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“JUSTICE AND THE MEDIA”

National report

**prepared by
the delegation of United Kingdom**

A. INFORMING THE PUBLIC ABOUT THE JUDICIAL SYSTEM – DIRECT CONTACT WITH THE PUBLIC

1.1 Courts

As a rule the enquiry desk or reception at the courts is well equipped to deal with day to day enquiries and to refer people to the relevant bodies for further information. Normally the Customer Service Officer of the court would be available to assist in general enquiries. A number of leaflets and information brochures are available upon entering the building or after guidance has been sought from reception.

The Court Service supplies leaflets on various different subjects, which include what is expected of a witness, and what one should know coming to a court hearing. These sources give extensive information to anyone who comes in contact with the courts.

The Royal Courts of Justice distributes a leaflet that sets out the standard of service that is striven for. This leaflet describes the obligations of the Court and provides valuable contact numbers to obtain legal assistance. The leaflet also sets out the complaints procedure.

The main reception desk readily distributes a map of the building to assist first time visitors.

The Lord Chief Justice's Office is about to expand to include up to nine individuals with responsibility for public relations, and for distributing information and responding to enquiries about the workings of the courts and the legal system as well as recent judgments (although not for commenting on the substance of judgments).

1.2 Citizens Advice Bureaux

All Citizens Advice Bureaux in England, Wales and Northern Ireland belong to Citizens Advice, the national charity that sets standards for advice and equal opportunities and supports bureaux with an information system, training and other services.

The Citizens Advice Bureau (CAB) situated in the Royal Courts of Justice is a component thereof and gives free, confidential and impartial advice on a limitless range of legal subjects. Qualified legal practitioners are operating these bureaux and the advice they offer range from general legal advice to intricate legal questions.

The value of the CAB in the Royal Courts of Justice is highlighted by the role they play in assisting litigants in person. The focus of the CAB in instances where they deal with litigants in person is to equip the person to represent him/herself in court.

The CAB also makes a practical contribution by preparing document bundles, which can help clients enormously and saves court time.

1.3 Internet

The Internet plays a significant role when it comes to informing the public about the legal

system. The websites are understandable, accessible and furnish the user with the necessary contact details where further information can be sought.

Department for Constitutional Affairs, Justice, Rights and Democracy (DCA)

The DCA website provides an especially useful source of information to the general public and anyone involved in the judicial system.¹ It has various links to amongst others people's rights, constitutional issues, information on appointments and the role of judges. This site provides relevant links to the legal system which is available to anyone who has access to the Internet.² This site provides information on the structure of the courts and tribunals and contains various other useful Internet links.

The DCA website also has a link that directs one to where legal assistance is obtainable³ and it also provides a list of links where one can search for recent judgments that have been approved by a specific court.⁴

Criminal Justice System

The Criminal Justice System has a separate website which also provides valuable information to everyone who comes into contact with the criminal justice system.⁵ An interactive component illustrates the different stages one would encounter should one be a witness, a juror, a victim, a defendant or an offender. This entails an overview of the process with detailed information about what to expect and what is required.

The Criminal Justice System's website furthermore supplies a collective overview of the structure and function of the CJS.

2. EDUCATIONAL PROGRAMMES

The Lord Chancellor's Department (now the Department for Constitutional Affairs) circulated a guide to court visits for school children. This project, called "Judges and Schools", was launched in 2002 after collaboration with the Education Secretary but it has not really gone beyond the preliminary stages.

The idea behind the project was to inform young people and children about the court structure, procedure, etiquette and other interesting facts before visiting the courts. Over 700 judges throughout the country indicated that they would welcome school visits and even meet the groups at the end of the court day.

1 <http://www.dca.gov.uk>

2 <http://www.dca.gov.uk/thelegalsystem.htm>

3 <http://www.dca.gov.uk/legalhelp/links.htm>

4 <http://www.dca.gov.uk/judicial/judges/judgments.htm>

5 <http://www.cjsonline.gov.uk/>

B AND C(i) RELATION OF THE COURTS WITH THOSE INVOLVED IN COURT PROCEEDINGS AND WITH THE PUBLIC

3.1 Training of judges, lawyers and court staff.

3.1.1 Judicial Studies Board (JSB)

The Judicial Studies Board provides training and instruction for all full-time and part-time judges in the skills necessary to be a judge. It also has an advisory role in the training of Lay magistrates and of chairmen and members of Tribunals. An essential element of the philosophy of the JSB is that the training of judges and magistrates is under judicial control and directions. The Judicial Studies Board was set up in 1979, with the most important objective of judicial training being "To convey in a condensed form the lessons, which experienced judges, have acquired from their experience..."⁶

3.1.2 Department for Constitutional Affairs

The DCA staff in the Royal Courts of Justice all go on an induction and diversity course within the first two months of being appointed. This ensures that they are well prepared to deal with the public on a daily basis. Further to that all are required to attend a Disability and Discrimination Act Awareness course to ensure that people with disabilities can be well accommodated in the Royal Courts of Justice.

3.2 Court infra-structures and procedure

Physical structures

Because the building that houses the courts is a Grade 1 listed building the adjustment or modification of the physical features poses some difficulty. Due to the constraints on a listed building, restrictions exist in respect of the changes that can be made to accommodate exceptional cases of inaccessibility.

A formal information brochure, which is distributed freely by the court service, sets out the facilities available to customers with disabilities.

Court procedure

Every possible consideration is given by court staff and judges when a person appears in court not to seem biased in respect of a specific religious, gender or ethnic group.

To illustrate this the oath or confirmation that is taken in court by a witness or defendant is adapted to be acceptable to people of diverse religious orientation.

Furthermore, the Judicial Studies Board issues every judge with an Equal Treatment Bench Book which "informs, assists, guides and enables all judges to deal confidently, sensitively and fairly

⁶ JSB Web site: <http://www.jsboard.co.uk/aboutus/introduction.htm>

with all those who appear before them.” This book addresses the matter of diversity with particular reference to minority ethnic communities, belief systems, children, disability, gender inequality and sexual orientation.

Other measures

Personal Support Unit (PSU)

The PSU supports litigants-in-person, witnesses, victims, their family members and other supporters attending the courts both at the Royal Courts and the Principal Registry of the Family Division.

The requests that the PSU deal with vary from the very simple to the complex. The nature of the support provided is not of a legal nature. This unit provides various services which include guidance for people to find their way around the building, emotional support and assistance to communicate with judges and other people involved in their cases.

During 2004, the Unit helped over 2000 people. A significant proportion of clients is vulnerable or has special needs in addition to the stress of appearing in court. Most are litigants in person. Many have serious health problems or a disability, and 20% are registered disabled. Nearly half are from an ethnic minority and one fifth do not have English as their first language.⁷

Information brochures

In addition to the brochures mentioned under 1.1 the Court Service sends out information to all potential jurors that have been chosen for jury service. This information pack contains a leaflet informing the potential juror what to do and what is expected of him/her. Upon arriving at the court the jury members are shown a video of how the case would progress, what happens inside the courtroom and what the role of the jury is.

C(ii). INDIRECT RELATIONS OF THE COURTS WITH THE PUBLIC – JUSTICE AND THE MEDIA

Restrictions to the right of information

Regarding judicial activity the scope of secrecy is very limited and generally all documents and proceedings are open to whoever might have an interest in the outcome. Most court cases are open to the public and anyone can attend given that there has not been directed that it be conducted in secret. There are limited exceptions, conforming with article 6(1) of the European Convention on Human Rights in for example situations involving national security or where the interests of juveniles or victims of sexual crimes require or where necessary to protect the identity of those providing information or assistance to the police. (There are also judicial procedures for protecting the interests of defendants in such cases.)

⁷ Summary supplied by Judith March, Director of the PSU, Room M104, Royal Courts of Justice, Strand, London WC2A 2LL.

4.1.1 Freedom of Information Act 2000⁸

The Freedom of Information Act 2000, which incorporates the recommendations by the Council of Europe on access to official documents,⁹ governs the position regarding access to information extensively. This act confers general rights to information held by public authorities to members of the public. This right is not limitless and can in some instances be restricted to protect greater interests.

Section 32 of this act provides absolute exemption from disclosure¹⁰ to information contained in legal documents and court records.¹¹

Data Protection Act 1998¹²

On the other side the Data Protection Act balances the right to information by protecting and regulating the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.

Section 32 of this act makes an exception to the publication of personal information for journalistic purposes.¹³ This exception is still checked by the need for publication in terms of

⁸ Available at <http://www.hms.gov.uk/acts/acts2000/00036--a.htm>. See also the DCA website containing practical information regarding this act: <http://www.dca.gov.uk/foi/index.htm>

⁹ Rec(2002)2

¹⁰ Cf section 2(3)(c) of the Freedom of Information Act 2000

¹¹ **32.** - (1) Information held by a public authority is exempt information if it is held only by virtue of being contained in- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter, (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or (c) any document created by- (i) a court, or (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

(2) Information held by a public authority is exempt information if it is held only by virtue of being contained in - (a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or (b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.

(4) In this section-(a) "court" includes any tribunal or body exercising the judicial power of the State,

(b) "proceedings in a particular cause or matter" includes any inquest or post-mortem examination, (c) "inquiry" means any inquiry or hearing held under any provision contained in, or made under, an enactment, and (d) except in relation to Scotland, "arbitration" means any arbitration to which Part I of the Arbitration Act 1996 applies.

¹² Available at <http://www.hms.gov.uk/acts/acts1998/80029--a.htm#1>

¹³ **32.** - (1) Personal data which are processed only for the special purposes are exempt from any provision to which this subsection relates if- (a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material, (b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and (c) the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the special purposes.

(2) Subsection (1) relates to the provisions of-(a) the data protection principles except the seventh data protection principle, (b) section 7, (c) section 10, (d) section 12, and (e) section 14(1) to (3).

(3) In considering for the purposes of subsection (1)(b) whether the belief of a data controller that publication would be in the public interest was or is a reasonable one, regard may be had to his compliance with any code of practice which-(a) is relevant to the publication in question, and (b) is designated by the Secretary of State by order for the purposes of this subsection.

(4) Where at any time ("the relevant time") in any proceedings against a data controller under section 7(9), 10(4), 12(8) or 14 or by virtue of section 13 the data controller claims, or it appears to the court, that any personal data to which the proceedings relate are being processed-(a) only for the special purposes, and (b) with a view to the publication by any person of any journalistic, literary or artistic material which, at the time twenty-four hours immediately before the relevant time, had not previously been published by the data controller, the court shall stay the proceedings until either of the conditions in subsection (5) is met.

(5) Those conditions are-(a) that a determination of the Commissioner under section 45 with respect to the data in question takes effect, or (b) in a case where the proceedings were stayed on the making of a claim, that the claim is withdrawn.

public interest.

Public Interest Immunity

It is under this head that the state is entitled to withhold information which could affect national security or disclose the identity of police informants. Judges have an important and well-recognised role in ensuring that this right is not abused and that the interests of defendants are protected, if necessary by requiring the Crown either to disclose any information that might assist the defence or to abandon any prosecution.

The Media

The media as a group falls within the ambit of the Freedom of Information Act and the Data Protection Act as set out above.

The situation concerning broadcasting in courts is another contentious issue which has been raised several times in the past. At the moment a consultation process is underway to obtain the input from various interested parties.¹⁴

At present, the law prohibits taking photographs (including television, film or video) in court, or broadcasting any sound recording made in court. Information about what happens in court, and about the details of a particular case, is drawn from journalists' accounts, in newspapers and on television, and sketches made by court artists in the press room.

Any proposed change of the status quo would need to pay close attention to the needs of participants in court proceedings – particularly those most likely to be vulnerable such as litigants in person, witnesses and victims of crime. In permitting broadcasting a likely impact may be that people would be less willing to take part in proceedings.

Law governing publications and the protection of a person's reputation

4.2.1 The general rule in English law is that the press will not be prevented from publishing material which the press maintains is true. If the material is untrue the press may have later to pay damages for defamation.

4.2.2 The English law of defamation is notoriously strict, and has sometimes been criticised for capable of being used to stifle the publication of allegations which hindsight shows were justified, but which the press feels unsure of being able to prove.

There are certain heads of absolute privilege from liability for defamation (possessed by judges, jury, parties, advocates and witnesses in litigation, by Parliamentarians and by officials making confidential reports to their superiors). There are other heads where there is qualified privilege - that is privilege save in cases of malicious publication. An example is statements passing between persons with a common interest in the subject matter. *Reynolds v Times Newspapers*

(6) For the purposes of this Act "publish", in relation to journalistic, literary or artistic material, means make available to the public or any section of the public.

¹⁴ The full version of the consultation paper is available at <http://www.dca.gov.uk/consult/courts/broadcasting-cp28-04.pdf>

Ltd and others¹⁵ the House of Lords considered whether the common law should develop a new head of qualified privilege whereby the publication of all political information would attract qualified privilege; and discussed the interaction between the right to freedom of expression and the right to the protection of reputation.

Lord Nicholls of Birkenhead said that

“The crux of this appeal lies in identifying the restrictions which are fairly and reasonably necessary for the protection of reputation”.

The House of Lords decided upon a measured development of existing principle. In summary, there is qualified privilege where it can be said that the press had a duty to publish and there was a real public interest in the readers or recipients receiving the information taking into account all the relevant circumstances:

“[T]he established common law approach to misstatements of fact remains essentially sound. The common law should not develop 'political information' as a new 'subject-matter' category of qualified privilege, whereby the publication of all such information would attract qualified privilege, whatever the circumstances. That would not provide adequate protection for reputation. Moreover, it would be unsound in principle to distinguish political discussion from discussion of other matters of serious public concern. The elasticity of the common law principle enables interference with freedom of speech to be confined to what is necessary in the circumstances of the case. This elasticity enables the court to give appropriate weight, in today's conditions, to the importance of freedom of expression by the media on all matters of public concern.

Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only.

1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.
3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
4. The steps taken to verify the information.
5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
6. The urgency of the matter. News is often a perishable commodity.
7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
8. Whether the article contained the gist of the plaintiff's side of the story.
9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
10. The circumstances of the publication, including the timing.

This list is not exhaustive. The weight to be given to these and any other relevant factors will vary from case to case. Any disputes of primary fact will be a matter for the jury, if there is one.

¹⁵ [2001] 2 AC 127 (judgment dated 28 October 1999 also available at <http://www.parliament.the-stationery-office.co.uk/pa/ld199899/ldjudgmt/jd991028/rey01.htm>)

The decision on whether, having regard to the admitted or proved facts, the publication was subject to qualified privilege is a matter for the judge. This is the established practice and seems sound. A balancing operation is better carried out by a judge in a reasoned judgment than by a jury. Over time, a valuable corpus of case law will be built up.”

(D) ACCESSIBILITY, SIMPLIFICATION AND CLARITY IN THE LANGUAGE USED BY THE COURTS IN PROCEEDINGS AND DECISIONS

5.1 The Woolf reforms which have led recently to a new procedural code in England had as one important aim the introduction of simpler and more easily understood language.

5.2 English judgments are expressed in the judge’s own language, without formalities or rigid procedural requirements. (The outcome of the proceeding and any orders made as a result of such judgments are expressed shortly in a separate document drawn up by the court.)

5.3 English, Scottish and Northern Irish judgments are in general very specific in their reasoning on both fact and law, and often quite long. In the Court of Appeal, whose decisions are likely to be relied on in future cases, the Court not uncommonly aims to reach a single judgment, although separate and dissenting judgments are also very common. In particularly important cases, accessibility is sometimes also promoted by an index and executive summary.