



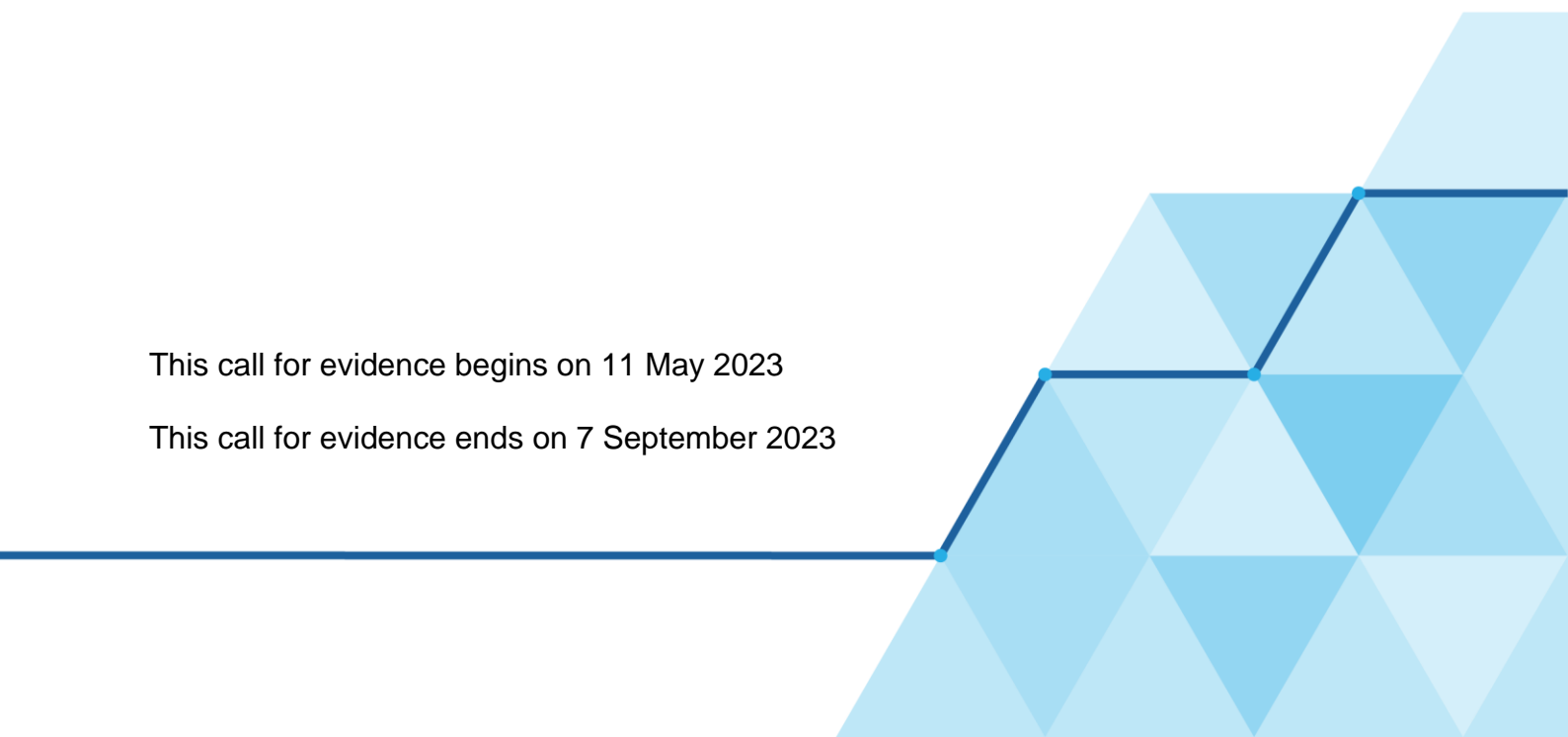
Ministry
of Justice

Open Justice: the way forward

Call for Evidence

This call for evidence begins on 11 May 2023

This call for evidence ends on 7 September 2023





Ministry
of Justice

Open Justice: the way forward

Call for Evidence

2023

A call for evidence produced by the Ministry of Justice.

About this call for evidence

To:	All interested parties, the judiciary, legal profession, media, businesses, academics, law and technology experts, court and tribunal users.
Duration:	From 11/05/2023 to 07/09/2023
Enquiries (including requests for the paper in an alternative format) to:	Open Justice Policy Team Ministry of Justice 102 Petty France London SW1H 9AJ openjusticepolicy@justice.gov.uk
How to respond:	Please send your response by 7 September 2023 via the Open Justice Policy Team Email address at: openjusticepolicy@justice.gov.uk
Additional ways to feed in your views:	A series of stakeholder meetings is also taking place.
Response paper:	A response to this call for evidence will be published on a date to be confirmed.

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Foreword

Open justice is a fundamental principle at the very heart of our justice system and vital to the rule of law – justice must not only be done but must be seen to be done. Its history and importance in law can be traced back to before the Magna Carta. It is a principle which allows the public to scrutinise and understand the workings of the law, building trust and confidence in our justice system.

For centuries open justice has been accommodated by the provision of public galleries, allowing individuals to observe court proceedings in-person and see justice being delivered. Acceptance of this historic provision, and little change to the way we deliver justice, has meant that open justice has been subject to little re-examination during the twentieth century, with the last public evaluation on open justice taking place in 2012.

In the intervening period there have been myriad changes to modernise our justice system, not least the introduction of the £1.3 billion Reform Programme launched by HM Courts and Tribunals Service (HMCTS). This has unlocked the funding for new technologies that can modernise the way in which we deliver justice.

In 2020, the pandemic also led to rapid changes, as court buildings across the country had to close and legal proceedings were conducted almost entirely via video and audio technologies. This re-enforced the necessity for change and provided us with a great opportunity to reassess and modernise how we can deliver open justice by harnessing new technologies available in the modern age.

This government is committed to upholding open justice and we continue to implement new services and changes which strengthen the scrutiny and transparency of the justice system.

We are therefore launching this call for evidence to gain your views on how we can support and strengthen the openness of our court and tribunal services. Recognising the challenging fiscal environment, this exercise will help us target our limited resources where they can have the biggest impact. If you are interested, then we would be delighted to hear from you, and I encourage you to respond. It is important that we hear from a wide range of views to inform the government's future strategy on this important area.

Mike Freer MP

Parliamentary Under Secretary of State for Justice

Introduction

We have not undertaken a public consultation on open justice since 2012. Since that time, the justice system has undergone a period of modernisation, with the HMCTS Reform Programme central to this transformation. Digitisation of the justice system presents both opportunities and risks for open justice and raises important questions on the balance between openness and privacy. As the justice system modernises, we must examine how open justice continues to be upheld, and furthermore, ensure we are advancing open justice in a way that will meet the rising expectation to access justice in a more modern and digitised way.

In 2022, the Justice Select Committee (JSC) began an inquiry examining the effects of digitisation on the courts, the media and open justice. This concluded with the publication of its report – Court Reporting in the Digital Age. The JSC report produced a series of recommendations concerning topics such as published listings, broadcasting, remote observation, access to court documents and the publication of judgments.

The contents of this call for evidence cover many of the issues raised in the JSC report; however, we have expanded our focus beyond court reporting to include open justice matters which affect all members of the public. This includes issues across jurisdictions, HMCTS services, within legislation, throughout public legal education, and on access to data and information. We are examining these topics as they impact on open justice and transparency, and all have undergone a period of change and modernisation over the last decade. The evidence gathered across these areas will help us develop new guidance, inform open justice policy, and enhance current and future service development.

Furthermore, we want to use the opportunity to broaden engagement beyond our traditional stakeholders and gather as much information, as much data, and as many perspectives as possible. We want to hear from all interested parties, including the judiciary, legal professionals, the media, businesses, academics, law and technology experts and our court and tribunal users on how you think the government can uphold and strengthen open justice in the modern age.

This call for evidence will form part of a range of methods we will use to engage with the public on open justice issues. We will consider all evidence submitted to this review and from this identify where government intervention may be effective and inform where we should prioritise our limited resources.

Open justice

The principle of open justice is underpinned by common law and Article 6 of the European Convention on Human Rights¹, which states that ‘everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’. As the principle is underpinned by common law, this allows its definition to adapt and gives the judiciary flexibility in its application on a case-by-case basis.

The open justice legislative framework spans at least seventeen pieces of primary legislation and dates back to 1925. This legislative framework is a mix of restrictions that protect the rights of parties to a case, and provisions that enable greater transparency of proceedings. Two prominent pieces of legislation include Section 41 of the Criminal Justice Act 1925² which provides an absolute prohibition on photography in courts across England and Wales, and Section 9 of the Contempt of Court Act 1981³ which prohibits the making of unauthorised sound recordings in courts across the UK. To ensure open justice is maintained in the modern age, we have introduced legislative measures which enable us to disapply or circumvent these prohibitions. Such measures are discussed in further detail later in this call for evidence, in relation to remote observation, livestreaming and broadcasting of proceedings.

The requirement for open justice is interpreted differently in each type of court and according to the circumstances of each individual case. While the procedure rules for each jurisdiction (which ensure consistency and that cases are managed properly and justly) establish a process for open justice, the courts ultimately have an inherent jurisdiction to decide how it should be applied. The principle of open justice is also not absolute, and when there is specific legitimate justification (e.g., to protect vulnerable parties) a case may be held in private.

We regularly work with the judiciary on how we can uphold the principle of open justice across our courts and tribunals. We do this in recognition of the independent powers they hold, acknowledging that many decisions regarding court proceedings, such as the way in which they are held (remote, hybrid, or in-person), whether reporting restrictions are imposed and when the public can access court documents, remain a matter of judicial discretion. It is important to understand what can be determined by policy, and what is ultimately a matter for the judiciary, when looking at how the government can enhance open justice.

¹ Human Rights Act 1998 (legislation.gov.uk)

² Criminal Justice Act 1925 (legislation.gov.uk)

³ Contempt of Court Act 1981 (legislation.gov.uk)

We are therefore, seeking your views to gauge public awareness and understanding of the open justice principle and the current challenges and opportunities for open justice. We are also seeking views on where we can direct both existing and future policy and how to harness modern technology to enhance and strengthen open justice.

Questions on open justice

1. Please explain what you think the principle of open justice means.
2. Please explain whether you feel independent judicial powers are made clear to the public and any other views you have on these powers.
3. What is your view on how open and transparent the justice system currently is?
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?
5. Are there specific policy matters within open justice that we should prioritise engaging the public on?

Listings

Published court and tribunal lists are essential to open justice as observers rely on them to know what cases are being determined and when judgments are due to be given. Listings were traditionally pinned to notice boards inside court buildings and have been available online for a number of years.

HMCTS supports the principle of open justice in practice by publishing and sharing listings. The rules which govern listings are set out in the procedure rules⁴ and legislation. Changes to these rules are made via the procedural rule committees.

In July 2022, HMCTS launched the first phase of its new Court and Tribunal Hearings (CaTH) service⁵ on GOV.UK, as part of its Reform Programme. This new online service will simplify and streamline how the media and public find information on upcoming court and tribunal hearings, by publishing all lists across England and Wales online, in one place.

This new service can be freely accessed by anyone, but HMCTS will allow professional users, including accredited members of the media, to view lists not available to the public (known as a 'media list'), including additional information such as the defendant's address and the offence code. Currently these professional users can subscribe to receive lists by email in a PDF format, but CaTH will also offer them via outbound API, JSON and PDF. This will allow professional users to choose how to view lists and plan which hearings to observe and report on. The service will soon receive listings data directly from justice systems to publish hearing information directly from those sources. This removes current manual processes for publishing, allowing CaTH to present the information in a consistent and accessible format, which will in turn allow anyone viewing lists to search, sort or filter the lists. Civil and family hearing lists will begin to be published on CaTH in this way during 2023.

CaTH currently receives and publishes Single Justice Procedure (SJP) lists using a manual process, with plans for it to receive data directly from Common Platform in the future. The SJP press list is available to view online by accredited members of the media who sign into a verified part of the CaTH service, or by way of a subscription email. Whereas the information contained in the public list replicates what is already published in traditional listings.

⁴ Procedure rules ([justice.gov.uk](https://www.justice.gov.uk))

⁵ Fact sheet: Court and Tribunal Hearings service - GOV.UK (www.gov.uk)

Existing publishing of listings not on CaTH will continue, with the aim of having all HMCTS listings on the new service.

As seen in the evidence provided to the JSC inquiry into open justice⁶, there are common criticisms of the way in which we currently publish listings. Respondents to the JSC's inquiry, including media organisations, raised concerns over the lack of detail available publicly and suggested that for Magistrates' Courts and Crown Courts in particular, the name, age and address of each defendant, and the charges they are facing should be freely available both online, and in paper format in courts. Additionally, it has been suggested that a small outline of the nature of a case could be included in the listing, as this could help journalists decide which cases to attend and report on. The importance of listings being released in a timely manner to ensure that observers can contact courts with any queries has also been stressed. It has also been suggested that additional information such as reporting restrictions, court documents and results should be added to listings.

The government recognises the benefits of increasing the detail and information available in published listings as this can help to further simplify and consolidate the way in which the media and public access information on court hearings. Doing so, however, will require careful consideration due to the varying rules and practices in each jurisdiction, governing what information can be made publicly available, how and where this information is held within justice systems, as well as considering the implications for information and data management. Establishing this functionality would also require considerable resource which is not currently within the scope of the HMCTS Reform Programme.

We want to understand how we can further enhance list publishing services to improve transparency and open justice, whilst recognising the aforementioned risks and considerations.

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

⁶ Open justice: court reporting in the digital age - Committees - UK Parliament

- 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?
- 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?
- 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?

Accessing courts and tribunals

Public access and observation of court and tribunal proceedings is essential to upholding open justice. Ensuring proceedings occur in an open, public, and transparent manner helps to build public trust and confidence in the justice system and the rule of law. Therefore, where possible, court and tribunal hearings in England and Wales take place in public. It is important to note that in every case, the judge can decide how a hearing is held. If they feel it is necessary for the proper administration of justice, a judge can decide to hold a hearing in private, with no observers allowed.

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

Our online Find a Court or Tribunal (FaCT) service⁷ also helps people swiftly find the correct contact details and additional information (e.g., travel information) for individual courts. We are seeking your views on whether there is more the government could offer to support public access to court and tribunal hearings.

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

⁷ Find a court or tribunal - GOV.UK (www.gov.uk)

Remote observation and livestreaming

Attendance to observe court and tribunal hearings has traditionally been in person, through public galleries or allowing members of the media to sit in the well of the court (beyond the public seating area). In March 2020, the Covid-19 pandemic meant that court and tribunal buildings across the country were forced to close, and legal proceedings in England and Wales were conducted almost entirely via audio and video technologies. During the pandemic we passed emergency legislation to allow for the remote observation of wholly remote proceedings so that the principle of open justice could be maintained. This worked well, and so the government took the decision to expand remote observation and make it a permanent feature of the justice system.

Consequently, in June 2022, the government introduced legislation via the Police, Crime, Sentencing and Courts (PCSC) Act 2022⁸ which allows the media and public to request access to remotely observe any open court and tribunal hearing across England and Wales. The government published guidance⁹ which explains that to remotely observe a hearing, the individual must contact the court or tribunal where the hearing is taking place, provide their full name and email address and request a video link.

As well as allowing individuals to request access to remotely observe a hearing, these new powers also allow courts to make transmissions of proceedings to specific places. The Lord Chancellor must name places as designated livestreaming premises, and these premises would then be added to a list of approved sites published on GOV.UK. Livestreaming court cases is different to broadcasting court cases. Broadcasting allows television cameras into courts to broadcast proceedings and is therefore a more unrestricted method of streaming proceedings (this is covered in the 'broadcasting' section of this call for evidence).

As previously mentioned, the open justice legislative framework dates back to 1925, including the 1925 prohibition on photography in court and the 1981 prohibition on sound recording in court. The legislation introduced in the PCSC Act 2022 replicates these measures for remote observers, making it a criminal offence to record the video or sound of a hearing or to take photos/screenshots of the hearing while remotely observing.

It is important to note that these powers only enable courts and tribunals to make direct transmissions to specific individuals or locations as they see fit (e.g., those who have a direct interest in the proceedings and are identified to the court), rather than making wide broadcasts of proceedings. Additionally, the judge can still decide whether a hearing can

⁸ The Remote Observation and Recording (Courts and Tribunals) Regulations 2022 (legislation.gov.uk)

⁹ Observe a court or tribunal hearing - GOV.UK (www.gov.uk)

be observed remotely. To facilitate remote access for observers, courts and tribunals will also need to be supported by the necessary technology and staff.

These changes have been transformative for open justice. They support court reporting by allowing journalists to virtually attend multiple hearings at different locations in one day. It also allows those who are unable or uncomfortable observing a court or tribunal hearing in person to do so from a different location. The powers introduced via the PCSC Act 2022 therefore have great potential to enhance open justice, enabling more people to observe court proceedings and develop a greater understanding of how the justice system works.

As the legislation introduced in the PCSC Act 2022 has been in place since June 2022, we want to explore public views on remote observation. Additionally, we want to test the public's appetite on increasing the use of livestreaming specifically.

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?
- 15.** Do you think that all members of the public should be allowed to observe open court and tribunal hearings remotely?
- 16.** Do you think that the media should be able to attend all open court proceedings remotely?
- 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?
- 18.** Would you impose restrictions on the reporting of court cases? If so, which cases and why?
- 19.** Do you think that there are any types of buildings that would be particularly useful to make a designated livestreaming premises?
- 20.** How could the process for gaining access to remotely observe a hearing be made easier for the public and media?

Broadcasting

Few people currently have direct experience of court proceedings, and overall public understanding of the justice system is limited. Most court sittings take place when people are at work, and consequently, many people currently base their views of the court system from dramatised portrayals in television or films. The broadcast media can play a part in opening up the courts to the public, demystifying the criminal justice process, and increasing understanding of sentencing.

We currently facilitate the broadcasting of proceedings in the Supreme Court, the Court of Appeal (Civil Division), the Competition Appeal Tribunal and, in a limited capacity, judicial sentencing remarks from the Crown Court. Allowing the broadcasting of proceedings enhances open justice by helping the public observe and understand how our justice system works.

While the broadcasting of proceedings would usually be prohibited due to the 1925 prohibition on photography, and the 1981 prohibitions on sound recording, this can be disapplied in certain circumstances. Section 32 of the Crime and Courts Act 2013¹⁰ allows for the prohibitions to be disapplied in specific circumstances by secondary legislation. There is currently secondary legislation in place to allow the Court of Appeal¹¹ and the Competition Appeal Tribunal¹² to broadcast proceedings and for the Crown Court¹³ to broadcast sentencing remarks only. Since 2022, in high profile cases, approved media parties (BBC, PA, ITN, Sky) can request to broadcast judge's sentencing remarks in any specific Crown Court case and the relevant judge must approve this request. This allows the media and interested members of the public can hear the judge's sentencing remarks delivered in court.

As per the Constitutional Reform Act 2005¹⁴, the Supreme Court is excluded from the scope of the original 1925 and 1981 prohibitions and therefore can record and publish any footage of its proceedings. This is because prior to its establishment in October 2009, cases that are now heard by the UK Supreme Court would have been heard in the House of Lords, where broadcasting was allowed. In addition, when it was established, the

¹⁰ Crime and Courts Act 2013 (legislation.gov.uk)

¹¹ The Court of Appeal (Recording and Broadcasting) Order 2013 (legislation.gov.uk) and The Court of Appeal (Recording and Broadcasting) (Amendment) Order 2020 (legislation.gov.uk)

¹² The Competition Appeal Tribunal (Recording and Broadcasting) Order 2022 (legislation.gov.uk)

¹³ The Crown Court (Recording and Broadcasting) Order 2020 (legislation.gov.uk)

¹⁴ Constitutional Reform Act 2005 (legislation.gov.uk)

Supreme Court identified a key objective of making its proceedings more accessible to the public and for that reason its proceedings are filmed and routinely broadcast.

Respondents to the JSC's inquiry into open justice made several recommendations in terms of expanding the current broadcasting regime. They include the expansion of broadcasting to other divisions of the Court of Appeal, the High Court and Upper Tribunal, as well as broadcasting the opening of the case by prosecution of an image of the defendant in the court.

Those recommending this expansion argue that television, filming, and multimedia coverage of court proceedings in other legal jurisdictions have improved public understanding and respect for the criminal justice process, the rule of law and the importance of the independent judiciary. The appetite for viewing Supreme Court proceedings and Crown Court Sentencing remarks has also highlighted a public demand and interest for how the courts work and expanding the current regime would facilitate this further. It is also suggested that new generations of media consumers may already be demanding and expecting a more modern, high 'tech-conscious' representation of open justice in court reporting.

There are concerns that relaxation of the current broadcasting rules in the criminal courts could undermine the necessary privacy and protection required in many cases. Televising our courts may also open the judicial process to sensationalism and trivialise serious processes to a level of media entertainment.

To explore where we could further expand the broadcasting regime in England and Wales, we can also look at the different approaches that have been taken to broadcasting internationally. In Scotland, broadcasting has never been restricted in the same way as England and Wales. Since 1992, broadcasters have been able to apply for permission to film trials. The fundamental principle of the practice is that the presence of cameras in the court should be without risk to the administration of justice. As long as all the key parties agree and conditions are met, full trials can theoretically be filmed for educational purposes and juries' verdicts, or sentencing can be filmed for other purposes such as news broadcasts. While there have been some cases in which filming in courts has been authorised in Scottish court proceedings, in practice, Scotland has not seen widespread broadcasting largely due to the requirement that all parties have to give their permission.

In New Zealand, court filming was introduced in 1998 and the broadcast of most parts of proceedings may be allowed, but broadcasters must make an application to the court in advance stating which aspect of the court process they wish to film (trial, sentence, appeal) and the name of the programmes in which the film will be used. The judge in each case can approve or decline applications and has the power to control court proceedings, and to remove the media at their discretion. Specific rules about what can be filmed in court are also covered in guidelines issued by the judiciary.

In the US, broadcast is permitted in any state; however, the rules governing filming of court procedures varies between them. In some states, only appellate proceedings may be filmed, in others trial coverage is restricted to civil proceedings. In all states, filming is only allowed at the discretion of the presiding judge. Unlike the UK, the US Supreme Court is the one court where broadcasting of proceedings is not permitted. The court releases audio recordings at the end of weeks when it has heard arguments, but has never allowed video, even on a delayed basis.

Considering the above arguments and recommendations, we want to test public demand for expanding powers to allow for further broadcasting of proceedings.

Questions on broadcasting

- 21.** What do you think are the benefits to the public of broadcasting court proceedings?
- 22.** Please detail the types of court proceedings you think should be broadcast and why this would be beneficial for the public? Are there any types of proceedings which should not be broadcast?
- 23.** Do you think that there are any risks to broadcasting court proceedings?
- 24.** What is your view on the 1925 prohibition on photography and the 1981 prohibition on sound recording in court and whether they are still fit for purpose in the modern age? Are there other emerging technologies where we should consider our policy in relation to usage in court?

Single Justice Procedure

Single Justice Procedure (SJP) is a more proportionate way of dealing with straightforward, uncontested, summary-only (low severity), non-imprisonable offences which almost exclusively result in a financial penalty. Examples of such offences include using a television without a license, driving without car insurance and exceeding a speed limit. It ultimately allows a single magistrate, supported by a legal adviser, to decide on such offences without the defendant going to court.

Previously in these cases, defendants would be sent a requisition inviting them to either plead guilty to the offence by post or attend a specific magistrates' court on a day already allocated and resourced by the court. It was found, however, that defendants tended not to engage at all, and trials often went ahead without them. These also proved to be cases which the press rarely attended.

The introduction of SJP aimed to both reduce this wasted court time and ensure that defendants do at least engage in the court process. It means that for defendants that do plead guilty, or do not respond within the 21-day time limit, their case will be dealt with through the SJP. If they plead not guilty or ask for a court hearing, the case goes to a hearing in open court; however, defendants pleading guilty can still request a hearing, for example if they want to argue against a driving ban. It is important to note that defendants cannot be dealt with via the SJP against their will.

Defendants pleading online can also include details of any mitigating circumstances they would like the court to consider. The plea can be added to the case the same day it is entered. This reduces the length of time it takes for the case to be resolved. HMCTS' new case management system, Common Platform¹⁵, automates processes and significantly reduces the administrative tasks necessary on each case. The outcomes are recorded digitally and are immediately available to prosecutors and other parties.

We have worked closely with the media to ensure that the SJP is accessible and open and would argue that there is sufficient transparency for cases dealt with under this procedure. While the Criminal Procedure Rules require all courts to give certain additional information on individual cases upon request from the media and other interested third parties, courts are currently obliged to give more information on cases prosecuted under the SJP. This includes the prosecution statement of facts and the defendant's statement in mitigation.

Additionally, a list of pending SJP cases is published each day online on the CaTH service, which is available to the public. There is also a media version of this list published

¹⁵ Fact sheet: Common Platform - GOV.UK (www.gov.uk)

on CaTH, which contains more information on these cases so they can report on them if they so wish. The media therefore receive more information about cases dealt with under this procedure than traditional proceedings, where reporters would only receive such information if they attended the courthouse in person and wrote down the evidence.

The degree to which the SJP ensures adequate transparency and openness of the justice system, however, is still questioned. Some feel that the SJP is an 'inherently closed procedure' with a lack of oversight and would welcome more access to information around these cases such as the statistics on how many people are prosecuted under the SJP, for which offences, and whether the defendant pleaded guilty, non-guilty, or entered no plea.

Concerns have also been raised that SJP does not provide sufficient transparency of the process by only publishing case outcomes.

We are therefore seeking your views on whether there is more the government could do to enhance the transparency of the SJP process.

Questions on Single Justice Procedure

- 25.** What do you think the government could do to enhance transparency of the SJP?
- 26.** How could the current publication of SJP cases (on CaTH) be enhanced?

Publication of judgments & sentencing remarks

A judgment outlines the decision reached by a judge in a court or tribunal proceeding and provides an explanation as to how they reached that decision. Therefore, the publication of judgments places into the public domain judicial decisions and enables the public to scrutinise and understand those decisions.

Under our common law system judgments are a source of law, and access to them is a fundamental right central to the rule of law and the principle of open justice. In August 2019, the Supreme Court reiterated this importance in the case *Cape Intermediate Holdings Ltd v Dring*, emphasising that, at the very minimum, the public should have access to court judgments¹⁶ and tribunal decisions.

In April 2022, The National Archives and the Ministry of Justice launched Find Case Law (FCL)¹⁷, a service which publishes freely accessible court judgments and tribunal decisions. The purpose of FCL is to increase public access to judgments, ensure their preservation and enable reuse. Reuse of judgments published on FCL is governed by the Open Justice Licence. Importantly, judgments published on FCL are machine readable and therefore can be processed and analysed computationally. Reuse for computational purposes is governed by a separate Transactional Licence which is only granted following a successful application to the National Archives. By enabling this type of reuse our aim is to support and encourage research and innovation with appropriate safeguards for the personal and sensitive data contained within judgments.

In addition to FCL, some tribunal decisions are published on GOV.UK including judgments and written reasons for the Employment Tribunal. The Lord Chancellor is required by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to maintain a register of judgments and written reasons.¹⁸ These are not machine-readable and are not governed by the same licences as decisions published on FCL; however, published tribunal decisions are easy to locate online through the use of search engines such as Google.

Since its launch in April 2022, FCL has published over 4,000 judgments and tribunal decisions on its website. The service is currently in the early stages of development and

¹⁶ 'Cape Intermediate Holdings Ltd v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK)' (2019) UKSC 38, paragraph [22]. *The Supreme Court* [Online]. Available at: <https://www.supremecourt.uk/cases/uksc-2018-0184.html> (Accessed: 7 January 2021)

¹⁷ Find case law (nationalarchives.gov.uk)

¹⁸ Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013

incremental improvements are being made in response to user testing and feedback. FCL currently prioritises the publication of legally significant judgments and decisions from England and Wales; however, the longer-term ambition is to provide a complete record of judgments and decisions. As we work towards this ambition, we want to understand your views on expanding FCL and the current processes for publishing decisions on GOV.UK.

Sentencing remarks are separate to court or tribunal judgments and are not routinely published. They are statements passed by a judge during the sentencing of an offender. The remarks detail the sentence imposed on the offender and outline the judge's reasons for the sentence. A judge may decide to publish their sentencing remarks if there is public interest, the case has legal significance, or the remarks assist public understanding. In the higher courts, judges give their sentencing remarks verbally at the sentencing hearing and these are then recorded and transcribed. In high profile cases, the Crown Court may broadcast sentencing remarks online.

Sentencing remarks are not published throughout the Magistrates' courts. As noted, in our response to the JSC inquiry, the large capital investment and resources needed to record, transcribe, and publish sentencing remarks across the magistrates' courts would be disproportionate; however, we want to use this call for evidence to build and inform future policy on the publication of sentencing remarks.

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.
- 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?
- 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.
- 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.

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.
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?

Questions on the computational reuse of judgments on Find Case Law and licencing:

33. What new services or features based on access to court judgments and tribunal decisions are you planning to develop or are you actively developing? Who is the target audience? (For example, lawyers, businesses, court users, other consumers).
34. Do you use judgments from other territories in the development of your services/products? Please provide details.
35. After one year of operation, we are reviewing the Transactional Licence. In your experience, how has the Open Justice and/or the Transactional Licence supported or limited your ability to re-use court judgments or tribunal decisions. How does this compare to your experience before April 2022? Please give examples in your response.
36. When describing uses of the Transactional Licence, we use the term 'computational analysis'. We have heard from stakeholders, however, that the term is too imprecise. What term(s) would you prefer? Please explain your response.

Questions on tribunal decisions published on GOV.UK:

37. Have you searched for tribunal decisions online and if you have, what was your experience, and for what was your reason for searching?
38. Do you think tribunal decisions should appear in online search engines like Google?
39. What information is necessary for inclusion in a published decisions register? What safeguards would be necessary?

Questions on public access to sentencing remarks:

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

Access to court documents and information

Access to court and tribunal documents is a fundamental part of open justice as it allows members of the public who are not party to proceedings (non-parties) to understand the proceedings of a case and the conclusions reached by the court. Without access to these documents in complex cases it can be very difficult to understand what is taking place.

The rules on accessing case documents by non-parties (people not directly involved in the case) vary across jurisdictions. Certain documents require the permission of the judge to be released whilst others do not. This is set out in the procedure rules across the different jurisdictions. For example, in open proceedings, once a case has concluded, anyone may obtain the judgment or order made in public. Some documents require permission of the judge and payment of a fee – for example, this can include transcripts and skeleton arguments. At times, applicants must explain why they are seeking access and how granting them access to this information advances open justice. The judge will then carry out a fact-specific balancing exercise. This means it will weigh up the open justice principle against the risk disclosure may cause to the administration of justice or the legitimate interests of others. Most non-parties seeking access to documents are members of the media. Increasingly however, applicants also include NGOs and academics carrying out research on the justice system. These applications usually consist of requests to access multiple court documents across several courts.

As seen in evidence submitted to the JSC inquiry¹⁹ on open justice, non-parties can experience difficulty when seeking access to documents. As such, we continue to work with the judiciary to look at ways we can improve the public's ability to understand and scrutinise the justice system. Examples of this include, the introduction of Find Case Law, the Reporters' Charter²⁰ which provides guidance for journalists on which documents they are entitled to, and the Media Protocol²¹. The Media Protocol is an agreement between the media and HMCTS whereby HMCTS provides free copies of enhanced court lists and registers to accredited journalists.

Ultimately, the decision to release most court documents rests with the judge and court. However, it is important we test your understanding of current practices as this will help

¹⁹ Open justice: court reporting in the digital age (parliament.uk)

²⁰ HMCTS702_Reporters_Charter_A4P_v5_Dec_22.pdf (publishing.service.gov.uk)

²¹ HMCTS314_Protocol_on_sharing_court_lists-registers_and_docs_with_media_Jan_22.pdf (publishing.service.gov.uk)

inform future changes to strengthen open justice. Any future policy on access will be developed in partnership with the judiciary.

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?
- 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?
- 43.** Do you (non-party) know where to look or who to contact to request access to court or tribunal documents?
- 44.** Do you (non-party) know what types of court or tribunal documents are typically held?
- 45.** What are the main problems you (non-party) have encountered when seeking access to court or tribunal documents?
- 46.** How can we clarify the rules and guidance for non-party requests to access material provided to the court or tribunal?
- 47.** At a minimum, what material provided to the court by parties to proceedings should be accessible to non-parties?
- 48.** How can we improve public access to court documents and strengthen the processes for accessing them across the jurisdictions?
- 49.** Should there be different rules applied for requests by accredited news media, or for research and statistical purposes?
- 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?

Data access and reuse

The justice system is undergoing a period of rapid and extensive change with the HMCTS Reform Programme central to this transformation. Through the modernisation of courts and tribunals, we can collect more detailed information on users and processes. By facilitating public access and reuse of this data we can enhance understanding of the justice system, improve transparency, and encourage research and innovation.

Data derived from the justice system can be placed into various categories and includes court and tribunal user data, case level data, administrative information, and primary legal data. Types of data which fall within these categories include judgments, user satisfaction, outcomes, statements of case, orders, details of a charge or claim, listings, entered plea, transcripts, legislation, dates of hearing, sentencing remarks, party names and representatives, and judges' names. This list is not exhaustive and there exist many other types of data collected and processed across the justice system. How this data can be accessed and shared with the public is set out in legislation, case law, procedural rules, and departmental guidance.

Improving access to data is essential to improving the public's understanding of and confidence in the justice system and to enabling innovation. Together with HMCTS and the judiciary we have introduced changes to facilitate access and reuse of this data. This includes the reformed HMCTS' Data Access Panel (DAP) and the creation of the Senior Data Governance Panel (SDGP). Decisions regarding access to Ministry of Justice held data are made by the Data Access Governance Board and decisions regarding the release of documents are made by the relevant court or tribunal.

The DAP facilitates access to case-level information, historical case records and survey data to support research proposals on the Ministry of Justice's and HMCTS' areas of interest. This includes proposals exploring machine learning and other novel methods of quantitative research. Access to certain types of data via the DAP, is only granted following a successful application. Applicants requesting documents held by a court are directed by the DAP to request them from the relevant court. Applicants may then have to submit a form to the court and pay a fee. Issues regarding access to court documents can be found under the 'access to court documents and information' section in this call for evidence.

At times the DAP may receive novel or contentious requests. These are referred to the SDGP for advice. The SDGP is composed of government officials, the judiciary and experts on data governance, who provide independent advice and guidance on novel and contentious data matters. The Ministry of Justice, HMCTS and the judiciary may refer matters to the SDGP and one of its guiding principles includes open justice. In addition to

governance reforms on data access, the introduction of Find Case Law and a new licencing regime has encouraged the reuse of published judgments and the data held within them.

As we consider the ways we can improve access and reuse of data we must balance the benefits with the risks of misuse and the impact it may have on the administration of justice, the independence of the judiciary and public confidence in the justice system. Therefore, we want to test your views on data access and its reuse to inform future policy and service development.

Questions on data access and reuse

- 51.** For what purposes should data derived from the justice system be shared and reused by the public?
- 52.** How can we support access and the responsible re-use of data derived from the justice system?
- 53.** Which types of data reuse should we be encouraging? Please provide examples.
- 54.** What is the biggest barrier to accessing data and enabling its reuse?
- 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?
- 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.
- 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?

Public legal education

In its full definition, open justice involves ensuring the public have a satisfactory understanding of the legal process by providing citizens with access to proceedings, data, advice, and information. Public legal education (PLE) seeks to provide the public with awareness, knowledge and understanding of the justice system. It involves a range of activities such as awareness-raising campaigns, providing information or resources about legal issues and court and tribunal visits/activities (e.g. mock trials and roleplay exercises).

PLE ensures the public are aware of their rights, as well as providing them with the skills and confidence to gain access to justice. Therefore, maintaining a satisfactory level of PLE is an important aspect of upholding open justice.

PLE also seeks to ensure both the media and public are aware of the rules in place to protect the fair administration of justice. This includes, for example, making the media and public aware of the actions involved in committing contempt of court, and therefore risking unfairly influencing a court case. For example, The Attorney General's Office recently ran the 'Think Before You Post' PLE campaign, complete with examples of social media posts which could prejudice court proceedings. We are seeking views on how the government can further support PLE, and how we may work with others to facilitate it.

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.
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?
60. What do you think are the main knowledge gaps in the public's understanding of the justice system?
61. Do you think there is currently sufficient information available to help the public navigate the justice system/seek justice?
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.
63. Do you think the government is best placed to increase knowledge around the justice system? Please explain the reasons for your answer.

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

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

- 1. Please explain what you think the principle of open justice means.**
- 2. Please explain whether you feel independent judicial powers are made clear to the public and any other views you have on these powers.**
- 3. What is your view on how open and transparent the justice system currently is?**
- 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?**
- 5. Are there specific policy matters within open justice that we should prioritise engaging the public on?**
- 6. Do you find it helpful for court and tribunal lists to be published online and what do you use this information for?**
- 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)?**
- 8. Please explain whether you feel the way reporting restrictions are currently listed could be improved.**
- 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?**
- 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?**
- 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?**

- 12. Are you aware that the FaCT service helps you find the correct contact details to individual courts and tribunals?**
- 13. Is there anything more that digital services such as FaCT could offer to help you access court and tribunals?**
- 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?**
- 15. Do you think that all members of the public should be allowed to observe open court and tribunal hearings remotely?**
- 16. Do you think that the media should be able to attend all open court proceedings remotely?**
- 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?**
- 18. Would you impose restrictions on the reporting of court cases? If so, which cases and why?**
- 19. Do you think that there are any types of buildings that would be particularly useful to make a designated livestreaming premises?**
- 20. How could the process for gaining access to remotely observe a hearing be made easier for the public and media?**
- 21. What do you think are the benefits to the public of broadcasting court proceedings?**
- 22. Please detail the types of court proceedings you think should be broadcast and why this would be beneficial for the public? Are there any types of proceedings which should not be broadcast?**
- 23. Do you think that there are any risks to broadcasting court proceedings?**
- 24. What is your view on the 1925 ban 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?**
- 25. What do you think the government could do to enhance transparency of the SJP?**

- 26. How could the current publication of SJP cases (on CaTH) be enhanced?**
- 27. In your experience, have the court judgments or tribunal decisions you need been publicly available online? Please give examples in your response.**
- 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?**
- 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.**
- 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.**
- 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.**
- 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?**
- 33. What new services or features based on access to court judgments and tribunal decisions are you planning to develop or are you actively developing? Who is the target audience? (For example, lawyers, businesses, court users, other consumers).**
- 34. Do you use judgments from other territories in the development of your services/products? Please provide details.**
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64. Who else do you think can help to increase knowledge of the justice system?
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.?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 7 September 2023 to:

Email: openjusticepolicy@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.



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