MEDIA LAWYERS ASSOCIATION

CALL FOR EVIDENCE: OPEN JUSTICE, THE WAY FORWARD

RESPONSE FROM THE MEDIA LAWYERS ASSOCIATION

A. The Media Lawyers Association

1. The Media Lawyers Association ("**MLA**") is pleased to be able to offer a response on behalf of its members and journalists to the Ministry of Justice's ("**MoJ's**") call for evidence on open justice.

2. The MLA is an association of in-house media lawyers from newspapers, magazines, book publishers, broadcasters and news agencies. It was formed to promote and protect freedom of expression, and the right to receive and impart information, opinions and ideas. A list of the MLA's corporate members may be found at the end of this response. As is evident from that list, MLA membership is extensive and wide-ranging. The MLA represents major publishers and broadcasters which reach the vast majority of the viewing and reading public in the UK, at national and local level, but its members also publish Europe-wide and worldwide in a wide variety of formats. For example, its members include all national UK newspaper publishers and broadcasters, but also news agencies (The Press Association and Thomson Reuters PLC), representative organisations for thousands of regional, local and specialist publications, the publishers of a very wide range of national and international magazines (including e.g. The Economist, Which? and Harper's Bazaar) and non-fiction book publishers. Some members of the MLA will also be providing individual responses to this consultation.

3. Many of the MLA's members have extensive experience of the issues being considered by the MoJ's consultation. They work alongside experienced court reporting teams covering cases of local, national, and international public interest, being heard in a range of courts and tribunals. They have also been involved with many major developments aimed at facilitating open justice (such as the developments in filming certain court proceedings, see [37] below).

4. As will be evident from the many examples set out in this response, the MLA's members and its journalists are at the coalface of the practical implementation of "open justice."

B. Evidence-gathering process

5. In response to the MoJ's call for evidence, the MLA has consulted with journalists from those of its members who routinely cover court and tribunal proceedings. It has received responses from court reporters across regional, local and international media (both print and broadcast). Those reporters have provided the MLA with first-hand accounts of their experiences when covering proceedings.

6. The purpose of this document is to collate and summarise key aspects of the responses received by the MLA, and to highlight recurring themes and points of concern raised by the journalists, as well as key recommendations. This response does not purport to cover all of the questions posed in the MoJ's call for evidence; rather, the MLA has focused on those areas that are of most relevance to the journalists' work (and these are identified under the relevant headings from the call for evidence below). Should the MoJ require any further information about any of the issues raised in this response, the MLA would be keen to assist.

C. Open justice

7. There can be no doubt as to the importance of open justice as a concept that is "*at the heart of our system of justice and vital to the rule of law*."[1] Nor can there be any doubt as to the important role of the media in facilitating open justice, who "*serve as the eyes and ears of a wider public which would be absolutely entitled to attend but for purely practical reasons cannot do so*."[2] As the MoJ notes in its call for evidence, few people currently have direct experience of court proceedings, which take place during the working week when the public is unlikely to be able to attend and observe. Accordingly, the media fulfils a vital role in facilitating public understanding of the justice system. As indicated in some of the examples provided by the journalists (see e.g. [43] below), court reporting also allows for ventilation and public scrutiny of broader issues of public interest which may be revealed by individual cases (making access to historical data an important part of facilitating open

[1] *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2013] QB 618 at [1].

[2] *Khuja v Times Newspapers Limited* [2019] AC 161.

justice, see e.g. [17] below). As to the question of what open justice means (**Question 1**), therefore, it is clear that it means very little without a media that is empowered and able to effectively fulfil its role in informing and educating the public about the justice system and its decision-making.

8. It is clear from the responses that the MLA has received from its members' journalists, that there remains a significant disconnect between the commitment to open justice that is clear from the judgments of the senior courts, the development of pilot schemes intended to facilitate open justice[3], and consultations such as the present, on the one hand; and the experience of journalists "on the ground" on the other. Key observations from journalists in response to the MoJ's **Question 3** include: the lack of consistency in ensuring that their requests for information or documents will be dealt with (as one journalist observed, "*you're at the mercy of time-pressured clerks and counsel*"); delays in obtaining documents; obstructive attitudes from parties in response to requests for documents; exclusion from the process of determining restrictions on reporting (when, as the most likely to be affected by such restrictions, the media should be central to this process), and, relatedly, a readiness among Judges to grant sweeping and overbroad reporting restrictions. Of concern also are reports from some journalists that they are not guaranteed seats in court. In one particularly alarming case, a journalist was denied access to a high-profile trial, despite showing an accredited press card, as attendance needed to be approved by a press office in London. In another, a journalist was ordered not to use a phone or laptop in court, and was required to show press accreditation for the Judge to verify personally.

9. The above examples all give rise to very serious concerns. Accordingly, the overarching response from the MLA is that more must be done to ensure the effective implementation of open justice, at all levels of courts and tribunals, in practice.

10. The MLA welcomes the MoJ's question as to how it can best continue to engage with the public and experts following the conclusion of the present call for evidence (**Question 4**). The media, at the coalface of the practical implementation of open justice, must be a key stakeholder in such engagement, and the MLA's members and journalists would be happy to work with the MoJ on the issues highlighted in this response. In September 2022, the MLA wrote to the Civil Procedure Rules Committee to offer its input into a consultation

[3] See e.g. the Court of Protection's successful Transparency Pilot and the ongoing Family Court Reporting Pilot.

on access to documents arising from the Supreme Court's remarks in *Cape Intermediate Holdings Ltd v Dring* [2020] AC 629.[4] However, the MLA received no response and its invitation has not yet been taken up. Considering that (as explained further at Section J below) difficulty accessing court materials is the biggest concern raised by the journalists in response to the MoJ's call for evidence, the MLA takes this opportunity to reiterate its willingness to offer its input on this issue. It observes that, some four years after the Supreme Court's judgment in *Dring*, no steps have been taken to consult on the issues raised.[5]

11. As to the identification of specific policy matters within open justice that should be prioritised (**Question 5**), the key points of priority that the MLA has identified from its members' journalists' responses include:

    11.1. Facilitating media access to court materials (see Section J below);

    11.2. Improving the provision to the media of listings and case information (see Section D below); and

    11.3. Ensuring that the media are properly notified of, and given a meaningful opportunity to contest, Reporting Restriction Orders ("**RROs**") (see Section D below).

12. The MLA has also identified, from the responses it has received, that the criminal courts currently present the greatest difficulties for journalists in obtaining access to information and court materials. However, the MLA stresses that these difficulties are nonetheless being experienced across a variety of court and tribunal settings. Moreover, whilst the MLA has identified the above areas of priority as being the ones causing the most

[4] At [51] (per Baroness Hale): "*We would urge the bodies responsible for framing the court rules in each part of the United Kingdom to give consideration to the questions of principle and practice raised by this case. About the importance and universality of the principles of open justice there can be no argument. But we are conscious that these issues were raised in unusual circumstances, after the end of the trial, but where clean copies of the documents were still available. We have heard no argument on the extent of any continuing obligation of the parties to co-operate with the court in furthering the open justice principle once the proceedings are over. This and the other practical questions touched on above are more suitable for resolution through a consultative process in which all interests are represented than through the prism of an individual case.*"

[5] Later cases have also commented on the need for updates in the rules: see for instance *Guardian News and Media Limited v Rozanov* [2022] EAT 12 at [66] (a case in which the MLA intervened): https://assets.publishing.service.gov.uk/media/6239aeeb8fa8f540eb4c1304/Guardian_News_and_Media_Ltd_v__Dimitri_Rozanov_and_Others__2022__EAT_12.pdf.

immediate and serious concern, it invites the MoJ to consider all of the additional issues set out below.

D. Listings

13. The MLA strongly agrees with the statement in the MoJ's call for evidence that "*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*." The MLA's members' journalists have identified numerous ways in which they are assisted in their role as the eyes and ears of the public by the online publication of court and tribunal lists (**Question 6**). Primarily, it assists them to plan reporting of cases, and removes the need to spend time contacting court staff. Moreover, daily court lists can also enable journalists to identify trends in the courts (for instance, the types of offences that are reaching the criminal courts).

14. Given the importance of accessible listings to the media, the MLA notes with concern at least one recent example provided by its members' journalists of a significant and high-profile case that was not listed at all (namely, the Divisional Court's judgment in businessman Mike Lynch's appeal against extradition to the USA).

15. It also notes numerous concerns raised by the journalists about difficulties they have faced in accessing listings in practice, which echo the "*common criticisms*" identified by respondents to the JSC's inquiry into open justice, and the practical recommendations proposed to alleviate these concerns.

16. So far as concerns timely access to listings information, a recurrent concern was the timing of publication of listings. As one journalist pointed out, where listings are published after court hours the day before a hearing, court staff are no longer available to assist with queries. A longer lead-in time for publication would be a simple way to resolve this issue. Another issue is the inconsistency of accessibility; some journalists have pointed to particular difficulties with accessing Crown and Magistrates' Court lists.

17. Concerns were also raised about the ephemeral publication of listings, and the consequent difficulties for journalists in retrieving listings information once they have been published. Access to historical listings data enables journalists to identify trends. It also means that journalists who have missed a listing (if, for instance, a hearing is rescheduled at short

notice, as can often occur) can retrieve the details easily and do not need to spend time contacting the court. These difficulties could be avoided if listings information were sent directly to accredited journalists or media organisations (as is the case for some court lists indicated in the responses, e.g. South London Magistrates' Court, North London Magistrates' Court, and Westminster Magistrates' Court). Another suggestion is for cases to be tracked, so that journalists could be alerted when a hearing is next listed. Listing information could also simply be retained for a longer period in an easily accessible format.

18. A recurrent concern was the sparsity of information provided, with journalists identifying that much more readily available information could be provided with court listings to ensure that they meaningfully assist journalists in planning their reporting (**Question 7**). Of more concern are reports that, in a number of cases, listing information has been incomplete or wrongly withheld (such as the example provided by one journalist, who was unable to trace a case because the name of the Defendant had been redacted, seemingly because of the existence of an RRO that applied to some of the victims in the case but not the Defendant). Outside of (the rare) cases where reporting restrictions prevent identification of the parties[6], it is of the utmost importance that listing information includes their names. Additional information in criminal cases that would assist journalists in tracking them includes a Defendant's date of birth and address[7], and a summary of the charge. Information about remote access could also be included in listings information shared with the media.[8]

19. Finally, numerous concerns were raised over the way reporting restrictions are currently listed (**Question 8**), and suggestions offered for how these can be alleviated.

20. Most fundamentally, there is little consistency in the provision of RROs to the media. RROs are not identified on court lists nor stored centrally in a way that the media can access. Nor are they consistently or reliably communicated to the media: for instance, some are sent via the CPS; some are sent by email; some are confirmed orally to journalists (and

[6] Lists published directly to the media should include information enabling them to identify parties even in cases where that information is covered by RROs. The media well understands the difference between information being provided on a publication and a not-for-publication basis (and should be trusted not to publish information in breach of an RRO of which they have been notified).

[7] See the example provided by one journalist of *R v Michael Lockwood*, a high-profile criminal case in which a Magistrate agreed not to release the Defendant's address to the media, despite this being information to which they are entitled under CrimPR 5.8.

[8] As to which, see Section E below.

sometimes only when the journalist has made proactive inquiries of busy clerks or court staff at the start of a hearing).

21. Given that the media are inevitably the primary intended recipients of RROs, this is a concern that requires urgent consideration. The dangers of not doing so are clear: plainly, there is a risk of the media being misinformed as to whether or not an RRO has been made in a case. One journalist provided the recent example of *R v Connor Chapman*, in which information was reported by some broadcasters who had not been made aware that an RRO covering that information had previously been made. Another provided an example of being notified by both counsel and a local reporter that an RRO existed in a case, only to discover after a day's investigation and speaking to the Judge's clerk that one did not exist. These are issues that do not just have extremely serious consequences for the media (who may find themselves being summoned to court by the Judge to explain the position, requiring them to instruct legal representation and risking further delay to the substantive proceedings), but for all court users if such reporting inadvertently jeopardises active proceedings and results in trials having to be abandoned at huge expense.

22. Uncertainty as to the existence of RROs in any given case can also lead to knock-on difficulties with the provision of information or materials to the media. The journalists report court staff declining to provide information to which they are entitled, because the staff do not know whether an RRO is in place.

23. A centralised repository of RROs (modelled on the USA's PACER system, or the National Archives' FCL system for judgments), accessible by the media and their legal advisers, would be a clear and preferred solution to this significant concern, and one on which the MLA would be keen to consult further. However, even lesser measures, such as a clear and consistent indication on court lists that a RRO has been made (even this fact, without more) would represent an improvement on the current situation.

24. Relatedly, there is little consistency in notifying the media of variations to, or the lifting of, RROs. One journalist observed that where reporting restrictions are indicated on court lists, they often remain on those lists even after having been lifted. The dangers of this lack of clarity have been highlighted above, and this is again a significant concern that could be alleviated by the establishment of a central and maintained repository.

E. Accessing courts and tribunals

25. The MLA strongly agrees with the statement in the MoJ's call for evidence that "*public access and observation of court and tribunal proceedings is essential to upholding open justice*." In response to its question about awareness of the FaCT service (**Question 12**), most of the journalists were not aware of its existence, suggesting that further efforts could be made to publicise it.

26. In response to the question of what more digital services such as FaCT could offer (**Question 13**), one journalist observed that it can take days for emails sent to generic court email addresses to receive a response, and that it would be helpful to have more specific email addresses and contact numbers (in particular, for issues such as listings and the arrangement of CVP links).

F. Remote observation and livestreaming

27. The MLA supports the observation in the MoJ's call for evidence that the remote observation of proceedings "*worked well*" during the COVID-19 pandemic, and that new powers in the Police, Crime, Sentencing and Courts Act 2022 to allow the media and the public to request remote access to proceedings have been "*transformative*" for open justice. Its members' journalists report similar practical benefits to those identified by the MoJ (**Question 14**), including: avoiding the cost and time of travel (which is a particularly relevant consideration where cases are adjourned at short notice)[9]; saving resources where hearings alternate between closed and open sessions (meaning journalists do not experience "dead time" at court during closed sessions); gaining access to a broader spectrum of proceedings; and being able to cover multiple sets of proceedings in the same day.

28. They generally agree that risks of unauthorised recording or disruption may be higher with respect to the public's remote access to proceedings (**Questions 15 and 16**), but do not consider that this should affect the accredited media's ability to access hearings remotely and responsibly. It is also suggested that there could be a working presumption that the media's legal representatives may attend hearings remotely, where their input is required on open justice issues. These issues normally take up a relatively short amount of time at

[9] As one journalist reported, "*it is unrealistic… to expect any media organisation to attend a month-long inquest physically. Only a tiny percentage of legal proceedings are deemed important enough by editors to physically send a reporter to every day when it's a long case*."

the start of substantive hearings, and consist primarily of legal submissions, and in that context remote attendance is much more cost- and time-effective for the media than requiring their representatives' in-person attendance.

29. As a number of journalists stressed, however, facilitating remote observation of proceedings should not replace or limit the ability of the media to physically access the courtroom. They observed with concern the decreasing numbers of press seats in recent years at hearings of considerable media interest (for instance, only five media seats were available in the main courtroom for *R v Lucy Letby*). There remain significant benefits to attending hearings in person (for instance, as one journalist observed, it allows the media to speak directly with the parties' lawyers), and downsides to remote attendance (for instance, the inability to see all parties, and sometimes difficulties with audio; see also [36] below).

30. As to whether all open court hearings should allow for livestreaming and remote observation (**Question 17**), the consensus from the journalists was that they should (at least for accredited media). If the public and media are physically able to access a court in person, there can be no good reason for preventing the media accessing remotely.

31. There should not be further restrictions on the reporting of court cases (**Question 18**). The broad consensus among the journalists was that no further restrictions should be imposed in addition to those already in place to protect, for instance, minors and sexual offence victims, or to militate against the substantial risk of serious prejudice to proceedings. Nor did they identify a need for any restrictions on the reporting of court cases attended remotely. They indicated, however, that journalists who observe parts of cases remotely may be unaware of any RROs in place (for the reasons set out at [20] above), and proposed that it may assist the media to have an on-screen reminder or notification that RROs apply to a case they are attending remotely.

32. Finally, in response to the MoJ's question of how the process for gaining access to remotely observe a hearing could be made easier for the public and the media (**Question 20**), the journalists identified a number of practical difficulties they had faced and suggestions for how these could be alleviated.

33. First, they reported logistical difficulties with requesting and obtaining remote access, and in particular an inconsistency in how requests are dealt with by court staff. For instance,

some courts insist on the media making requests for access the day before a hearing, which causes difficulty when lists are only published at the end of the court day. In addition, there have been occasions where it has been unclear to journalists until very late whether the court had approved their request for remote access (and, more seriously, journalists missing hearings because of the failure to resolve access issues in time, despite the court granting permission for remote media access).

34. One suggestion consistently proposed by the journalists was to streamline the process for allowing accredited media access to hearings. For instance, at an individual case level, if an accredited journalist is permitted remote access for the first hearing in a particular case, that access could automatically remain for future hearings. More generally, there would be a significant reduction in bureaucracy if courts adopted a centralised process that moves away from requiring individual journalists to sign up for individual hearings (for instance, providing the media with links corresponding to particular court rooms, or recording these links on court listings, or alternatively devising a streamlined request and registration system for accredited media, allowing automatic access to links).

35. Second, there were concerns over the opacity of the decision-making process when a media request for access is made. One journalist reported being told that sometimes Judges decline requests because they do not want to increase the administrative burden on court staff (something that the recommendations immediately above seek to address). Another reported an experience at Stafford Crown Court where a CVP link was initially provided but turned off by the Judge with no explanation or possibility for the media to make representations.[10] The MLA suggests that these types of situations can be avoided with better guidance or training for court staff and Judges on when CVP access should be allowed.

36. Third, concerns were raised over the quality of the audio and video feed (which is a particular problem where a journalist may have limited opportunity to alert the court to technical issues).

[10] See also https://www.holdthefrontpage.co.uk/2023/news/journalist-slams-judge-who-wrongly-refused-remote-trial-access/.

G. Broadcasting

37. As to the benefits to the public of broadcasting court proceedings (**Question 21**), the MLA strongly agrees with the MoJ's statements that "*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*" and that "*allowing the broadcasting of proceedings enhances open justice by helping the public observe and understand how our justice system works*." Members of the MLA have been central to the developments in filming court proceedings.

38. In particular, broadcasting allows for a more accurate reflection of what is happening in court in real time, and is an important way of encouraging younger, and more technologically proficient, members of the public to engage with the court process. Broadcasting (including of witness evidence) has been carried out effectively and unobtrusively at high-profile public inquiries, such as the Manchester Arena Inquiry[11] and the ongoing COVID-19 Inquiry[12], and has allowed proceedings to reach far wider sections of the public who would not otherwise have been able to attend in person.

39. The MLA acknowledges there are fears, raised in the MoJ's call for evidence, that televising court processes could undermine privacy and protection concerns, and could open the judicial process to sensationalism. That said, it notes that responsible public interest broadcasting by the accredited media has not, to date, led to these concerns (which certain journalists considered to have dominated discussions on this issue) manifesting in practice.

40. In response to the MoJ's request for details of the types of court proceedings that should or should not be broadcast (**Question 22**), the MLA recognises that there are likely to be difficulties with broadcasting witnesses' evidence (particularly in cases engaging statutory reporting restrictions, such as those involving youths and victims of sexual offences). In contrast, the same difficulties do not arise for legal submissions and sentencing remarks. The responses received by the MLA proposed that consideration should be given to the broadcast of: parties' opening and closing statements; sentencing hearings (not just judicial remarks), as well as a greater range of Judges' sentencing remarks; hearings and judgments in the High Court; hearings and judgments in Magistrates' Courts; and submissions and

[11] Hearing videos available on YouTube: https://www.youtube.com/channel/UCdWYYDnEbLUOyFsCaVhqlxw.

[12] Hearing videos available on the Inquiry's website: https://covid19.public-inquiry.uk/hearings/.

decisions in coronial proceedings raising issues of general public interest and importance (e.g. public health and safety).

41. Consideration could also be given to allowing responsible filming, by accredited media, subject to careful control and oversight, of matters other than witness evidence in the Youth and Family Courts. As is clear from pilot schemes such as those in the Court of Protection and the Family Courts, there is a recognition that certain types of court remain largely inscrutable to the public, whilst there is plainly a considerable public interest in their decision-making processes (not least given the importance of the issues that these courts are determining on a daily basis). While recognising that each case will require determination on its merits, the MLA suggests that there is a strong case for further exploration of this issue.

42. As to the MoJ's **Question 24** on the 1925 prohibition on photography and the 1981 prohibition on sound recording in court, it is clear from the responses received by the MLA that these have not kept pace with technological developments.

43. First, most of the journalists reported that the 1981 prohibition on recording prevents their use of automatic transcription technology. There are significant benefits to the use of such technology for the media: for instance, it allows for extremely accurate records of hearings and therefore improves the accuracy of reporting; it allows for instantaneous access to such a record (whereas official transcripts, where provided to the media at all, are often subject to delays which cause difficulties for reporting breaking or otherwise time-sensitive stories); and it removes the prohibitive cost to the media, and cumbersome process, of purchasing official transcripts via the X107 form. Moreover, one journalist identified that full and accurate transcripts are also beneficial for long-term newsgathering and reporting on issues of important public interest (such as terrorism). Whilst recognising the risks associated with the unauthorised recording and dissemination of courtroom audio, these are plainly risks more associated with members of the public than the accredited media (particularly if recording were permitted purely for transcription purposes).

44. Accordingly, the MLA would encourage consideration of a controlled relaxation on the prohibition for the accredited media, for transcription purposes. As a number of journalists pointed out, they already adopt this approach for other types of hearing (e.g. select

committee hearings), and have on occasion been granted permission by a Judge to record court hearings for reporting purposes.

45. Second, some of the journalists highlighted difficulties that arise from the 1925 prohibition so far as concerns court "*precincts.*" One cited an example of a wheelchair-using murder suspect who was unloaded in the court's car park, meaning that the media were unable to film (which would not have been the case had he walked into the court building directly from the public highway). There is no good reason for such an anomaly, and the prohibition should not operate to prohibit filming of matters readily visible from the public highway.

46. Third, and more generally, some journalists highlighted that the prohibition of photography or filming inside the court room has the potential to become increasingly otiose given that developments in technology make it possible for anyone to digitally create images (and even moving video) of a party in a court room, without needing to photograph or film at all. It is recognised that there are risks associated with allowing the public the unrestrained ability to take and disseminate photos and videos, but such risks can be mitigated by limiting permission to take photos and videos to the accredited media under carefully controlled circumstances. In light of this, the MLA suggests that further consideration should be given to such a system; plainly, such authentic material would have a far greater value in promoting open justice than digital "mock ups."

H. Single Justice Procedure ("SJP")

47. The MLA notes the MoJ's description of the SJP as a "*more proportionate way of dealing with straightforward, uncontested, summary-only (low severity), non-imprisonable offences which almost exclusively result in a financial penalty*", and of such cases as being ones "*which the press rarely attended.*" The MLA rejects any suggestion that cases determined under the SJP are of any less inherent interest to the media and the public. Whilst resourcing constraints may prevent the media's routine in-person attendance at such cases (as is the case for any type of hearing), it is clear from recent high-profile examples[13] that cases dealt with under the SJP may nonetheless raise issues of important public interest

[13] See for instance a motoring offence committed by the Archbishop of Canterbury in late 2022, determined through the SJP: https://www.bbc.co.uk/news/uk-england-london-65572257; and prosecutions of attendees of a public vigil for murder victim Sarah Everard: https://www.theguardian.com/uk-news/2022/aug/13/sarah-everard-met-forced-to-halt-absurd-convictions-over-vigilhttps://www.lawgazette.co.uk/news/closed-door-court-process-criticised-after-everard-vigil-prosecutions-dropped/5113429.article.

(including, for instance, the appropriateness of the SJP procedure itself: see high-profile criticism of its use in the context of COVID-related offences).[14]

48. The MLA would disagree with the MoJ's assessment that "*there is sufficient transparency for cases dealt with under this procedure*." On the contrary, its members' journalists are concerned that the SJP system prioritises expediency to the detriment of transparency and open justice, with some remarking that many journalists were not familiar with the process precisely because it was "*an inherently opaque system*" and "*effectively secret justice*." In response to the question of how the government could enhance the transparency of the SJP (**Question 25**), the responses received by the MLA make three key suggestions.

49. First, an effective procedure for notifying the media of hearings. The MLA notes the MoJ's indication that "*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 on CaTH, which contains more information on these cases so they can report on them if they so wish*." However, more must be done to increase awareness of this facility: the responses received by the MLA indicate that journalists are not familiar with it. Given the current lack of awareness as to the existence of this facility, it was not possible for the MLA's members' journalists to give evidence as to the comprehensiveness of the information it provides.

50. Second, an effective way of ensuring that the media can access hearings and challenge decisions to hear cases in private.

51. Third, proper media access to court materials (such as judgments, transcripts, and evidence put before the court).

52. Finally, the MLA notes its members' journalists' deep concern at the onward direction of travel away from accessible and open hearings, and in particular the Online Plea and Allocation ("**OPA**") process, due to commence in 2024. As one noted: "*The direction of travel seems to us to be leading towards there being no free press reporting on magistrate proceedings at all, which is really worrying*." The MLA would ask that urgent thought be

[14] Such criticism has been raised in the course of select committee hearings, see for instance: https://www.lawgazette.co.uk/news/minister-defends-single-justice-procedure-for-covid-19-offences/5108291.article.

given to how the process is intended to operate compatibly with the important principle of open justice, and would be happy to engage with the MoJ further on this.

I. Publication of judgments and sentencing remarks

53. The MLA strongly agrees with the MoJ's statement that access to judgments "*is a fundamental right central to the rule of law and the principle of open justice*." As such, and in response to the MoJ's **Question 27** as to whether court judgments or tribunal decisions have been publicly available online, it is a matter of concern that some of its members' journalists reported the following key difficulties in practice with obtaining certain judgments.

54. First, they reported difficulties in obtaining specific orders, for instance, after directions hearings. Such orders are often of significant assistance to the media as they may indicate dates of future hearings or important procedural points, and should be as readily available online as substantive judgments. One high-profile example highlighted was Julian Assange's appeal against extradition, which was declined on the papers on 6 June 2023 with the Judge's clerk informing journalists to make an application for access to the order (and the judicial press team only being able to supply it after a delay of several hours).

55. Second, they reported particular difficulties with reliably obtaining Magistrates' and Crown Court judgments. Whilst some, for instance, in high-profile cases, are published online, others are only made available if the media contacts the court or its press office (or even, on some occasions, the parties' legal representatives, as occurred in the recent example of *R v Kristofer Kearney*[15]). Some journalists reported that court staff have been unhelpful or obstructive in response to media requests for judgments and other documents or court materials.[16] The MoJ's resourcing concerns regarding the provision of sentencing remarks across all Magistrates' Courts are noted, but it would nonetheless represent a significant improvement on the current position if there were a consistent and centralised system in place for publication of particular types of judgment (and for requesting and obtaining them if not published).

[15] The media obtained the Judge's ruling on a Newton hearing from prosecution counsel.

[16] Although it is right to acknowledge that they also reported positive experiences, such as the responsive press office at Northampton Crown Court promptly, upon request, providing a copy of Baker J's judgment on a fitness hearing in the case of *R v Louis De Zoysa*.

56. Third, they raised an issue about access to historical decisions (particularly of the criminal courts and first-instance courts). This includes even high-profile and relatively recent cases, such as *R v Pazeer Ahmed* in 2012, for which one journalist was unable to find any transcripts or rulings. Whilst paid-for subscription services to legal libraries exist, they are likely to be beyond the resources of many media organisations. The MLA notes the improvements brought about by the National Archives' FCL service (although the journalists highlighted that there is often a delay in judgments becoming available on that service), and suggests that its scope could be expanded to cover at least some criminal and other first-instance courts and tribunals (including medical tribunals).

57. In response to the MoJ's **Question 28** on consolidation of judgments and decisions onto the FCL service, the responses received by the MLA expressed support in general terms for a simplified and centralised system (and, as indicated at [23] above, a strong preference for this or a similar system for RROs). They also expressed support for search-engine compatible systems (in response to the MoJ's **Questions 38 and 40**).

J. Access to court documents and information

58. The MLA very strongly endorses the MoJ's statement that "*access to court and tribunal documents is a fundamental part of open justice*." Whilst the MoJ's call for evidence refers to "*documents*", it is important to recognise that this extends to material in other formats, particularly images and video (such as CCTV, see [61.1] below) which are plainly of crucial importance to online and broadcast news reporting.

59. The MLA also notes the MoJ's statement that the evidence submitted to the JSC inquiry demonstrated that non-parties can experience difficulties when seeking access to documents. This is consistent with the responses from its members' journalists, who pointed to a number of practical difficulties in obtaining court materials (**Question 45**). The key difficulties are summarised below (and the MLA would stress that this is the issue from the MoJ's call for evidence that has given rise to the highest number of examples and concerns from journalists).

60. First, and of most significant concern, many journalists reported a culture of suspicion and reticence in response to requests for access to materials. As one journalist reported, "*the biggest obstacle to reporters accessing court documents is the attitude of lawyers who think the media is not entitled to see them; there should be a bias towards openness and reporters*

should not have to be wasting judges' time asking for access to skeleton arguments, witness statements etc."[17] Another reported how "*I never get a sense when I ask for information in a physical courtroom either from the clerk or from counsel that it is my right to have that information. I often find myself expressing extreme gratitude just to have the spelling of someone's surname confirmed*."

61. This has been a particular experience in criminal cases, with the CPS and local police forces (as the *de facto* gatekeepers of material) denying access to the media:

    61.1. One example provided to the MLA was *R v Connor Chapman* (see also [21] above), in which an agreement was made between the CPS and Merseyside Police to restrict media and public access to material put before the jury. CCTV footage of the shooting was played before the jury numerous times during the three-week trial, but the media were denied access for the purpose of their reporting of the trial. Regrettably, this led directly to a reduction in coverage by broadcast media in particular, as the absence of the CCTV footage as a crucial visual component rendered reports of significantly less public interest.[18]

    61.2. Another example provided was *R v Lucy Letby*, in which the CPS and Cheshire Police denied the media access to material shown in open court, forcing journalists to write to the Judge on several occasions to obtain it. Concerningly, the MLA received reports of journalists being forced to abandon challenges to the CPS's and Cheshire Police's denial of access to material due to a lack of resources (the media will often not have ready access to legal representatives to challenge denials of access). As is abundantly clear from recent reports on this high-profile case, broader issues of enormous public interest have been highlighted by media reporting of material shown to the court (such as documents evidencing a reluctance from senior hospital directors to investigate a sudden and suspicious rise in neo-natal deaths).[19]

[17] Of particular concern is an example given by one journalist of a recent hearing in which legal representatives refused to provide their names or contact details, or skeleton arguments, and the Judge declined to intervene.

[18] At the conclusion of the trial the Judge, having appreciated the importance of the CCTV in demonstrating the gravity of the crime, expressly asked the media to show it to the public. However, this request was made too late to include in contemporaneous reporting of the trial.

[19] See e.g. https://www.theguardian.com/uk-news/2023/aug/19/trust-me-im-a-nurse-why-wasnt-lucy-letby-stopped-as-months-of-went-by; https://www.bbc.co.uk/news/uk-66120934; https://news.sky.com/story/lucy-letby-hospital-bosses-didnt-allow-investigators-to-see-clinical-notes-related-to-baby-deaths-expert-says-

61.3. A further example was *R v Kevin Spacey*, where on one day agreed facts were read out at speed by the prosecution, making it difficult for the media to take an accurate note. The media was denied access to a note of the agreed facts, and as a consequence this part of the trial went unreported.

62. Yet another example provided, from the Employment Tribunal, arose when the parties had failed to redact names which they agreed should be kept confidential, and consequently refused the media's request for access to the papers that contained those names. The Tribunal spent many hours resolving the issue, highlighting that these issues not only impact upon the media's resources, but also the court's.

63. Second, the responses received from the journalists highlight the serious logistical difficulties they face in obtaining court materials. Examples include being passed from department to department; lack of responses to emails; delays (of weeks, in some instances) in obtaining materials once requested; and civil cases not being listed on CE-file.

64. As a result of the above concerns, and in response to the MoJ's **Question 46** on how rules and guidance on non-party access to material can be clarified, it is suggested that there needs to be clear and comprehensive guidance, addressing the types of court materials to which the media are entitled, when they can be sought, timeframes within which requests must be dealt with, who has responsibility for dealing with media requests for access, and the process for dealing with disputes as to access. Media reporters in court raising requests during a hearing cannot be expected to have ready access to or knowledge of Criminal and Civil Procedure Rules dealing with access to materials; readily digestible and comprehensive guidance is required. In that regard, whilst the MLA acknowledges the introduction of the Reporters' Charter and the Media Protocol, as identified by the MoJ, it is clear from the numerous examples above that access to court materials remains a pervasive problem, requiring urgent further consideration and guidance.

65. A further suggestion is for a centralised system permitting media access to court materials. Whilst the MLA recognises that resourcing issues will be an important consideration, it is

12942917. There will be an independent inquiry into these matters: https://www.gov.uk/government/news/government-orders-independent-inquiry-following-lucy-letby-verdict.

a system that has already been deployed in public inquiries[20] and should be considered for cases of high public interest. In addition, consideration should be given to the automatic or presumptive allocation of specific time at the start of hearings to consider the release of material to the media (as well as any other media-specific issues). This is already required by the 2019 President's Guidance on Reporting Restrictions in the Family Courts[21], paragraph 8(f) of which requires Judges to indicate at the start of hearings for the media to make any applications to vary or discharge reporting restrictions.

66. In response to the MoJ's **Question 30** and **Question 47**, as to what material provided to the court by parties, and other court records, should be made available to non-parties, there was a strong consensus among the MLA's members' journalists that materials relied upon in the course of open proceedings should be made available to the accredited media. There is also a consensus that transcripts, skeleton arguments or opening and closing speeches, Defendant's details in criminal cases, indictments and judicial remarks and judgments should be available (see Section I above). It is further suggested that conviction lists and records of sentences should be made available.

K. Conclusion

67. The MLA hopes this response, and the evidence its members' journalists have provided, are of assistance to the MoJ. It reiterates that, as a key stakeholder in open justice issues, it would welcome an opportunity to consult further on the issues and concerns raised.

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[20] See evidence and documents available for public inspection on the websites of the Manchester Arena and COVID-19 inquiries at [38] above.

[21] https://www.judiciary.uk/wp-content/uploads/2019/10/Presidents-Guidance-reporting-restrictions-Final-Oct-2019-1.pdf

Media Lawyers Association: list of current members

1. **Associated Newspapers Limited**, publisher of the Daily Mail, The Mail on Sunday, Metro, i, MailOnline, Mail Plus, metro.co.uk and inews.co.uk.

2. **Bloomberg L.P**, a financial, software, data and media company publisher of Bloomberg News and a variety of other business publications.

3. **The British Broadcasting Corporation**, a public service publisher of 8 UK-wide television channels, interactive services, 9 UK-wide radio/audio stations, national and local radio/audio services, bbc.co.uk and the BBC World Service.

4. **British Sky Broadcasting Limited**, a programme maker and broadcaster, responsible for numerous television channels, including Sky News and Sky One.

5. **Channel 5 Broadcasting Limited**, a public service broadcaster of the Channel 5 service and 2 digital channels, interactive services and related websites.

6. **Channel Four Television Corporation**, public service broadcaster of Channel 4 and three other digital channels, plus new media/interactive services, including websites, video on demand and podcasts.

7. **Condé Nast**, a global media company and publisher of Vogue, The New Yorker, GQ, Glamour, AD, Vanity Fair and Wired, among many other titles.

8. **The Economist Newspaper Limited**, publisher of the Economist magazine and related services.

9. **The Financial Times Limited**, publisher of the Financial Times newspaper, FT.com and a number of business magazines and websites, including Investors Chronicle, The Banker, FTAdviser, MandateWire and fDi Intelligence.

10. **Guardian News & Media Limited**, publisher of the Guardian, the Observer and Guardian website.

11. **Harper Collins**, one of the largest consumer book publishers in the world.

12. **Hearst Magazines**, publisher of consumer magazines including Cosmopolitan, Good Housekeeping, Harper's Bazaar and Reveal.

13. **Independent Digital News and Media Limited**, publisher of the Independent online, the Evening Standard, and related websites.

14. **Independent Television News Limited** (ITN), ITN produces the television news programmes: ITV News, Channel 4 News and 5 News. ITN Productions produces factual, entertainment and current affairs TV programmes, TV commercials and branded content, sports programmes, and digital content services.

15. **ITV PLC**, a programme maker and a public service broadcaster of the channels ITV1 (in England and Wales), ITV2, ITV3, ITV4 and CITV, interactive services and related websites.

16. **NBCUniversal News Group**, is the news division of NBCUniversal, composed of NBC News, CNBC and MSNBC.

17. **News Media Association**, is the voice of the news media industry whose members publish over 900 national, regional and local titles, accounting for the majority of the total spend on news provision in the UK, and which reach 49.2 million adults each month, in print and online.

18. **News UK**, parent company of a) **News Group Newspapers** – publisher of The Sun and related magazines and websites; and b) **Times Newspapers Limited** – publisher of The Times and Sunday Times and related websites.

19. **PPA (The Professional Publishers Association),** the membership network for UK consumer magazine media and business information publishers, representing around 160 of the UK's most renowned publishing houses.

20. **The Press Association**, the national news agency for the UK and the Republic of Ireland.

21. **Reach PLC** (including **MGN Limited** and **Express Newspapers**), publisher of over 140 local and regional newspapers, 9 national newspapers including the Daily Mirror, Sunday Mirror, The People, Daily and Sunday Express and Daily and Sunday Star, and over 400 websites.

22. **Telegraph Media Group Limited**, publisher of the Daily Telegraph, Sunday Telegraph and related websites.

23. **Thomson Reuters PLC**, international news agency and information provider.

24. **Which?**, the largest independent consumer body in the UK and publisher of the Which? series of magazines and related websites.