



The Bar Council

## **Bar Council response to the Ministry of Justice Call for Evidence on Open Justice: the way forward**

1. This is the response of the General Council of the Bar of England and Wales (“the Bar Council”) to the Ministry of Justices’ Call for Evidence on Open Justice: the way forward.<sup>1</sup>
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar’s high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (“BSB”).

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

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

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<sup>1</sup> Available here: <https://www.gov.uk/government/consultations/open-justice-the-way-forward>

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

4. The Bar Council supports Open Justice. Transparency in the legal system has improved this century - through case law (such as *R (on the application of Guardian News and Media Ltd) v Westminster Magistrates* (2012) EWCA 420 and the Supreme Court case *Cape Holdings Ltd v Dring* (2019) UKSC 38), initiatives such as the Judicial College Reporting Restrictions in the Criminal Courts (Sept 2022), remote access to online hearings, the Crown Prosecution Service ("CPS") Media Protocol – Publicity and the Criminal Justice System, changes to the civil and criminal procedure rules, the Family courts Openness Pilot and guides such as the Reporters Charter and the Bar council's own guidance Provision of documents to journalists, law reporters and other non-parties (June 2023). The introduction of remote observation and live-streaming has been a significant development with many benefits for openness, it can reduce costs and time wasted on unnecessary journeys, allows access to more than one hearing at one time.

5. More can and should be done to improve transparency of the legal system and courts and to promote reporting of the courts and public engagement with the system. The direction of travel should be towards greater openness to ensure the courts system is central to public attention and the public sphere. There are obvious benefits of transparency, not least to promote the rule of law, to improve public understanding and to promote an educational interest in the law for young people.

6. Openness has moved forward from the time it was limited to leaving the court door open but every day there remain challenges to openness, such as:

- transparency of the Single Justice Procedure
- concerns about the Online Plea and Allocation system ("OPA") in magistrate court proceedings which will mean that some offences will have no public hearing
- the lack of a database of court orders
- the lack of clarity as to the system to allow reporters to access documents to which they are entitled under the Criminal and Civil Procedure Rules.
- The need for a consistent approach to the Cloud Video Platform ("CVP") in different courts and areas.

Priority should be given to an online system allowing access to court documents and reporting restrictions.

7. The filming of court proceedings in the Supreme Court, Court of Appeal and sentencing in the Crown Court has been largely successful and fears of lawyers grandstanding, and suchlike has not materialised. Filming in other parts of the legal system warrants consideration - for example, filming of judgements in the High Court and filming of trials in some cases – which has happened already in Scotland. There will always be some safeguards that will need to be built in such as protecting vulnerable witnesses and children but as far back as 1989 the Bar Council recommended filming of court proceedings subject to “strict rules of coverage and to the supervisory discretion of the trial judge to exclude the camera whenever it was necessary in the interests of justice”. (Report of the Working Party of the Bar Council, chaired by Jonathan Caplan QC, ‘Televising the Courts’ (1989)). Broadcasting proceedings is also promotes younger people engaging in the justice process due to seeing the courts online and on social media. Filming proceedings gives real effect to the public’s right to see justice being done.

**Question 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?

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

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

8. Online publication of listings is essential to promote openness and engagement with the courts. Such lists are vital for lawyers, the public and the media to find out what is happening in the courts and tribunals. It can assist the lawyers in saving time by knowing when a case is listed say in an interim applications list. Without such listings there is no real means to find out about cases. Comprehensive information should be provided, even if not all the information is for publication. It is though important that there is uniformity in how the lists are published. Currently some are published at 5pm which leaves little time to contact the court that evening with any queries as most courts close their telephone lines at the same time. The central line customer services team are not usually able to assist. Furthermore it would assist if the lists could be standardised and published in a templated format for all courts and tribunals as well as by a set time say 4pm. For example, Birmingham County Court

publish the list by judges. Sometimes that involves trawling through a list of twenty judges to find one case.

9. Possible improvements include listing the charge, dates of birth of the defendant and any reporting restrictions, always listing the judges clerk and CVP link.

10. Better information on reporting restrictions could be provided online in a secure centralised system to accredited journalists including the full order and notice when a restriction is lifted. The fact that the press may know the identity of parties does not necessarily lead to these identities being subsequently published, especially where the contempt risk is on the journalist/publisher.

**Question 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)?

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

**Question 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?

**Question 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?

**Question 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?

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

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

**Question 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?**

11. Remote observation and livestreaming have been a positive step in increasing Open Justice, making court proceedings more easily accessible to journalists, others with a professional interest (such as law students) and members of the public with an interest in a particular case. The limited nature of these practices, and the judicial control of them, means that they remain largely a proxy for physical attendance.

12. There are associated risks, however, which must be carefully considered in relation to any proposals to further expand the existing legal framework. Whilst individuals have to identify themselves to the Court and provide a legitimate interest for remote access, there is still the potential for this to be abused and for individuals to obtain access for non-legitimate reasons. Expanding remote access to hearings will also make it more difficult to police the restrictions on photography and recordings. While those attending court are under the observation of the judge, those attending remotely are far more difficult to monitor and deal with should any transgressions occur. This risk cannot be overstated in terms of the increased likelihood of proceedings being recorded, via screen recording technology and then either disseminated in their original form or, worse, disseminated in an edited or manipulated form such as to misrepresent the proceedings.

13. Remote observation could also make the litigation process more daunting for witnesses and self-represented litigants with the potential effect of inhibiting those parties from giving full evidence and effectively presenting their case. In criminal proceedings the additional anxiety caused by escalating numbers of remote observers (potentially greatly exceeding the physical capacity of a public gallery) could potentially lead to an increase in applications for special measures for witnesses, which would be detrimental to defendants (e.g. if more witnesses give evidence from behind a screen) and somewhat counter-productive.

14. Whilst advocates and judges can assumed to be more robust than witnesses and parties, there is nonetheless also a risk that a greatly expanded online audience could have implications for their security in controversial cases and recruitment (which is already an issue in many areas of the Bar and Judiciary) given the increased exposure. Further, many legal professionals, judiciary and court staff may simply be

uncomfortable being livestreamed to a significantly wider audience. Any lack of confidence in the ability of the courts to maintain control over recording of proceedings would greatly exacerbate this.

15. Further, there are technical challenges with many court rooms not being equipped for livestreaming or allowing remote access to in person hearings (especially those in smaller County Court hearing centres). Even for those with the necessary equipment, IT issues are far too common. This has the potential to disrupt the orderly running of court proceedings and adversely affect the administration of justice. If remote observation and livestreaming are to be further expanded, they will need to be properly resourced in terms of equipment and staffing, and guidance will be needed as to whether and when proceedings are to be delayed due to technical issues that do not directly effect the running of the hearing itself.

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

16. Yes, subject to: (a) our answer to Question 17 below; (b) individuals identifying a legitimate interest in the proceedings; and (c) the Court retaining ultimate control of whether or not an individual is allowed to observe remotely. If open court and tribunal hearings are made accessible remotely, we cannot envisage any legitimate reason to limit access to a subcategory of the public.

17. It will, however, be necessary to ensure that the rules for attending such hearings are made clear to any individual attending remotely, ideally in writing (communicated electronically), as they will not have seen the warning signs displayed in court buildings and the temptation to behave differently when not physically in a courtroom is obvious.

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

18. Yes, subject to our answer to Question 17 below. If open court and tribunal proceedings are made accessible remotely, the media should be able to attend remotely. Standard rules and guidance should be available to the media with an expectation that they will be familiar with them.

**Question 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?**

19. We have identified some risks that may arise from livestreaming and remote observation in our response to Question 14 above. This will not be an exhaustive list. These risks will need to be balanced against the benefits that livestreaming and remote observation provide to Open Justice. To that end, we suggest judicial control over whether any specific case (or part thereof) is appropriate for remote access or livestreaming. This could operate in a similar way to judicial control over whether a hearing is conducting in public or, exceptionally, in private.

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

20. Legislation already exists to allow restrictions on the reporting of cases in certain circumstances and jurisdictions and the need for such restrictions is long established and accepted. There seems no reason why steps to make it easier for the media to observe cases without physically attending should have any bearing on reporting restrictions that exist.

21. It should be noted, however, that the expansion of remote observation and livestreaming considered above could make it more likely that a case is reported in ignorance of reporting restrictions, these currently being the subject of physical notices on court room doors and only announced in court at the time they are granted and very occasionally thereafter.

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

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

22. Simplifying the process for gaining observer access to remote hearings can enhance transparency, public participation and media coverage. One area of improvement would be the publication of a weblink for remote video access in the same place as the court/tribunal lists on the HM Courts website. However, the policing

of the spectators, including information and enforcement of the prohibition on recording proceedings needs to be considered in depth and carefully managed.

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

23. Broadcasting court proceedings would assist in the public's understanding of the litigation process (which is often misrepresented in dramatised works). As with all Open Justice measures, it is also likely to increase public confidence in the justice system.

24. Broadcasting court proceedings is also likely to be particularly helpful to litigants in person or prospective litigants in person, who might otherwise be daunted by the prospect of pursuing a claim without assistance from a lawyer. It would be similarly helpful to those training for the legal profession or other lines of work that involve familiarity/engagement with the courts.

**Question 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?**

25. In light of the risks identified in response to Question 23, it would not be appropriate to broadcast witness evidence in any court proceedings. Broadcasts should be limited to submissions, argument and judicial comment, judgments and other rulings.

26. Further, it would not be appropriate to broadcast proceedings involving self-represented litigants without their express consent.

27. The extent to which it is appropriate to broadcast proceedings will clearly vary between jurisdictions, with an obvious public interest in the sentencing of high profile criminals, or applications for judicial review of decisions of government, as against the obvious dangers of broadcasting proceedings in the Family Court or the Court of Protection.

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



28. Yes, there are risks involved in broadcasting proceedings. Court proceedings often involve large amounts of personal information (including sensitive personal information) and it would not, in many cases, be appropriate to broadcast that material. General data protection principles which include the right to be forgotten / erase personal details need to be weighed in the balance.

29. Knowledge that proceedings are being broadcast could also have an inhibiting effect on witnesses and self-represented litigants. This could reduce the quality of the evidence and the quality of how the claim or defence is presented.

30. There is also the potential for the litigation process to be sensationalised and reduced to another form of entertainment.

31. Broadcasting court proceedings may also increase the risk of reputational damage for litigants and/or witnesses and therefore discourage prospective litigants from bringing meritorious claims or mounting meritorious defences.

**Question 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?**

32. The bans on photography and recording remain fit for purpose and should remain in place. It would be extremely detrimental to the wellbeing of court participants and the general efficient running of proceedings if individuals were allowed to make any kind of audio or visual recordings within a courtroom, and would utterly defeat the safeguards we have referred to previously in relation to expanding the use of remote observation and live-streaming.

33. Any emerging technologies should remain subject to the simple and basic rules that there must be no audio or visual recording, and that may mean that articles like smart glasses would be problematic if it were akin to someone holding up a mobile phone camera.

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

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

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

34. No. In particular the decisions of lower and specialist courts are frequently not available. In Court of Protection work, judgments on similar issues can be extremely helpful in assisting the court with difficult cases, but these judgments are rarely published and when they are, it relies on sites such as BAILII or websites run voluntarily such as the Court of Protection Hub to draw practitioners' attention to recent cases and the issues determined. Decisions of senior courts are more accessible and whilst helpful, the principles are often so trite that we rarely need to seek them out to assist with our own cases. In other areas of law, practitioners might access the cases from Westlaw as opposed to a public portal such as BAILII.

**Question 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?**

35. In principle a one-stop shop would be helpful, provided it is user-friendly, and easy enough to search and locate the case or category of cases you are looking for. Even as a legal professional, it is not always easy to obtain judgements and decisions from public websites. As always the success hinges on functionality, but in principle having court decisions in one place would be an improvement to the current state of affairs. Funding is key to this - sites such as BAILII (as helpful as it is) demonstrate the vulnerability of running a similar service without proper investment to ensure good functionality, user-friendly design and accessibility, and a comprehensive store of reports.

**Question 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.**

36. See the response to question 27. Judgments of lower and specialist courts are frequently not available at present and would assist those who practice in these courts. It is possible there would need to be a value-judgment undertaken on certain kinds of cases where there are anonymity concerns around the publishing of judgments, even

on cases where particular personal details are anonymised this may not altogether prevent the risk of disseminating sensitive information or information that places people at risk to the wider public. Provided that any policy decision around publication is taken mindful of the existing rules concerning the anonymity of court decisions and when anonymity should be applied then we cannot envisage a category of decision that should *never* be publicly available. All reported judgements should be available free of charge to the public so that they are able to inform themselves of the law.

**Question 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.**

37. There are differing views in relation to this question. In one view, it is harder to see the public interest/public policy justification in sharing (for example) orders of the Court (even where appropriately anonymised), which are really only for the parties and do not greatly assist the wider public's understanding of the case.

38. Conversely, some would favour all court orders (except cases heard in private) being made public. Although they are currently available on request from the court file, they would also support them being made available without needing to go through this process to increase confidence and transparency in the justice system. This should be subject to a right to be forgotten under the general law. Given that these are already publicly available, this is not a change in the law as to whether they are accessible by the public, only the ease with which they can be accessed. There is a general public interest in this analogous to the public's rights to consult the Companies House Register, the Land Registry, and the Probate Register. The above comments as to the functionality and funding of such a resource are also applicable here.

**Question 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.**

39. There are many technologies available to help with accessibility, and much information is already available online concerning modern best practice (e.g., <https://www.gov.uk/government/digital-accessibility>). Publication of judgments and decisions in proprietary or closed formats, or those which are harder for machines to

parse (such as MS Word or PDF) is unhelpful. They are not straightforward for search engines to search, or for screen readers to read (see here <https://www.gov.uk/guidance/publishing-accessible-documents#making-non-html-documents-accessible>). Instead, using correct HTML and semantic markup will help both with accessibility and also with machine interpretation for artificial intelligence (“AI”). Correct metadata (e.g., markup showing the name of the judge, the parties, the outcome etc) and even standardising on markup of paragraph numbers (which is basic, but presently lacking) will enable easier navigation by those using assistive technologies. Provision of AI-powered chatbots can help individuals find what they are looking for more efficiently (<https://www.gov.uk/guidance/using-chatbots-and-webchat-tools>).

**Question 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?**

40. The publication of court judgement and/or tribunal decisions are generally regarded as an essential component of transparency and accountability in the legal system. However, there may be situations where the publication of certain judgments might have potential negative effects on court users and/or the wider public. Some concerns that may be considered (most of which can be dealt with adequately by the court or tribunal) include:

- Avoid personal sensitive data where possible or have it redacted. Publication of certain information in judgments could lead to stigmatization or discrimination against specific individuals or groups. This is more likely to be in cases involving sensitive matters such as family law, employment law or mental health issues.

It is important to note that most often the negative effects may be diminished and/or are outweighed by the benefits of transparency and the rule of law.

**Question 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).

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

**Question 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.

**Question 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.

**Question 37. Have you searched for tribunal decisions online and if you have, what was your experience, and for what was your reason for searching?**

41. Barristers frequently need to search for tribunal decisions online. Access to tribunal decisions is vital for understanding the law and procedure in each practice area, in order to advise clients and represent them in proceedings.

42. The National Archives' 'Find Case Law' website launched by the Government in April 2022 holds decisions from many courts and tribunals. This has an effective search system but, despite a government commitment in April 2022 to expand coverage, the site only covers a limited period, e.g. decisions of the Upper Tribunal Administrative Appeals Chamber only go back to 2015.

43. In order to access certain older decisions of these tribunals (e.g. the Upper Tribunal Administrative Appeals Chamber) it is necessary to access the Courts and Tribunals Judiciary website. For other older decisions (e.g. of the Upper Tribunal Immigration and Asylum Chamber), it is necessary to send an email requesting it (which requires the user to have a clear idea of what they are looking for).

44. Decisions of tribunals which are not on the Find Case Law website are available on other websites, for example, Employment Tribunal decisions are available within the government (.gov.uk) website and decisions of the Mental Health First Tier tribunal are within the judiciary.uk website (albeit not all of its decisions are published).

45. The lack of a complete central record of tribunal decisions can make searching for decisions more difficult and time-consuming, in particular as there is a different

search method for older decisions. This is in contrast to commercial providers which provide a consistent system for searching judgments as well as case summaries.

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

46. No. It is sufficient that public tribunal decisions can be accessed from a dedicated website or area within a website which is set up for that specific purpose. That means that anyone who knows about the case, having watched it or having some other interest in it, can obtain the decision or judgment.

47. The danger of allowing such decisions to be searchable via engines such as Google is that it enables people to search for witnesses or parties for reasons which would not, on the face of it, be appropriate such as:

- i. Seeing whether a prospective employee has given evidence in or brought a claim in a tribunal, which may lead to victimisation that is hard to police;
- ii. Trying to find out where a person lives or works which could represent a security risk for the person concerned depending on the person's motive;
- iii. Prurient interest rather than legitimate interest which could inhibit witnesses from giving certain evidence in a public hearing bearing in mind that the strong principle of Open Justice means that many personal and private details do end up in the public domain either because the witness or party is not empowering to make a request for a restricted reporting order, or similar, or the tribunal refuses such a request.

Further, general data protection principles which include the right to be forgotten / erase personal details need to be weighed in the balance.

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

48. This is a very wide question and the Bar Council would welcome the opportunity to comment in closer detail if and to the extent that proposals for law reform in this area are developed. Nonetheless, the information that should be included in a published decision of a public hearing is the information which a member of the public would need in order to understand what the claim and defence was, the decision and the essential reason why a party won or lost.

49. Many decisions go well beyond this because they are required to for other reasons. One of the most important safeguards that will be necessary is ensuring that information that would enable someone to identify where someone lives or works (or where their family live or work) is not publicly available unless there is a compelling reason, or the decision simply cannot be understood without it. It may even be desirable for there to be a warning about the “misuse” of publicly available decisions.

**Question 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.**

50. Judicial sentencing remarks in significant cases are already published online and remain available thereafter.

51. The majority of sentencing remarks are delivered *ex tempore* and do not exist in a written form unless a transcript is ordered in relation to Crown Court proceedings. This is generally done in the course of any appeal, or if required for another purpose such as in a tribunal dealing with the defendant’s immigration status or detention under the Mental Health Act 1983. The Magistrates’ Court is not a court of record and it would be extremely rare for there to be any official record of the substance of a sentencing decision other than what is reported in the media.

52. Any requirement that sentencing remarks be delivered in writing as well as orally would result in a significant delay in busy court lists, in circumstances where the Crown Court and magistrates’ courts are already overburdened and (in certain parts of the country) dealing with a substantial backlog. The availability for the media and interested parties to attend sentencing hearings remotely provides sufficiently Open Justice without substantially increasing the burden on the judiciary, magistracy, and the courts.

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

53. The most likely purposes for which a non-party might seek access to such documents is (a) journalistic purposes including reporting and (b) to prepare for litigation i.e. where someone wants to try to understand more about the process being attending a hearing. Other purposes may include screening a prospective worker or employee, which may ultimately result in unlawful victimisation in some cases (e.g.

because they have previously pursued a claim for discrimination at work) or a refusal to give that person a job for a reason which is not actionable in law (e.g. they have brought a wages claim in the past).

54. Non-parties may also seek access to court or tribunal documents where (a) the non-party is a litigant or prospective litigant in separate court proceedings, (b) the documents in question are relevant to those separate proceedings and (c) the documents would not or may not fall to be disclosed in the separate proceedings or (d) the documents would be disclosable in the separate proceedings, but the non-party wishes to obtain early access to those document.

**Question 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?**

55. Yes. A non-party seeking access to documents about civil proceedings should generally apply to the relevant court or tribunal. Requests about documents in criminal proceedings are generally made to the CPS or the police.

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

56. It is not widely known which department or office at the court or tribunal should be contacted by a non-party to request access to documents. Some tribunals, such as the Immigration & Asylum Upper Tribunal, have a form which non-parties can use to request documents with return email addresses. However, this practice is not widespread.

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

57. This is not widely known and different courts and tribunals have different practices.

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

58. There are rules within the Civil Procedure Rules dealing with non-party applications for documents in court proceedings. However, tribunals generally do not have rules or guidance dealing with this.



59. Overall, there is a lack of uniformity across the court and tribunal systems. While there is case law (including from the Supreme Court) setting out the principles of Open Justice applying to non-party applications for documents, there is little guidance on how to apply, what documents are held, whom to apply to and what factors a particular court or tribunal will consider when deciding whether to provide documents to a non-party.

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

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

60. In civil proceedings the claim, the defence / response, and witness statements once in the public domain the evidence having been given, but subject to redaction of sensitive personal details.

61. In criminal proceedings it is common for the media to be provided with substantial information by the prosecution/police that has been adduced in open court including videos and images.

62. Where witness statements are to be provided to non-parties, information which is private or confidential and irrelevant to the dispute in question should also be redacted. This strikes an appropriate balance between (a) the public interest in understanding the workings of the justice system and seeing justice done and (b) the interests of litigants and witnesses in maintaining privacy and confidentiality.

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

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

**Question 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?

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

63. The main purposes we consider apt are:
- i. Journalistic purposes (investigations and reporting);
  - ii. Information to assist would-be litigants;
  - iii. Research including in respect of access to justice and
  - iv. To share matters which are of genuine public interest (in the sense that the public has a legitimate interest to know).

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

64. Data should be published in open and accessible formats, using valid semantic markup. This will help with data-reuse, but also (importantly) with discoverability and access by users of assistive technologies (and others) (see Q31 above).

65. In compliance with Data Protection Laws you may establish data initiatives and guidance to make synthetic or anonymised data publicly available in machine-readable formats that facilitate analysis and re-use, while ensuring the integrity of the judgments.

66. Make court judgments and orders widely accessible to the public, with user-friendly search tools for case research.

67. Data concerning case types, numbers of cases handled, judicial workloads, time-to-judgment, case values, can all be published and regularly updated (some are published presently, but often only in inaccessible formats in annual reports). All will improve public understanding of how the justice system operates, and how it is functioning.

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

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

**Question 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?

**Question 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.**

68. There is evidence that AI is currently being used with justice data in limited ways. AI can be defined as computer systems or software that can perform tasks that would ordinarily require human intelligence, such as visual perception, speech recognition, and decision-making.

69. One example is the use of AI by court transcription services to automatically generate transcripts of court proceedings using speech recognition technology. This allows transcripts to be produced more quickly and cheaply compared to manual transcription. However, automatically generated transcripts are not always accurate, especially when transcribing complex legal terminology, which can pose risks in terms of preserving an accurate record of proceedings.

70. Another example is using AI to assist with legal research. Some legal research companies are developing AI tools to search and analyse legal documents such as case law, to identify relevant cases and extract key information. This can help lawyers conduct research more efficiently. However, current AI legal research tools still require human oversight as they cannot fully replace a lawyer's judgment in assessing the relevance of cases and interpreting the law. Further, such purpose-specific tools should be distinguished from General purpose Large Language models ("LLMs") (such as ChatGPT) because of the tendency of LLMs to "hallucinate" and produce unreliable results.

71. Overall, while there are promising applications, AI is not yet advanced enough to fully replace humans when working with justice data. Risks around accuracy, privacy, bias and transparency need to be carefully managed. AI should be viewed as an assistive tool rather than a complete replacement for human analysis.

**Question 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?**

72. Our view is that specific guidance should be provided on the ethical use of AI in the legal sector, and this guidance should come from both government and legal services regulators working together.

73. The guidance should cover issues such as:

- Privacy and data protection - ensuring AI systems used with legal data comply with requirements around client confidentiality (including intellectual property rights) and data privacy. Outline best practices for data anonymisation, encryption and data security.
- Accuracy and transparency - providing guidance on auditing AI systems to ensure accuracy and avoid biases, and explaining how AI is used in a transparent way to clients.
- Impacts on legal professional roles - assessing the impacts of AI on the legal services workforce, access to justice and implications for education and training.
- Public trust - considering risks around diminishing public trust in the justice system if AI is deployed without sufficient oversight.
- Ethics approval - establishing clear procedures for checking AI systems across the legal sector for compliance with ethical requirements before deployment.
- Cross border considerations – address potential challenges related to cross-border use of AI in legal services including jurisdictional differences and compliance with applicable international laws.

74. Collaboration between government and regulators with professional bodies/institutions would allow such guidance to cover both the policy landscape and professional practice issues. It could draw on lessons from other sectors and adapt them specifically for legal services based on input from practitioners and the judiciary.

**Question 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.**

75. No.

76. It is frequently experienced by criminal practitioners (both prosecution and defence) that members of the public have inadequate or no understanding of the powers of criminal courts to restrict reporting/publication/dissemination of certain matters, including the identity of certain witnesses/complainants or other materials inimical to the conduct of a fair trial.

77. This has become apparent through the establishment of the internet and social media as the primary means of communication. Before, when 'mainstream' media outlets were the sole source of information about court proceedings, there were comparatively few instances of behaviour engaging the contempt jurisdiction.

78. Those professional media outlets continue, broadly, to observe those laws.

79. However, particularly in those cases which engage the public's interest (as opposed to the interests of the public) communications on social media now much more frequently breach applicable laws. Often (but not always) that is without actual malice or intent on the part of the individual concerned, who simply does not appreciate the potential impact of their actions on the trial, or the legal liability they incur.

80. It is right to say that such matters are normally well observed in the courtroom/court building itself, due to substantial signage and publicity physically present within those spaces. That, in our view, demonstrates the need for wider public education as to the relevant laws in this area, so that those who may never come near the actual court, but are instead engaged in online gossip or commentary from the comfort of their own homes, are aware of the need to respect the trial process, what the rules are, and the important of following those rules. That wider education should include the clear message that speaking on social media about a current case and in particular saying anything about a witness or a defendant or the issues in a case is potentially a criminal contempt of Court. It is our experience that when things are said on social media there is a real danger to the integrity of a trial. That may result in juries being discharged.

**Question 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?**

81. No. Some updates are made available via gov.uk but these are sporadic and occasionally inaccurate, and without any active attempt to disseminate more widely only really serve those who go looking for them, which is unlikely to be the majority of the public who do not have a direct vested interest in the justice system. To the extent that public communications are made concerning changes to the justice system, these are often part of policy announcements made by ministers, and therefore to some extent couched in political terms, which does not assist the wider public in understanding in neutral terms the substance of the changes that have been made and how it might affect them.

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

82. The issue is that the courts and legal system can seem very remote to ordinary members of the public. There is a distinct gap in public knowledge of how the legal system works, the role of the judiciary and the legal profession.

83. More needs to be done to make the legal system a central focal point of our society. Commitment is needed to openness to encourage the public to engage with the courts and the media helped to report the courts system. The days of the courts being populated by local reporters has passed, which has partly been due to the downturn in local newspapers.

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

**Question 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.**

84. Yes, we think digital technologies have an important role to play in supporting public legal education ("PLE") to help people understand and resolve legal disputes.

85. Digital tools can make legal information much more accessible and understandable for the public. For example, interactive online resources could explain key legal concepts and processes in simple terms. Chatbots could be used to provide general guidance on common legal issues, if their output is generated from a pool of

answers that is pre-vetted by lawyers. Mobile apps could also help people prepare for court proceedings by outlining what to expect and their rights.

86. Digital technologies can also expand access to PLE. Online learning resources can reach people in remote areas or who face mobility challenges. Multimedia content is useful for engaging people with lower literacy levels, and services can be offered in multiple languages to support non-native English speakers.

87. However, there are risks in relying on some AI-driven technologies such as ChatGPT for legal advice given their current tendency to occasionally hallucinate or just be wrong. There is also a risk of exclusion if digital channels are relied on too heavily for PLE delivery. Face-to-face advice and non-digital resources remain important to ensure all sections of the community can build their legal capability. Digital tools should supplement rather than replace traditional PLE methods.

88. Overall, thoughtfully designed and inclusive digital PLE provision can significantly broaden access and deepen public understanding of the justice system. But blended delivery combining digital and non-digital channels will be needed to fully support people's legal learning.

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

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

**Question 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.?

89. More could be done to promote transparency of the courts, including local and educational initiatives (such as school visits or Open Days) and also a commitment to aiding day to day court reporting. Some of this will require resources and development. One solution would be to make in high profile cases an Electronic Press Kit of documents journalists are entitled to access - but cannot presently access since there is no recognised system to make it happen.

90. Broadcasting court proceedings can be a very effective way of improving public knowledge of the justice system. Consideration should be given to rolling out filming to other parts of the legal system, including the High Court, Coroner's Inquests, magistrates courts and tribunals.

Bar Council<sup>2</sup>

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