

My name is Daniel Cloake and I run what The Times has described as “the investigative court reporting blog, Mouse in the Court.” I also tweet.

The blog is crowdfunded. We recently raised £3,000 to cover a fraud trial at Southwark Crown Court.

I am unable to call myself a reporter as I earn more than half my income from non-newsgathering activities.

Please find below my submissions in relation to the recent call for evidence concerning open justice.

I will be happy to provide further information upon request.

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

Open justice ties in with the ability for members of the public to understand how and why their country makes the decisions it does.

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

The actual process of justice is not widely understood by members of the public.

For example, look at how many people think gavels are still used in our courts.

Media reporting on apparently short sentences often fail to mention how judges hands are tied by the sentencing guidelines. This leads to unjustified criticism about judges and prevents attention being given to the body that sets those sentences.

I echo the comments made in this article *“Key legal principles are threatened by the growing rightwing attacks on our judiciary”*:

<https://www.theguardian.com/commentisfree/2023/aug/12/lefty-lawyers-enemies-of-people-upholding-law-a-crime>

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

We do not have open justice in this country. We have something worse – a system that purports to be open.

There are, in my observation, two levels to open justice.

The first is perhaps wrongly described as the touristy level. That is to say members of the public visiting the Royal Courts of Justice to see what’s going on.

They won’t have been given any encouragement to visit the court rooms there. The website <https://www.find-court-tribunal.service.gov.uk/courts/royal-courts-of-justice> does not actually say the courtroom are open to the public.

There is a link to a page entitled “What to expect coming to a court or tribunal” but this doesn’t cover attendance by non-parties. That page states *“You need to arrive 30 minutes before the time*

*stated in your hearing letter. Do not arrive earlier as you may be turned away, particularly during busy times.”* This is off-putting for non-parties.

There is no link to the court list for the RCJ - <https://www.gov.uk/government/publications/royal-courts-of-justice-cause-list/royal-courts-of-justice-daily-cause-list>

This court list, one of the few that is publicly accessible without logging into courtserve, does not say if any of the hearings are in public.

It is expected that “*Applications in Court as in Chambers*” is known to mean that the hearing is in private.

There is no sign outside the court rooms explaining that the public are allowed in. They enter with the fear that the judge will shout at them for disturbing a private hearing.

Once in the courtroom the public will often not understand what is going on as routinely documents such as skeleton arguments are not handed out or made available on request.

They’ll leave confused about whether they have seen justice in action. But, this passes as open justice.

Specifically, about the RCJ I’ve written about “The RCJ’s secret Crown Courts”. I adopt what I’ve written here:

<https://mouseinthecourtroom.wordpress.com/2023/01/18/the-rcjs-secret-crown-courts/>

‘Touristy’ access to court buildings doesn’t always go smoothly. I’ve written about an experience at Barnet County Court where staff initially turned me away because I wasn’t a party.

<https://mouseinthecourtroom.wordpress.com/2022/10/26/entry-denied-at-barnet-civil-justice-centre/>

The second level of open justice is one where members of the public, which included journalists, have a particular focus on a certain issue or a certain party.

The courts also fail in this regard.

For example. I might be concerned about drug dealing in my local park. There is no way for me to find out which cases at my local court are specific to drug offences. Media reporting of court cases is practical non-existent, especially for those which are run of the mill and do not involve commercially rewarding content like celebrities.

My blog covers inter alia the niche area of crowd-funded investment fraud. This means I focus on say a specific claimant and follow the case from start to finish.

There is no publicly accessible registry of claims filed at county court level which makes it difficult to know that some claims even exist.

When a claim is listed it’s often done on courtserve at about 16.30 the night before. If the hearing is remote this presents challenges for getting access to the link. If it is in person this present difficulty for planning to attend court.

In some cases a hearing I know is going ahead has not been listed.

This has occurred several times.

Eg at the Rolls Building in London. A part-time judge communicated directly with the parties to hand down a judgment. The court was unaware that the judgment had even been made and so the hearing was not listed.

I wrote about it here:

<https://mouseinthecourtroom.wordpress.com/2021/09/22/the-secret-judgment-hand-down/>

It has happened in the court of protection:

<https://mouseinthecourtroom.wordpress.com/2023/05/01/court-of-protection-listing-mishap-leaves-observers-in-dark/>

It has happened in Manchester:

<https://mouseinthecourtroom.wordpress.com/2023/02/03/a-140-day-fight-for-a-judgment/>

And it happens repeatedly in Birmingham:

<https://mouseinthecourtroom.wordpress.com/2021/07/28/the-hidden-hearing/>

There are three other instances in Birmingham which I haven't written about.

One memorable instance was where a remote hearing hadn't been listed. Attempts to contact the court on the morning of the hearing did not result in a connection. Attempts prior to that to request hearings dates had been unsuccessful.

I complained (Complaint 15297797) and I was told on 6/5/21 that I would receive a copy of the transcript.

I'm not sure exactly what happened but after a significant number of e-mails and telephone calls, on 8<sup>th</sup> March 2023 I was told:

*"Having looked into this complaint and the previous complaint which Mr Farley responded to I can see that an attempt was made to get a transcript but regrettably after investigation into this matter the audio from the Teams hearing before HHJ Cooke was not saved by the Clerk who ran the hearing that day. As a result we are not able to have a transcript produced in this case."*

Incompetence? A cover-up? No idea. All I know is that what happened in that hearing is a secret and it somehow took 22 months to tell me that the recording had never existed.

The Rolls Building in London, which hears high value claims, has issues with its signage.

Eg on 7<sup>th</sup> March 2022 I tweeted:

<https://twitter.com/MouseInTheCourt/status/1500773713368825858?s=20>

*"THIS COURT IS NOT SITTING" says sign outside Court 12 at the Rolls building. A judgment in a £2.3m fraud case is being handed down inside*

*Let's hope the sign doesn't put anyone off from going in.*

On 12<sup>th</sup> May 2022 I tweeted:

<https://twitter.com/MouseInTheCourt/status/1524738245564813312?s=20>

*"THIS COURT IS NOT SITTING" reads sign outside hearing room.*

*The case has moved rooms but the signs haven't been updated.*

The courts will pretend that we have open justice. Judges will write perfectly polished prose proclaiming that open justice "... it is not merely of some importance but is of fundamental importance...".

The reality is that we don't have open justice, we pretend that we do, but we don't.

I don't attend court that often. But the difficulty I have had across a wide range of courts and jurisdictions when trying to follow specific cases does not convince me we have open justice.

**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?**

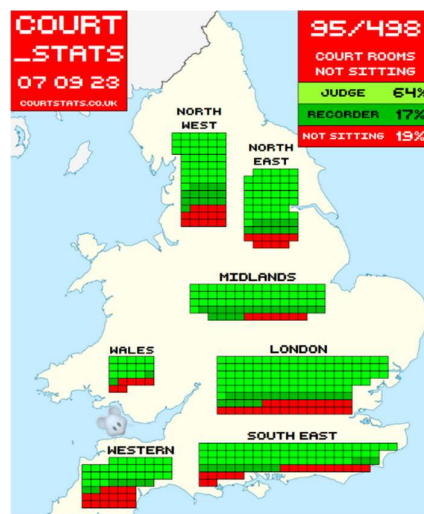
Have a dedicated e-mail address for someone responsible for open justice policy.

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

Access to hearings – both by promoting access to court rooms and the provision of information.

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

Yes. I run the service <http://courtstats.co.uk/> which tweets a daily image of the utilisation of the crown court rooms in England and Wales.



In August 2023 I received tweet impressions of 641K.

**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)?**

The lists should be published in accordance with the court rules.

Eg criminal procedure rule 5.8 “Supply to the public, including reporters, of information about cases” gives a list of information that the public are entitled to receive.

<https://www.legislation.gov.uk/ukxi/2020/759/rule/5.8/made>

It is entirely artificial for HMCTS to create a separate category of ‘professional user’, and it is artificial, perhaps unlawful, for HMCTS to restrict information to non-professional users that is by right available to them.

With the exception of family and the youth courts there is no distinction in law between members of the media and members of the public.

CrimPR 5.8 included reporters in the wider class of members of the public ie “Supply to the public, including reporters”. Likewise the civil procedure rules, 5.4c, talks about supply of information to non-parties.

In response to the justice committee report I wrote about what I say are problems with the press card system:

<https://mouseinthecourtroom.wordpress.com/2022/11/02/justice-committee-report-a-blogger-responds/>

*“This criteria applies just as much to truck drivers who command outside broadcast vehicles as to diligent well trained investigative journalists. The warm glow of reassurance that a press card holder is somehow vetted or verified is misplaced.*

*The press card system, in my opinion, needs reform. No other accreditation system relies on a share of earnings to justify membership”.*

The courts have jurisdiction to anonymise parties and other information and this should be reflected in the information published on the list.

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

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**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?**

I run the service <http://courtstats.co.uk/> which tweets a daily image of the utilisation of the crown court rooms in England and Wales.

I would like to expand this to county courts and the magistrates’ courts but the lists currently published are of such a variety of formats that this makes it very difficult to analyse the underlying data.

**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?**

There is no justification for services or feature that are for the sole use of accredited members of the media.

This is an affront to the article 10 rights of the public at large.

Information that is of right accessible to the public should be made available to the public.

**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?**

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

Yes, but the information is often incomplete.

There is no mention of whether the buildings are open to the public. There is no mention of how one might access hearing lists.

Often phone numbers are for central switchboard which is not obvious.

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

Include information listed in 12.

**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?**

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

Yes, in accordance with the limitations of the overriding objective HMCTS and the courts are required to actively promote the article 10 rights of the public at large.

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

Except in cases where bandwidth or administrative resources are an issue there should be no distinction between the public and public who have press cards because they earn more than half their income from news gathering activities.

**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?**

Open court is open court. So if there is the ability to live stream then this should be facilitated. There is a burden in facilitating access but also a burden in allowing physical access to court rooms.

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

The existing rules are sufficient in my opinion.

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

I don't think there's demand for dedicated premises.

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

The link should be published on the list. It should be as easy to access a court hearing as to remotely view a select committee hearing in parliament.

There is no evidence that the court of appeal and supreme court live streaming services have been abused.

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

That an accurate experience of the court can be obtained without the information passing through the filter of a reporter's editorial constraints. Eg six hours of court proceedings are often distilled down to 300 words or less.

Or only the first day of the hearing is covered.

**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?**

There should be the ability to access a selection of cases from each jurisdiction. What makes a good proceeding for the media is different to the public.

For instance, I know several people who have had issues getting payment for invoices. The ability for the public to 'tune in' to a relatively mundane and straightforward case to see how the courts deal with such a complaint would be very beneficial. These sorts of cases are actively avoided by the press as they are not commercially rewarding.

A cleaner on minimum wage would benefit from being able to watch an unfair dismissal claim at the employment tribunal – again unlikely to give a commercial return to the media but important for the public.

Courts have jurisdiction to impose restrictions on open justice and judges are best placed to hear argument from the parties on this. I don't think there needs to be a rule change.

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

The same risks that are inherent in physically attending a court room.

The same risks that are inherent in broadcasting debates in parliament.

**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?**

I think the absolute prohibition should be removed and discretion should be placed in the hands of the judge who can hear arguments accordingly.

The ability for a barrister to make a recording of an extempore judgment to assist in producing an accurate record is one I wouldn't see a problem with.

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

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

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

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**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?**

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**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.**

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**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.**

For each case the parties' skeleton arguments and the resultant court order should be made available.

**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.**

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**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?**

The opposite, having an issue clearly set out is of great assistance to the public in understanding how the court has reached its decision.

**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).**

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

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**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.**

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**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.**

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**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, because I covered the substantive hearing. I had been told by the employment tribunal that the decision had been handed to the parties, but they couldn't tell me when the judgment would be available online. There was a delay of several weeks I recall.

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

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

The identity of the parties. This is more than just a name. Eg an age and location. A published judgment saying Tom Smith has been convicted of theft runs the risk of libelling all Tom Smiths.

**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.**

Well they are available on request by means of a transcript request. Crown court and higher should be published yes.

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

To understand the issues in the case and to understand the current state of the litigation.

**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?**

The application should be made to the parties first then made to the court. Requests are often made on the day of the hearing as you often only know that the hearing is going ahead the evening before.

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

I speak to the clerk in person on the day or email the generic email address – although I recall with Manchester B&PC there was a 5 week turn around for emails.

County Court at central London typically takes months to reply if at all.

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

Nope

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

The main one is the email request just being ignored. Then being told about incorrect cost.

A big issue is even knowing that the documents exist in the first place.

Records on ce-file are 'locked' until the defendant acknowledges services – often the court fails to unlock the record when this is done so years of litigation can go past effectively in secret. I tweeted one example here –

<https://twitter.com/MouseInTheCourt/status/1611346211218378752?s=20>

Nine court orders had been made since the last public hearing.

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

By having a dedicated document listing the rules for all non-party members. It was a mistake to make the reporters charter for just reporters when the rules are the same for both.

I read *"In our response to the JSC's inquiry into open justice, we committed to publish a charter that summarises the existing rules that facilitate public access to court and tribunal hearings and information. We will publish this charter later in 2023."*

This must, in my opinion, go for consultation first.

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

This is a very complicated question which has years of case law behind it – but briefly anything submitted to the court.

Eg para 38 of *Cape v Dring*: *"[i]n 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"*.

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

By having systems and processes in place that acknowledge that these documents exist and by providing information to staff to give them the tools to facilitate such requests.

Eg I asked the MOJ whether guidance was given to staff in dealing with requests in the civil jurisdiction and was told they didn't.

<https://www.whatdotheyknow.com/request/how-court-staff-deal-with-requests#incoming-1669370>

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

No, a non-party is a non-party.

**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?**

By providing a system which allows access. If the public are allowed access then there shouldn't be the need for staff intervention.

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

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

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

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

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**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?**

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**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.**

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**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?**

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**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.**

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**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?**

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

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

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**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.**

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

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

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**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.?**