



Transparency
Project

OPEN JUSTICE CONSULTATION RESPONSE OF THE TRANSPARENCY PROJECT

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If you would like us to acknowledge receipt of your response, please tick this box: **YES**

ABOUT THE TRANSPARENCY PROJECT

- 1) The Transparency Project is a registered educational charity operating in England & Wales, whose charitable objects are:
 - i) To advance the education of the public in the subject of family law and its administration, including the family justice system in England and Wales and the work of the family courts, in particular but not exclusively through the provision of balanced, accurate and accessible information about the work of family courts and the facilitating of public discussions and debates which encompass a range of viewpoints.
 - ii) To promote the sound administration and development of the law in England and Wales, in particular, family law, by encouraging and contributing to the transparency of processes in the family justice system, contributing to public legal education concerning family law and matters of family justice, enhancing access to justice in matters of family law and by such other means as the trustees may determine.

- 2) In short, our objectives are to make family justice clearer.

- 3) The Project has four trustees: Lucy Reed KC (practising barrister), Dr Julie Doughty (lecturer Cardiff University), Polly Morgan (solicitor, associate law Professor, UEA) and Paul Magrath (Incorporated Council of Law Reporting). The Project has a core group of volunteers, including family, Court of Protection and media lawyers and academics, and journalists (Louise Tickle, Dr Judith Townend, Malvika Jaganmohan, Alice Twaite, Barbara Rich, Jack Harrison). The Project is also supported by a 'pool' of occasional writers (mainly practising lawyers) and guest writers from a range of disciplines and viewpoints. Our patron, His Honour Clifford Bellamy, is a retired Circuit Judge. Between us we have written two important books about transparency in the Family Court¹ and have been involved as journalist, counsel, judge or legal blogger in a number of family court cases with an important open justice element.

¹ The 'Secret' Family Court - Fact or Fiction (HH Clifford Bellamy, Bath Publishing, 2020) and Transparency in the Family Court - Publicity and Privacy in Practice (Doughty, Reed, Magrath, Bloomsbury Professional Press, 2018 - 2nd Edition forthcoming).

- 4) The Project's core work is the publication of blog posts that furthers our charitable objectives, by explaining judgments or reports in the mainstream media, by correcting inaccurate or confused reporting by journalists, and by supporting more accurate and balanced reporting in future. We have pioneered and championed 'legal blogging' in the Family Courts as an alternative and complement to mainstream media reporting, and having submitted written and oral evidence to the President of the Family Division's Transparency Review in 2020, several of our members have been actively involved in the work of the subsequent Transparency Implementation Group. Individually and as a collective, we have worked to push forward the reforms that came out of the Review through our members' involvement in TIG, our scrutiny of its process and progress, and by making use of the reforms as they have begun to be piloted (primarily the current Reporting Pilot). We continue to press for more practical and cultural change.

- 5) In addition to the above activities, the Project has previously published a series of Plain English Guidance Notes on poorly understood or problematic areas or issues, runs public debates and events, and its members are regularly invited to speak about transparency issues and legal blogging, and to train family justice professionals (lawyers, judges, social workers). Our most recent publication is 'What to do if a reporter attends (or wants to attend) your hearing', a guidance note for Judges and professionals, which was endorsed by the Transparency Implementation Group FRC Subgroup earlier this year².

- 6) In line with our charitable objectives, experience and expertise, our response to this consultation is necessarily focused upon open justice issues as they pertain to Family Courts and family justice, and our responses should be read as applicable to family courts unless we say otherwise. Whilst there has been some limited progress in promoting some degree of open justice in this area since we produced our detailed evidence pack for the Transparency Review in 2020, that progress has been halting and limited and much of what we said then is equally applicable today. The pressing need for greater transparency has certainly not diminished and if anything has become more urgent in view of the increasing resource pressures upon the system and the need for proper scrutiny of the impact of those resource issues, and because of the continuing

² <https://transparencyproject.org.uk/new-guidance-note-what-to-do-if-a-reporter-attends-your-hearing/>

creep of low public confidence in institutions and the justice system in particular, and the overarching erosion of the rule of law across the board in recent years. We therefore invite the consultation group to consider our 2020 evidence alongside this response, and to consider also the oral evidence given to the Transparency Review in the 2021 as part of that process³.

The current position vis a vis open justice in respect of family courts

- 7) Before answering the specific questions we wish to give some context as to the current situation that pertains in terms of the family justice system and open justice (or transparency as it is often labelled).
- 8) We are concerned that, despite the welcome improvements to open justice in family courts proposed in the President of the Family Division's Transparency Review (published October 2021)⁴ and the work of the TIG⁵, we are yet to see any significant progress in the areas of media and legal blogger reporting; increased publication of judgments; or an annual review based on relevant data collection. See our recent review of the limited on the ground progress two years since the Reforms were announced⁶.
- 9) Whilst a twelve month 'Reporting Pilot' was launched in three courts at the end of January 2023, its impact has been limited by a number of factors in particular issues relating to transparent and timely publication of informative court lists, a slower than planned rollout. We have made clear throughout that the removal of as many of the multiple barriers to the attendance of reporters, in particular in the area of listing, was an

³ That evidence and recordings of oral sessions is gathered together here <https://www.judiciary.uk/guidance-and-resources/update-family-divisions-transparency-review-2/>, see our written evidence linked to here <https://transparencyproject.org.uk/transparency-review-call-for-evidence-closes-our-response/> and oral evidence here <https://www.youtube.com/watch?v=2PF8RebPZn8>

⁴ <https://www.judiciary.uk/guidance-and-resources/transparency-in-the-family-courts-report-3/>

⁵ www.thetig.org.uk

⁶ <https://transparencyproject.org.uk/the-transparency-review-reviewed/> - see also our post when the reforms were announced <https://transparencyproject.org.uk/seeing-invisible-elephants-the-transparency-review-is-published/> .

essential component to increasing the willingness of reporters (by which we mean legal bloggers and journalists) and mainstream media organisations to invest time and resource into this demanding area of court reporting. The low take up of the pilot and the low output is not a surprise to us - it requires time to be invested both at court and in the writing up of reports. We do note however, that whilst the volume of pilot reporting has not been vast, it has in general been of good quality and has made good use of the ability to report dialogue and behaviour observed in hearings and to include quotes from the parties arising from interview - to that extent the pilot has been successful in facilitating qualitatively different and more subtly textured reporting of cases, based on observation rather than the summarising or cherry picking of the judge's own summary of the important aspects of the case (i.e. the published judgment), which has been the typical source of reports about family courts so far. The pilot has facilitated some coverage of cases which would otherwise have been unlikely to have been reported at all, because of the absence of published judgment, and has allowed reporters to tell a story from the perspective of the families involved, rather than being reliant on interpreting a document whose primary focus is the legal rather than human interest.

10) Regrettably, there are some anecdotal reports of professionals (including judges) demonstrating some reluctance to permit reporters to exercise their pre-pilot rights to attend hearings in non-pilot courts, which we think is likely to be a product of poor awareness of those pre-existing rights and a perception that open justice is somehow only applicable in the three chosen pilot courts⁷. There seems to be a perception that now there are pilot courts, reporters ought to be focusing their attempts at observation and reporting in those courts, and the unintended consequence of the pilot seems to be that the soft barriers to reporting may have increased rather than reduced in non-pilot courts. If this perception is correct it is a regrettable regression and one which will require correction.

11) There is no news about the evaluation or about the next steps for the pilot after the twelve months elapse. The pilot has still not been rolled out to incorporate magistrates and whilst it has been indicated that it will be rolled out at some point in October, this will mean at most that there is a three month window in which to test out this important

⁷ See for example <https://transparencyproject.org.uk/media-bloggers-observing-hearings/>

aspect of the pilot. Given that magistrates are responsible for a substantial proportion of Family Court work, including the approval of the removal of children and of plans for their placement for adoption, and given the extent to which the family justice system is dependent upon the lay bench in order to manage its workload, it is of critical importance that any pilot enables proper scrutiny of this important component of family justice system.

- 12) Our legal blogging output can be viewed on our site⁸. We are taking steps to try and increase the volume of legal blogger attendance and output, for example by seeking additional funding to cover travel expenses and loss of earnings for lawyers who are otherwise willing to undertake this voluntary work. But to succeed this must be combined with removal of other barriers to the attendance of reporters which are outside our control.

- 13) On other fronts, the increased publication of judgments which was acknowledged to be a critical component of open justice has not come about at all. A target of at least 10% of judgments to be published, set in the Transparency Review, appears unrealistic at present. In part this appears because of judicial uncertainty about what is expected, pending a decision from the Ministry of Justice on funding an anonymisation unit. This facility was found to be an essential requirement by the TIG sub-group which undertook research last year into judicial approaches to publication. The inability of the family justice system to make good on this clear promise in a timely way is profoundly damaging. It is now a decade since efforts were first made by Sir James Munby to increase the numbers of judgments published and we are in reality no further forward⁹.

- 14) We have contributed to a number of inquiries and calls for evidence on the subject of transparency and open justice, including the following. Our evidence has contributed to various recommendations for reform which would have advanced open justice vis a vis family courts, but to date the conversion rate into real change has been poor. Responses include:

⁸ www.transparencyproject.org.uk/legalbloggers

⁹ And of course the history of this vexed topic goes back much further - to Jack Straw's time as Justice Secretary and the white paper https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/238680/7502.pdf, and later the ill fated and later repealed 'transparency' element of the Children Schools and Families Act 2010 Part II,

- a) The President's Transparency Review in 2020-21¹⁰
- b) The Subsequent Financial Remedy Transparency Consultation¹¹
- c) The Public Accounts Committee's 2018 Consultation on Court Reform and Open Justice¹²
- d) The Cairncross Review¹³
- e) Response to the Justice Committee's 2021 Open Justice Consultation¹⁴
- f) The HoL Communication and Digital Committee 2021 inquiry into the future of journalism¹⁵
- g) Various consultations about press regulation.

15) The history of 'transparency' and family justice is littered with acknowledgments of the problem and promises of reform, almost always failed. We very much hope that this consultation will lead to meaningful changes that can be seen on the ground, and which can restore some public confidence in the family justice system both through explaining the law and process, showcasing the good work it does and by helping to highlight areas in need of learning, change and improvement.

Questions on open justice

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

16) Open justice means justice being not only done but seen to be done.

17) It means judicial proceedings conducted in the public's name should be open to public scrutiny - not just by representatives of the mainstream media but also by ordinary members of the public including students, researchers, campaigners and commentators.

¹⁰ <https://transparencyproject.org.uk/transparency-review-call-for-evidence-closes-our-response/>

¹¹

<https://transparencyproject.org.uk/financial-remedies-transparency-proposals-our-response/>

¹² <https://transparencyproject.org.uk/court-reform-and-open-justice-responses-to-the-public-accounts-committees-transforming-courts-and-tribunals-inquiry/>

¹³ <https://transparencyproject.org.uk/is-high-quality-journalism-sustainable-our-evidence-to-the-cairncross-review/>

¹⁴ <https://transparencyproject.org.uk/open-justice-inquiry-read-the-written-evidence/>

¹⁵ <https://transparencyproject.org.uk/the-future-of-journalism-our-response-to-the-inquiry/>

- 18) The scrutiny to which court proceedings should be open has traditionally meant opening a physical court room to public access and the provision of a public viewing gallery. Since proceedings may often now be conducted wholly or partly by remote audio or video conference, open justice should also be understood to comprise public observation by remote means (subject to reasonable technical and managerial limitations but NOT subject to accreditation or justification of the requesting observer).
- 19) Open justice also means that it should be possible for those observing proceedings to follow and understand their nature and outcome. That incorporates the notion of transparency: ie, access to the necessary information, including case documents, interpretation, etc to enable the observer not only to see and hear but also to understand the proceedings.
- 20) With regard to the family justice system, we would emphasise that the private nature of most family proceedings and proportionate restrictions to protect privacy and vulnerable parties do not exempt these proceedings from the principle of open justice. The principle is just as important in family cases as in other types of proceedings, but the ways of achieving it may require adjustment in order to protect the welfare and privacy of children and vulnerable adults and to ensure that proceedings are effective.

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

- 21) Judicial powers (to hear and determine proceedings in court) are derived from a number of sources, mainly
- a) legislation,
 - b) case-law,
 - c) rules of court and
 - d) the “inherent jurisdiction” (i.e. the powers inherent in the court whose jurisdiction the particular judge is exercising at the time, rather than the status of the judge or the nature of the proceedings).
- 22) Most members of the public may not be aware of all these sources of judicial power, but most will be aware of legislation (laws made by Parliament) and case law (binding precedents set by earlier court decisions). They may not be aware of the hierarchy of precedent or the difference between a court of record and other courts, or of how precedents can be overturned or reversed by later decisions of more senior courts.

Some members of the public are unaware that statutes can be repealed or superseded by later enactments, or that Magna Carta does not automatically trump any later enactment or create freestanding rights and/or immunity from suit.

23) Rules of court or procedural rules are currently difficult to follow and apply even for professional litigators, so it seems quite unfair to expect public observers to be able to find out about them. They are published in a variety of formats and locations and not consistently kept up to date. The justice website often contains errors in the consolidated version of the Family Procedure Rules that is housed there, and an attempted transfer of this content to the gov.uk website in around 2020 was abandoned when practitioners complained that it was poorly designed and difficult to navigate. The transfer was scheduled to take place in 2023, but as at the time of completing this response it is unclear when it will take place, or whether the design flaws in the earlier aborted rollout have been rectified.

24) The broader information about the judiciary (at least at senior level) published on the Courts and Tribunals Judiciary website maintained by the Judicial Office (“the Judiciary website”) is generally helpful and illuminating, if it can be located. However, the Family Court frequently supplements (or in some cases counters) the rules of court and formal Practice Directions by issuing Guidance issued by the President of the Family Division or by High Court Judges nominated to act on his behalf, and through newsletters called ‘Views’ which signal changes in practice and procedure that are not found elsewhere. We are disappointed to note that the long awaited revamped judiciary website which was launched earlier this year remains extremely difficult to navigate and locating specific guidance, templates or information about the family court is not straightforward. Given the high numbers of litigants in person attempting to understand what is expected of them by the family court, this state of affairs is regrettable. If the public cannot find out what the rules of engagement or expectations are, that is a failure of open justice and accessibility.

25) The National Archives Caselaw archive is bedding in and is now being routinely used by judges who wish to publish their family court judgments. However it is an incomplete repository of family court / Family Division judgments previously published on BAILII. BAILII itself was an incomplete repository, but it was generally possible to locate most

judgments using a neutral citation. The current situation often requires those who wish to source caselaw without a subscription (in particular the public) to search two sites with different search functionality. This is unhelpful.

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

26) There are areas where justice is not open, for good reasons such as the confidentiality of the subject matter, the vulnerability of certain parties, such as children and those lacking mental capacity, and the need to protect their privacy, or to protect the interests of national security, criminal investigations, or to prevent prejudicing pending proceedings. These derogations from open justice are long established and well recognised: see *Scott v Scott* [1913] AC 417 and subsequent cases. Such restrictions do not necessarily justify a lack of transparency.

27) There are also areas where justice is not open for bad reasons, such as lack of resources, court listing errors, court staff errors and training failures, and technological breakdown. Examples include observers being excluded from a court building or particular court without good reason; marking the cause list as “in chambers” when it should be in open court; court staff failing to respond to emails requesting information about a hearing or access to it by remote means; court staff telling students or observers that they are not permitted to take notes in court; court staff marking the court “closed to the public” when it should be open; judgments not being published; requests for access to court documents being refused; etc. Most of these examples are not systemic or policy-driven, they are more symptomatic of a system deprived of adequate staff training and resources.

28) In some areas where derogations from open justice are routinely permitted and acceptable, such as in the Court of Protection, some progress has been made in the last decade to open the courts to greater scrutiny while preserving the privacy and confidentiality of the parties and subject matter. This has been achieved by published anonymised judgments and permitting greater access to press and public observers, subject to reporting restrictions.

29) The family justice system is currently said to be committed to and working towards greater transparency in its practice, but progress is achingly slow and insufficient to sustain and grow public trust and confidence or to meaningfully facilitate scrutiny, accountability, understanding and learning. open in principle, but less so in practice.

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?

30) Apart from public consultation, the best way to engage with the public and experts on the development and operation of open justice policy is to engage with representative groups. In the past, such engagement has tended to be largely confined to representatives of the media, and to a lesser extent representatives of the judiciary and practitioners. The views and interests of other types of observers have not been so well sought or represented.

31) For example, the recent HMCTS staff guidance on providing support to the media¹⁶ was developed in conjunction with the Society of Editors and the News Media Association, but although the guidance also addressed (or purported to address) the needs of non-media observers, no formal attempt was made to engage with any group or individual representing the interests of civil society, academic researchers, legal commentators working outside the mainstream media channels, legal bloggers, law reporters, et al. In fairness, it should be recognised that Tristan Kirk, Courts Correspondent, London Evening Standard, who wrote the foreword to the guidance and was involved in the media consultation over its drafting, did personally seek the views of some others, such as representatives of the Transparency Project.

32) The commitment in the current consultation for the publication of a Charter summarising the rules governing public access to court and tribunal hearings and information is certainly welcome, but needs to be based on prior consultation with a full range of representatives of the different types of non-media observer. These would include, among others, the various academics and NGOs who signed an open letter on

¹⁶ HMCTS staff guidance on supporting media access to courts and tribunals
<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>

access to remote proceedings during the covid emergency, as published on The Justice Gap.¹⁷

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

- 33) With the closure of many smaller courts, and the reorganisation of court business into larger provincial court centres, justice has become much less local. That is a barrier to casual public observation, and makes planned observation (especially where it involves travel to physical courts) more dependent on access to information (such as cause lists, case documents etc) in advance. Such information needs to be both transparent and accessible. Designing the best way to improve such information requires stakeholder engagement and feedback.
- 34) Public engagement should also be sought in developing and improving access to other information, such as statutes and case law, public legal information materials, and reliable news about case outcomes. There should be information readily available in court buildings (such as leaflets) and on websites enabling public observers to understand the nature and context of proceedings.
- 35) Public engagement will ensure such facilities are not designed solely or primarily around the convenience of the media, important as that may be.
- 36) The public should also be consulted about the contents of the promised court observers' Charter.

¹⁷ Open letter from NGOs and academics on open justice in the Covid-19 emergency <https://www.thejusticegap.com/we-need-to-protect-open-justice-during-the-covid-19-emergency/>

Questions on listings

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

- 37) Yes. The prompt publication of information is essential so that reporters (by which we mean journalists and legal bloggers) (and in matters heard in public, the general public) may
- a) find out what cases are being heard in which courts,
 - i) either in order to locate, follow or observe a particular case,
 - ii) or to understand the general type and jurisdiction of business in the courts in order to observe a case or cases "on spec",
 - iii) And in both cases to enable the reporter to request a link to enable remote attendance where appropriate (and as a courtesy, to notify the court of the intention to attend, which can facilitate the smooth running of a list insofar as it may alleviate issues arising from advocates and parties being unprepared to deal with 'novel' issues in jurisdictions such as family court where attendance of reporters is relatively uncommon)
 - b) be warned about judgments and know when they have been delivered,
 - c) find out where a particular judge or division may be sitting,
 - d) check details of the hearing date(s) and bench when reporting a case.
- 38) However, a serious hindrance to accessing information via Courtserve is that lists go up very late in the day. It is not even clear where to find family court or Court of Protection lists. We understand that a new system is being piloted - the CaTH service. Although this was apparently introduced in July last year, we were not aware of it until we read this call for evidence. It is not clear how quickly the roll-out of this service is progressing, nor how it is being evaluated.
- 39) Since becoming aware of the CaTH service, one of our practising lawyer members has subscribed to it for information and are able to make some limited preliminary observations-
- a) We note that court lists appear often to be published somewhat earlier in the day than is the case with Courtserve, though this may be due to local practice in the handful of pilot courts rather than systemic, and it is unclear whether this would continue to be the case on rollout. Email updates are not consistently early - we note email notifications from occasionally as early as 11.20am and occasionally as late as 9.20pm the day before a hearing. Even circulation at 11am the day prior to a hearing is often insufficient time to enable a reporter to be able to raise

a member of court staff to facilitate a link to attend that hearing remotely in line with the Guidance issued by the Lord Chief Justice last summer.

- b) The ability to subscribe to email updates from a particular court is helpful, and ensures that lists are seen as soon as published without a reporter having to repeatedly check back and refresh a page. However, the email updates do not seem to reliably filter the information in line with instructions - we have subscribed to family only lists, but frequently receive emails containing largely civil court lists.

40) We are unclear at the time of writing whether the CaTH service will be accessible for non-practising legal bloggers without a myHMCTS account, as our CaTH account application has not been processed by HMCTS. If the service is to be effective for both mainstream media and those 'duly authorised lawyers' (aka legal bloggers) who are entitled to attend family court hearings (and, in pilot courts, to report) then this group of people will need access.

41) We would like to see the circulation of provisional lists further in advance i.e. circulation of lists in week blocks, even if on the basis that they are subject to adjustment the day before, would be extremely helpful for reporters and would we think take pressure of court staff in having to deal with last minute requests for links. In addition, it would enable reporters to potentially flag their intention to attend or to request documents further in advance, which reduces the pressure on advocates and parties on the day. This is generally thought to be helpful, providing the giving of notice does not become a pre-requisite to attendance and this is reflected in the guidance that accompanies the Reporting Pilot whereby reporters are requested to give notice if they can but not required to do so - at present they are in practice rarely able to give meaningful notice because of late listing, and are regularly and inappropriately criticised for failing to do so, in spite of the fact that the Family Procedure Rules do not require this and that judges and legal professionals should be aware that reporters may attend most hearings as of right, subject only to case specific good reason for their exclusion [Family Procedure Rules 2010 rule 27.11].

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)?

42) Yes. The names of parties should be anonymised if the hearing is being conducted in private and the provisions of s12 Administration of Justice Act 1960 or s97 Children Act 1989 apply, or where the court has specifically directed that anonymisation is necessary and proportionate. In public law children proceeding where the state has intervened in the family life of a vulnerable family and often seeks the most draconian and permanent

of solutions the applicant local authority should almost always be named on the court list (save where the identification of the local authority is likely to somehow jeopardise the anonymity or wellbeing of the children concerned).

43) However, information about the (general) nature of the proceedings should rarely be restricted and there should be more of it. At present the information published is insufficient for most purposes other than identifying the name of the case, since codes are usually used which are not made known to the public. Even for reporters who understand the information encrypted in a case number, the usable information is negligible. Information about the type and duration of hearing and the issues in the case is of critical importance in facilitating and encouraging regular reporting of family court cases.

44) The most significant current restriction is the inability to see lists other than the list for the next day (and these are often only published at lunch time or late afternoon the day prior to a hearing). The inability to plan in advance and to give notice of an intention to attend, a need for a link, or a likely request for permission to report are all significant barriers to attendance by reporters (and thus to the volume of reporting). This is compounded by the lack of information in the lists even when published.

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

Reporting restrictions are not currently listed, although in most cases within the family jurisdiction concerning children automatic restraints imposed by statute will usually apply. In financial remedy cases the 'automatic' position is unclear, and there is no way of knowing from the face of the list whether any case specific restrictions have been imposed - or whether any case specific permissions have been granted. We understand that in Reporting Pilot courts there is a proposal for lists to identify which cases are 'pilot' cases, which gives an indication that a 'Transparency Order' has been made or that it is likely to be made upon the attendance of a reporter, but although the pilot is now entering its eighth month we have seen no evidence of this happening in practice on a consistent basis. Therefore even in pilot courts a reporter can attend a hearing unclear whether or not they will be able to benefit from the 'freedoms' offered by the pilot.

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?

45) We are continuing to try and develop a cohort of legal bloggers who can regularly observe and report on family court hearings. We are doing our best to make use of the

current pilot notwithstanding the barriers to doing so, and if and when the pilot is rolled out we will continue those efforts. Whilst we have generated a groundswell of interest in and support for legal blogging as an idea, our attempts so far to expand the number of active legal bloggers has had limited success. This is because legal blogging is challenging and time consuming, is unpaid, and is high risk for the cohort of eligible legal professionals many of whom are self employed, who do not live locally to pilot courts, who have unpredictable diaries (as they are court based workers) and who are almost universally overworked and highly stressed.

- 46) We are currently considering whether the CaTH listing or other promised listing developments might enhance our ability to coordinate legal bloggers to enable coverage of more hearings, and we are considering applying for funding to enable us to offset some of the expenses and loss of earnings that might be incurred by legal bloggers in order to facilitate their participation in this work.

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?

- 47) If enhanced lists were made available to the media AND to organisations such as The Transparency Project, which is a recognised educational charity for the purposes of authorising non-practicing lawyers who wish to undertake legal blogging, we would be able to make use of those lists to identify cases suitable for our legal blogging pool to attend as observers, with a view to reporting them. We anticipate such enhanced lists might contain further information about the issues in the case and perhaps the contact details for legal representatives, or core documents that might otherwise not be published. We note that some steps to publish (marginally) enhanced lists are proposed via the Reporting Pilot using category codes, but in practice this is not visible on published lists, though recently listed hearings may ultimately show on the list with enhanced information, as and when those lists are published.

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?

48) As above we would potentially use this information to coordinate legal blogging activities across England and Wales, and would only circulate it to our pool of legal bloggers to enable them to decide whether to attend a hearing as an observer.

Questions on accessing courts and tribunals

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

49) None of our team had heard of 'FaCT' until we read this question, which suggests it is an unhelpful acronym and / or not well publicised. We assume the question relates to this service? <https://www.gov.uk/find-court-tribunal> and that the acronym stands for 'Find a Court or Tribunal'? Other than to observe that acronyms are the antithesis of open justice and accessibility, and to note that the gov.uk website is notoriously difficult to navigate and has extremely poor search functionality, we have no comment to make.

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

50) If they are not already included in the listings, contact information for the relevant court should be included, to avoid the need to perform a separate search on the FaCT website.

51) The information about particular courts on the FaCT website appears to be primarily aimed at professionals and the parties. For example, it includes a link to "What to expect coming to a court or tribunal" which is primarily addressed to parties. It would be useful to have information for those attending as observers.

52) The court and tribunal search pages should provide correct e-filing email addresses for each court, specific to the relevant jurisdiction, and correct contact details for enquiries by reporters about access to hearings.

- 53) They should provide a link to the published court lists for that court.
- 54) Where administration for a particular court is carried out in a different court building / location than the court shown in the case number or where hearings are taking place, the court pages should make clear which court office is the administrative centre for particular categories of case heard at that court.
- 55) We have come across several instances of journalists and legal bloggers either being wrongly informed by courts that they have no right to attend a family court hearing, or attending but then being subject to restrictions on reporting that are made without the required exercise in balancing Articles 8 and 10 ECHR.¹⁸ We are also aware of numerous occasions where journalists have been wrongly asked why they are there and about their sources of information.

Questions on remote observation and live streaming

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

- 56) The ability to observe a hearing remotely via audio or video conference software or livestream broadcast is a major enhancement to open justice, for the following reasons:
- a) Given the closure and reorganisation of many courts, and the time and cost of travelling to a physical court, it makes the courts more accessible for both reporters and other observers.
 - b) For representatives of the media and others attending court as observers in a professional capacity, it reduces the barriers to attendance, and in particular makes the process more economically viable and reduces the risk of wasted outlay.
 - c) For those of limited mobility or sensory impairment, with suitable technological support, it can make the difference between being able to attend or not attend for observation purposes.
 - d) In our experience the attendance of reporters remotely can be less intrusive than physical attendance, and for example where appropriate observers can be asked to turn their camera off.

¹⁸ <https://transparencyproject.org.uk/media-bloggers-observing-hearings/>

- e) Where proceedings are recorded for live streaming purposes, and made available for later catch up viewing, it also enables observers to view proceedings in their own time and allows for repeated viewings.

57) There are, evidently, risks involved in permitting remote observation. While observers are attending a live physical court hearing, the judge can control behaviour within the court and where necessary prevent or punish unacceptable behaviour such as disturbing the proceedings, unlawfully recording them, etc. The same is much harder for the judge in a remote hearing, which to some extent justifies the conditions imposed in providing access via a remote link, such as requiring the observer's name and email address.

58) A live streamed hearing is easier to control, in that the entire broadcast can be suspended if necessary, or its publication delayed, or edited to enable the redaction or excision of harmful material.

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

59) Yes, provided they agree to conduct themselves properly and in accordance with existing restrictions on filming and recording. However, there may be some justification for restricting such access to those who are not within the court's contempt jurisdiction i.e. those who are abroad.

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

60) Yes, subject to reporting restrictions and the established derogations from open justice, eg for national security, etc. We note that broadly, this position is supported by the LCJ's Guidance issued in June 2023¹⁹.

61) In cases of high public interest, remote access would avoid the need for large numbers of journalists to attend in person, or indeed other observers, obviating the need for an enlarged court room or overflow relay rooms.

62) But for reasons which have already been given above, any restriction of access just to the media, such as would exclude other public observers, must be strictly justified.

¹⁹ <https://www.judiciary.uk/guidance-and-resources/practice-guidance-on-remote-observation-of-hearings-new-powers/>

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

63) Not all parts of all hearings. We would exclude the examination of vulnerable witnesses, for example, as well as exempting entire proceedings under the established derogations from open justice mentioned above. In family court matters live streaming is only likely to be appropriate very exceptionally at first instance, although it has been successfully and appropriately used in Family Appeals heard in the Court of Appeal (usually with delayed transmission to cater for any anonymisation errors in spoken advocacy).

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

64) Yes. But some of the automatic statutory restrictions, such as s 12 of the Administration of Justice Act 1960, badly need reviewing, if not repealing and replacing with a regime that focuses upon anonymisation rather than a wide ban on reporting of substance, and which provides for judicial restriction /adjustment on a case by case adjustment , e.g. by way of transparency orders.

65) In court proceedings generally, restrictions may be justified for reasons of national security, to protect the integrity of the court process, to protect industrial and commercial secrecy (where this is justified), and to protect vulnerable parties such as children or those lacking mental capacity. But, given that all cases are now actively case managed, it should be possible to agree the restrictions applicable in a particular case and then to make those available to anyone attending and observing the hearing, alongside relevant (cited/quoted) case documents in order to boost transparency. This works tolerably well in a welfare jurisdiction like the Court of Protection, and should be capable of being transposed into the family court. A similar arrangement underpins the current Family Court Reporting Pilot, but based on our observations and experience of how matters work in both CoP and Family Court we do not anticipate that the necessary cultural change and practitioner / judicial familiarity will be built up unless and until arrangements that permit anonymised reporting becomes the norm across the jurisdiction of the Family Court i.e. until the Reporting Pilot or something like it is rolled out across all courts and becomes standard practice - whether through Guidance, rule change or statutory amendment (or a combination of all three).

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

66) Where live streaming is appropriate we think locations such as public libraries, town halls, cinemas, as well as designated areas of court buildings could be utilised.

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

67) At present, the system is cumbersome and resource intensive, because each request to join a hearing remotely (otherwise than by published livestream) must be made individually to the court or judge's clerk and administered by them. The alternative might be to publish a link and allow anyone to use it, subject to being invited into the hearing individually by a clerk or the judge. This, again, imposes a burden which could be a hindrance to the conduct of the proceedings.

68) What we would suggest is the establishment of an online portal by HMCTS on which regular or occasional observers would be able to register an account. This would record details of the observer's name and email address and could, if necessary, be used to capture their reasons for wanting to observe, although the mere fact of registering should be assumed a sufficient expression of legitimate interest. (A drop down menu could offer suggestions such as "legal blogging", "litigant in another case", "journalism", "academic" etc.) A person could, by registering, also agree to submit to the jurisdiction of the court, regardless of their geographical location (although this might be of limited benefit if beyond the practical reach of court bailiffs for enforcement purposes). Each registered user would then be accorded a joining code, enabling them to join and observe proceedings without necessarily disclosing their identity. The database could include a search facility linked to the daily cause lists, thus enabling registered users to find cases to join, be sent alerts to remind them to log in, and enable them to download relevant case documents and (crucially) reporting restrictions or transparency orders, before the hearing commenced.

Questions on broadcasting

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

69) Public legal education and transparency. Most dramatic fictional representations of court proceedings are inaccurate, even when supposedly based on true stories. The old

television series Crown Court and Rumpole of the Bailey are exceptions, but it is hard to think of any other courtroom drama series that has been consistently both accurate and true to life. It might even benefit writers to see what actually happens.

70) Broadcasting also aids observation for various purposes, including reporting, and public scrutiny of the justice system in action.

71) In cases of high public interest, broadcasting would obviate the need for large numbers of observers and reporters to crowd the court itself, making the trial more manageable.

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?

72) In addition to what is already in some form or other broadcast or live streamed:

- a) Appeal hearings in the Court of Appeal, Criminal Division as well as Civil Division.
- b) Hearings in the Upper Tribunal, Employment Appeal Tribunal
- c) Hearings in the High Court for substantive relief and judicial review hearings
- d) Parts of hearings in the Crown Court, eg opening, closing speeches, summing up, sentencing.
- e) Coroners' court hearings

73) Hearings involving children in the family courts and criminal courts should not usually be broadcast, or those in the Court of Protection.

74) The New Zealand approach, which gives ultimate control to the trial judge, appears to be a sensible option.

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

75) Yes. But they do not include disruption of the proceedings by an observer, which is a risk associated with remote access to online hearings.

76) There are risks of broadcasts being illicitly recorded, but it is hard to understand why that is necessarily a problem. The risk appears to be abuse of the images or recordings by some form of editorial manipulation, in order to misrepresent what happened. That would already be in breach of the Contempt of Court Act 1981.

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?

77) No, they are not still fit for purpose and are instead anachronistic and irrelevant in the modern age.

78) The original ban in section 41 of the Criminal Justice Act 1925 appears anecdotally to have been in response to the risk of distraction from cameras being physically in the court. This would not apply to cameras involved in providing an official broadcast, because these would be controlled by the court. Both sound and film recording are increasingly difficult to police in the modern age of smartphones and body cams.

79) The risk of abuse of recorded sound or images may be a real one, but any such abuse would probably already be covered by the Contempt of Court Act 1981, or could be the subject of a separate new criminal offence.

80) Emerging technologies which should be considered include:

- a) the use of holographic projections or virtual reality (the metaverse) as a medium for remote hearings, and the risks associated with that; and
- b) the use of AI and other techniques to make the manipulation of sound, images or other sensory information, and the fake generation thereof, more realistic and convincing.

Questions on public access to judgments

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

81) No. It is common for cases listed for judgment, or reported or commented on elsewhere, to be unavailable via the The National Archives, or Judiciary website or BAILII, either at the time of judgment or subsequently.

82)Published on Judiciary but not sent to TNA:

Example: *Re JW (Child at Home under Care Order)* [2023] EWCA Civ 944, judgment delivered 4 August 2023. The rubric on the front of the judgment states:

This judgment was handed down remotely at 10.30am on 4th August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

This case appeared on the Judiciary website the next day, but no copy was sent to The National Archives. When emailed a week later to ask why they had not published it, they replied that they had not received it until 14 August. (It was then published later the same day.)

83)Published elsewhere but not on TNA, BAILII or Judiciary:

Example: *Berkshire Assets (West London) Limited v AXA Insurance UK PLC* [2021] EWHC 2689 (Comm) given 8 October 2021. Was commented on in a post on the RPC Perspectives blog published by solicitors Reynold Porter Chamberlain on 17 December 2021. No copy sent to BAILII, ICLR or TNA. Email to deputy judge at his chambers elicited the response that “I do not have a copy of the handed down version although I note that it has been published in [2022] Lloyd's Rep. IR Plus 6.” (i.e. in Lloyd's Insurance and Reinsurance Reports - a specialist series of commercial law reports published by Informa.)

84)Commented on in press but not available to read:

Example: the recent judicial decisions relating to *R v Letby (Lucy)* (sentenced 21 Aug 2023) on anonymity of victims and witnesses was the subject of articles in, eg The Guardian (Lucy Letby trial: why the babies remain anonymous²⁰) and a blog post by Joshua Rozenberg (Letby: what

²⁰ <https://www.theguardian.com/uk-news/2023/aug/18/lucy-letby-trial-why-babies-remain-anonymous>

next?²¹) but no reasons for the decisions have been transcribed and/or published. The matter is one of general public as well as legal interest in respect of the transparency of criminal trials.

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?

n/a

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.

n/a

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.

n/a

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.

n/a

²¹ <https://rozenberg.substack.com/p/letby-what-next>

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?

85) No, we have not been aware of any negative effect on individuals caused by publication of family court judgments. An evaluation of the judicial guidance issued by the President of the Family Division in 2014 on publishing judgments on BAILII found no instances of any individual who had been anonymised in a judgment being identified nor any negative impact of publication.²²

86) As noted in the President of the Family Division's Transparency Review report²³, whilst there has been understandable concern about the impact upon children of publication of family court judgments about children, studies do not evidence actual harm, merely concern about the risk of such harm. We are unaware of any negative effects arising from the current Reporting Pilot.

Questions on access to court documents

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

87) To understand a case while watching the hearing, and to enable rounded, balanced and accurate reporting of the case if and when writing it up. Since much of the evidence and submissions in most cases is now presented in writing, and only a proportion of it is read out into the audible record, it is impossible to fully observe a hearing without having access to such material. Indeed, it calls into question how much meaningful the right of observation is for anyone not having access to such written material.

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?

²² J Doughty, A Twaite and P Magrath (2017) <https://orca.cardiff.ac.uk/id/eprint/99141/>

²³ <https://www.judiciary.uk/wp-content/uploads/2022/08/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final1.pdf>

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

87) In a case that a reporter has not been previously involved in it can be difficult to know who to approach first for access to documents, as in the Family Court permission of the judge is required before material can be disclosed to reporters, and identifying contact details and raising a timeous response via the court office is usually challenging. The first port of call is to make contact with the court where the hearing is taking place. For skeleton arguments, and some other documents, it may be easier and quicker to ask the lawyers directly, but unless the case is a Reporting Pilot case where a Transparency Order is in place they will not be able to provide documents without judicial approval, but they may be able to progress a decision by notifying the judge of the request.

88) Our experience of accessing documents relating to open court hearings is limited because most family court work is in private. In family appeals in the Court of Appeal journalists are entitled to skeleton arguments. As the Civil Procedure Rules apply and these do not recognise 'legal bloggers' in the same way as the Family Procedure Rules, we need to apply for permission to have a copy of these documents in appeals, which is a barrier to our engagement and reporting. In the case of Re H-N & Others heard in the Court of Appeal in March 2021, which we observed and live tweeted we were, after some effort, able to obtain most of the skeleton arguments in the case, though not soon enough to read them before the hearing began.

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

Yes. Many of our members are lawyers and are familiar with the contents of court files in family proceedings.

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

89) Difficulty making contact with the judge or parties in order to seek permission for disclosure. Failure of the court or lawyers to supply copies when asked (even when the Reporting Pilot applies and permission is not required). Objections from advocates on spurious grounds (usually that there is a risk of identification even though we have clearly indicated we are aware that if we published contents with a name we would be at risk of contempt of court or prosecution (s97 Children Act 1989)..

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

- 90) In the Family Court clear guidance regarding the approach that will be taken to permission to access documents and the process that should be adopted.
- 91) Guidance and training (including HMCTS job cards) for court staff on how to deal with requests for access to documents by non parties, and what the rules actually say about this issue.

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

- 92) We suggest that all those documents specified in the Reporting Pilot Guidance should be automatically disclosable by the court or parties to reporters (journalists and legal bloggers), subject to a discretion to make different provisions in an individual case. Those are:
- a) Documents drafted by advocates or the parties if they are litigants in person: Case outlines, skeleton arguments, summaries, position statements, threshold documents, and chronologies.
 - b) Any indices from the Court bundle.

- 93) We suggest that there should be a clear process to enable reporters to request access to other documents in order to better understand the case they are observing or reporting on.

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

- 94) By linking together online filing, case listing, and publication of judgments and orders. Where cases are heard or accessible remotely, the documents should be made accessible via the online hearing platform or portal.

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

95) Yes, as set out above. Reporters should be able to access documents and speak to the parties involved in family cases (as was proposed by the President in his 2021 Review Report.

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?

96) n/a

Questions on data access and reuse

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

97) With regard to this section, we would refer to the work of the TIG Data Collection Group which is currently undertaking data scoping.²⁴

98) To develop legal services and products; to promote research; to support access to justice and transparency.

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

99) Access requires making data available in a convenient format at timely intervals or on a continuous basis. Responsible re-use might best be governed by some sort of licensing regime. Responsible use may depend on anonymising certain types of data before sharing.

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

n/a

²⁴ See Sub Group Minutes at <https://www.judiciary.uk/guidance-and-resources/transparency-implementation-group-minutes-and-sub-group-minutes/>

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

- 100) Lack of consistency in the collection, archiving and publication of such data. In 2021 in the Transparency Review report the President of the Family Division identified a pressing need for better data gathering and dissemination relating to the Family Court and promised improvements. Evidence of those promised data collection exercises is limited.

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?

- 101) A survey conducted by IPSOS for The Legal Education Foundation published in 2022²⁵ found that over 70% of participants said that they knew nothing or not very much about the information contained in court records, or about who has access to court records; that 50% of polling respondents expressed discomfort about use of court data by tech companies, credit rating agencies (42%), and insurance companies (42%); and that while 56% said they were comfortable with the information from court records being used to improve judges' decision-making or reduce costs in the justice system, only 26% were comfortable with commercial companies having access to develop products and services. This showed, among other things, a lack of awareness of how judgments are used as precedents in a common law system.
- 102) Another common misconception might be that judges' decisions can be predicted by analysing their previous decisions. But judgments (particularly family court judgments) are too unstructured to permit reliable analysis to detect such patterns of behaviour, and we think that the evaluative nature of much family judge decision making is not susceptible to easy analysis. Data based on court filings (type of action, issues, sums involved, nature of dispute etc, types and length of hearing, duration of proceedings, plus disposals, outcome) would be more reliable, regardless of identity of judge; but at present such data is not available in sufficient quantities or consistency of format to permit such bulk analysis.

²⁵ Gisborne, J. Patel, R. Paskell, C. and Peto, C., Justice Data Matters: building a public mandate for court data use (TLEF 2022) <https://research.thelegaleducationfoundation.org/research-learning/funded-research/justice-data-matters-building-a-public-mandate-for-court-data-use>

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

n/a

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

n/a

Questions on public legal education

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

103) No. It is unlikely most members of the public have more than a vague understanding of contempt of court.

104) As successive Law Commission projects have noted, the law on contempt of court is complicated, and hard to find, being derived from a mixture of individual provisions in various statutes, in rules of court, previous cases, and practice directions. There is no single reliable source of information available to the public.

105) They may be aware of the need not to prejudice the outcome of a criminal prosecution by commenting on the case before or during the trial. If and when members of the public attend or observe court remotely, they may need to be reminded about how they should and should not conduct themselves. Most people are aware that they cannot disrupt proceedings or speak out of turn, and many will also be aware that they cannot film or record proceedings, even with a mobile phone. We suspect not everyone will link these rules with 'contempt of court'.

106) Few outside the professional media and legal professions will be aware of the full range of reporting restrictions, including both automatic restraints such as s 12 of the

Administration of Justice Act 1960 and the court's powers to impose restrictions in the individual case.

107) We are aware the law commission is in pre-consultation on reform of the Contempt of Court. We do not know to what extent the Law Commission is intending to tackle s12 AJA 1960, but we respectfully suggest that it should do so. We are aware that the Justice committee recommended this in its 5th report²⁶, following our submissions to that Inquiry. A proposal for reform was contributed to by a number of our members in 2021²⁷.

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?

108) No. A lot of the time announcements (generally in the form of a press release) about the justice system seem to be geared towards boosting confidence in the government's performance, or responding to a perceived crisis, rather than increasing the public's knowledge and awareness of how the system works. Such announcements rarely include sufficient contextual material or links to other information or statistics to enable the public to read up about the background to the development or get a better idea how it fits into the system as a whole. The press rarely do more than report the manufactured quotes and rejig the copy in the press release, unless a specialised reporter happens to track down background information or statistics on their own initiative.

109) Example: recent announcement highlighting efforts to cut Crown Court delays by increasing sitting days (*Courts operate at full throttle to cut delays*)²⁸ included some information about the historic backlog of cases, and some extra funding for court building maintenance, and then went off at a tangent to talk about the asylum claims backlog. There were no links to any more detailed charts or statistics on the Crown Court backlog (though these are available); and the Notes to Editors section only covered the asylum backlog (with link to those stats) and provided no information at all about the main topic of the press release.

²⁶ <https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/339/summary.html>

²⁷ <https://www.judiciary.uk/wp-content/uploads/2022/08/Proposal-for-the-Law-Commissions-14th-Programme-of-Law-Reform.pdf>

²⁸ <https://www.gov.uk/government/news/courts-operate-at-full-throttle-to-cut-delays>

110) There is also the matter of where the public finds such press releases or announcements. If a member of the public goes to gov.uk and browses in the “Crime, Justice and Law” section, the Contents tab labelled “News and Communications” often shows²⁹, initially, a list of the latest Employment Tribunal decisions. There is no obvious way to find the latest press releases and announcements relating to the justice system in the way a commercial or non profit organisation would, putting them in a feed on the home page, for example. The Judiciary website is better, because it has a dedicated News and Updates page where announcements can be searched and results filtered.³⁰

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

- 111) There often appears to be ignorance around:
- a) Burden and standard of proof
 - b) Difference between criminal convictions and civil liability or responsibility (e.g. in fact-finding decisions over conduct in family court which are made on the civil standard of proof)
 - c) Sentencing policy and procedure
 - d) Contempt of court
 - e) How to find relevant law
 - f) How precedent works and which decisions it applies to
 - g) Difference between European Court of Justice and European Court of Human Rights
 - h) Difference between EU law and Human Rights Law
 - i) The role of lawyers and judges
 - j) The difference between an allegation and a finding or a conviction

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

112) The main problem is that the information is not centralised. This has been repeatedly identified as an issue in the family court where many litigants do not have lawyers to assist them. It has never been dealt with (see for example Transparency Review Report).

113) There is a lot of information on the various pages and sections of gov.uk but it is very hard to search there. The results are not ranked by relevance in any way that makes

²⁹ https://www.gov.uk/crime-justice-and-law#news_and_communications

³⁰ <https://www.judiciary.uk/news-and-updates/>

sense, and it is hard to funnel or filter the results. There is some information on judiciary.gov.uk but there are similar problems with architecture and search functionality.

114) There is no single portal that would guide a user through all the information they might want about the justice system, where they could find information about all the different courts and tribunals, legislation, rules of court, case law, practice directions, courts, forms and online procedures relevant to each type of case, let alone any way of finding out what that type of case is. This has been repeatedly recommended but never implemented by government.

115) Some of the information can be found on the gov.uk pages, some on legislation.gov.uk, some on Find Case Law, some on Justice.gov.uk, some on Courtserve, some on legal charity sites, some only behind paywalls beyond the reach of the public.

116) Open justice includes the idea that the law should be clear and readily ascertainable. But despite valiant efforts over two decades or more, there is still much to do.

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.

117) Yes. A chatbot triage system might help people identify the nature of their dispute, if they did not already know. Common problems like housing, divorce, small claims etc would be amenable to online triaging with a view to directing the users to the relevant materials on a dedicated site. This sort of system could not replace proper legal advice, particularly in complex family matters where advice is necessarily highly fact sensitive and individualised, but it could assist in signposting litigants to sources of such advice.

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

118) The government is well placed, and has the biggest resources. But it should also provide support to others, particularly independent non-profit bodies or civil society organisations.

- 119) Unfortunately, the merging of the Lord Chancellor's role with that of a government minister has politicised it in a way that (a) makes it harder to separate the provision of information about the justice system from party-political 'spin' in the publication of announcements and (b) makes it less appropriate for the government to be in control of access to information (such as the judgments of the independent judiciary) that might be necessary in order to challenge the government or its decisions. It is probably better for such information to be under the custodianship of an independent body or organisation with responsibility for promoting public legal education.

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

- 120) Courts, lawyers, law centres, legal charities, civil society organisations, academic researchers, the media all have a role to play. Basic civics courses should be taught in schools.
- 121) If the information is available, librarians in public libraries could be trained to help people find it, as well as providing the facilities necessary (computers etc).
- 122) Government should invest in these sectors to enable them to promote PLE and support the rule of law.

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.?

- 123) Broadcasting**
- a) TV and radio broadcasting, via dedicated series and some well-researched soap opera legal story lines have done a lot to raise awareness in a way that news reporting has failed to do. Unfortunately, much film and TV drama introduces more by way of error than erudition in portraying the legal system, confusing the viewer with inaccuracies and inappropriate usages. But public funding for legally themed dramas or a long running series using story lines derived from real cases might go a long way towards correcting the misrepresentations.
- b) Actually broadcasting live trials, bookended with explainers from legally trained presenters, might be even better. Where live broadcasting might be risky, recorded material could be edited and redacted as necessary, prior to broadcast.

124) Education

The school curriculum could usefully include lessons explaining the legal system and the constitution, the role of democratic politics in law-making, the independence of the judiciary, the cab rank rule, burden and standard of proof, the jury system, legal aid, and basic knowledge of civil and family law claims. Instead of PPE being taught as a degree, it should be a GCSE subject.

125) Social media campaigns

The falling circulation of traditional newspapers, the falling viewing figures of traditional news broadcasting all point to a move away from the conventional consumption of news via these channels; many younger people get their news and indeed views via social media. If they look to TikTok to learn about life, then that is where we need to provide them with public legal education. This is a question of legal educational design. The material must be arranged to suit the medium that reaches the intended audience.