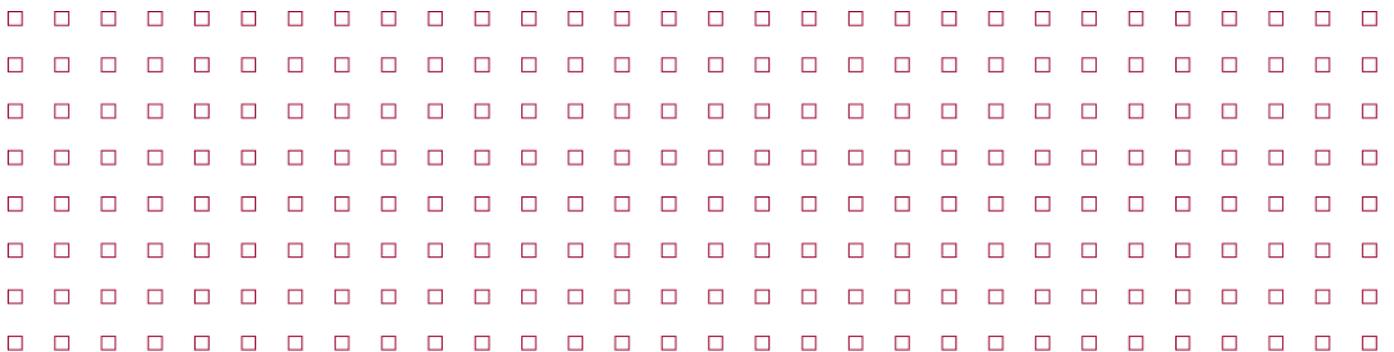




Proposals to allow the broadcasting, filming, and recording of selected court proceedings

May 2012





Ministry of
JUSTICE

Proposals to allow the broadcasting, filming, and recording of selected court proceedings

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Introduction

The Government and the judiciary are committed to open justice. Open justice is a long-standing and fundamental principle of our legal system. Justice must be done and must be seen to be done if it is to command public confidence. As the Master of the Rolls, Lord Neuberger, has argued, it is not enough that our Courts are open as a matter of general principle: it has to be a reality. This argument has been made for many years; in 1924, Viscount Hewart, then Lord Chief Justice, stated that “*Justice should not only be done, but should manifestly and undoubtedly be seen to be done.*”¹

In the course of the judgment in *Scott v Scott*, which is one of the most important authorities on the issues relating to public hearings, Lord Atkinson stated that: “*The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses... but all this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial and efficient administration of justice, the best means of winning for it public confidence and respect.*”²

We believe that the more informed people are about the justice system, the more confidence they will have in it.³ A key aim in our Green Paper from November 2010 ‘*Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders*’ was to make it easier for victims and the general public to understand the nature of the sentences handed down by the courts. We believe that television has a role to play in this, and are therefore proposing to remove the ban on cameras in courts to allow broadcasting in certain limited circumstances. We are clear that this should not be at the expense of the proper administration of justice, and that protecting the interests of victims and witnesses must remain paramount. However, 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.

Few people have direct experience of court proceedings, and overall public understanding of the criminal justice system is limited.⁴ Most court sittings take place when many people are at work. Many people, therefore, currently base their views on how the system is portrayed on television, or in films. These dramatised accounts rarely portray what happens in court accurately. With the range of technology now available, it should be easier for people to access better information on court proceedings.

¹ *R v Sussex Justices* KB (1924) 1

² Viscount Haldane, L.C., *Scott v Scott* [1913] AC 417

³ This is shown, for example, by the research in *Attitudes to Guilty Plea Sentence Reductions* by IPSOS Mori and the Sentencing Council (2011) which “highlighted a link between positive perceptions of fairness in the CJS and a view that sentences are ‘about right’ as they stand. Those who say that sentences are currently ‘about right’ are significantly more likely to be confident that the CJS is fair (73% compared with 48% overall).”

⁴ Ref: Crime Survey for England and Wales

We are now bringing forward legislation which will allow judgments and sentencing decisions in cases before the Court of Appeal (Criminal and Civil Divisions) to be broadcast. Cases in the Court of Appeal normally deal with complex issues of law or evidence, and victims and witnesses rarely appear in order to provide new evidence. Given the complexity of legal issues in Court of Appeal cases, we believe that allowing advocates' arguments to be filmed in addition to judgments would be more likely to improve public understanding than judgments alone.

In due course, we intend to allow filming of sentencing remarks in the Crown Court as we believe this will go a considerable way to opening up our justice system to the public.

We are aware of concerns that televising our courts may open the judicial process to sensationalism and trivialise serious processes to a level of media entertainment. This is why we are not proposing to allow full trials to be filmed. However, we believe that allowing people to see and hear judges' decisions will increase their understanding of the court without undermining the proper administration of justice.

The Current Position

The broadcasting of image and sound recording from courts in England and Wales, except for the Supreme Court, is prohibited by section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 respectively. Section 41 of the Criminal Justice Act 1925 prohibits the taking of photographs, or making of sketches, in or around the court, and the publishing of any such photograph or sketch. Case law has interpreted section 41 to also prohibit filming in court.⁵ Section 9 of the Contempt of Court Act 1981 prohibits the recording of sounds except with leave of the court, and s.9(2) makes it a contempt of court to broadcast recordings of court proceedings to the public.

With certain exceptions, most courts are open to the public and journalists are already able to be present in and report from court, subject to reporting restrictions. Despite this, very few people have direct experience of court proceedings. For many, the criminal justice system is still seen as opaque, remote and difficult to understand. We need to make it a reality that our courts are open and accessible to as many people as are interested in seeing them work. The judge, when he gives a sentence or a judgment, is a public official performing a public function; his words can be quoted, he will be reported and we therefore believe that it would be appropriate for a judge to be filmed.

In Northern Ireland, section 29 of the Criminal Justice (Northern Ireland) Act 1945 applies identical restrictions to photography or sketching in the courts in Northern Ireland and publication of the results. Scottish legislation has never restricted court broadcasting in the same way as in England and Wales. Conditions governing broadcast from Scottish Courts are set out in Lord Hope's Practice Direction (1992).⁶

UK Supreme Court

There is already precedent for televising court proceedings in England and Wales. The Supreme Court for the United Kingdom came into being in October 2009. Broadcasting in the Supreme Court is allowed through section 47 of the Constitutional Reform Act 2005. This exemption from the Criminal Justice Act 1925 was intended to replicate the arrangements for broadcasting which had existed in the House of Lords prior to the establishment of the Supreme Court.

When it was established, the Supreme Court identified a key objective of making its proceedings more accessible to the public and for that reason its proceedings are filmed and routinely broadcast. The detailed operational framework and rules on the approved circumstances for filming and broadcasting of Supreme Court proceedings are set out in an agreement which is signed up to by the main national broadcasters (BBC, ITN, Sky News). The footage is made available for the use of news, current

⁵ Re Barber v Lloyds Underwriters 1987; R v Loveridge, Lee and Loveridge (2001)

⁶ Information on the 1992 Practice Direction can be found in the case of X v British Broadcasting Corporation and Lion Television Limited [2005] CSOH 80, para 4
<http://www.scotcourts.gov.uk/opinions/2005csoh80.html>

affairs and educational or legal training programmes, and may not be used in light entertainment programmes, satirical programmes, party political broadcasts, and advertising or promotion. Any still images produced from the film must be used in a way that has regard to the dignity of the Court and its functions as a working body.

Sky News now broadcasts live footage of UK Supreme Court proceedings on their website.⁷ All hearings in the Supreme Court can be viewed online anywhere around the world through the live stream; for the extradition hearing of Julian Assange in February 2012, there were 14,500 unique visitors to the live-stream on the first day of the case. In March 2012, there were 35,000 views of the Supreme Court live stream on the Sky News website, of which 22,000 were unique monthly visitors—demonstrating a public appetite for watching court proceedings.

⁷ <http://news.sky.com/home/supreme-court>

The Case for Change

At the time of the Criminal Justice Act 1925, photographs of judges, defendants and other participants in court proceedings were a popular subject for newspapers, in particular the tabloid press – just as they are in 2012. Although judges had the power to prevent photographs being taken in court where this disrupted proceedings, the increasing availability of portable cameras meant that the growing number of “news photographers” easily got round this problem. During the debates in Parliament on the 1925 Act, specific reference was made to *“a photograph... taken at the Old Bailey of a Judge passing sentence of death... a most shocking thing to have taken, or to have published, dreadful for the judge, dreadful for everybody concerned in the case.”*⁸

Despite some protests that the measures in the 1925 Act were part of a wider trend of trying to censor the press, the legislation was passed with the argument that *“Everybody has suffered for a long time by prisoners in the dock and witnesses being pilloried by having their photographs taken, and this is to prevent that happening.”*⁹

In principle the majority of our courts are open to all members of the public who wish to attend, but in practice very few people have the time or opportunity to see what happens in our courts in person. In addition, the extent of press coverage of court cases, particularly in local courts has declined in recent years. In cases of particular interest to the public, there may not be sufficient space in the public gallery for all those who wish to attend.

Increasingly, people rely on television and the internet for access to information. The current restrictions do not reflect advances in society and technology since the law was introduced in 1925. This, together with the huge growth in communications and information technology has raised public expectations of being able to see and hear things for themselves using a variety of different media.

At the end of last year, the Lord Chief Justice published new guidance for journalists wishing to use live text-based communications – including Twitter from mobile phones – in court rooms, during the conduct of a court case.¹⁰ Journalists and legal commentators no longer need to apply to use text-based devices to communicate from a court during a case, although the presiding judge always retains full discretion to prohibit these communications in the interests of justice.

More widely, the Government is committed to increasing transparency and we are already taking steps to open up the court process to the public.

⁸ House of Lords debates, vol.56, column 313

⁹ House of Commons debates, vol.183, column 1599

¹⁰ <http://www.judiciary.gov.uk/publications-and-reports/guidance/2011/courtreporting>

Previous Consultation and Pilots

In 1989, a working party of the Bar Council chaired by Jonathan Caplan QC, published “Televising the Courts”, a report into “*the feasibility and desirability of televising court proceedings in England and Wales.*” The report concluded that the law “*should be amended to permit the televising of courts on an experimental basis.*”

The then Department for Constitutional Affairs published a consultation on broadcasting court proceedings in 2004. Although there was no overwhelming support or opposition to the idea of broadcasting from courts, there was widespread agreement that broadcasting would enable public scrutiny; make courts more accessible; educate the public about what happens in courts; and give a better idea of what “really happened in a particular case”. The majority of respondents also agreed that the administration of justice was the most important factor to consider, and any concession to broadcasting must be taken forward on the basis that it was in line with these principles and aims, whilst avoiding the widely recognised risks to witnesses (and potential witnesses) and other participants.

To supplement the consultation exercise, a pilot was conducted at the Court of Appeal in 2004 to test the practical implications of how broadcasting court proceedings might work, to show what media coverage could look like, and how the technology would look and work. Cameras were placed in the Lord Chief Justice’s and the Master of the Rolls’ court rooms, covering the Criminal and Civil Divisions of the Court of Appeal. This was the first time filming proceedings in the courts of England and Wales was permitted. Filming was allowed under strict conditions, and was never intended to be broadcast. The footage was used to produce a video showing different examples of different uses that might be made of footage e.g. news reports, lunchtime programmes, rolling news etc. None of these reports contained a high proportion of courtroom footage, but used extracts from footage of the cases to highlight particular parts of the reports and demonstrate the arguments in the case. No formal evaluation of the pilot was published, but it was generally considered to have been successful by those involved.

International Court Broadcasting

Scotland

Scottish legislation has never restricted court broadcasting in the same way as in England and Wales. However, until 1992 the courts adopted a strict position banning electronic media access. Broadcasters have been able to apply for permission to film trials since the then Lord President, Lord Hope, issued a Practice Note in 1992. He stated that *“the public have a right to know and to understand what goes on in court. Access to proceedings by means of a television camera will assist this process.”*¹¹ The fundamental principle of the practice note is that the presence of cameras in the court should be without risk to the administration of justice. As long as all key parties agree and conditions are met, full trials can theoretically be filmed for educational purposes and the juries' verdict or sentencing can be filmed for other purposes such as news broadcast.

There have been some cases in which filming in courts has been authorised in Scottish court proceedings. Examples include the proceedings against Abdelbaset al-Megrahi who was convicted of the Lockerbie bombing, filming of a documentary in the special domestic violence court in Glasgow by the BBC, and a documentary for Channel 4 filming proceedings at the High Court in Glasgow. In practice, however, Scotland has not seen widespread broadcasting of court proceedings, largely due to the negotiations required and the fact that all parties have to give their permission.

Last month, in April 2012, permission was given to film the sentencing of David Gilroy in the High Court in Edinburgh. The Scottish Court Service considered that there was little risk to the administration of justice in allowing the judge's sentencing remarks to be broadcast after conclusion of the case. It was agreed with the broadcasters that footage would be made available after a short delay to allow for editing in the event of any outburst from the dock or the public gallery. This broadcast was generally positively received.

In 2000, the BBC requested permission to televise the trial of the Lockerbie bombing suspects, which took place in the Netherlands under Scottish law. Following an application by the United States Office for Victims of Crime, permission was given to relay the proceedings via encrypted signals to remote sites for viewing by the immediate families of the victims of the bombing. The BBC applied to receive the signals and broadcast them to the general public.¹² This request was refused, as the case was being heard for the first time in a court of first instance, and an appeal on the grounds that the refusal contravened the BBC's rights under Article 10 of the European Convention on Human Rights (freedom of expression) was rejected.

¹¹ Quoted in *The Times* 8 November 1994, p.37

¹² *Her Majesty's Advocate v Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah* SCCR (2002) 177

However, a subsequent application by the BBC for permission to televise the appeal of Abdel Baset Ali Mohamed Al-Megrahi against his conviction for the bombing was granted, subject to certain restrictions, including a prohibition on the broadcast of any witness giving evidence.¹³ The coverage was broadcast online, and shown in television news broadcasts and documentaries. The broadcasts followed the strict guidance laid down by the Scottish courts, and it was generally felt that the coverage was beneficial to open justice.

New Zealand

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

The New Zealand Ministry of Justice report that the introduction of filming in courts has generally been without controversy, although one judge has refused permission for filming citing concerns that this threatened the principle of 'innocent until proven guilty'.

United States

Broadcasting is permitted in courts in every US state, but the rules governing filming of court procedures varies significantly between states. In some states only appellate proceedings may be filmed, in others trial coverage is restricted to civil proceedings. Cameras are allowed in two federal appeals courts, and, on an experimental basis, in 14 trial courts. In all states, filming is only allowed at the discretion of the presiding judge.

In New York, broadcasting was permitted from trial and appellate courts between 1987 and 1988 as part of a pilot programme. After this time, following evaluation, broadcasting ceased from trial courts and is only permitted in appellate courts.

Televised court proceedings have been allowed in California since 1978. Following evaluation in 1984 which found that the presence of television cameras did not disrupt proceedings, distract trial participants or impair judicial dignity, the Judicial Council allowed cameras into courtrooms at the discretion of judges under the Californian Rules of Court, including appellate and trial courts. Strict regulations governing filming were established, but it has been argued that infringements were not firmly enforced between 1984 and the mid-1990s. Following the trial of OJ Simpson in 1995, judicial support for court broadcasting was low but the majority still

¹³ British Broadcasting Corporation (Petitioners) SCCR (200) 203

felt that it should be allowed at the discretion of the judge rather than banned outright. In 2002 judges granted 59% of applications to film.

Unlike the UK, the US Supreme Court is the one court where broadcasting of proceedings is not permitted. The court releases audio recordings at the end of weeks when it has heard arguments, but has never allowed video, even on a delayed basis. There has been some public debate over this practice during recent high-profile cases in the US, most recently over whether the hearing in March 2012 on the constitutionality of the Affordable Healthcare Act (President Obama's healthcare reforms) should be broadcast as a case of significant public interest. The Justices of the US Supreme Court have rejected these arguments and the case will not be broadcast.

Broadcasting of Inquiries and Parliament in the UK

Inquiries

Televised excerpts of high profile public inquiries, such as the Hutton, Shipman, and Leveson inquiries have moved public debate and opinion on the transparency of the justice system forward.

Although broadcasting of court proceedings in England, Wales and Northern Ireland is prohibited, in most cases it is legal to broadcast inquiries, though only with the permission of the chairman. The exception is inquiries held under the Tribunals of Inquiry (Evidence) Act 1921. These inquiries are covered by section 9 of the Contempt of Court Act 1981, restricting sound recording.

One of the highest profile inquiries in recent years was the Hutton Inquiry¹⁴ into the death of Dr. David Kelly, the UN weapons inspector, which was not held under the 1921 Act. When this inquiry was established, the chairman, Lord Hutton, announced his intention to permit the filming or broadcast of only the opening and closing statements. However, ITN, BSkyB, Channel 5, ITV and IRN Radio launched a joint application for permission to broadcast the proceedings in full.

Geoffrey Robertson, QC, on behalf of the broadcasters, relied on the common law principle of open justice, the argument that television broadcasting would inform the public of the proceedings better than the press alone, and the right to freedom of expression under the European Convention on Human Rights.

Lord Hutton rejected the arguments on two grounds.¹⁵ The first was the additional strain that would be placed on witnesses when giving evidence to the inquiry if they knew that their testimony was to be broadcast. He noted that this argument applied to Government Ministers and BBC reporters as well as to Dr. Kelly's family, as they would be in an equally unfamiliar situation. The second reason given by Lord Hutton for refusal of the application was that he felt that the absence of television filming of the witnesses giving evidence did not mean that the inquiry was not a public one as required by the principle of open justice.

Although Lord Hutton refused permission to allow television pictures of witnesses giving evidence to be filmed, broadcasters were still able to film the opening and closing statements of counsel, and to publish a rolling transcript of the entire inquiry on the internet and on 24-hour news channels. The Hutton Inquiry website,¹⁶ which carried the transcript and copies of all the crucial documents in the case, received numerous hits: a total of 16,778 on 19th August for the appearance of Alastair Campbell, then the Prime Minister's Director of Communications and Strategy, and 20,669 on 28th August, the day on which the Prime Minister gave evidence. Interest

¹⁴ *Inquiry into the Circumstances Surrounding the Death of Dr. David Kelly CMG* by Lord Hutton

¹⁵ <http://www.the-hutton-inquiry.org.uk/content/rulings/ruling01.htm>

¹⁶ www.the-hutton-inquiry.org.uk

culminated in over 80,000 hits on 28th January, when the report was delivered, and published in full on the website.

More recently, public hearings from the ongoing Leveson Inquiry into the culture, practices and ethics of the press have been streamed live on the Leveson Inquiry's website¹⁷, and due to the high levels of interest, are also streamed live to an annex at the Royal Courts of Justice for members of the public who wish to attend and cannot be accommodated in the court room. The live streams have also been carried on several newspaper websites and extracts from hearings have been used in reports on the Leveson Inquiry on a range of broadcast news programmes. Lord Justice Leveson, legal representatives, and witnesses are all shown in the footage. Lord Justice Leveson has said that he wants the Inquiry to be as transparent as possible.

Parliament

Sound broadcasting from parliament commenced on 3 April 1978, with live BBC daily coverage focussing on Question Time and Prime Minister's Questions, and television broadcasting of Parliament has been allowed since 1989.

In 1988, a Select Committee on Televising of Proceedings was established, which recommended that an experiment in televising proceedings should take place, subject to strict controls both on what could be filmed, and the way in which it was used. The experiment commenced in November 1989, and the Select Committee reported on the experiment in July 1990, recommending its extension. Permanent arrangements were recommended by the (renamed) Committee and approved by the House on 1 May 1991.

The Rules of Coverage were initially developed by the Select Committee in 1989, and enforceable by the Director of Broadcasting. The core objective was specified as to "*give a full, balanced, fair and accurate account of proceedings, with the aim of informing viewers about the work of the House*", and that "*in carrying out this task, the director should have regard to the dignity of the House and to its function as a working body rather than a place of entertainment*"¹⁸.

The main restrictions on filming were the prohibition of reaction shots, and a requirement to focus on the occupant of the chair during any periods of "grave disorder". The first of these prohibitions was later softened, to allow reaction shots of members referred to during debate, "group shots" and "zoom shots". Guidelines for use of the signals specify that no extracts should be used in programmes of "light entertainment" or "political satire", nor in party political broadcasts or for advertising or promotion. There are also guidelines for the use of archive material, which must not be subject to "*internal editing ... such as to distort the timing of events or the meaning of any words spoken*".

¹⁷ <http://www.levesoninquiry.org.uk/hearings/>

¹⁸ Broadcasting Committee, First Report *The Rules of Coverage*, Session 2002-2003, HC786

Most broadcasters use extracts of Parliamentary material in news bulletins and current affairs programmes, as well as live transmission of Prime Minister's Questions, some Ministerial statements and important debates. During the various debates on televising, the Select Committee and others were strongly in favour of a dedicated channel which would transmit unedited coverage of the proceedings of the House. This channel, now BBC Parliament, began broadcasting in 1992. Webcasting of Parliament (now via www.parliamentlive.tv) began on an experimental basis in January 2002, and the permanent version was launched in September 2003.

What We Are Proposing

We announced in September 2011 that we would allow judgments in cases before the Court of Appeal (Criminal and Civil Divisions) to be broadcast. Cases in the Court of Appeal normally deal with complex issues of law or evidence, and victims and witnesses rarely appear in order to provide new evidence. Given the complexity of legal issues in Court of Appeal cases, we believe that allowing advocates' arguments to be filmed in addition to judgments would be more likely to improve public understanding than judgments alone. We are therefore proposing to allow judgments and legal arguments from cases before the Court of Appeal to be broadcast. Over a longer period, we intend to extend broadcasting to judges' sentencing remarks only in proceedings in the Crown Court. We are working closely with the judiciary to take this work forward, a reasonable time after introduction of broadcasting from the Court of Appeal.

We plan to remove the current legislative ban on cameras in court, and the broadcast of sound and image recordings in limited circumstances, but put in place clear safeguards and limitations as to how filming and broadcasting could operate. Broadcast of sound recording will be allowed under the same terms as broadcast of images and television footage.

Primary legislation in the Crime, Communications & Courts Bill will enable the Lord Chancellor, with the agreement of the Lord Chief Justice, to set out in secondary legislation the specific circumstances in which the prohibition on cameras in courts in section 41 of the Criminal Justice Act 1925, and the contempt provisions in the Contempt of Court Act 1981 relating to broadcast of sound recording will be dis-applied.

Even in those cases, the court will have the discretion to stop filming or refuse to allow broadcast of recorded footage where it would interfere with the proper administration of justice; would threaten the interests of any person involved in the proceedings; or in the event of disruption or demonstration.

The secondary legislation would authorise limited broadcasting, subject to further operational guidance issued by the Lord Chief Justice, and agreed with the Lord Chancellor. Specific matters which would be set out in the secondary legislation may include:

- the courts in which filming would be allowed;
- the parts of proceedings which may be filmed;
- the participants who would be allowed to be filmed; and
- who would be allowed to film.

Use of the footage will be restricted to news, current affairs and educational purposes only. It should not be used in light entertainment, satirical programmes, advertising or promotion, as is the case with the agreements already in place for broadcast from Parliament and the UK Supreme Court.

Judicial guidance is expected to cover technical and operational issues surrounding recording and broadcasting, and will be agreed with MoJ, HMCTS and the broadcasters. Such issues would include the procedures for operating cameras, the process by which a judge might suspend filming or refuse permission to broadcast footage, for example in the event of a disturbance in the court room, limitations on positioning of cameras, and camera angles.

Safeguards for victims, witnesses and jurors

While it is important for justice to be seen to be done, this cannot be at the expense of the proper administration of justice. As was said in the 1913 case of *Scott v Scott* “*While the broad principle is that the Courts... must... administer justice in public... the chief object of Courts of justice must be to secure that justice is done.*”¹⁹ The courts deal with very serious matters which can affect the liberty, livelihood and reputation of the parties involved. It is important that broadcasting from courts helps to demystify the court process without undermining the seriousness and diligence that is so central to the quality of our justice system. Our plans therefore include safeguards to ensure that participants are treated fairly, and their rights are respected. We will not allow victims, witnesses, jurors or defendants to be filmed under any circumstances.

Filming must not give defendants opportunities for theatrical public display. Offenders will not be allowed to be filmed and we are clear that the judge will have the right to stop filming in the event of any demonstration or disruption in the court room. Victims and witnesses will be protected and we will not introduce any measures which would make their experience of court even more difficult or make them reluctant to give evidence.

One key concern is that potential witnesses may refuse to appear if they know that their testimony is going to be broadcast, which could lead to delays, cracked trials, or miscarriages of justice. There are often difficulties in persuading people to testify, for example if they fear intimidation, and it has been argued that the prospect of a case being broadcast would be a further obstacle in this process. Certain assistance and protections are available to vulnerable or intimidated witnesses (VIWs), including children and complainants in sexual offences, to help them give their best evidence. This reflects the particularly daunting and stressful nature of a criminal trial for these witnesses and victims. It would be highly inappropriate to expose VIWs to the additional stress and anxiety that the mere possibility that their testimony or identity might be broadcast would cause. They need to be reassured from the outset that this will not be the case.

There is also a danger that, if witnesses are able to watch coverage of other witnesses giving evidence earlier in a case, they might alter the testimony that they give, either deliberately or subconsciously. Alternatively, witnesses may be tempted to tailor their evidence to make it more acceptable to the viewing public. This is why we are not considering allowing any filming or recording of victims and witnesses.

¹⁹ Viscount Haldane, L.C., *Scott v Scott* [1913] AC 417

Existing rules about reporting restrictions on cases will continue to apply to filmed cases, as they do to other types of news reporting. For example, the identities of young people involved in proceedings and victims of rape will continue to be protected, as well as those of other parties (for example, a witness who has been intimidated) where the court determines it is in the interests of justice. In all cases, the judge will be able to halt filming at any time and will have the final say in whether proceedings should be broadcast.

We have no plans to allow broadcasting of whole trials from the Crown Court. The Government and the Judiciary will not permit our courts to become show trials for media entertainment. We do, however, hope to extend broadcasting to judges' sentencing remarks only in proceedings in the Crown Court. We are working closely with the judiciary to take this work forward, a reasonable time after introduction of broadcasting from the Court of Appeal.

Media organisations

As with the Lord Chief Justice's guidance on live text-based communications in court, filming and subsequent broadcasting will only be allowed by recognised media organisations, using authorised cameras installed in court rooms for the purpose of filming footage for broadcast. The current legislative prohibitions on photography will continue to apply to the general public, who will not, for example, be allowed to film court proceedings using their camera phone.

Broadcasters are under a legal duty to present the news with accuracy and with impartiality. Section 319 of the Communications Act 2003 requires that news is presented with "due impartiality" and with "due accuracy". Section 320 prohibits the giving of undue prominence of view and opinions of persons or bodies on matters of "political or industrial controversy" and "matters relating to current public policy". The broadcast media is regulated by Ofcom, which has the ability to impose substantial fines and even revoke licences.

Initially, we expect the main interest in broadcasting court proceedings to come from the established main players in television news broadcasting – particularly BBC, ITN, and Sky News. We are working with these organisations, and the Press Association, as the current main broadcast organisations in England and Wales, so that court broadcasting is available to as many people as possible. We will ensure, however, that any arrangement for syndication of broadcast footage reflects the need for adaptability in the light of future changes to technology. Newspaper websites, for example, some of which have streamed live footage from the Leveson Inquiry in recent months, may also have an interest in footage from high-profile court cases. Local newspaper websites may have an interest in showing footage from their local court when broadcasting is extended to sentencing remarks in the Crown Court. Local TV Stations, due to be established over the course of the next year in up to 20 UK towns and cities, may also wish to show footage from local Crown Courts.

The proposed primary legislation allows all the prohibitions on recording court proceedings in the 1925 Criminal Justice Act to be lifted, subject to conditions set out and agreed by the Lord Chancellor and Lord Chief Justice in subsequent secondary legislation. This means that, as well as allowing broadcasting, it would be possible for the secondary legislation to specify circumstances in which photography or sketching might be allowed within court rooms. We do not currently plan to change the existing prohibitions on photography or sketches in courts as part of the broadcasting legislation, but will review how this is working once broadcasting has been implemented in the Court of Appeal. We do not propose to allow any forms of recordings, including videos, photographs, or sketches, to be taken by members of the public on camera phones or other mobile technological and communications devices. All filming and broadcasting will be strictly limited to accredited journalists, as is the case currently with live text-based communication from court.

Conclusion

The Government is committed to increasing transparency and providing the public with information on the operation of public services - the justice system is no exception. We are taking significant steps to open up the courts to the public and have already released an unprecedented level of information about their performance.

For the first time, we are making available information on court timeliness, and on sentencing decisions in every court. This will enable the public to see exactly what sentences are being handed down and where, and how long it takes for cases to be resolved in their local court.

Allowing broadcast of judgments and sentencing remarks provides another means to open up court process to the public, given that most people do not have the occasion or opportunity to attend court in person.

To many people the law remains mysterious. Public understanding of how the courts work, and of sentencing in particular, is critical to confidence in the system and to its effectiveness in ensuring that justice is done. These measures will help promote that understanding

Annex A - Analytical considerations for the introduction of broadcasting to courts

Introduction

- 1: A regulatory impact assessment is not necessary for the plans to introduce broadcasting from courts. This is not Government intervention for a market failure, but is a proposed measure to increase public transparency and public confidence in the justice system. The primary legislation is an enabling tool to put this measure in place rather than a regulatory control; the broadcasters (BBC, ITN, BSkyB) are not required by the proposed legislation to fund cameras in courts. Instead, the legislation removes the current ban on any filming in courts, so that broadcasters and other media organisations may install cameras in court rooms, subject to certain conditions, should they chose to do so.
- 2: We have, however, carefully considered the decision to introduce court broadcasting. This section of the policy paper provides further information on the evidence we have considered in making this decision, and what we consider will be the likely impact from this change.

Potential costs

- 3: There will be some costs to **broadcasters** (BBC, ITN, BSkyB) in setting up and running court broadcasts. Other media organisations may be affected by costs in the future, should they chose to show footage of court proceedings. These costs will depend on how many courts they broadcast from, the number of cases filmed, the length of time taken to broadcast and the number of staff required. It will also depend on the type of equipment used, plus replacement and depreciation costs.
- 4: Costs to the **Criminal Justice System (CJS)** - There are potential resource implications for the HMCTS (staffing, estates) as a result of allowing broadcasting from courts and potential training costs if the judiciary are to be filmed.
- 5: Concerns have also been raised via a review of international research on this area that filming trials may alter the way in which witnesses, jurors and others involved in trials interact. For example a public opinion poll in the US found that 54% of the public surveyed stated that they would be less willing to testify if proceedings were televised and 62% felt that it would impede on the right to a fair trial²⁰. More specifically, anecdotal evidence suggests that judges played to the cameras or imposed harsher sentences to court public opinion. It would be imperative to monitor this in relevant courts involved as there may be potential costs to the CJS should harsher sentences be administered.

²⁰ Broadcasting Courts: Consultation Paper CP 28/04, 107-8; Stepniak Audio-Visual Coverage of Courts, 152-6

Potential benefits

- 6: The **broadcasters** who incur costs, are expected to make some gains in terms of attracting viewers from implementing court broadcasting, or reducing expenditure on other footage to cover court cases. This assumption is made on the basis that they would not invest in court broadcasting without expecting some form of return.
- 7: The **public** lack understanding of how the CJS works²¹ and media coverage is the primary information source for the public to gain knowledge of the CJS²². Broadcasting aims to increase transparency and forms part of the transparency agenda. There is evidence that increasing public knowledge can be related to increasingly accurate and positive public attitudes when it comes to the CJS²³. If the public are not confident in the CJS they are less likely to engage with it. For example, if the public do not have confidence in the CJS, they are less likely to report offences to the authorities.

Monitoring impacts

- 8: Changes in public confidence could be monitored via the Crime Survey for England and Wales (CSEW) however changes could not be attributed to court broadcasting specifically. We could consider posing a question in the next version of the CSEW to explore public perceptions of broadcasting more specifically and the first round of results would be available in July 2014.
- 9: Given the anecdotal evidence and concerns regarding sentencing it would be important to consider the impact on sentencing decisions in the trial courts. There may be an option to monitor any changes to sentencing decisions following the implementation of broadcasting in courts.
- 10: Interviews with relevant practitioners could be conducted to assess perceptions of any behavioural changes occurring as a result of the broadcasting.

²¹ Roberts & Hough (2005) *Understanding Public Attitudes to Criminal Justice* London 2005

²² Turner et al (2009). 'Creating a Knowledge Base of Public Confidence in the Criminal Justice System: Final Report on Empirical Findings'. Newcastle: Newcastle University

²³ Ministry of Justice and Burns and Co (2010). *Attitudes towards Sentencing qualitative research, Phase 2*

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