

Response on behalf of the Judiciary of England & Wales, to the International Association of Judges', 1st Study Commission Questionnaire entitled:

QUESTIONNAIRE – FIRST STUDY COMMISSION – NOVEMBER 2014

Media (including social media) in the Courtroom and Effect on Judicial Independence

Broadcast and Print Media

- 1) Are there statutes, rules or orders of the courts (hereinafter referred to collectively as “rules”) that govern persons who are representatives of the media while they are reporting on judicial proceedings?
 - a) If “yes,” do they apply in criminal proceedings,
 - b) civil proceedings, or
 - c) both.

All relevant information for reporting in criminal cases can be found in the new guidelines published in June 2014.

<http://www.newspapersoc.org.uk/sites/default/files/reportingrestrictionsguide-2014.pdf>

Broadcasting is permitted for both criminal and civil cases in the Court of Appeal and this is allowed by virtue of section 32 of the Crime and Courts Act 2013 in addition to the Court of Appeal (Recording and Broadcasting) Order 2013.

- 2) Please briefly describe such “rules” governing members of the media, addressing when possible whether they govern:
 - a) taking of photographs
 - b) use of sound/video recording equipment
 - c) use of live, text-based communications.

All set out in the guidance above.

- 3) Are the media permitted to televise or otherwise tape and broadcast court proceedings?
 - a) If “yes,” what types of proceedings:
 - i) Criminal trials - **NO**
 - ii) Civil trials - **NO**
 - iii) Criminal appeals – **YES – in certain types of case (see the Order referred to above)**
 - iv) Civil appeals – **YES – as at 3(a)(iii)**
 - b) If “yes,” are judges or other court officials given the right to control what may be televised? **Yes, to an extent. They can decide if an appeal should not be broadcast and there is no right of appeal from that decision.**
 - c) If “yes,” how is such control exercised? **Limited so far; generally broadcasters’ requests to broadcast daily appeal cases have been accepted.**
- 4) Where there is a real risk that disclosure of the matters in court proceedings will cause substantial and demonstrable prejudice in the proceedings, what are the possible actions/measures available to a court to avoid such prejudice? **If the statutory criteria were fulfilled, the court would order reporting restrictions to be imposed (see guidance above).**

- 5) Whether or not the media are permitted to televise court proceedings, to what extent are judges in favor of or opposed to televising or otherwise taping and broadcasting court proceedings? **It would not be appropriate for the judiciary to comment on potential legislative change but a persistent cause of concern would be the impact on vulnerable witnesses if television cameras were permitted into trial courts in criminal cases**
- 6) What are the general views of the citizen population about whether court proceedings should be televised or otherwise broadcast? For example, do people care about what is happening in the courts such that they want to see televised proceedings; do they support televised proceedings or are they critical of them, and what are the bases of such support or criticism?

According to the broadcasters yes, the public want to see this. The Government is committed to a transparency again, hence publically announcing the aim of extending broadcasting to include sentencing remarks in the Crown Court. This has yet to be agreed and there are some concerns about where it will lead. Notwithstanding this, there has been limited actual broadcast of court proceedings from the Court of Appeal since broadcasting started on 31 October 2013. The usage statistics across all media channels are very modest, so might tend to suggest that there is limited appetite for viewing such material, unless the case is of significant general interest.

Social Media

- 7) In addition to what has been identified in response to questions 1 and 2, above, regarding the media, are there “rules” that govern persons (both members of the media and citizens generally) who are delivering information about judicial proceedings through the use of social media?
- a) If “yes,” do they apply in criminal proceedings,
 - b) civil proceedings, or
 - c) both.

The LCJ issued guidance on live, text based communication in 2011. The guidance emphasises that anyone using electronic text is strictly bound by the existing restrictions on reporting court proceedings, under the Contempt of Court Act 1981. This will be incorporated into the Criminal Practice Direction in due course -

<http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/lbtc-guidance-dec-2011.pdf>

- 8) Please briefly describe such “rules” governing persons (media members and citizens generally) who are delivering information about judicial proceedings through the use of social media, addressing when possible whether the rules govern:
- a) taking of photographs
 - b) use of sound/video recording equipment
 - c) use of live, text-based communications.

See above for remaining questions on social media.

- 9) Where there is a real risk that disclosure of matters in court proceedings will cause substantial and demonstrable prejudice in the proceedings, what are the possible actions/measures available to a

court to avoid such prejudice? For example, may the court simply ban the use of all communication devices in the courthouse; may the court bar the public and the media from the courtroom; may the court bar certain persons from attending the court proceedings if they have caused problems in the past?

- 10) With respect to use of social media, such as twitter, that may create an actual risk in a particular case adversely affecting fair and proper administration of justice, apart from imposing a ban on such social media are there alternative procedures available to prevent or limit that risk?
- 11) When social media is used to publicize court proceedings, should the conditions limiting or prohibiting use of social media such as twitter be determined by:
 - a) system-wide statutory or procedural rules,
 - b) left to the discretion of presiding judge on a case-by-case assessment,
 - c) some combination of general rules and case-by-case assessment?
- 12) Accepting *arguendo* that there should be a balance between the goal of achieving fair and proper administration of justice and the goal of delivering accurate detailed reports of judicial proceedings to the public, can this be achieved if the use of live, text-based communications in court houses is permitted and all bans on and control over the use of social media are eliminated?

Publicity and the Courts

- 13) Who on behalf of the courts should respond to inquiries from the media and other members of the citizen population to share information about the court proceedings with the public: judges, executives of the courts, some other designated person? Who and why? **The three-strong Press Office for the Judiciary answers questions on anything relating to judicial actions. The press officers are not legally qualified. Judges may very occasionally speak in general terms outside court in interviews or speeches, but not about individual cases.**
- 14) What sort of information should be shared:
 - a) Explanation of the facts and law applicable to a case – **if it can be answered by reference to sentencing remarks or a judgment made in court. The press office cannot be a substitute for attending court proceedings.**
 - b) Explanation of the court procedures applicable to a case – **basic but not legal questions may be answered, in consultation with court officials.**
 - c) Explanation of a judge's ruling in a case – **by reference to remarks or published judgments in a case.**
 - d) Other kinds of information, and if "yes," please describe briefly.
- 15) Where there are serious criticisms of a court proceeding, particularly criticisms that are factually inaccurate or are based on a misunderstanding of the law, what, if anything, should that court do to correct the inaccuracies or otherwise to respond to the criticisms? **The press office will address factual inaccuracies in consultation with the judge by referring directly to remarks made in open court by the judge during the case.**

- 16) If the particular court involved should not do anything to respond, should the central governing body of the judiciary take any action to respond in order to correct inaccuracies? Why or why not? **The process (in 15) will often involve a three way discussion between the press office, the trial judge and more senior judges.**
- 17) If the criticism of the court is well-founded, what, if any, should be the response of the court or the court's central governing body? **If the criticism relates to Judicial Conduct it can be investigated by the independent Judicial Conduct Investigations Office. [http://judicialconduct.judiciary.gov.uk/]. If it relates to a sentence it may be appealed by either side]**
- 18) If not already covered in the preceding responses to the questions 15, 16 and 17, how are such matters handled in your country?
- 19) If all prohibitions and restrictions on the use of all forms of media (print, television, social media) in the courthouse were abolished, what in your view would be the consequences for judicial independence? **The consequences would relate more to the administration of justice than to judicial independence.**

INSTRUCTIONS: Please be sure to identify your Judges Association on your answers and return the answers on or before 15 September 2014 to the IAJ-UIM Secretariat: secretariat@iaj-uim.org

with copies to the officers of the First Study Commission:

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The officers will prepare a summary of the answers for use at the meetings of the First Study Commission in November in Brazil, and we will also circulate in advance of those meetings a separate short series of questions that will further guide our discussions at the meetings in November.