



# **Wales Safer Communities Network response to: Ministry of Justice Call for Evidence Response- Open Justice: the way forward**

Closed 07 September 2023

Response submitted via email

## **Questions**

### **1. Please explain what you think the principle of open justice means.**

The term 'open justice' means the systems in place to ensure there is appropriate, accessible and clear information available to members of the public to ensure they are both aware and understand the legal process upheld in a given country. Open justice should allow for people with no knowledge to make limited enquiries in order to find explanations of how the judicial system and the processes within it work. It means members of the public can easily find out what to expect if a person is involved in a judicial process and what their rights are both as perpetrator or victim.

### **2. Please explain whether you feel independent judicial powers are made clear to the public and any other views you have on these powers.**

Judicial independence is the keystone of the judicial process in England and Wales. It is believed that in the information shared with individuals attending court that the judiciary's position is explained. We understand that in most cases leaflets are sent with court invites explaining that the judiciary are objective decision makers based on their interpretation of how a given situation fits within the current law. It also ensures that the process should be outside of political influence and remain independent of other influences including the media.

### **3. What is your view on how open and transparent the justice system currently is?**

Whilst there is believed to be a want to be open and transparent we do not believe this is currently being achieved. Without too much effort it is relatively easy to find the Courts and Tribunals Judiciary website (<https://www.judiciary.uk/>) where there is a lot of information widely available if you are able to navigate the website.

However, there is a clear accessibility issue for individuals who do not have access to the internet or for those who are not computer literate, or for those who are unable to read English. Meaning individuals unable to read English or who have a different language preference such as deaf people, Welsh speakers or BSL users for example would not have access. There is a requirement in Wales for Welsh to be treated equal to English which should mean that whilst decisions may be in the agreed language of those in the justice system that the general information should be available bilingually, it is clear on Government websites that Welsh can be spoken in courts and tribunals.

The Wales Safer Communities Network have a section on Criminal Justice on their website (<https://safercommunities.wales/offending-justice/>) which is available in

Welsh. The tools available on the Courts and Tribunals Judiciary page such as this animation *The Rule of Law - Courts and Tribunals Judiciary* (<https://www.judiciary.uk/how-the-law-works/the-rule-of-law/>) are very useful and helpful but limited in its reach.

We feel there is much more that could be done from education in schools, easy read information leaflets at community hubs and police stations to designated community focused webinars, a series of public information sessions available in multiple languages, and updating the website so that it has multiple languages and in easy read format to assist people with learning disabilities (or younger, older or those who process information in different ways).

As the justice system is not devolved in Wales there is an additional layer of complexity which can be confusing. Working in partnership with the devolved administration and through the Criminal Justice Board for Wales will hopefully help to identify where public information should and can be strengthened.

**4. How can we best continue to engage with the public and experts on the development and operation of open justice policy following the conclusion of this call for evidence?**

We would suggest continued engagement with partnership groups and Networks such as Criminal Justice Board for Wales, Wales Safer Communities Network as well as organisations such as Victim Support. We would also suggest engaging with the wider third sector who have experience of engaging with a range of different communities and through a range of different means, some of these could include People First (learning disability organisation), RNIB, RNID and ProMo Cymru (young people run Meic).

**5. Are there specific policy matters within open justice that we should prioritise engaging the public on?**

Language and jargon used to encourage a shared vocabulary. It is not clear if the different types are understood at the lower levels which are rarely reported on Criminal court, Magistrate court, Family court, Tribunals.

We suggest that it may be appropriate to engage with victims and those going through the justice system to find out what would be helpful to them. Anecdotally there is suggestion that support for those giving evidence whether victim or witness are given little if any information and support through the system and that engaging with them may assist in improving the delivery of open justice.

**6. Do you find it helpful for court and tribunal lists to be published online and what do you use this information for?**

In principle we find the online publication of lists helpful, however we are aware that sometimes courts may change for any number of reasons and therefore those who support victims have told us that they still rely on the written lists in court otherwise victims and other witnesses miss the slot which could potentially lead to a miscarriage of justice. The publication of lists should not be in place of those

involved being contacted and notified, it should purely act as a source for possible interested parties but not for those involved in the proceedings.

**7. Do you think that there should be any restrictions on what information should be included in these published lists (for example, identifying all parties)?**

Yes, we think there should be limited information in the published online lists. For example, if an address is published then that is forever in the public domain but people and individuals move house. It could also cause particular continuing issues where identity theft has taken place or where the system is being abused to harass or intimidate through false accusations. It may also lead to additional vigilante justice with little effort required by the offending party.

There should be systems in place to safeguard children and vulnerable parties especially those who have been party to exploitation and are therefore already susceptible to such activities and exploits.

There should also continue to be protections in place to protect the identities of those who have been subject to sexual violence, who have lived through one trauma, are already reliving it through the justice system and should not continue to be traumatised by it being available by a simple search of their own name by them or others who may mean them harm.

**8. Please explain whether you feel the way reporting restrictions are currently listed could be improved.**

Reporting restrictions as they are currently appear to be understood by the traditional media of newspapers, radio and television. However, we think it is important to note that social media does not have the same restrictions and is open to everyone. We therefore think it may be appropriate to have some of the most common restrictions laid out in jargon free, plain language and what that means to anyone using any social media or other platform or AI to add detail to any of them and the possible consequences.

**9. Are you planning to or are you actively developing new services or features based on access to the public court lists? If so, who are you providing it to and why are they interested in this data?**

We are not at this time.

**10. What services or features would you develop if media lists were made available (subject to appropriate licensing and any other agreements or arrangements deemed necessary by the Ministry of Justice) on the proviso that said services or features were for the sole use of accredited members of the media?**

As a Network it may be something we consider in the future but do not have any opinions on this at this time.

**11. If media lists were available (subject to appropriate licensing and any other agreements or arrangements deemed necessary by the Ministry of Justice) for the use of third-party organisations to use and develop services or features as they see fit, how would you use this data, who would you provide it to, and why are they interested in this data?**

As a Network it may be something we consider in the future but do not have any opinions on this at this time. We may direct individuals and organisations to where they can access the information themselves but would be unlikely to use the data ourselves to share with a third party. However, if this were to occur we would be sharing with only specific members for whom it would be relevant – which may be limited to Policing in Wales, Councils, Fire and Rescue Services, Public Health Wales and Probation as our statutory body members depending on the reason and topic.

Our concern is not what the media and academics who already have access may do it is what the organised crime groups and individuals with criminal or exploitative intent could potentially do with the information if it is made available more widely.

**12. Are you aware that the FaCT service helps you find the correct contact details to individual courts and tribunals?**

We are aware of FaCT but we do note that it is almost impossible to locate in the abbreviated form using any of the standard search functions and therefore if it is almost impossible to find then we are not sure of its usefulness currently. We were pleased to note that this online service is available in Welsh. This service appears to only be available online so for those who are digitally excluded it is unclear how they could access the same information.

**13. Is there anything more that digital services such as FaCT could offer to help you access court and tribunals?**

A walk through of what a standard court or tribunal room looks like, especially for those with mental health issues or are neurodivergent so they have a better understanding for when they attend.

**14. What are your overarching views of the benefits and risks of allowing for remote observation and livestreaming of open court proceedings and what could it be used for in future?**

The benefits are that it could allow people with an interest to be present without needing to travel. The risks are that it is abused and that monitoring any recording or photography may become more difficult. However, this may be overcome using processes similar to those used during remote examinations. There could also be a role for AI in the future to monitor and notify of any odd or banned behaviours.

There is also a potential risk for it to be used for intimidation of witnesses. If there are only four or five observers until one witness and then there are twenty that may be a

sign of intimidation or continuing harassment of the witness. Something that is not allowed in a court but could be enabled through technology.

There would also need to be protections for if any technology was used to protect any witnesses from being recognisable to make sure that it could not be reversed remotely either by individuals or the use of AI.

**15. Do you think that all members of the public should be allowed to observe open court and tribunal hearings remotely?**

Yes, as this encourages the principle of open justice but there should be certain conditions put in place. For example, they should always be seen on camera not just their faces but also their upper bodies as this may prevent illegal voice recording, photography or filming. They must provide their full name, age and address with checkable photo ID when accessing (such as driving licence or passport). The one exception should be where there is any existing court order that prohibits an individual from being close to another, then the remote access should be treated the same as if the person with the order is present in court otherwise this may contribute to their ongoing behaviour and possible intimidation or harassment of a victim, witness, defendant or court official.

They should also be muted by the court or tribunal so they cannot disturb proceedings. For example, a dog whistle would not be used in a court but could be remotely and not be noticed but for some neurodivergent individuals they can hear dog whistles and may cause them discomfort whilst they are either observing or giving evidence.

Attending in person allows for more than just the words but the body language to be read, so remote attendance may result in subtle non-verbal elements being missed which a jury or those in court may notice. This could result in people feeling there is a miscarriage of justice as something noted by a jury could be missed through the remote feed.

**16. Do you think that the media should be able to attend all open court proceedings remotely?**

Yes for the same reasons as given to question 15. In addition, it may allow a journalist to attend more than one case in the same day that occur in different courts or tribunals. There should be a requirement that they are only allowed to attend one at a time, so they can't be observing two or more at the same time which would give parity to current processes. It may also be worth noting that attending in person allows for more than just the words but the body language to be read, so remote attendance may result in subtle non-verbal elements being missed which a jury or those in court may notice.

**17. Do you think that all open court hearings should allow for livestreaming and remote observation? Would you exclude any types of court hearings from livestreaming and remote observations?**

Yes, with the exception of cases involving children and vulnerable adults, as the safeguarding and safety of individuals should be paramount in the process. Attendance in court should not result in any harassment, bullying or exploitation as a direct result.

**18. Would you impose restrictions on the reporting of court cases? If so, which cases and why?**

We suggest the continued use of restrictions as is currently applied. In our workshop it was noted that the change in reporting from family courts was helpful in enabling open justice and to being able to challenge what victims have reported and continue to report as poor or bad practice. It was not felt that this should be opened up further as it could risk the identification of children and other vulnerable victims adding to their trauma.

**19. Do you think that there are any types of buildings that would be particularly useful to make a designated livestreaming premises?**

We have no view of any buildings that should be designated for livestreaming, we do however think that it would not be appropriate for any building that is also used for victims to provide video evidence to be used, as that could risk the anonymity and security for that child or adult.

**20. How could the process for gaining access to remotely observe a hearing be made easier for the public and media?**

The process for booking to attend could be an online process, but then be checked when accessing as per our previous answers. Whilst we agree that it should be easy and straightforward to access we also need to continue to ensure that defendants and victims continue to be protected through the system.

**21. What do you think are the benefits to the public of broadcasting court proceedings?**

Making it open to anyone to view and enabling more opportunities to observe, watching when convenient and only for parts that they are interested in. However, with a broadcast there is no way to know who has seen it and for what purposes they may use it.

**22. Please detail the types of court proceedings you think should be broadcast and why this would be beneficial for the public? Are there any types of proceedings which should not be broadcast?**

We think that restrictions to protect children, vulnerable adults and victims of sexual assault etc should remain in place. There is also a question of if a criminal case is broadcast then how could or would it impact the possibility of a retrial.

In all instances the victims or alleged victims opinions should be sought and taken into account.

**23. Do you think that there are any risks to broadcasting court proceedings?**

Yes, the risk may come from two sources the first being if there is a retrial how to ensure that it is fair and that no part of the first trial was seen by any of the potential jurors. The second is where on hearing the evidence others decide on evidence if the defendant is guilty or not, which may differ from the jury and increase either the risk of vigilante activity or the targeting of jury members who came to a different conclusion.

**24. What is your view on the 1925 ban on photography and the 1981 prohibition on sound recording in court and whether they are still fit for purpose in the modern age? Are there other emerging technologies where we should consider our policy in relation to usage in court?**

The prohibition of photography could potentially be removed, however the issue of sound recording is a different matter as the ability to edit and repurpose sound could allow it to be misused, this risk increases with the emergence of AI technologies with more capacity and skill.

It may also be more distracting for those in the court if anyone is able to take photographs or recordings rather than just the agreed equipment. This could be used as an additional form of harassment to victims to put them off and therefore we think should be limited or only via approved cameras in specific positions in the court. Therefore the view from our workshop was that there should be discretion given towards the victims and families and their views taken into consideration.

Where a child or vulnerable adult is involved the need to maintain safeguarding protocols should be paramount above any other requirement including public interest or media requests.

**25. What do you think the government could do to enhance transparency of the SJP?**

There could be an awareness campaign that explains what a SJP is and when it is appropriate and how it engages with the rest of the justice system.

**26. How could the current publication of SJP cases (on CaTH) be enhanced?**

As with FaCT, CaTH does not appear early in any search engine, other than this we have no further comment at this time.

**27. In your experience, have the court judgments or tribunal decisions you need been publicly available online? Please give examples in your response.**

They are made available but there does not appear to be any specific timings so if waiting for a specific judgement or decision it can take time. If there was a specific amount of time until it had to be publicly available, this would be helpful.

**28. The government plans to consolidate court judgments and tribunal decisions currently published on other government sites into FCL, so that all judgments and decisions would be accessible on one service, available in machine-readable format and subject to FCL's licensing system. The other government sites would then be closed. Do you have any views regarding this?**

Our concern is that there would be a lot of information in one place and it could be difficult to search through especially for more common names. The filter facility as well as the search function will be important.

- 29. The government is working towards publishing a complete record of court judgments and tribunal decisions. Which judgments or decisions would you most like to see published online that are not currently available? Which judgments or decisions should not be published online and only made available on request? Please explain why.**

The need for any redaction to protect any child, vulnerable adult or victim of sexual violence may limit the opportunity and options for historical cases that have not been in the public domain before. We are concerned that it may lead to more traumatising of victims or attempted exploitation or harassment as a result of more information being in the public domain.

Victims and victim organisations and bodies should be engaged with as part of processing this area as it is the victims who are most likely to suffer.

- 30. Besides court judgments and tribunal decisions, are there other court records that you think should be published online and/or available on request? If so, please explain how and why.**

We don't think there are any at this time.

- 31. In your opinion, how can the publication of judgments and decisions be improved to make them more accessible to users of assistive technologies and users with limited digital capability? Please give examples in your response.**

The technologies used should enable the reading of documents, so photographs are unlikely to work unless they are accompanied by the information being included in the alternative text that is read for images. If a redacted version is published then the method for redaction should make sure that it is not then possible to be read by the assistive technologies thereby leaving the redacted information freely available in the public domain.

If the information is available online then it should be possible for those who are digitally excluded to be able to request to either read a copy via technology in public buildings such as libraries or for a hard copy to be provided in person which matches the information available online (including any redactions).

- 32. In your experience has the publication of judgments or tribunal decisions had a negative effect on either court users or wider members of the public?**

Not that we are aware, but there is the risk that where people have been found innocent of wrong doing in tribunals that the continued publication could be used against them by future employers or to enable harassment or continued harassment if the case was brought forward with malicious intent.

- 33. What new services or features based on access to court judgments and tribunal decisions are you planning to develop or are you actively developing? Who is the target audience? (For example, lawyers, businesses, court users, other consumers).**

None at this time.



**34. Do you use judgments from other territories in the development of your services/products? Please provide details.**

Not at this time and is not something we are planning on doing currently.

**35. After one year of operation, we are reviewing the Transactional Licence. In your experience, how has the Open Justice and/or the Transactional Licence supported or limited your ability to re-use court judgments or tribunal decisions. How does this compare to your experience before April 2022? Please give examples in your response.**

We do not have experience of using it so have no comment to make.

**36. When describing uses of the Transactional Licence, we use the term 'computational analysis'. We have heard from stakeholders, however, that the term is too imprecise. What term(s) would you prefer? Please explain your response.**

We think that it may be more appropriate to use the term AI or Artificial Intelligence which allows for a wider range of possible technologies and is how it is referred to in every other sphere that we operate in. We think using the term AI would also increase the general public's understanding and limit any arguments around what is and is not a computer.

**37. Have you searched for tribunal decisions online and if you have, what was your experience, and for what was your reason for searching?**

The Network members have a range of responses to this question and therefore it is not appropriate for us to provide the reasoning for the searches. However, the system appears easy to use but complicated where common names or bodies with similar names are involved.

**38. Do you think tribunal decisions should appear in online search engines like Google?**

No, as this could be traumatising for victims. If a victim chooses to seek the information specifically that differs to what may seem like sudden reminders of a difficult and traumatic experience brought to the fore with algorithms.

Also with tribunals all are published even when an individual or company has been cleared of any fault, if this was a malicious claim then the continued reminder is likely to add to the ongoing trauma for the falsely accused.

**39. What information is necessary for inclusion in a published decisions register? What safeguards would be necessary?**

We feel that limited information would be best, perhaps limited solely to name and verdict. The reason for this is that any detail such as address could quickly become out of date, but also the more information available about victims, children and vulnerable people the more at risk of exploitation or other criminal activities that may be targeted at them.

**40. Do you think that judicial sentencing remarks should be published online / made available on request? If that is the case, in which format do you consider they should be available? Please explain your answer.**

We agree in principle as it should enable more open justice, however we would want to be sure that any redactions to protect any child, vulnerable adult or victim of sexual abuse etc is carried out correctly and not subject to being reversed by individuals, technology or AI.

**41. As a non-party to proceedings, for what purpose would you seek access to court or tribunal documents?**

We are unsure why we would at this time so have no comment.

**42. Do you (non-party) know when you should apply to the court or tribunal for access to documents and when you should apply to other organisations?**

No this is not always clear, but there are also documents that should not be made available for many reasons including the safeguarding of victims, their families and other vulnerable people who may be involved or closely related to those involved.

**43. Do you (non-party) know where to look or who to contact to request access to court or tribunal documents?**

Given the range of members of the Network this is a question we are unable to answer as there is a range of understanding.

**44. Do you (non-party) know what types of court or tribunal documents are typically held?**

Given the range of members of the Network this is a question we are unable to answer as there is a range of understanding.

**45. What are the main problems you (non-party) have encountered when seeking access to court or tribunal documents?**

We have no comment on this question.

**46. How can we clarify the rules and guidance for non-party requests to access material provided to the court or tribunal?**

As with all engagement and communication jargon free, plain language information should be available so people understand the different options and routes that can be taken and also any regular reasons for why the requests may be rejected.

**47. At a minimum, what material provided to the court by parties to proceedings should be accessible to non-parties?**

We do not think any evidence should be made available. It should be limited to court documents, opening and closing statements, judgements / decisions and sentencing remarks.

**48. How can we improve public access to court documents and strengthen the processes for accessing them across the jurisdictions?**

We are concerned that if there is too much access it may limit individuals being willing to be witnesses, reduce any possibility of retrials if one is needed and put at risk children, vulnerable adults and other victims. There is also the risk of copycat crimes if too much detail is made available or of vigilante actions justified by some evidence accessed potentially out of context.

**49. Should there be different rules applied for requests by accredited news media, or for research and statistical purposes?**

Potentially, but we think this should be on a case by case basis and any decision discussed and agreed with any victims involved.

**50. Sometimes non-party requests may be for multiple documents across many courts, how should we facilitate these types of requests and improve the bulk distribution of publicly accessible court documents?**

If they are publicly available, then they should be online providing the process is completed as described in the consultation document. Therefore, providing they can already access it then we do not think it is a good use of time and resources to be providing it additionally which could be used to better improve the court experience for witnesses and victims.

**51. For what purposes should data derived from the justice system be shared and reused by the public?**

We are not sure by who you are referring to as the public in this question, as the range of possible purposes could be never ending if it includes everyone. We are keen that it is able to be utilised by Community Safety Partnerships, Criminal Justice partners, Public Service Boards in Wales to understand need and develop appropriate support and services and Universities for research purposes. However, we would not want it to be used to enable organised criminal gangs or individuals with criminal (including exploitative) intent.

**52. How can we support access and the responsible re-use of data derived from the justice system?**

Once data is in the public domain it is almost impossible to ensure it is used for only responsible, legitimate and legal purposes.

**53. Which types of data reuse should we be encouraging? Please provide examples.**

We think that it should be used to enable Community Safety Partnerships, Criminal Justice partners, Public Service Boards in Wales and other partnership bodies to understand need and develop appropriate support and services and Universities for research purposes.

**54. What is the biggest barrier to accessing data and enabling its reuse?**

Accessing any data needs to be completed without breaching any data protection legislation and requirements. It should be anonymised as much as possible which may limit its usefulness and the protection of victims, children and vulnerable adults should come ahead of any other consideration in our opinion.

**55. Do you have any evidence about common misconceptions of the use of data by third parties? Are there examples of how these can be mitigated?**

Not at this time, though please see previous answers linked to exploitation and criminal activity.

**56. Do you have evidence or experience to indicate how artificial intelligence (AI) is currently used in relation to justice data? Please use your own definition of the term.**

No, we don't at this time.

**57. Government has published sector-agnostic advice in recent years on the use of AI. What guidance would you like to see provided specifically for the legal setting? In your view, should this be provided by government or legal services regulators?**

We think there should be guidance on the need to safeguard and protect victims, children and vulnerable adults. This should be developed collaboratively by government, legal service regulators, the Victim Commissioner and Victim Support.

We think that AI is too new and developing too quickly for us to know what it could do and how it may be used in the future. However, it may be possible to legislate to make it so that any use of AI that leads to inaccurate information, criminal or exploitative action or the identification of individuals otherwise protected through the justice system to be subject to the justice system itself.

**58. Do you think the public has sufficient understanding of our justice system, including key issues such as contempt of court? Please explain the reasons for your answer.**

No, we do not especially when it comes to social media and other new technology platforms.

**59. Do you think the government are successful in making the public aware when new developments or processes are made in relation to the justice system?**

Information may be sent out but we are not sure that it is seen or understood so we are unable to provide more comment to this question.

**60. What do you think are the main knowledge gaps in the public's understanding of the justice system?**

Family courts are an area where there has been some improvement with the most recent changes, but they remain a bit of a mystery for many.

The processes that take place before, during and after engagement with the justice system can seem hidden. Even jurors are often uninformed so there is little to no ability to talk and share information person to person about what goes on – even excluding the specifics of each case.

**61. Do you think there is currently sufficient information available to help the public navigate the justice system/seek justice?**

We think that it is difficult for our members to navigate the justice system at times and many work with victims, defendants and others in the justice system or are part of it themselves. Family courts are seen as particularly difficult and secretive and the ability to understand and navigate is reliant on the socio-economic position of a person and if they can afford their own legal counsel or are given access to legal aid, but without either of these, navigation is seen as particularly challenging.

**62. Do you think there is a role for digital technologies in supporting PLE to help people understand and resolve their legal disputes? Please explain your answer.**

We think there is a role for digital technologies supporting PLE to possibly help people understand their options better, which may lead to better legal dispute resolution. However, it should not fall to how intelligent and able to understand the system someone is for justice to take place.

**63. Do you think the government is best placed to increase knowledge around the justice system? Please explain the reasons for your answer.**

No, in our opinion we think organisations that work with victims are better placed and understand the need for plain, understandable language and therefore think they should be commissioned to develop the options to increase knowledge across all of the court and tribunal systems especially tribunal, family court, magistrate court and criminal courts.

**64. Who else do you think can help to increase knowledge of the justice system?**

There was a programme or docudrama which ran a fictional murder case through a courtroom ([The Trial: behind the scenes of Channel 4's courtroom docudrama \(inews.co.uk\)](http://inews.co.uk)) which was identified by an attendee at our engagement workshop and which was seen as a positive and something that could be repeated and used to increase knowledge. This could bring more realism and reduce the sensationalism that happens with court dramas on the radio, television or film.

**65. Which methods do you feel are most effective for increasing public knowledge of the justice system e.g., government campaigns, the school curriculum, court and tribunal open days etc.?**

Different people learn through different means and therefore we think a combination of government campaigns online, social media and leaflets can be supported through the justice system having open days and by things like mock trials which provide more realism than the depictions often made by media.

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**Response on behalf of the Wales Safer Communities Network.** The Network includes members from Local Authorities, Policing in Wales, Probation, Fire and Rescue Services and the Third Sector.