



Informing the Future of Open Justice in Scotland
Event Report and Next Steps
July 2024

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1. Purpose of this report

In order to gather views on the future of open justice in Scotland, representatives of the judiciary, media, academics, communications specialists, members of the legal profession and senior staff in the Scottish Courts and Tribunals Service were invited to a 'Think Tank' event on 22 April 2024 in Parliament House, Edinburgh.

The event was part of an ongoing dialogue with those who have an interest in and contribution to make to shaping future open justice policy and practice.

The purpose of this report is to capture the key areas of discussion at the event, outline initial actions and a way forward in response to the points raised.

2. Foreword from the Lord President

The Scottish justice system has a longstanding commitment to open justice, ensuring that justice is not only done, but seen to be done.

Open justice has two key elements. The first is that proceedings are heard and determined in public. The second is that the public should have access to judicial decisions, including any reasons given for them and the identity of the parties.

As a proxy for the wider public, the media have an important role. Reporting on court and tribunal cases is vital to ensuring public confidence in the justice system and the rule of law. The public would lose confidence in the courts if they could not understand what decision had been reached and why it had been reached.

The general rule is that all cases are conducted with unlocked doors without any restrictions on the press to report on proceedings, except where the interests of justice demand or statute requires. Circumstances in which there is a restriction are rare. Only the identities of children or vulnerable witnesses are routinely withheld from the public gaze.

With the public embracing technology in an ever-increasing way, the ways in which we can open up the courts can also evolve. We have already embraced livestreaming of significant civil appeals with some notable success. There are undoubtedly other opportunities offered by technology to welcome the public 'into our courtrooms' and enhance understanding of judgments, the court system and its processes.

I am grateful to all who participated at the event in April, giving their views and time freely. An overview of the key themes raised is captured in this report and these will help inform both future policy and immediate next steps.

Open justice is the responsibility of every one of us in the justice sector, including those who report on it, and we are committed to working together to respond to the changing needs of those we serve, while also ensuring that we protect the most vulnerable members of society who participate in the justice system.

I look forward to seeing how we take forward the principle of open justice in the coming months and years.



The Rt Hon Lord Carloway
Lord President

3. Overview of the day and next steps from Lord Pentland

Justice being dispensed in public is one of the most fundamental principles we have in this country; it is central to the justice system. It reinforces the independence, integrity and stability of our courts and serves to uphold the rule of law. All in attendance at the event were in agreement with the importance of the principle.

Attendance in court is an aspect of our fundamental human rights; journalism can provide access where attendance is not physically possible.

What was reinforced at the event was that the justice system benefits from a strong relationship with the media so they can report, scrutinise and criticise the decisions of the courts.

To assist journalists, whether print, broadcast, online or documentary makers, and to help to improve public understanding and confidence in our courts, we need to respond imaginatively and constructively to the changing context for both the public and the media.

It is vital that the courts continually reassess how open justice is upheld in practice and ensure that we are making the best use of technological advances. This provides an area of common interest for the judiciary, the courts, the media and the public.

One of the key findings from the event is that a systemic, collaborative approach is not only useful, but necessary, if the principles of open justice are to be effectively and consistently applied.

A striking feature of the day was the high level of engagement and participation by the attendees, including senior practitioners and decision-makers, representing a cross-section of justice stakeholders, the media and higher education. The engagement reflects the desire of us all to broaden access to justice in a well thought-through manner.

The event organisers are very grateful to those who gave their time to attend and make such an important contribution to this shared endeavour.

We have identified a number of areas for collaboration and moving open justice forward. These will now be reviewed by the judiciary and SCTS and an action plan put in place - with further dialogue essential to implementation.



The Rt Hon Lord Pentland

4. Context for the event

The judiciary and the Scottish Courts and Tribunals Service (SCTS) are committed to the principle of open justice and consequently to supporting journalists to report proceedings fairly, accurately and timeously and to fulfil their role as the eyes and ears of the public in our courts.

A number of measures are already in place:

- A [Media Guide](#) is published which sets out the rights and obligations of reporters in Scotland's courts and tribunals ;
- A [Broadcast Protocol](#) is also in place to help inform broadcasters how they can apply for access to court proceedings and this is frequently used for documentary makers, filming of sentencing statements and for key moments in the courts such as the swearing in of a new First Minister;
- The recently introduced Livestreaming of the Court of Session enables the public and the press to watch live and play back most civil appeals heard by the First and Second Divisions;
- The use of the Objective Connect app allows journalists to view court documents, such as indictments, securely online;
- The SCTS Media Portal allows journalists to view court listings and charges in advance of the hearing calling in court;
- The SCTS website carries the court rolls and published judgments, allowing the public and the media to view the business of the courts.

Beyond these measures, the public and the media can engage and ask questions through the communications team about court and tribunal hearings.

5. Acknowledgements

The *Informing the Future of Open Justice in Scotland* event was held in Parliament House on 22 April 2024. Just over 60 guests were invited who all had an active interest in taking forward open justice.

We would like to thank all who attended the event and acknowledge their contributions.

We would also like to thank our speakers: the Lord President Lord Carloway, Lord Pentland (the judicial lead for livestreaming), Mike Milligan – Executive Director of Change and Digital Innovation at SCTS, Stefan Webster – Regulatory Affairs Manager at Ofcom, Sam Clark – Director of Corporate Services at the UK Supreme Court, Rosalind McInnes – Legal Director at BBC Scotland, Dr Andrew Tickell – Senior Lecturer in Law from Glasgow Caledonian University and our host on the day, Martin Geissler of BBC Scotland. A programme for the day is contained in Appendix 1 for information.

Thanks are due also to the Faculty of Advocates for kindly allowing the use of the Laigh Hall which was a fitting setting for the event.

The speakers and attendees provided a variety of valuable perspectives. This report captures the key themes and discussions from the day and outlines areas for future exploration and immediate next steps.

It is understood that there may be further reflections about the event from those who attended. We welcome further contributions either from the attendees or indeed from those with an interest who did not attend.

6. Key themes from the event

Extending access to hearings through livestreaming

Livestreaming of the Inner house of the Court of Session has been undertaken since June 2023. It has been very well received by the legal profession, the judiciary, academia, journalists and the public.

In recent months, livestreamed hearings have included cases of considerable public interest and importance. For example, the Gender Recognition Reform (Scotland) Bill; a freedom of information request relating to alleged breaches of the ministerial code; and the definition of ‘woman’ in the Gender Representation on Public Boards (Scotland) Act 2018.

In the first six months of livestreaming, the livestreaming web pages were accessed by over 133,000 people and were viewed over 200,000 times by people from across the World. This may be compared with the physical capacity of the court room: a maximum of 90 persons.

The success of livestreaming Inner House hearings, and the use of livestreaming in other jurisdictions, has highlighted the benefits of broadening access to justice through hearings being available online.

There are, however, significant resource implications to be taken into consideration in managing and extending livestreaming.

Introducing livestreaming to the Inner House has involved significant resource and investment in technology – and we heard at the event how this was an experience shared by the UK Supreme Court who have had 15 years of experience of livestreaming. UK Supreme Court hearings being livestreamed have become ‘business as usual’ and hearings can regularly spike at around 20,000 views, with one recent case attracting over 85,000¹ views on the day itself.

The resource required to keep up to date with broadcasting developments; costs in using contractors for operating, managing and maintaining equipment; the increased implications for resilience of the service; and managing cyber security, were highlighted as significant.

Nonetheless, extending livestreaming to the Criminal Appeal Court is being actively pursued in Scotland.

¹ First day of the Vybz Kartel hearing (JCPC 2022/0049) 14-15 February 2024

Media attendance at hearings

A clear judicial perspective was articulated at the event supporting the principle that all cases are conducted in public without any restrictions on the press to report on proceedings, except where the interests of justice demand or statute requires. Media attendance and reporting can also provide easy access to court proceedings and decisions for the public where their attendance is not physically possible.

It was pointed out, and accepted, that there have been some occasions when this principle was not observed due to inconsistent practice and possible lack of understanding.

Reiteration of the principle in training provided to judges by the Judicial Institute may help improve practice in ensuring that, even if a court has to be closed to the public to protect vulnerable individuals, the media would still be given access and reporting restrictions applied only insofar as necessary to ensure individuals and the judicial process are protected.

In extreme and rare circumstances, where the interests of justice are thought to require the media to be excluded, it was reiterated by participants at the event that journalists must be afforded the opportunity to challenge that decision.

A common understanding of information available to journalists

An issue identified during the event is the need for a common understanding by the judiciary, court staff and journalists on the entitlement of the media to have access to documents submitted to the court, such as pleadings, notes of argument and productions.

There can be occasions where different understandings can be a source of frustration and a potential barrier to open justice.

The SCTS Media Guide is available for all parties to consult; its implementation would be aided if a simplified version were to be published and promoted for all concerned to use.

A draft of a simplified version, entitled 'Reporters' Guide', was available at the event. Journalists attending volunteered to help in ensuring that the wording was clear and easily understood from all perspectives. The draft will be developed in consultation with them.

It was also thought that increasing awareness of the Reporters' Guide amongst the judiciary, court staff and journalists would be a positive step in achieving a common operating practice across Scotland's courts and would help alleviate frustrations caused by misunderstandings in practice.

Media access to court documents, productions and decisions

Documents

It was recognised that improved access to documents submitted to the court, such as pleadings and notes of argument would help journalists and the public understand arguments being made in court and would improve reporting and therefore support open justice. Attendees expressed the view that it is difficult to follow court proceedings where documentation referred to in court is not made available.

There was enthusiasm for exploring how technology might be able to assist.

Other evidence/productions

The point was made that broadcasters would value being able to film productions shown in court as this helps in being able to tell the story visually to the public.

However, it was suggested that using images of productions needs careful consideration. For example, in a recent case involving weapons, images of the actual weapon used could have potentially been triggering for the victim and duty of care needs to be considered for those participating in a hearing.

Decisions

Sheriff Court judgments were highlighted as an example where digitisation could aid open justice. Previously, Sheriff Court judgments were accessible by being placed physically in a room in the court for journalists to read. Digital access has yet to catch up as, at the moment, these documents are not routinely published on the SCTS website.

Individual sheriffs decide whether or not they wish to authorise publication of a judgment on the SCTS website. The current approach is that sheriffs publish judgments on the website where the case involves a matter of principle, a particular point of general public importance, or where they have heard substantial evidence.

In contrast, the default position in the Court of Session is that all written judgments are published.

Sheriffs are being encouraged to move towards that approach. This will not mean that every procedural or incidental decision will be published, but it should mean that all substantive decisions are available for general scrutiny.

Responding to the speed of the news cycle

Members of the public are able to use digital devices and a variety of media platforms to access news instantly on a 24/7 basis. This means that the pace at which members of the media have to work has increased dramatically in recent years – reporting in minutes after events take place rather than hours.

Quick access to information relating to court hearings is increasingly important in order to make open justice effective.

Providing more information online about court cases would help fulfil public expectations and minimise the risk of misreporting.

Making documents such as joint minutes of agreement in criminal trials readily available online or in hard copy to journalists as soon as they are referred to in court was given as an example.

In addition, journalists suggested that a database of current reporting restrictions would be helpful as a way to ensure adherence to restrictions.

The need to support public service broadcasters in this way was emphasised at the event. Ofcom outlined that there is a great deal of fragmentation in the way the public consume media, particularly among young people, but the importance of Public Service Broadcasters and radio continues.²

Access to information may not be enough

Providing access to court hearings and information may not be sufficient in itself. While lawyers are familiar with technical court documents and judgments, understanding these may be more challenging for members of the public and journalists.

In addition to making documents and recordings of hearings publicly available, there were calls for the development of:

- Timely signposting of court material when it is made available;
- Contextual background about cases;
- Supplementary explanatory material about technical legal aspects of a case;
- Information to explain the implications of the information being shared with the public.

Journalists seek to do this every day and recent documentary productions, which have been designed specifically to guide lay audiences through court proceedings, have been particularly well received.

² *Media Nations: Scotland 2023 report from Ofcom*

Documentary makers have added additional commentary and narrative to programmes which explain legal technicalities and processes in appropriate detail. Similar approaches have been made by social commentators, academics and bloggers in relation to live content.

For court documentation, it was suggested at the event that the following would help to simplify legal documents and make them more understandable for a lay audience:

- Summaries of judgments;
- Summaries of cases in advance;
- Plain English filters (the potential use of AI to support this was mentioned)

The scale of the challenge in implementing these ideas is obviously significant and may need to be taken forward iteratively. In addition, with simplification comes the risk of not providing enough detail, or missing out important information. A careful balance needs to be struck.

Filming

Access to the courts by broadcasters and documentary makers was welcomed.

Although it was stressed that the courts must not be allowed to become a form of entertainment, there was a great deal of support and enthusiasm at the event for the high quality of the recent documentaries about individual criminal cases. For example, the informative approach taken by the makers of the BBC 'Murder Trial' series and the Channel Four documentary 'The Push' had had a strong and positive impact in furthering open justice.

In addition to handling the details of each case sensitively, the documentaries have helped improve the understanding of the way the courts work and the roles of the prosecution, defence and judiciary.

SCTS and the judiciary have witnessed a growing interest in recent years from broadcasters, podcasters and documentary makers in filming sentencing and making programmes about the work of the courts.

Further discussions between SCTS, the judiciary and broadcasters on how the filming of hearings and sentencing could evolve would be helpful and continuing dialogue and engagement with broadcasters and documentary makers would help shape how future filming develops. The establishment of a forum for journalists, broadcasters, justice partners and the judiciary to meet regularly would be helpful in this regard.

Balancing the public interest with personal protections

Ensuring that the media is given sufficient access to proceedings is ultimately the responsibility of the judges. If the court is considering imposing reporting restrictions in a particular case, the right to freedom of expression under article 10 of the European Convention on Human Rights is a key factor to be weighed in the balance.

Clearly understood ways of challenging restrictions were sought in addition to ensuring that journalists and justice partners have a shared understanding of the circumstances where open justice and the freedom of the press must be curtailed to protect the rights of individuals.

It was suggested that the application of highly complex GDPR rules is an area where there can be undesirable variations in approach across the courts to the detriment of open justice. A more consistent approach was sought.

Protective measures such as data protection and trauma-informed practice (when properly understood) are rarely at odds with the principles of open justice.

Participants recognised that advances in technology can present some challenges, such as the risk to the anonymity of vulnerable people due to ‘jigsaw identification’ i.e. revealing the identity of parties from a combination of different sources, only some of which may be known to the court.

This is something that all involved need to consider, balancing developments with the need to ensure that the most vulnerable in our society are protected.

Additional benefits of open justice

At the event a number of additional benefits and considerations relating to open justice were articulated.

Improving and strengthening the principle of open justice helps to educate the public about the justice system. In schools and universities this may be of great benefit.

Better information about current court cases, especially those of particular importance, would be a valuable step forward.

It was also suggested that members of the public who make requests for information about cases need to be respected and treated appropriately. There is a much broader group of people broadcasting and writing about legal matters and criminal cases than purely traditional media. Social media has helped redefine the concept of broadcasting, allowing any individual with an internet connection to distribute content to a potentially global audience.

Open access and accessibility

Although not fully explored at the event, it is relevant to note that open justice cannot be achieved if people with disabilities and differences experience barriers to access. Accessibility principles should be applied to both physical and digital court environments, as well as digital content, such as multimedia and documentation.

The Equality Act 2010 and the Public Sector Bodies (Website and Mobile Applications) Accessibility Regulations 2018 provide that the court service must be accessible to everyone, including people with disabilities, in physical and virtual contexts. That includes attending court and accessing court documentation.

Collaboration with other jurisdictions

At the event, practice in other jurisdictions was shared and it was clear that there are opportunities to learn from others' experiences and to share our own experience in Scotland.

For example, statistical information about consumption of court livestreaming by the public between Scotland and England and Wales is comparable when the relative size of populations is taken into account.

The recent announcement that the Lady Chief Justice of England and Wales has created a new Transparency and Open Justice Board to lead and coordinate the promotion of transparency and open justice is consistent with the approach being taken in Scotland; both jurisdictions are moving broadly in the same direction.

This provides a useful basis for collaboration. Whilst there are different legal systems, geographical, cultural and societal factors at play, there are many common challenges across the UK jurisdictions.

The SCTS Communications Team will keep an open dialogue with other jurisdictions to share and develop current practice and experience in open justice.

7. Action Areas

Immediate actions

The following actions will be taken forward immediately:

1. Extend livestreaming to the Criminal Appeal Court as a next step in livestreaming hearings (currently in planning).
2. A 'Reporters' Guide' to be completed and actively promoted to SCTS staff, the judiciary and the media to help to ensure a common understanding by September 2024.
3. More Sheriff Court judgments for substantive cases to be made available online (currently being actioned).

Training

4. Training and resources will be developed for judicial office holders in specialist knowledge and skills that facilitate the effective delivery of open justice.

Engagement and prioritisation

5. An Open Justice Advisory Group will be set up with representation from the media, SCTS, academia, the legal professions and the judiciary to help shape future developments.
6. The first meeting will take place in the third quarter of 2024.
7. The first task of the group will be to advise on a plan of action for open justice, and help define the short, medium and long term priorities. The starting point will be to examine the areas identified as a result of the Open Justice Event.

For consideration

8. Development of the SCTS Media Portal to include indictments, court documents and supporting information on high profile cases.
9. Greater online access to documentation used in civil and criminal cases to be piloted for high profile cases.
10. All live Contempt of Court orders to be held in one place (potentially the SCTS Media Portal)
11. More summaries to be published offering simplified explanations of judgments.
12. Advance media briefings for hearings with particular legal relevance.
13. Exploration of live filming of high profile sentencing statements, pleas in mitigation and section 76 narrations.
14. A review of the current Broadcast Protocol to be undertaken to reflect current practice.
15. Consideration of access to productions for broadcasters in their reports.
16. A section on Open Justice Initiatives on the SCTS website to be created as a touch point for progress.

Appendix 1: Event programme

The event was split into two sessions, each followed by a half hour open discussion where all event attendees had the opportunity to ask questions, share their experiences and views and challenge the perspectives of others.

The programme

1.00pm	Welcome	Lord President
1.05pm	Introduction	Martin Geissler
1.10pm	Session 1: Context for change	
	<ul style="list-style-type: none">Principles and possibilities Lord PentlandConsumer media trends Stefan Webster, Regulatory Affairs, OfcomHarnessing new technologies Mike Milligan, Executive Director, SCTS.	
2.00pm	Q&A with presenters – questions/contributions from floor	
2.30pm	Break	
2.45pm	Session 2: Potential ways forward	
	<ul style="list-style-type: none">UK Supreme Courts experience Sam Clark, Director of Corporate Services and Change, Supreme CourtsA broadcaster's perspective Rosalind McInnes, Legal Director, BBC ScotlandPublic and educational interests Dr. Andrew Tickell, Senior Lecturer in Law, Glasgow Caledonian University	
3.30pm	Q&A with presenters – questions/contributions from the floor	
4.00pm	Round Up	Martin Geissler