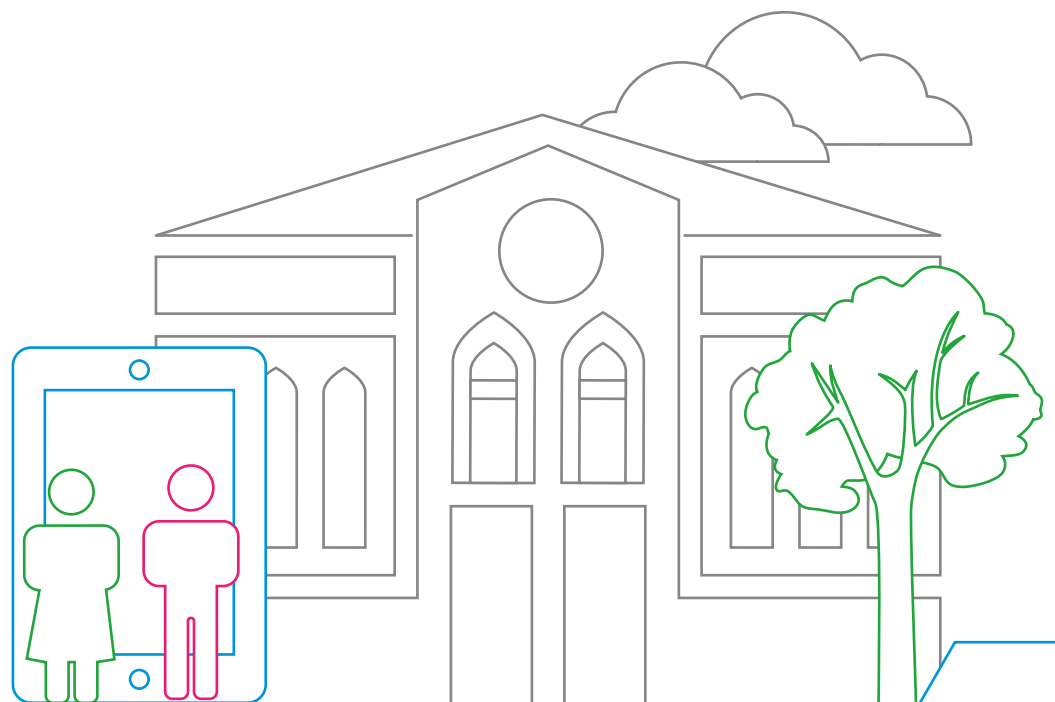




HM Courts &
Tribunals Service

Jurisdictional guidance to support media access to courts and tribunals

Criminal courts guide



Criminal courts

Although journalists are often in court to report on particular proceedings, you may still be contacted outside a hearing to verify the facts about a case they have heard about or to get details of a specific case after the event. You can release factual information that is said or read out in open court, contained within a court document that is open to public inspection, or placed on a public notice board.

Information you must provide to the media

Where you have the relevant information and the case is ongoing (or the verdict is less than six months ago), you must supply the following details on request from a member of the media (in court or by phone/email) in line with the Criminal Procedure Rules:

- a) the date of any hearing in public, unless any party has yet to be notified of that date;
- b) each alleged offence and any plea entered;
- c) the court's decision at any hearing in public, including any decision about bail, or the committal, sending or transfer of the case to another court;
- d) whether the case is under appeal;
- e) the outcome of any trial and any appeal; and
- f) the identity of the prosecutor, the defendant, the parties' representatives, including their addresses, and the judge, magistrate or magistrates, or justices' legal adviser by whom a decision at a hearing in public was made.

Details of any reporting or access restrictions ordered by the Court should also be given.

Please note that in order to comply with the obligation in relation to the identity of the defendant, you should also provide the media (although not the public) with defendant's address, age and where it is provided, date of birth.

The full details of Rule 5.8 of the Criminal Procedure Rules can be found at: <http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/crim-proc-rules-2015-part-05.pdf>

Requests for copies of the indictment

Reporters attending a criminal trial may ask for copies of the charge sheet or indictment and the practice directions state that this should be released as "The alleged offence(s) will have been read aloud in court, and their terms must be supplied under Criminal Procedure Rules 5.8(4)."

If you have concerns that draft indictments may be subject to amendments, particularly if they have been asked prior to the Pre and Trial Preparation Hearing and the defendant has not yet been arraigned, then a warning could be drafted along the lines:

"The charges specified on this draft indictment may still be subject to amendment and cases may not proceed in exactly the same way as the charges appear on the basis of this draft indictment."

It may also be sensible to point out that there may be reporting restrictions in place, or that the complainant may have the benefit of lifetime anonymity due to the nature of the offence. It is, however, the responsibility of the publisher to find out what reporting restrictions exist prior to publication.

If you are asked by the media for an indictment when a reporter was not in court for the Plea and Trial Preparation Hearing, as the charges must be lodged under the Criminal Procedure Rules by that hearing, you would be able to confirm the charges on the indictment after that point, unless there's a specific reason not to.

Details of the directions to courts on all aspects of access to information were updated by the Lord Chief Justice in July 2018 and took effect on 1 October 2018.

Full details are included in Division I of the Criminal Practice Directions, at paragraph 5B. The Directions can be read online at: <http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/crim-practice-directions-I-general-matters-2015.pdf>.

Courts' registers and lists

Under a protocol agreed between HMCTS, the Society of Editors and the News Media Association, Magistrates' Court lists and court registers should be made available to the media on request and without charge. At a minimum, the lists should contain each defendant's full name, age, date of birth (when provided), alleged offence and address.

The full protocol can be seen in full at Annex A of this guidance and can be read online at: <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>

Although there is no direct equivalent to the magistrates' court lists and register in the Crown Court, similar principles in relation to media access to information are to apply insofar as they can. Crown Court staff are encouraged to provide the equivalent information in response to media enquiries.

Crown Court lists may be accessed at www.courtserve.net/homepage.htm.

Guidance on reporting restrictions

The making of reporting restrictions is covered by Part 6 of the Criminal Procedure Rules. It sets out which restrictions may be imposed by a criminal court and should serve as a guide to court staff where there is uncertainty about what restrictions may apply and how they should be managed and administered.

Part 6 is available in full at Annex B of this guidance and can be read online at: <http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/crim-proc-rules-2015-part-06.pdf>

In addition, you should refer to guidance issued by the

Judicial College, and supported by the News Media Association, Society of Editors and Media Lawyers' Association. It sets out a "structured approach for magistrates and judges" to ensure reporting restrictions are correctly applied and observed, including the advance notification of the media of such an application. The guidance can be read online at: <https://www.judiciary.uk/wp-content/uploads/2015/07/reporting-restrictions-guide-may-2016-2.pdf>.

Applications for reporting restrictions

Where the court has the power to impose a restriction on the reporting of events at a public hearing, or on public access to an otherwise public hearing, or has the power to withhold information from the public during a public hearing, the court may do so on application by a party or on its own initiative. The party who wants the restriction imposed must apply as soon as reasonably practicable, notify any other party, and any other person as the court directs. They must specify the proposed terms, how long the restriction should last, what power the court has to make the order, and why such an order is necessary.

If the application is for the trial to be held in private, court officers must display a notice of the application being made at a prominent location near the courtroom, and give notice of the application to the media according to any other administrative direction given by the court manager.

The media should be allowed an opportunity, if they want, to make representations to the court about a discretionary reporting restriction that the court is thinking of making or is being asked to make. 'Courts are required to hear the media's representations in relation to a proposed reporting restriction or restriction on public access to proceedings before making any order. Exceptionally this may not be possible where an unexpected issue arises; in such circumstances the media should be invited to make representations at the first available opportunity.'

If, exceptionally, the court is asked to impose a reporting restriction at a hearing in private, or without a hearing at all, then action should be taken to inform the media, in the

same way they are informed of an application for a trial to be held in private.

Display of a reporting restriction order

Any reporting restriction imposes potential criminal liability on any media organisation that breaches it and it is therefore essential that the restriction(s) imposed is written up as soon as possible in clear and precise terms, and drawn up as a court order as soon as practicable.

Subject to the requirements of Part 6 of the Criminal Procedure Rules, local procedures may vary. But as a rule court staff will be responsible for producing the relevant order and any accompanying notices that will be displayed following an order for reporting restrictions in any type of case. These notices should be drawn up promptly and agreed with the judge/magistrate who made the order. The following information will be available from the order and should be included in any notice:

- date of order
- name of trial
- who made the order and where
- reason for the decision and the legal basis
- what or who is affected by the order
- how long the order is intended to last
- lifting restrictions in place.

The notice should also mention that if the media wish to challenge the order, they will need to make representations to the judge/magistrates.

Orders that are rescinding, replacing, updating or amending a previous order must make this clear, including the status of previous orders. All decisions from the list above must be clearly recorded on the court file and on XHIBIT/CREST.

All notices setting out the above information must be clearly displayed on the courtroom door, by daily lists and in the pressroom, if there is one. Copies of the notices should be made and retained on the court file so that queries can be easily answered. CREST/electronic systems, including public display screens, should also be updated and the listing officer should then ensure that details appear on the court list so all staff and media are alerted to the fact that reporting restrictions are in place.

The media should be able to find out if there are reporting restrictions on a particular case in a timely fashion but court staff should not attempt to interpret the restrictions.

The appropriate members of staff should however, be available and briefed to deal with media inquiries, inside and outside of court hours, this could be a nominated press or media lead. Whilst HMCTS is under a duty to ensure any

reporting restrictions are accurately recorded and displayed, the media is expected to pay close regard to the reporting restrictions made and carry the risk of contempt of court if they publish information subject to them.

Court staff should avoid providing advice to the media on the interpretation or scope of reporting restrictions because of the risk of being in contempt of court themselves. If the media want further clarification about a reporting restriction then they should seek their own legal advice.

Request for information about historic cases

Under rule 5.8(4) of the Criminal Procedure Rules court staff can only supply information about cases that are ongoing or where the verdict was not more than 6 months ago. If the media want information about a case that ended more than 6 months ago then they must apply to a judge, under rule 5.8(7), and they must explain the reasons for the request: see paragraph I 5B of the Criminal Practice Directions. Court staff should give all the help they can and in particular should make sure that the request is referred promptly to a judge – the process of court staff referring these requests to a judge is already in place and in most instances a decision is made within 5 working days depending on the nature of the request and the age and complexity of the case.

The Criminal Procedure Rule Committee decided that for court staff to supply the information allowed under rule 5.8 within 6 months of the end of a case would not breach any of the data protection principles in Part 3 of the Data Protection Act 2018, or any restriction imposed by the Rehabilitation of Offenders Act 1974. After 6 months, however, the legal position is more complicated and that is why any request for information about older cases needs to be decided by a judge, even if the request is made by the media.

Jurors

We do not give jurors' names to the media (or anyone else). The only reason the names are read out in open court is because the defendant has a right to hear the names of the jurors who are about to try them in the interests of justice. This is in case they may know any of the names and may need to challenge that juror sitting on the trial.

Jury visits

The media are entitled to attend jury visits, but their attendance needs to be carefully handled.

When the jury, judge and parties come together on a site visit, the court is effectively 'in session' just as it would be in the courtroom. All the normal contempt rules therefore apply – the group cannot be filmed or photographed while the court is in session and evidence must not be interfered

with but equally the media should be allowed to attend the visit. Some media photography at the site can be arranged when the court is not in session with prior request to the court staff.

The local police should be approached well in advance of the jury site visit to discuss what assistance they can give in controlling the media attendance at the site visit. If possible, a cordoned area should be set aside for the media, as close to the site as possible.

Experienced ushers or other senior staff from the court where the trial is being held should also attend to perform the same role they would in a normal court in controlling the media's attendance. They should remind any media attending that the normal contempt of court rules apply in relation to filming or photographing jurors, the judge or anyone else attending the site visit.

Defendants entering court by a side entrance

You may be asked to allow defendants on bail to enter the court through a side entrance to avoid the press in the street. This could lead to complaints from the media.

You should only allow defendants to use a side entrance if you have been specifically advised to, on security grounds, by the police or the judge. If the media do make complaints you should tell them that the decision was made following police advice.

Transcripts

Anyone may ask for an available transcript of a hearing held in public for a fee. The transcription company must not provide information where a reporting restriction applies if doing so would contravene the reporting restriction.

For a hearing held in private, the transcription company can only provide the transcript to a person who was present at the hearing (or to the registrar).

Youth courts

The media are entitled to attend and report on proceedings in the youth court, and we should facilitate this. Unlike members of the public, the media do not need permission to attend, however it is reasonable to request identification from a journalist or media representative before giving them access to the courtroom. In line with this wider guidance, the UK press card is the accepted form of identification required.

There are automatic reporting restrictions that apply to protect the identity of under-18s involved in the following proceedings:

- proceedings in the youth court;
- proceedings on appeal from a youth court;
- that relate to a breach, revocation or amendment of a Youth Rehabilitation Order (occurring when the offender has since turned 18);
- proceedings on appeal from a magistrates' court relating to a YRO.

The court can, however, lift or amend such restrictions by order.

If you receive calls from the media about youth court cases the following information can be given out:

- result of the case
- the name and address of the defendant (in most cases the journalists will already know it), but remind them that these details cannot be published
- the age, including the date of birth recorded on the court file
- details of any order under section 49 of the Children and Young Persons Act 1933 dispensing with the prohibition under section 49(1).

As you are giving out information not normally available to the public, if you do not know the journalist, you can ask them to email you to prove they are press or, if in person, ask to see a UK Press Card.

The point of providing these details is to promote accurate reporting; responsibility for what is published always rests with the media organisation.

Power to prohibit publication

Section 45 of the Youth Justice and Criminal Evidence Act 1999 allows a court to prohibit publication that would identify a young person concerned in any other criminal proceedings. The court may direct that:

- no report of the proceedings shall reveal the name, address, school or place of work, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings, either as being the person or in respect of whom the proceedings are taken, or as being a witness therein; and
- no picture (still or moving) shall be published as being or including a picture of any child or young person so concerned in the proceedings.

Protocol on sharing court lists, registers and documents with the media

There is a longstanding policy and practice of magistrates' courts providing copies of the court register and court lists to the media free of charge, as well as providing access to documents used in particular cases and hearings.

HMCTS believes that assisting the media to report what is happening in local courts is important in order to maintain and increase confidence in the criminal justice system, and to uphold a clear commitment to open justice.

As the information provided is not routinely available to the general public, media organisations and journalists receiving it must conform to appropriate, common-sense safeguards and recognise their wider legal obligations relating to publication.

This protocol has been agreed by HMCTS, the Society of Editors and the News Media Association, and approved by the Lord Chancellor for the purposes of conforming to the Criminal Procedure Rule 5.8, and comes into effect on the 6 April 2020. It accords with all legal obligations including General Data Protection Regulation and the Data Protection Act 2018.

HMCTS will:

- provide copies of court registers and court lists by e-mail marked "Note this email contains Special Category Data as defined by Data Protection Act 2018, formally known as Sensitive Personal Data, and should be handled appropriately." in the body of the email
- ensure the email contains the following disclaimer:
"This email contains information intended to assist the accurate reporting of court proceedings. It is vital you ensure that you safeguard the Special Category Data included and abide by reporting restrictions (for example on victims and children). HMCTS will stop sending the data if there is concern about how it will be used."
- not charge for copies of court registers or court lists
- ensure that court registers contain details of any reporting restrictions when they are first made¹
- ensure that magistrates' court lists, which are supplied or made available to the media on request, contain each defendant's name, date of birth (when provided), age, alleged offence and address
- ensure that the information is being provided to an accredited journalist or media organisation. This is normally done by requesting to see an individual's UK Press Card²
- Any dispute should be referred to HMCTS press office to resolve.
- ensure that any email lists/contact details of media organisations and journalists are reviewed regularly for accuracy (at least twice a year)
- reserve the right to refuse to disclose data if there is a concern about how that information will be used (e.g. sold to a third party, used to create internet lists of sex offenders etc).

¹ There is a requirement in Rules that court registers will inform details of reporting restrictions when first made but they cannot be automatically included in court lists or in register entries pertaining to subsequent hearings.

² The UK Press Card Authority(UKPCA) manages a voluntary scheme for issuing press/media credentials- the UK Press Card – to professional newsgatherers working in the UK. Further information is available on UKPCA's website, together with contact details for the Secretary of the UK Press Card Scheme. (<http://www.ukpresscardauthority.co.uk/> and <http://www.ccsi.co.uk/Press/UKPressCardAuthorityPoster.pdf>)

The media will:

- only request court registers and lists to assist their role in reporting court proceedings and editorial coverage
 - provide bona-fide e-mail addresses and appropriate accreditation information, as requested
 - safeguard the information that is passed to them, so far as is appropriate and reasonable
 - destroy the electronic data supplied, and any printed copies, of lists and registers within six months or other appropriate longer period, if recommended
- by their legal advisers or insurers (although details of individual cases for journalistic purposes can be retained)
 - not pass the information contained in court lists, registers and documents to third parties outside the media and its legal advisers for reasons unconnected with journalism
 - comply with reporting restrictions and any other legal restrictions on the use of information³.

³ See Judicial Communications/ News Media Association/ Society of Editors/ Media Lawyers Association Guide to Reporting Restrictions in the Criminal Court and predecessor JSB Guidelines on Reporting Restrictions in the Magistrates Court, Home Office Circular no 80/1989, Statement of Justice Secretary House of Commons 15 July 2008.

Single Justice Procedure cases

The Single Justice Procedure was established under the Criminal Justice and Courts Act 2015 to enable some magistrates' court cases to be dealt with "on the papers" without the need for a traditional physical hearing by a single magistrate sitting with a legal adviser.

It is used for cases involving summary-only non-imprisonable and victimless offences where a defendant pleads guilty and indicates that he or she would like to have the matter dealt with in their absence, or fails to respond to the notice at all.

Cases being heard as part of the Single Justice Procedure should conform to HMCTS's wider commitment to open justice and the media should have access to the same information in SJP cases (including lists, registers and documents) they are entitled to in respect to other magistrates' court cases.

The documents that the media may request are:

- the prosecution statement of facts or, if there is no statement of facts, the witness statement(s);
- any defence representations in mitigation (although not the defendant's statement of means which would not be read aloud, or treated as read aloud, were the case being heard in public)

Accredited journalists should be provided with such documents, subject always to any judicial restrictions that, exceptionally, prohibit it.

Media requests for documents will normally be made via HMCTS Courts & Tribunals Centres rather than individual courts and should be provided within 1 working day from the receipt of a request by email which should include the individual's UK Press Card to authenticate the request.

Members of the general public can seek such documents under rule 5.8(7) of the Criminal Procedure Rules. But in order to do so they must apply for judicial adjudication before HMCTS provides access to these.

Endnote

This guidance is intended to encourage the courts' supply of court lists, registers and relevant documents and the information which they contain to the media. Nothing in this guidance is intended to reduce the frequency or volume or the amount of information already supplied to or published by the media.

Although there is no direct equivalent to the magistrates' court lists and register in the Crown Court, similar principles in relation to media access to information are to apply insofar as they can. Crown Court staff are encouraged to provide the equivalent information in response to media enquiries.

This protocol has been agreed between HMCTS, the News Media Association and the Society of Editors, and approved by the Lord Chancellor for the purposes of conforming to the Criminal Procedure Rule 5.8 (<http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/crim-proc-rules-2015-part-05.pdf>).

The protocol shall be reviewed by the three parties on an annual basis, and any amendments agreed on a collective basis.

It forms part of HMCTS's wider guidance to staff relating to media access issues. Any disputes arising from this issue should be escalated to the HMCTS Press Office currently provided by MoJ Press Office.