

**Open Justice Policy Team
Ministry of Justice**

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Consultation Response – Open Justice: the way forward

Dear Open Justice Policy Team,

Thank you for the opportunity to respond to this consultation and its consideration of the principles of open justice.

Open Justice

These principles manifest in various ways throughout a victim's journey, yet unfortunately justice often doesn't seem 'open' to them, even though open justice should be at the heart of the criminal justice process. As discussed in the consultation document, the deployment of technology across the court estate and wider justice system has the potential to enable a more open and transparent process for victims and the public, but I am concerned that existing policies and practice – such as charging victims for transcripts of proceedings – prevent this.

Victims and family members often report feeling like bystanders in the justice process, unable to have their voice heard and sometimes actively dissuaded from having any involvement in proceedings. Open justice means transparency for the public, but even more so for the victim, who arguably has the most vested interest in seeing justice done.

With regard to engagement in developing and operating an open justice policy, I believe victims and bereaved family members must be at the heart of this. In my six years as London's Victims' Commissioner, they have been clear in their asks – for transparency in proceedings, for better communication and explanations from justice partners, and for written records of court proceedings to aid them in understanding and coming to terms with a justice outcome. Without this, many are unable to move past the justice process and start any form of recovery.

I hope to outline some of the key areas which victims and families continue to bring to my attention, and I hope that you will engage with these groups and individuals as policies on open justice continue to develop.

Listings

The publication of listings is an essential element of open justice in this country, and it is crucial these lists are delivered reliably and consistently, both to members of the public and to the media, in a timely manner to enable attendance by interested parties. Publishing listings online should provide an opportunity for greater transparency, and the level of detail provided should not be diminished. In fact, greater detail should be provided in some areas, such as listing the charges faced in Crown Court cases, and making clear whether reporting restrictions are in place.

Listings should also be actively promoted and clearly accessible across a variety of relevant webpages, to enable members of the public to find information easily. This would also support victims to be clear on the details of their hearings, rather than them solely relying on the police or Witness Care Units to inform them of dates and times.

Remote Observation and Livestreaming

Allowing victims and bereaved family members to observe proceedings via a livestream can enable them to be a part of the proceedings when they don't feel able to attend in person. I have worked with a number of bereaved family members who – understandably – wanted to observe the trial, or specifically the sentencing hearing, but did not want to be seen by the defendant or their family/friends.

While there is technology to enable this, the logistics of putting this in place often prevent it. Many victims and their families will not know that this option is available to them, and so will not think to proactively ask for it. This is compounded by a lack of understanding among justice partners – often police officers or those in the Witness Care Unit – who will not discuss this option with the victim or will not know how to go about arranging it if requested. On several occasions, my office has had to support a victim or family member in facilitating their request for a video link, liaising with the police and court staff.

As a result of the lack of understanding, requests that are made for a live link often reach the court at short notice, who then struggle to accommodate this within their estate. Court buildings are not well equipped to accommodate these requests, and while I am pleased to see that plans for the new Fleet Street court have taken this into consideration and provided dedicated video rooms, consideration is needed for the existing court estate, and/or other premises that could be used for this purpose. A victim or family member's right to see justice done should not be hampered by a lack of spare room or television.

Broadcasting

In high profile cases, Judges have allowed broadcast of the sentencing hearing, building greater public understanding of sentencing and making justice truly open. I believe consideration should be given to the live streaming of all sentencing hearings, allowing members of the public – including victims who may not want to attend in person – to observe. Of course due consideration must be made to any reporting restrictions in the case, the wishes of any victims in the case, as well as their right to privacy.

Publication of Judgements and Sentencing Remarks

The publication of judgments and sentencing remarks in criminal cases is hugely inconsistent and confusing, with decisions coming down to 'public interest', 'legal significance', or 'public understanding'.

From the perspective of victims and family members involved in a case, access to accurate and timely sentencing remarks would provide huge value in better understanding the reasoning behind a sentencing decision, and in providing closure to their case. A transcript would also ensure a victim has the information they need to consider whether to exercise certain rights (such as requesting an appeal under the Unduly Lenient Sentence Scheme).

As detailed above, there are legitimate reasons why victims cannot or will not want to attend elements of the trial, including the sentencing remarks, however victims also tell us they are consistently advised by police and prosecutors not to attend. I myself have been repeatedly advised not to attend my offender's sentencing as it could make me look 'vindictive'. One victim told me "*I was told I couldn't watch the court case after giving evidence as I'd look like I wasn't scared of the perpetrator and it could harm the jury's decision*", while another said, "*we were advised not to attend because it may make us look bitter*". This misleading advice from professionals, in contrast to the views of Judiciary, make the need for access to transcripts even greater, and highlights the need for cultural change in this area. Strong guidance and clear alternative pathways are needed to enable victims to access a sentencing hearing, such as via video link.

One family member said "*I wanted to go and watch the trial after I had given my evidence but was told by the prosecution barrister that it would not look good with the jury. The police said the same. I didn't really question it. I was so scared to do anything that *might* have a detrimental effect on the outcome.*".

Where transcripts are requested, they are not free, and the cost varies depending on the transcript's size, whether it's a new transcript or a copy, and other factors. My understanding is transcripts are charged by the folio (which consists of 72 words) and range from £0.74 to £2.30 per folio. There may also be copying charges ranging from £0.10 to £0.42 per folio.

This results in a bill which we have seen range from ~£30 for a copy, to over £300 for an original transcript of sentencing remarks. Where victims request a transcript of the court case, we have seen figures including ~£7,500 and ~£22,000.

This system flies in the face of the principles of open justice, as no victim should have to pay in order to understand the sentence their offender received. I am of the firm belief that transcripts – at the very least of sentencing remarks – should be provided at no cost for **all** victims who request these in Crown Court cases.

Though bereaved families are – in principle – currently able to access remarks at no cost, the paperwork they need to fill out to request these is burdensome and intrusive, requiring families to declare their salaries, debts, bank balances, and more. None of these circumstances should prevent justice from being open, and so this mechanism must be simplified.

Given the financial burden of producing transcripts under the current system, it may not be feasible for victims to request transcripts at no cost for the entire court proceedings, however thought should be given to the sharing of audio recordings, which are taken at all hearings in Crown Court. The Crown Court is a court of record, and so this information must be made far more accessible.

In the Coroners Court at inquests, family members are entitled to receive the audio recording at no cost. All that is required is the signing of a short declaration regarding how the recording can be used. I believe a similar approach could be taken in the Crown Courts, with the caveat that greater resource would be needed for court staff, who would likely be responsible for managing the distribution of recordings.

Public Legal Education

Public understanding of the criminal justice system is poor, and of course victims are simply members of the public until – against their will – they are involved in the criminal justice system. A system which is often overwhelming, confusing, and opaque.

The justice system doesn't feature in our education system or in public campaigns. A comparison I have heard before is that members of the public are highly aware of their rights as consumers, the principles around this, and even of the specific legislation – and yet as a victim people are entirely unaware of the process and their rights within it.

If public legal education is considered an element of open justice, there should be far greater investment in this aspect. I have previously discussed this with members of the Judiciary, who are keen to support and enable greater awareness and education of the justice system. This could involve the facilitation of school trips to courthouses, and consideration of how understanding of certain aspects of the justice system could form a part of the national curriculum.

Thank you again for taking the time to consider this response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Waxman', written in a cursive style.

Claire Waxman OBE
Independent Victims' Commissioner for London