

Evidence from Transform Justice on open justice

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This evidence focusses on criminal courts, particularly magistrates' courts. Transform Justice is a charity focussing on research and advocacy. It has published reports and responses to inquiries and consultations on many aspects of the criminal justice system including the single justice procedure, video and online justice, unrepresented defendants, and the use of remand. Our evidence focusses on criminal justice, particularly magistrates' courts dealing with criminal cases. We have set out two general points before proceeding to answer some of the consultation questions.

Reporting on courts

There is an assumption underlying a lot of official communication about reporting from courts that accredited media are the only people who will and should be reporting from court. Non accredited media and the public are an afterthought. But there are and will continue to be very few accredited journalists in the courts and far more non accredited journalists, bloggers and members of the public who would like to report. So, all reporting guidance should be targeted to and inclusive of observers who are not accredited media.

The justification for giving accredited media special access to hearings and information is not spelled out. The media play an important role in reporting what happens in court, but most courts are not reported on by accredited media ([academics](#) found only one case attended by a reporter from local media in a whole week of cases in one magistrates' court) and it is not clear why accredited media should have privileged access in a world of citizen reporting. Much reporting on courts is now communicated via social media and podcasts by people who do not have, and in most contexts do not need, official media accreditation (which costs a significant sum to obtain). The courts are an outlier. We can think of no other context apart from major political events and certain summits where accredited journalists have such privileged access.

It is important to have accredited journalists in the courts and to support greater scrutiny of the courts by national and local media, but many good journalists are not accredited and anyone who visits courts can scrutinise and report on what they have seen there.

The current system of focussing on the attendance and reporting of accredited journalists creates two problems:

- 1) There is insufficiently clear guidance available for people who are not accredited journalists on what they can say, do, write and on what court documents they can access.
- 2) Academics and civil society advocates are denied default access to information and documents which would help them study and scrutinise the courts – both the rules on reporting and access to information divide accredited media from others.

Public access to courts

Physical or remote access to courts is the minimum requirement for access to courts for the public; (eg the lift is broken at Croydon magistrates' court so anyone with mobility issues cannot access some of the courts). Our own experience and that of the CourtWatch London <https://www.transformjustice.org.uk/focus-areas/courtwatch-london/> volunteers we have recruited is that understanding what is happening in courts is a much higher hurdle than simply getting into a hearing. We have given court-watchers a half day of training (funded by grant-making trusts) and sent them information (<https://www.transformjustice.org.uk/wp-content/uploads/2023/07/CourtWatch-London-volunteer-guidance.pdf>) about the criminal justice system and how to find out what hearings are happening. But court-watchers have still found it really difficult to understand what listed hearings are about, whether from the lists or from the hearing itself. Court lists are not always complete, for example some courtrooms are not listed in the main waiting area. To see the lists of hearings for that court, members of the public have to go to the door of that courtroom, sometimes on another floor. Even then, printed listings outside court-rooms are often inaccurate and have scant information.

The audibility in public galleries is frequently poor, partly because some are separated from the court by plexiglass (creating a secure dock for public observers), partly because it is not a priority for court actors to make proceedings audible for public observers. No-one checks whether people in the public gallery can hear, and advocates usually

have their back to the public gallery while speaking. Even if they can hear proceedings, it is difficult for public observers to understand what is happening in magistrates' courts. A lot of legal jargon is used, and no-one is given responsibility to explain in layman's language what the case is about and what stage it has got to. So even trained court-watchers find it hard to understand what the hearing is about.

Restrictions on photography, use of laptops and mobile phones seem arcane and are a barrier to scrutiny. We see no reason why people should not use laptops and mobile phones (on silent) in court-rooms given there are very strict sanctions for contravening reporting restrictions if any are breached. Inability to use such devices is a significant barrier to researchers, non-accredited journalists and observers taking notes on and reporting on the courts. Given that full proceedings are not officially recorded and transcribed, anyone who wishes to record what happens in court is forced to use hand-written notes. We understand the bar on photography within courts, but do not understand the rationale for the bar on photographing the public areas outside the courtroom. Evidence on the disproportionality of some court security processes and of the disrepair of courts is censored through the prohibition on photography.

Open justice relies on people knowing they can observe courts, having easy access to information about them and feeling welcome in them. The volunteers recruited for our CourtWatch programme have a lot of preparation and support – a half day in-person course, access to the Transform Justice team and written information. Even so they have felt intimidated going into their local magistrates' court. Truly open justice would facilitate people to access courts and hearings without having to ask people for information and without being asked why they are there. Many of our court-watchers have been asked by court staff why they are observing. This is done in a friendly way but none-the-less should not be done. Someone watching the court could be there for any number of reasons and may feel they are being asked to justify themselves by staff. This is potentially intimidating.

It is not immediately clear in some courts where the public gallery is. Public observers should not have to ask staff where they can sit. Signage should be clear. We are concerned also that some public galleries appear to have been designed like secure docks – to separate the public from the courtroom. Coralling the public in a "dock" suggests they are seen as dangerous and to be separated. All judges and court staff should try going into courts incognito to understand the experience of public observers and to help identify how improvements could be made. Though this submission focusses on magistrates' courts, the greatest barriers to open justice in the criminal courts were observed by the Director of Transform Justice at the Old Bailey
<https://twitter.com/PenelopeGibbs2/status/1520010570304528384>.

Perhaps the greatest symbol of a failure to welcome public observers is the lack of public wi-fi in courts. When even the Ministry of Justice has a public wi-fi system, it seems incredible that wi-fi is not available in the courts to defendants, witnesses and public observers. It is available to all court staff, all practitioners and accredited media. The exclusion of the public from court wi-fi discriminates against those of low means (who do not have a generous data contract) and signals that parties and observers are of significantly lower priority to the court system. Access to court wi-fi would help observers access information while in the waiting areas.

Genuine open justice will only be achieved when people are supported to acquire and are given a better understanding of how courts work and what goes on there. This would have an extra benefit of helping those who are active participants in court hearings to understand more of what they are about. The following would help make magistrates' court hearings more understandable:

1. Better online information about visiting a magistrates' court and about the basics of the criminal justice system, including the purpose of the main hearings.
2. Better, equality compliant, information inside courts on the same issues including in court lists.
3. Clearer oral explanations in court of what is happening particularly from the DJ/magistrates and from the legal adviser.
4. Relaxation on strictures not to use a mobile phone or laptop to take notes in court. Many people find it easier to take notes online than in longhand.

Answers to specific questions in the call for evidence

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

It is helpful for court lists to be published online but the way they are currently published is not ideal. Court lists should be published by the government not by a private provider such as Courtserve and there should be no obligation to register to gain access to the online court lists currently available to the public. Registering is a barrier to use and gives the provider access to private identity data of those registering. Courtserve does not present listings in a clear and easily navigable way. Public court listings should be open data published by the government, as is the case for SJP prosecutions (though the content of the latter needs reform).

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)?

These published lists do not need to identify all parties, but they should give more detail about the case – what body or who is prosecuting, what is the offence and what is the purpose of the hearing.

All court lists displayed in court should be available in one place as well as outside each court and all lists should be kept up to date. A court-watcher had the good idea that courts could create an electronic board which lists all cases outside each court and in the main waiting area. The same information could be made available to observers online. Even if lists remain printed not online, it should be possible for public observers to make a copy of the court list for the court they are observing. Currently the list is displayed outside the court but not inside the court. Public observers are not allowed to photograph the list outside so the information on it is of limited use when they are in the public gallery.

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

Listings should be clear about reporting restrictions and what they mean for members of the public. As well as being written clearly on court lists, reporting restrictions should also be clearly read out in the court, in a way that anyone could understand. If reporting restrictions are active in any case, they should be explained clearly by the judge both at the beginning and end of the hearing (in case anyone came in mid-way through). Alternatively or in addition, court staff could give those in the public gallery written information about particular reporting restrictions.

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?

No, but we would welcome the development of open free data services which enhance public understanding of and access to courts.

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?

Full “media” lists should not be exclusively available to accredited media personnel and organisations. Much high-quality reporting is done by individuals who are not accredited journalists using non-traditional media platforms. In addition, many civil society advocates and academics would benefit from access to full court lists – to aid their evidence gathering and research.

In our CourtWatch project, we have been disadvantaged by lack of access to full court lists. We do not have enough information from public lists to direct court-watchers to observe specific cases and we cannot check that the information supplied by the court-watcher is correct – frequently it is difficult for the court-watcher to hear in court and they may inadvertently get some facts wrong.

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?

See above for usage. We would like HMCTS to allow non accredited journalists, civil society employees and academics default access to full court lists – they could fill in a simple online form giving reasons for wanting access.

However this access should be automatic on filling in the form, not subject to an active screening process. We do not think there should be any charge for access to full court lists.

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

Yes

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

The FaCT service is good as far as it goes but could go much further in terms of helping people find the right court – a filter could be added for kind of court required (criminal, family etc) and on the court page there could be a link to public court listings and to information about what to expect from that kind of court, whether all hearings are open and so on.

Questions on 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?

The benefits of allowing for remote observation of courts are great. They would allow more people (including researchers and civil society advocates) to access court hearings and thus enable justice to “be seen to be done”. The Court of Protection observation project shows that the risks of allowing for remote observation can be minimised and are, in any case, small. It is not clear why there are much greater barriers to accessing court hearings remotely than in person. The risk of the hearing being recorded is the same whether the person is in the public gallery of the court or watching at home. Anyone in the public gallery in person could record proceedings covertly. The law of contempt is available to deal with anyone who does transgress.

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

Yes, though the rules on recording and reporting need to be made clear to anyone observing so they don’t inadvertently commit contempt of court. The process for accessing remote links needs to be very simple.

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

Yes.

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?

All hearings that are currently open to in-person observers should also be open to remote observation.

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

We support restrictions on the reporting of court cases of all complainants and defendants aged under 18. We would also support statutory anonymity for all those convicted before the age of 18, with that anonymity continuing unless there is significant and relevant further offending. The public interest of allowing convicted children privacy and supporting their long-term rehabilitation in this case overrides the public interest in open justice.

We would advocate extending current restrictions on access to the youth court to any case where the defendant is a child ie to Crown Court cases where children are defendants.

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

We question the need for specific buildings for livestreaming. If court buildings are open for in person observation and remote access is also available, what is the need for livestreaming in specific buildings? This option was floated before remote access from anywhere was available.

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

The process for gaining access should be made much easier. Good clear listings should inform people what is available to view. People should simply be able to click on a link and fill in a simple online form to request access. In response an automatic notice should be sent out with details of the hearing and of the rules governing recording and reporting. Some information about the case should also be available, for example a case summary.

We are not convinced there should be a distinction between remote and in person access to court hearings. Currently remote access is subject to judicial discretion. The criteria used by judges to determine access are not clear and there appears to be no “appeal process” for refusal of access. We are not clear why access to remote hearings should have different access criteria to access to in person hearings. As already stated, anyone who contravenes reporting restrictions can be subject to prosecution whether they are accessing a hearing remotely or in person.

Penelope Gibbs, Director of Transform Justice, wanted to scrutinise the activities of the magistrates’ courts at the height of the first Covid lockdown when people were advised not to travel. She applied to access hearings remotely and found the process slow, bureaucratic and inconsistent. She was given access to some London courts but refused access to courts elsewhere in the country. Information on how to gain remote access was very difficult to obtain and there was no means of challenging refusal.

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

The SJP is a closed court process with little transparency. Currently court lists for SJP cases are published daily online but the lists posted do not represent all SJP cases dealt with that day, and it is not made clear what kind of cases are missing. There is also no detail on plea entered, the prosecution case and evidence, mitigation submitted by defendant – information which would be available if the case was in open court. The government should publish full court lists of SJP cases online with details of plea and with details of sanctions decided for those convicted including the amount of fines and costs awarded to the prosecution. Currently the only way of finding out the result of an individual case is to ring a phone number on the HMCTS website. In each phone call, only one case outcome can be requested. 100 case outcomes would require 100 phone calls.

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

Some suggestions above. In addition, it would improve public understanding of the single justice procedure if HMCTS created a website about it both for the public and for those receiving SJP notices. This site would inform people about the SJP and give online support on how to fill in the form and on the implications of various options. It would show examples of the different prosecution forms online.

Members of the public have no access to case papers and thus to see what kind of mitigation is given by defendants. A recent investigation by Tristan Kirk of the Evening Standard suggested that case papers should be more available for scrutiny <https://twitter.com/PenelopeGibbs2/status/1690994827565891585>, to enhance public knowledge and understanding of how the process is actually managed

The media and those who specifically request permission should have access to the actual forms submitted and to the prosecution evidence – this would achieve true case transparency.

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

As an observer of proceedings, we might seek access to court documents in the magistrates’ courts (criminal) to understand the cases observed better and to double check details where the observer had merely heard them orally. Academics and civil society staff may need access to documents to support research.

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 rules governing access to documents by non-accredited journalists in the magistrates' court are not clear.

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

The magistrates' court is not a court of record despite dealing with the majority of criminal cases. This means no recordings or transcripts of hearings are available. Without this evidence miscarriages of justice are difficult to overturn and academics cannot research magistrates' court proceedings without observing every case.

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

The full court lists should be accessible to non-parties who apply for permission to see them. There is no information in full court lists that is not made available to the court during the hearing. Thus, there does not appear to be a rationale for access to full court lists to be restricted to accredited journalists.

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

Record magistrates' court proceedings and make the recordings and/or transcripts available by application.

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

Accredited media should not be privileged over researchers and civil society in response to requests. All may have equally valid reasons for making requests. All requesters need to justify their request and to agree to abide by rules on what can be reported.

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.

Why would a member of the public know about contempt of court, let alone understand its implications? There is very little teaching in schools or online about the justice system (apart from the excellent law for life <https://www.advicenow.org.uk/lawforlife>). If you google contempt of court there is this government webpage <https://www.gov.uk/contempt-of-court> but it gives no details or scenarios. And you would only get to that page if you had some idea what contempt of court is.

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?

Unfortunately, the government are not very successful in making the public aware of new justice developments. Public understanding of the existing system is low so the public does not have the building blocks to understand new developments. Also, there is nowhere online where the public might find a detailed, accessible explanation of a new development.

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

In the case of the criminal justice system there is little understanding of the whole process from alleged incident to resolution, including the human rights of defendants and alleged victims. People do not understand the role of the magistrates' court, nor of the participants in the process. They do not understand what a plea is, nor remand/bail, nor how sentencing is done. Legal language and jargon obscures understanding.

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

There is not nearly enough information to help the public navigate the justice system. In the case of the criminal justice system there is hardly any public information about what happens in the magistrates' court. A good website on magistrates' court processes would help both public observers, defendants and witnesses.

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.

There is a role for digital tech in supporting people to understand and resolve their legal disputes, but all tech initiatives need to be replicated in a non-digital form to ensure those who are digitally excluded are not excluded from the justice system.

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

The government is one of the organisations best placed to increase knowledge of the justice system since it directly controls the justice system itself, oversees the education system and has both central and local links. The government should set the strategy and policy for increasing knowledge of the justice system, but do this as part of an open policy making process involving the judiciary, the relevant unions, media, academia, civil society and any other interested parties. The government should provide funding and partner with other organisations, voluntary and statutory, to implement the knowledge dissemination strategy.

Appendix one: articles relating to open justice

<https://www.transformjustice.org.uk/news-insight/seen-but-not-heard-is-justice-open-if-you-cant-hear-it/>

<https://www.transformjustice.org.uk/news-insight/why-i-decided-to-become-a-courtwatcher/>

<https://www.transformjustice.org.uk/news-insight/eyes-on-the-court-courtwatch-comes-to-london/>

<https://www.transformjustice.org.uk/news-insight/swipe-right-to-plead-guilty/>

<https://www.transformjustice.org.uk/news-insight/is-closed-justice-a-price-worth-paying-to-keep-courts-running/>

<https://www.transformjustice.org.uk/news-insight/court-hearings-on-demand-a-triumph-for-openness-or-an-invasion-of-privacy/>

<https://www.transformjustice.org.uk/news-insight/i-could-see-they-believed-me-the-importance-of-feeling-listened-to-in-court/>

<https://www.transformjustice.org.uk/news-insight/justice-must-not-just-be-done-but-be-seen-to-be-done/>

Podcast <https://www.transformjustice.org.uk/news-insight/ep19-behind-close-doors-is-justice-seen-to-be-done/>

Appendix two: CourtWatch observations

Transform Justice has been running a CourtWatch programme (<https://www.transformjustice.org.uk/focus-areas/courtwatch-london/>) which has openly recruited volunteers to observe proceedings in three London magistrates' courts. Volunteers started court-watching at the end of July. Each has filled in an online form about ease of access to the court and to relevant information.

Audibility

Below are quotes from court-watcher reports relating to accessibility and openness of the magistrates' courts they visited. Most relate to problems with hearing what is happening.

"The public gallery is screened off behind thick perspex or glass, which makes normal proceedings inaudible. The speaker which should have conveyed sound was switched off or was otherwise out of order"

"The defendant was spoken to quite curtly by the judge and judge's clerk and told to repeat himself a number of times when stating his address/DOB etc, even though he was speaking clearly and I could hear him."

"It was almost impossible to hear anything that the CPS solicitor said. However, more of what the defence lawyer said could be heard, as he was standing at a 45' angle to the public gallery."

"Much of what the defendant and the solicitors said was inaudible and unintelligible."

"Again, I could not hear everything from the public gallery, nor see the defendant."

"During a hearing the prosecution shared a video clip. The clip was barely audible on the court's TVs, resulting in the judge being given the prosecution's laptop for her to listen extra closely herself."

"The court list was sometimes inaccurate and therefore caused confusion"

Questions on court accessibility

Court-watchers were also asked to respond to a series of statements about the accessibility of the magistrates' court during their visit. Below is a summary of the 48 responses received:

Is the court accessible for everybody with wheelchair access clearly signposted

- 22 said yes
- 4 said no
- 5 said sometimes
- 17 said N/A not sure

Security screenings are carried out respectfully

- 37 said yes
- 9 said no
- 1 said sometimes
- 1 N/A not sure

Timings for court cases are clearly displayed and/or explained to court users

- 22 said yes
- 10 said no
- 12 said sometimes
- 4 said N/A not sure

Courtroom rules are clearly displayed and communicated to court users

- 36 said yes
- 4 said no

- 2 said sometimes
- 6 said N/A not sure

The information help desk provided clear and useful information

- 19 said yes
- 6 said no
- 3 said sometimes
- 19 said N/A not sure
- 1 left blank

Public facilities in the building (including toilets and waiting areas) are well maintained and clean

- 34 said yes
- 4 said no
- 5 said sometimes
- 5 said N/A not sure

Delays to hearings are explained clearly to court users

- 9 said yes
- 21 said no
- 10 said sometimes
- 8 said N/A not sure

Court proceedings can be heard clearly from the public gallery

- 10 said yes
- 21 said no
- 13 said sometimes
- 4 said N/A not sure

Where you asked why you were in court

- 25 said yes
- 22 said no
- 1 blank

Any courtroom technology (e.g. video links) work properly and efficiently

- 7 said yes
- 6 said no
- 28 said N/A not sure
- 2 blanks

Were you asked who you were there with?

- 9 said yes
- 39 said no

Were you asked if you needed any assistance?

- 9 said yes
- 39 said no

Were you asked to leave any court rooms?

- 9 said yes
- 38 said no
- 1 blank