CIoJ report on Open Justice

This report is sent to you by the Chartered Institute of Journalists (CIoJ), the oldest professional association of journalists in the world which operates under a Charter granted in 1890 by HM Queen Victoria.

We represent staff and freelance journalists across all sectors of the media including local and national newspapers, periodicals, broadcasting and electronic publishing.

The Institute prides itself in being non-party political and expresses opinions only on matters that relate directly to our profession and industry, or to our members.

Open justice is at the very heart of a motion that was supported by Institute members at our 2017 AGM (see appendix two). In recent years there has been an unprecedented, and sustained, attack on the journalism profession, which has taken a toll on our ability to cover courts, and report on their function. This has alarming consequences for open justice and wider society.

Recently, Institute Vice President, and Professor of Media Law at Goldsmiths, Tim Crook, took a class of students to the Royal Courts of Justice and saw for himself the effect this is having on court coverage by the media. One day provided six examples where the dramatic effects this is having can be demonstrated (see appendix one).

In assessment, we feel there are a number of recommendations that might be made to help both the courts and journalism work in a closer and more synchronised relationship. One which will help and enhance both professions and help them meet the expectations that wider society expect of them.

Recommendations

Royal Courts of Justice infrastructure and judicial practice

Judges cannot afford to wait for the journalism industry and public to understand the importance of contemporaneous, accurate and fair reporting of their proceedings.

They can be encouraged to engage with the public and open society with their proceedings.

Justice can only breathe and exist with publicity and access to information.
Case ruling summaries

Through the Judicial Studies Board and Practice Direction, judges should be obliged to produce a one A4 page summary and explanation of all their rulings. The UK Supreme Court’s impressive public engagement policy of case ruling summary, and website publication is a good model to examine. The summaries and written rulings need to be published as soon as possible on the day of ruling by distribution of paper copies and digital uploading to a relevant online platform - preferably the Ministry of Justice website.

Access to case documents

The skeleton arguments of parties, that are now compulsory for most high court hearings, should be made accessible to journalists for all cases. This can be achieved by the operation of an active website resource, preferably hosted by the Ministry of Justice, where case listings are/can be accompanied by a digital folder of resources. The case listings, traditionally known as ‘the cause list’, should always include a brief summary of what the cases are about. It’s ludicrous that journalists or trainee journalists and their tutors should be faced with the bleak presentation of mere names of parties, judge, court numbers and times. Such information is virtually meaningless in terms of public communication. It would be progressive for judges to be encouraged to give approval for the advance release of case documents into these resource folders for professional journalists. It would fundamentally encourage and inspire much more journalistic engagement with the judicial process.

Journalistic facility in courtrooms

Everything should be done to encourage and invite a journalistic presence in court. Court officials should be trained, ready and willing to enable journalists to sit in the sections for Press/Media in court. Adequate provisions should be made for cases where a high level of Press attendance is anticipated. In those circumstances, it is highly unreliable and frustrating for journalists to be crammed into public gallery benches in order to cover proceedings.

Digital audio and video repositories of rulings

Much more can be achieved by the judiciary engaging with the use of multimedia (see suggestions above). Considerable progress has been made between the judiciary and media in bringing television coverage into the Royal Courts of Justice, but it has to be accepted that the process has not seen any increase in television coverage of RCJ proceedings. The Institute suggests that this excellent development can be re-set by organising active digital sound recording of rulings, and their uploading to an accessible platform, for the professional media so that publishers in radio, television, and online newspapers can link, extract and copy for use in publication and reporting of rulings. This would substantially expand and extend the range of coverage.

The RCJ is a massive national forum for judicial case outcome for the English and Welsh legal system. The very fact that regional/local media in places such as Swansea, Blackpool, Margate or Middlesbrough would be able to access one page summaries, and the digital sound files of rulings for cases connected to people and organisations in their areas would be an historic and exponential improvement in journalistic coverage and the open justice principle.
The Institute believes building this foundation of audio/radio multimedia coverage will strengthen and expand take-up and interest in digital video demand and coverage of case hearings.

**Court reporting specialist apprenticeships**

What can be done to halt and reverse the decline in professional journalistic presence at the Royal Courts of Justice? This unfortunate trend has been the result of a concomitant implosion in the financing by professional media publishers of court reporting. The impressive and highly professional Press Association is undoubtedly the last stand along with independent news agency presence in the building. The Institute recommends a partnership between the Ministry of Justice and the Press Association (should they be willing) with the inauguration of four high court reporting apprenticeships to run for three years with ongoing recruitment after each three-year period.

The apprenticeships should be available to people aged 18 (encouraging employment for school-leavers) and above with guaranteed income at statutory minimum wage, having the option of payment of fees so that the trainee journalists could study for an external LLB with the University of London if they want to, combined with support and training via the Press Association for NCTJ qualifications. These exciting training and educational opportunities would offer a special dynamic between the professional journalism of the Press Association and the legal and judicial expertise of the legal profession and judges at the RCJ who would be invited to provide seminars, discussions and tutoring for the trainees in relation to their law degree studies.

The four apprentice/trainees would be a substantial investment in the scale and scope that the Press Association can provide in terms of regional and local coverage of court cases at the RCJ. This scheme could be a progressive national model for 18 plus quasi-apprenticeship, professional training and external degree qualification development where the entrants are working and earning an income and at the same time receiving the benefits of a university standard education. It is a unique opportunity to achieve a positive combination of professional journalistic and legal education and could help to bring on a new generation of media professionals with a fundamental understanding and expertise of the importance of the judiciary in a democratic constitutional society.

**Online platform for daily Press Association coverage**

The Press Association could be encouraged to establish a daily updated online publication for the professional journalistic coverage of the Royal Courts of Justice hearings. The web resource could be multimedia. With part open-access for Tweet publication of breaking news, headlines, single image and first paragraph it could be monetised and self-funded through a public subscription arrangement for access to full reports and image/multimedia portfolios. The Institute believes that the online information age means that the significance of proceedings and rulings at the Royal Courts of Justice can rightly have a global presence and there is an opportunity for the qualitative multimedia journalism of the Press Association to generate an income model that is both self-sustaining and investing in reporting resources.
**RCJ Judge and media bench committee**

As indicated by our campaign declaration in 2017, we would suggest that a more formalised judge and media bench committee system is established to see what can be done to promote open justice and public interest access.

This commitment need not be onerous, and might only involve meetings taking place twice a year. Senior judiciary and HMCT service officials could discuss with Press Association and other media editors/legal affairs specialists to develop an understanding of the work that goes on in the largest court complex in the United Kingdom.

This practice has always worked well in the USA, and very effectively promoted understanding and appreciation of the respective needs and concerns of judicial and journalistic cultures.

In light of the Ministry of Justice working party on open justice, we hope that the contents of this report may help guide discussions on how the courts may support journalists and deliver open justice.

**Appendix one**

**Court 19. Afghan boy from Calais camp launches historical legal challenge against refugee policy**

In court 19 before Mr Justice Ousely at 10.30 a.m. there was a judicial review by a 16 year old Afghan refugee of the government’s refusal to allow him to seek sanctuary in the UK.

It is a case that could give hope to thousands of other child asylum seekers across Europe.

The boy was listed as ‘ZS’, and was living in the Calais refugee camp when the French authorities cleared it in October 2016.

He applied unsuccessfully to be brought to the UK under section 67 of the immigration act, known as the Dubs amendment.

It is the first time a lone child asylum seeker had issued a challenge of this kind against the Home Secretary.

I could only trace a report arising from this day’s proceedings in the Guardian by Diane Taylor.

I did my best to follow Press Association filing on this day and could not find any reports from this case being distributed.

The hearing lasted three days with Judgement being reserved.

Inside the building Court 19 was packed. There was no sitting room in the public gallery.
Court 1. Day Two of Liberty’s challenge to the Snoopers’ Charter

This is a landmark legal challenge to the Government’s flagship surveillance law, the Investigatory Powers Act.

The challenge has been funded by donations from members of the public, who gave more than £50,000.

It is a challenge to government powers to order private companies to store everybody’s communications data and internet history so that state agencies can access it.

Liberty is arguing that indiscriminately retaining every person’s data in this way violates the UK public’s right to privacy.

It is also a concern for journalists because of the fear that there is an inadequate protection for journalistic sources.

On the second day, anybody attending would have been able to hear the government’s argument.

Interestingly, the government lawyer was conceding that some parts of the legislation were unlawful.

Furthermore, the senior presiding judge, Lord Justice Singh was asking help from counsel on the rather vexed question of whether his court had any powers to do anything about it.

Court 13. From 10.30 a.m. The businessman who wants the right to be forgotten in legal action against Google

The Press Association did most effectively report on an important day in this ground-breaking legal action that is likely to have a massive impact on the rights of individuals to have data searching of their past censored on the grounds of privacy by the Google search engine.

But the take-up in terms of media publication was minimal. This was disappointing when the reasons advanced by the claimant were presented in detail.

The case is about the effective breaking point between journalistic publication, in times past, and in terms of archive and the ability for anyone to find and track it online by carrying out information searches in time present.

Legal experts say this is the first ‘right to be forgotten’ claim tried in England.

The Open Justice concept was somewhat challenged by the fact that the judge, Mr Justice Warby had barred journalists from identifying the man in reports of the case and indeed the identity of another man seeking the disconnection by Google search engine with the truth of a past conviction that is in the public domain and has been for many years.

The argument by the lawyers representing the businessmen is that they cannot get the justice they seek if the very action they take at the High Court involves their identification.

The publicity about the identity of the claimants would defeat the purpose of the justice they seek.

However, there is a counter-argument that the right to be forgotten concept established by the European Court of Justice is not a precedent guaranteeing anonymity for people who wish to remove online data concerning their past they did not want to be found.
That case still bears the name of the Spanish businessman who launched the action, Mario Costeja Gonzalez.

On day two of this legally historical case the Press Association reported:

‘A businessman who wants Google to stop linking his name to internet media reports about a past crime has denied painting a "false" picture of his career. The man was convicted of "conspiracy to account falsely" in the late 1990s and his case was reported in the media, a judge has been told. He says the conviction is legally "spent" and argues that he has a "right to be forgotten". Google bosses dispute his claims. They say the information is "materially accurate" and there are "strong public interest" reasons for "maintaining access" to the publications.’

It is entirely possible that advancing a privacy culture of expectation of anonymity at all levels in the legal system is a driving force in the decline of Open Justice.

Anonymity undermines any international, national, regional and local media interest in this case as a journalistic story. If you cannot know the person at the heart of this test case, how can you report it? How can you relate it to any human and social community? The process is potentially de-humanising.

Any media right to challenge and resist the imposition of anonymity orders and reporting restrictions has its limitations. An exhausted and declining industry does not have the financial and legal resources to challenge every new imposition of anonymity in litigation or criminal proceedings. There are just not the journalists there to even discover most of the restrictions being imposed.

Even when an alert and public spirited journalist raises a challenge, is it not the case that there will be inequality of arms in legal representation?

Any decision to challenge reporting restrictions carries the risk of thousands of pounds; sometimes millions in legal fees- budgets that news publishers can ill afford.

The conclusion here is not that the Courts are necessarily wrong to anonymise the businessmen in the Google right to be forgotten case, or indeed ‘ZS’ in the unaccompanied child refugee case. But there is a growing risk that these steps and decisions have the potential to degrade Open Justice on a day to day basis.

Perhaps they need to be reviewed and more carefully reflected upon about their wider implications and consequences.

Earlier on 15th February journalists had to persuade appeal court judge Lord Justice Holroyde that he did not have the power to prevent the identification of two convicted sex offenders appealing against their sentence.

On February 23rd after a two year freedom of speech battle, the Times was able to identify that a billionaire former judo partner of Russian President Vladimir Putin had been involved in a legal dispute with his former wife over money.

But the struggle to win this right had meandered from High Court, Appeal Court to Supreme Court.

Again the worry here is that journalists and news publishers cannot afford to be in every court that makes orders rendering justice secret.
Court 4. An appeal from 10.30 a.m. by Paul Stromberg, jailed for 26 years for drug smuggling, before the Lord Chief Justice of England and two other criminal appeal court judges

It was in 2008 that a Paul Stromberg received a sentence of 26 years imprisonment for masterminding a plot with another man which would have seen cocaine from Venezuela worth £40m reach the UK’s streets.

A 10 year post-release travel restriction was imposed on him.

This information was available from an online media release of what was then Britain’s FBI, SOCA, the Serious Organised Crime Agency, which has evolved into the NCA, National Crime Agency.

Mr Stromberg was living in Abergavenny, Gwent, so there may have been some regional news distribution opportunities in relation to this appeal.

Court 5, from 10.30 a.m. appeal by Richard Ridley from Teesside before Lord Justice Holroyde, Mrs Justice Andrews DBE and Mr Justice Green.

According to regional reports from Teesside Mr Ridley is a violent ‘Jekyll and Hyde’ character who terrorised a woman with degrading sex attacks in a bizarre drug-fuelled campaign of violence.

In June last year he was given a complex sentence amounting to nine-and-a-half years’ imprisonment to be served, of which he will serve at least two-thirds before the Parole Board consider his release, then four years’ extended licence.

He was also given a sexual harm prevention order and will be on the sex offenders’ register for life.

The case clearly has intense regional news interest; particularly as his victim waived her right to anonymity and engaged in an important public debate about domestic violence.

She has set up a Support Facebook page so that she can help women like herself.

As recently as February her attacker’s new partner was prosecuted for breaching her right to anonymity on social media before she decided to waive it herself.

It would appear that news that Richard Ridley was appealing did not appear in local media until three days later on Friday 2nd of March.

Since snow was the reason for the adjournment of the hearing a contemporaneous report could have combined public interest in the facts of his appeal as well as the disruption by the weather.

In the reconvening of his appeal one week later, his total sentence was reduced to 8 years with Mrs Justice Andrews ruling that the original Crown Court sentence had been too high.

Meanwhile regional journalistic interest went national in the Daily Mirror online with the report that Mr Ridley had been publishing Facebook postings saying he was having ‘a good J-life.’

Court 5 at 2 p.m. Court Martial Appeal of RAF pilot who caused his plane to nosedive over 4,000 feet while using a digital camera

This was the case of Flt Lt Andrew Townshend who at his Court Martial in February last year was accused of costing the Ministry of Defence millions of pounds when he accidentally deactivated the autopilot of the military passenger jet.

The Voyager aircraft, which had 198 passengers and crew on board, plummeted 4,400ft over the Black Sea.
He pleaded guilty to negligently performing a duty, received a four-month suspended prison sentence and was dismissed from the service.

During a flight from RAF Brize Norton to Afghanistan on 9th February 2014 his camera was pushed into the aircraft’s control stick as he moved his seat switching off the autopilot.

Crew and passengers thought they were going to die during the flight, and some were thrown weightless into the air and smashed into the ceiling.

The incident led to the grounding of the military fleet of six Voyager aircraft for 13 days while the cause of the nosedive was investigated.

48 personnel were left unfit for duty and the co-pilot suffered fractures to his spine.

Flight Lieutenant Townshend’s case was widely reported by the BBC, Daily Telegraph, Daily Mail, Daily Express, The Times, Daily Mirror, The Sun, and regional media.

This was an appeal the outcome of which could have justified national coverage and as well as interest in local and armed services media.

Flt Lt Townshend was there to see his QC John Price lead a successful appeal against his dismissal based on the importance of maintaining the Just Culture principle.

This encourages pilots in aviation to report mistakes and accidents in which they may be implicated in order to advance the cause of safety and avoid future events that could lead to considerable loss of life.

The ruling by Lord Justice Holroyde may well have legal significance. Certainly the wider media could have updated their previous reports that the pilot had been dismissed.

Yet the only reference to what happened online is an oblique posting on the website for Mr Price’s set of chambers at 23 Essex Street in which it is stated:

‘the appeal against that sentence was allowed by the Courts Martial Appeal Court on Wednesday 28.02.18 and the order for his dismissal from the service of the RAF was revoked.’

In the judge’s ruling Lord Justice Holroyde emphasised how unusual it was for the Court Martial Appeal Court to reverse the expertise of Judge Advocates and military court-martial board members.

His criticism of the decision to dismiss Flt Lt Townshend was made with regret, but he said the appeal court had concluded that the pilot was subject to an unjust double sanction that was not supported by reasoning and justification.

The Court Martial was silent in the face of clear evidence that the pilot had had an exemplary career and was recognised as having the prospects of a highly successful future career.

There was considerable human interest because Flt Lt Townshend was in the public gallery. If he were willing, he could have been interviewed.

The wider implications in encouraging just and blameless legal cultures, in relation to mistake, accident and negligence, affects all professions and the wider general public.
Appendix two


The Institute calls on Parliament and the judiciary to sustain the vitally important principle of open justice which is under continuing threat from an expanding culture of reporting restrictions and a decline in media reporting facilities in the legal system.

Open Justice depends on ensuring there are reasonable conditions to make professional reporting of court proceedings viable and accessible.

The Institute supports a campaign:

- to improve notice and information about court listings for professionally accredited journalists;
- to improve relations and understanding between the judiciary and journalism industry through the setting up of regular meetings between editors and judges, particularly at regional court centres;
- to improve understanding by HM Court Service and the Ministry of Justice on the needs of professional journalists to be able to do their work effectively in court buildings and court-rooms;
- and to convince Parliament and judges that the imposition of speculative, unprecedented and unjustifiable reporting restrictions makes reporting the legal system prohibitively expensive and journalistically purposeless.

When professional journalists as the eyes and ears of the public are unable to attend and offer public interest scrutiny of this vital aspect of the constitution, there can be no Open Justice and judicial accountability to the public.