 written remarks from the Crown Court available on the Courts site. This sits in the context of 98,000 cases received in Crown Courts in 2021.¹² There is no systematic archiving or publication despite this being recommended by the Lammy Report on race and justice published in 2017.¹³

Discrepancies between court types

Specific rules apply in the different jurisdictions and court types; however, these are not always consistently applied. It was observed that the rules of one court could impact the procedure of another court, even where those rules do not apply. For example, one participant explained how the 'legal blogger' terminology of the Family Court, whereby legally-qualified observers meeting specified criteria¹⁴ are permitted to observe cases, has occasionally been used in the Court of Protection, where such stringent rules do not apply. In fact, the Court of Protection is generally open to any public observer since the adoption of the current transparency rules (with public reporting subject to general and case-specific restrictions). Observers need to be alert therefore, to the wrongful application of rules, which may inappropriately impinge on public access.

Practicalities vs principle

Much of the discussion focussed on practical difficulties, rather than the over-arching scope and definition of open justice. Participants discussed the role of court personnel in the application of the open justice principle. For example, the assistance of clerks was often critical to accessing information about a case, but not all judges have assigned clerks.

¹⁰ <https://www.iclr.co.uk/blog/news-and-events/publication-of-listed-judgments-towards-a-new-benchmark-of-digital-open-justice/>

¹¹ <https://www.gov.uk/guidance/broadcasting-crown-court-sentencing>

¹² Sources: https://www.judiciary.uk/?s=&judgment_type=sentencing-remarks&jurisdiction=crown-court&post_type=judgment&after=&before=&order=relevance/ / <https://www.youtube.com/@SkyNewsCourts/videos> / <https://commonslibrary.parliament.uk/research-briefings/cbp-8372/>. Also see forthcoming research by Reardon et al (University of West England) and <https://www.gov.uk/government/news/over-30-cases-broadcast-in-first-year-of-tv-cameras-in-crown-court>

¹³ Lammy D, 'An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System' (2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf>

¹⁴ See: <https://transparencyproject.org.uk/legalbloggers/>

One participant felt that in the Court of Protection there was acceptance and support by judges for open justice as a principle (and that the argument for open justice did not need to be made); in this context, the primary issue was the mechanics of access, and ensuring that the principle was applied in practice.

Making complaints

Another practical issue was routes to redress, especially in urgent circumstances where access had been denied – whether by an intentional decision, or incidentally, because information was not supplied in good time.

In terms of immediate access issues, participants described making representations to the court as to their entitlement to attend. Participants agreed, however, that there were not obvious or efficient routes of complaint about barriers to access.

In evidence to the House of Commons Justice Committee in 2021, when asked about complaint mechanisms, the Lord Chief Justice said that the media usually found a way of letting those in authority (including him) know about issues;¹⁵ however, this is not a practicable or reliable method of complaint for observers on a day-to-day basis.

The example of HIVE in the Court of Protection was mentioned. HIVE, launched in 2020, has been described in judicial guidance as a ‘multi-disciplinary think tank that has been established to address and anticipate the impact of COVID-19 on the litigants in the Court of Protection’. The Court of Protection Handbook site (independent of the judiciary and Government) reports that the HIVE mailbox (hive@justice.gov.uk) can be used ‘as the first point of contact to raise specific issues relating to the operation of the Court of Protection during the pandemic. It is not to be used for issues relating to specific cases (for instance case progression or appeals)’.¹⁶ HIVE appears to be continuing its work, even though there are no longer COVID-19 restrictions in the UK.

HMCTS facilitates a media stakeholder engagement group, the meetings of which are formally minuted; however, this group is not open to members who are not employed by traditional media organisations (news agencies, broadcasters and newspapers). Furthermore, participants reported that it was not thought to be as active as it was in previous years.

Impact of technological changes

The group discussed a variety of ways in which courts process had been affected by technological change, such as the introduction of remote and video hearings.

Human relationships

One participant, who had conducted research among court reporters, described how journalists perceived the loss of human contact and opportunities to network as a

¹⁵ Justice Committee, ‘Oral Evidence: The Work of the Lord Chief Justice, HC 868’ (2021)

<<https://committees.parliament.uk/oralevidence/3022/html>>

¹⁶ <https://courtprotectionhandbook.com/2020/04/22/hive-update-and-email-address/>

disadvantage, although remote hearings did mean that they could follow several hearings more easily.¹⁷

Privacy

One participant discussed the way in which digital technology could have privacy implications. For example, it made it easier for parties to share evidence openly online, which can be distressing for the victim in a case (for example). A question arises, therefore, in terms of what the court should control, and what restrictions should look like.

Another participant said there was inconsistencies in how data was shared: Single Justice Procedure listings (with initial and surname) temporarily appeared on the Government's website, although results of the outcome were not published.

In this context, we considered the issue of stigmatisation and rehabilitation for those involved in court processes: although erasure rights form part of the UK's data protection regime, there are difficulties in getting data removed online. It was pointed out that is done differently done in other countries where defendants are routinely anonymised (e.g. Germany).

Another perspective shared was that real names are an important part of reporting by media and civil society groups, to ensure that companies and powerful individuals are not 'untouchable'.

Access to justice and equality

Another impact of remote hearings was the defendants' ability to fully participate. It has been reported that imprisoned defendants may not be given the option to fully participate in a remote or hybrid hearing, with prisons staff controlling access, which may be based on logistical factors rather than legal principles. In one cited example, the defendants were not visible during the remote hearing and were taken for lunch during the hearing. In another example, the defendant was unable to attend in person because of logistical difficulties in returning them to their prison. Instead, they had to attend online.

Doing courts observation

Financing

Undertaking courts observation is expensive for media organisations and it is frequently observed that fewer journalists regularly attend court, than previously was the case, for reasons of financial resource. One participant attested to this, saying that when they began their career, it was common to see large numbers of journalists covering the courts and that over the years the number of court reporters has reduced. Much less was put into writing in advance at that time, so it was necessary to attend a hearing to find out what the case was about (and, in fact, made following the detail easier because the case had to be explained orally, without any expectation or requirement for pre-reading). Another participant described how there is much less money in the budget for journalists to observe than in the

¹⁷ Smith, T., Reardon, S., Keppel-Palmer, M., & Gross, B. (2022). ['An endlessly strange experience': Experiences of media reporting on criminal courts during the Covid-19 pandemic](https://uwe-repository.worktribe.com/output/9655419). University of the West of England. Available from <https://uwe-repository.worktribe.com/output/9655419>.

past. Similarly, it is expensive for civil society organisations to attend court though some are trying to fill the gap left by media organisations (and also reporting from a different perspective).

A participant from a civil society organisation said that they were unable to meet the costs for access to commercial legal databases and were therefore restricted to using the free services online, which provide some but not all case information.

Challenging restrictions

As well as financial resource, expertise and training is required to navigate the system effectively. One civil society observer described how they had to make the ‘same arguments over and over in every court’ as to why they were entitled to access documents such as witness statements. In order to successfully challenge restrictions, support was needed, sometimes from counsel acting pro bono. The same participant was also concerned that the mechanism for giving notice to the press and public about reporting restrictions was not clear, if it was not in the interests of any party in the case to intervene. They may be pre-notified by a judge but only because the judge knows they are interested, as a result of previous cases, which is not a reliable method. Another civil society participant said it was useful when individual judges contacted them – as surrogates for the public - but that it did not equate to notifying the public.

Types of observers

Typically, journalists have been understood as the main observers of a court and references to open justice often focus on the traditional media organisations. In the past few years, HMCTS has published a ‘reporters’ charter’, media guidance resources and agreed – with media industry representative groups – an updated protocol for specified justice data sharing. The Criminal Practice Directions state that while public access to certain information is provided:

‘...if the application is made by legal representatives instructed by the media, or by an accredited member of the media, who is able to produce in support of the application a valid Press Card, then there is a greater presumption in favour of providing the requested material. This approach respects the role of the press as a ‘public watchdog’ in a democratic society.’¹⁸

Further, the drafting of rules such as Practice Direction 51Y in the Civil Procedure Rules reflect an assumption that providing access to media reporters is sufficient to constitute, or is equivalent to, open justice.¹⁹

However, these roles were changing, according to the group. One participant talked about how ‘we are all publishers in the age of social media’ raising questions about what we do with the material we have access to, as well as what an observer has as a right, and what

¹⁸ <https://www.judiciary.uk/wp-content/uploads/2023/04/Criminal-Practice-Directions-2023-1.pdf>, at para 2.6.7.

¹⁹ See: The Transparency Project, ‘Written Evidence from Transparency Project (PCS0252)’ <<https://committees.parliament.uk/writtenevidence/35874/html/>>.

they have by permission. The key questions are: ‘access to what, by whom, and what can you do with it?’.

In some settings, the question of ‘who’ is more significant than in others. The family court is the obvious example of restricted access, where only certain types of observer are permitting to attend and report (with reporting further widened under an ongoing pilot). Here, observers must be journalists with press cards within the UK Press Card Authority scheme, or ‘legal bloggers’ fulfilling a narrow set of criteria (including legal qualification).²⁰

In most other courts, no such restriction applies. In practice, however, as reflected in the Criminal Practice Directions, ‘accredited’ journalists may get privileged access: they may receive advance information from those involved in the case, or given access to remote hearings when others are denied access. One civil society participant described this happening: they had been refused access to a document by a legal representative in a criminal case, when it was supplied to a journalist reporting the same case. This, they said, was problematic because their role was to provide ‘expert comment’ to the media but could not do so if they did not have access to the necessary information.

One participant described how journalists are the ‘in-group’: ‘Everything is fine if you’re in the in-group such as legacy media’. The local courts provide information to a local pool of reporters. This, the participant said, was not a principled approach to access. Another civil society participant rejected the idea that it was necessary to tell the court or the court administrator who they were, and their purpose in reporting.

In 2022 the House of Commons Justice Committee had recommended the creation of a new court user information group, involving members from NGO, academic and legal technology backgrounds but the Government rejected the need for this, in its response (referencing the existing media engagement group for members of traditional media organisations). It pledged, however, to run a consultation on open justice and publish a charter for citizens’, as well as reporters’ rights in this context. The Government’s consultation was launched in between our May and June meetings and will close on 7 September 2023 (see Appendix: Further Reading).

At our June meeting, we discussed methods of ‘accreditation’ and access in more detail. One participant observed the tendency to create a ‘two-tier’ system for information sharing which was problematic, given that non-journalists also played an important role in holding the justice system accountable. Additionally, participants were sceptical of the current ‘accreditation’ process – tied to the UK press card system - as a check on quality: it did not require any training on reporting restrictions. It was conceded by some participants, however, that there were practical issues to work out, such as whom to entrust with confidential information that could not be published or disseminated further.

Courtroom architecture

The group was interested in the layout of physical courtrooms, as well as digital architecture of virtual hearings. The point was made that, historically, the public had not been consulted

²⁰ <https://transparencyproject.org.uk/legalbloggers/>

on court design. One participant discussed their research on court design and the relationship to democracy: are courtrooms becoming progressively undemocratic in their design? For example, the defendant has been taken increasingly out of view since the 1970s. At some point, the press was given differential treatment with a press bench, and the public moved to the back of the court. Now, the introduction of glass panels in some courts may further screen or obscure what is happening (or reflect one's own image back).

It was possible to adopt an inclusive and participant-focussed design; for example, in Melbourne, the local community were involved in designing a community court complex and as a result, there were additional facilities included: a food kiosk, child-friendly areas and activities and various support services relating to, for example, drug use and homelessness.²¹

In terms of digital architecture, it was posited by one participant, that in some courts and tribunals it may be that video-enabled technology is the most appropriate method for a hearing. However, we need to be alert to how the experience of observation may change. The camera may focus on different aspects (prioritising the judge, for example) and block the view of other aspects.²²

Overall, design of the court architecture may impact public participation – including in the role of observer – in both digital and physical settings.

Public participation in the justice system

Part of our discussion related to the public's understanding and engagement with proceedings. Supportive or educative work undertaken by participants revealed the low-level knowledge some members of the public had, in terms of what they could report, or how they should behave in a hearing as a public participant.

There is, several participants suggested, a place for public participation in decision making. In particular, development of data governance mechanisms benefit from public involvement. One participant discussed how there has been some push-back against public involvement in the justice sector data governance, because of wariness about the public's capacity to engage.²³

This theme arose again in our discussion around public legal education: it may be that those leading justice programmes under-estimate the public's willingness and interest in the issue. For example, when designing explanatory videos for court users, it had been advised that the public would find them too long in duration, but in fact there was evidence of good engagement.

²¹ See: Halsey M and de Vel-Palumbo M, 'Courts as Empathic Spaces: Reflections on the Melbourne Neighbourhood Justice Centre' (2018) 27 Griffith Law Review 182.

²² For discussion of the 'stylistic modes' in courtroom broadcasting see Moore S, Clayton A and Murphy H, 'Seeing Justice Done: Courtroom Filming and the Deceptions of Transparency' (2021) 17 Crime, Media, Culture 127.

²³ <https://justicelab.org.uk/resource/justice-data-matters-2022-evaluation-report/>

Judicial culture

Although the behaviour of judges was not the focus of our discussion, we touched on some aspects relating to judicial attitudes and the public's ability to monitor their performance.

One participant pointed out that there was insufficient means of appraisal and external monitoring of judicial process, partly owing to (lack of) internal processes but also because of low public attendance.

It was pointed out that judges were often very supportive of open justice in principle (this was the case in the Court of Protection – perhaps because of its relatively recent move to more transparency) but that issues arose (as noted above) in practice.

This led to a discussion by the group around the function of observers: is it to provide feedback to the judges (as some observers had been requested to do by a judge)? It was noted that there is unclear conceptual framework in jurisprudence with regard to the role of an observer.

Systemic injustices

Racism

Noting a variety of potential systemic injustices, we paid particular attention to the issue of racism and race discrimination. Many of the recommendations of the Lammy Report on race and justice in 2017 had not been introduced and more recent research by the University of Manchester provided evidence of racial bias within the Judiciary.²⁴ Public presence in the courts and publication of data on cases could play an important part on exposing and monitoring racial bias. Racism could also manifest in the treatment of court observers, as described in a recent article by journalist Bernie Choudhury.²⁵

Governance issues

As noted above, routes of complaint for immediate or longer-term issues were not obvious. Although the Senior Data Governance Panel was put on a public footing earlier in 2023,²⁶ further transparency of governance mechanisms is needed, according to several participants.

As well as complaints of insufficient access, participants were, in some instances concerned about the courts supplying too much information – where there was a misunderstanding of requirements: sometimes observers were issued with confidential information of which they had no need: the 'leaky data' mentioned above. It was noted that there is a Judicial Panel on Data Protection,²⁷ though it has limited remit (given the large exemptions for judicial data processing in the Data Protection Act 2018) and its reports thus far have been brief.

²⁴ See Monteith K and others, 'Racial Bias and the Bench' (2022) <<https://documents.manchester.ac.uk/display.aspx?DocID=64125>>.

²⁵ Choudhury B, 'Our Job Is to Hold Power to Account, and We Must Challenge Authority – Respectfully of Course' (21 April 2023) <<https://www.easterneye.biz/our-job-is-to-hold-power-to-account-and-we-must-challenge-authority-respectfully-of-course/>>

²⁶ <https://www.gov.uk/government/news/data-governance-panel-formed-to-improve-use-of-court-and-tribunals-data>

²⁷ <https://www.judiciary.uk/about-the-judiciary/judiciary-and-data-protection-privacy-notice/>

Justice system resource

Participants frequently referred to inadequate resources within the system (as well as for their own work in external organisations), a product of under-investment in certain parts of the justice system. One participant explained how, 'you have got to recognise the system is broken and needs to have proper financing'.

Future action

The workshop convenor proposed the following action for discussion: to co-produce a set of working principles and terms of reference for a new Courts and Tribunals Observation and Access group that can be used to inform the work of Government (MOJ/HMCTS), the Judiciary, and other relevant bodies/parties. It was agreed that this was a useful proposal. Suggestions included:

- A new working group on open justice should have representation from different professional and civil society groups, including – potentially – journalists, a judge, and those with technical and data expertise
- The working group could have a core membership that would draft a court observers' charter / set of principles
- Work could be done to educate judges in the application of open justice
- We need more direct communication with the MOJ, HMCTS board and judges
- We could also engage with existing stakeholder groups
- We could share the results of informational enquiries (e.g. FOI requests) on how policy decisions have been made

Additionally, it was suggested that participants may wish to share information and potentially collaborate on a submission to the forthcoming (since published) Government consultation on open justice. We discussed that:

- A joint submission could include around ten 'key asks' - that show across different contexts that we agree on certain principles (which could be supplemented by individual submissions)
- 'Asks' might include listings to say whether they are public or not, have current and correct email address, timely responses to inquiries about cases

In terms of models of access, it was suggested that rather than the focus on the current hierarchies of access to accredited journalists, the court needs to assess who has access to this information through different levels of control. It was suggested that 'what you do with the data rather than who gets the data is important'.

At our June follow-up meeting we agreed to proceed with setting up an independent Courts and Tribunals Observers Network; the first priority would be agreeing working principles, a joint statement to the Ministry of Justice open justice consultation (closing 7 September 2023) and encouraging/publishing consultation submissions by civil society groups. In the first instance, this work would be covered by the Sheila Kitzinger Programme. In the longer term additional funding may be needed to cover the running costs (primarily administrative assistance).

All hyperlinks accurate / accessible in June 2023. For further details about this initiative and for expressions of interest in the Courts and Tribunals Observers' Network, please contact Dr Judith Townend: judith.townend@sussex.ac.uk.

*Suggested citation: Townend, J. and Prasad, A. (2023) *Courts and Tribunals Access and Observation Workshop Report*. Oxford: Sheila Kitzinger Programme, Green Templeton College, University of Oxford, pp. 1–15.*

Appendix

List of participants

Attended either or both meetings held in May and June 2023

1. Ms Penelope Gibbs, Director, Transform Justice
2. Dr Jo Hynes, Senior Researcher, Public Law Project
3. Mr Mark Hanna, Journalist and Author
4. Mr Paul Magrath, Head of Product Development and Content Management, Incorporated Council of Law Reporting for England & Wales
5. Ms Maeve McClenaghan, Investigations Correspondent, The Guardian
6. Mr Keir Monteith, Barrister KC and Recorder, Garden Court Chambers
7. Professor Linda Mulcahy, Director, Oxford Centre for Socio-Legal Studies, University of Oxford
8. Professor Celia Kitzinger, Co-Director, Open Justice Court of Protection Project
9. Ms Sarah Palin, Barrister, Doughty Street Chambers
10. Ms Aastha Prasad, Doctoral Student in Socio-Legal Studies, Centre for Socio-Legal Studies, University of Oxford (Rapporteur)
11. Dr Sally Reardon, Senior lecturer in journalism, University of the West of England, Bristol
12. Dr Helen Taylor, Senior Legal Researcher, Spotlight on Corruption
13. Dr Jeni Tennison, Executive Director, Connected by Data
14. Dr Judith Townend, Senior Lecturer in Media and Information Law, University of Sussex (Convenor)

Further reading

Reports/articles

- Chamberlain, P., Keppel-Palmer, M., Reardon, S., & Smith, T. (2021). It is criminal: The state of magistrates' court reporting in England and Wales. *Journalism*, 22(9), 2404-2420 <<https://doi.org/10.1177/1464884919868049>>
- Magrath P and Beresford G, 'Publication of Listed Judgments: Towards a New Benchmark of Digital Open Justice' < <https://www.iclr.co.uk/wp-content/uploads/media//2023/01/Publication-of-listed-judgments-final.pdf>>
- Bosland J and Townend J, 'Open Justice, Transparency and the Media: Representing the Public Interest in the Physical and Virtual Courtroom' (2018) 23 *Communications Law* 183 < <http://sro.sussex.ac.uk/id/eprint/80451/>>
- Byrom N, 'Digital Justice: HMCTS Data Strategy and Delivering Access to Justice' (The Legal Education Foundation 2019) <<https://research.thelegaleducationfoundation.org/blog/digital-justice-hmcts-data-strategy-and-delivering-access-to-justice>>
- Justice Committee, 'Open Justice: Court Reporting in the Digital Age: Fifth Report of Session 2022–23' (House of Commons Justice Committee 2022) HC 339 <<https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/339/report.html>>
- Keppel-Palmer, M., Smith, T., Reardon, S., & Gross, B. (2023). Broadcasting crown court sentencing - A tentative step forward for open justice?. *Entertainment Law*

Review, 34(1), 1-3. < <https://uwe-repository.worktribe.com/output/10423855/broadcasting-crown-court-sentencing-a-tentative-step-forward-for-open-justice>>

- Townend J, 'Towards a National Commitment to Open Justice Data in the United Kingdom' (Spotlight on Corruption / Open Government Network 2019) <<https://www.opengovernment.org.uk/wp-content/uploads/2019/10/Open-courts-final-October-2019-latest.pdf>>

Government resources

- 'HMCTS Staff Guidance on Supporting Media Access to Courts and Tribunals' (GOV.UK, 6 April 2023) <<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>>
- 'Open Justice: The Way Forward' (GOV.UK, 8 September 2023) <<https://www.gov.uk/government/consultations/open-justice-the-way-forward>> accessed 19 June 2023
- 'UK National Action Plan for Open Government 2021-2023' (GOV.UK) <<https://www.gov.uk/government/publications/uk-national-action-plan-for-open-government-2021-2023/uk-national-action-plan-for-open-government-2021-2023>>