



‘An endlessly strange experience’: experiences of media reporting on criminal courts during the Covid-19 pandemic

Research Report

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ABSTRACT

It is well established that the news media plays a pivotal role 'in facilitating open justice' by reporting on the proceedings of the courts. Following the onset of the Covid-19 pandemic and the shutting of physical court rooms in England and Wales in March 2020, journalists needed to adapt to new ways of working by covering 'virtual' courts (sometimes called 'digital' or 'remote' courts).

This report provides an insight into the work of media reporters covering criminal courts during the initial stages of the Covid-19 pandemic in Spring 2020, considering the way in which courts and information on hearings were accessed; the routines of court reporters; and their perceptions of the maintenance of the principle of open justice in this context. The report explores this by detailing the self-reported experiences and insights of reporters, obtained through interviews.

Whilst most reporters believed that virtual courts afforded greater opportunities to access a greater range of hearings, the loss of face-to-face contact meant that traditional approaches to newsgathering in criminal courts – such as the ability to follow up on matters arising in hearings and the maintenance of key relationships – were challenged. This arguably had negative implications for the quality and depth of reporting on criminal cases. The report concludes that virtual hearings do have implications for open justice (albeit complex ones), should they be expanded beyond the immediate crisis of the pandemic, which appears highly likely.

Table of Contents

ABSTRACT	2
EXECUTIVE SUMMARY.....	4
RECOMMENDATIONS (also see SECTION 5)	5
ABBREVIATIONS	7
1 Introduction.....	8
2 Background and Context.....	9
2.1 The development of virtual hearings in E&W	9
2.2 The response of the criminal justice system to the first Covid-19 lockdown.....	10
2.3 Open justice and media reporting of criminal courts	11
3 Objectives, Scope and Methodology.....	13
4 Findings.....	15
4.1 Access to Courts	15
4.2 Access to Information.....	17
4.3 Relationships	19
4.4 Routines	20
4.5 Open Justice.....	21
4.6 Technology	24
4.7 Longevity	26
5 Recommendations	30
ACKNOWLEDGEMENTS.....	31
REFERENCE LIST	32

EXECUTIVE SUMMARY

- Journalists reporting on proceedings in criminal courts provide a vital public service and are essential in upholding the principle of open justice – the idea that court proceedings should be transparent and accessible to those beyond the justice system. Following the onset of the Covid-19 pandemic in March 2020, and the resulting closure of physical court rooms in England and Wales, journalists working in this capacity needed to adapt quickly to new ways of covering ‘virtual’ courts (sometimes called ‘digital’ or ‘remote’ courts). The speed of change brought about by the pandemic offered little time for reflection, as courts and journalists worked incredibly hard to overcome the obstacles of lockdown. In the current pandemic-emergent context, it is important to assess the impact of remote hearings on the various actors in criminal proceedings in the context of maintaining open justice.
- Drawing on the detailed, self-reported experiences and insights of journalists, this report provides an unique, empirical insight into the work of media reporters covering criminal courts during the initial stages of the Covid-19 pandemic. The report captures and critiques the way in which virtual courts were accessed by journalists; the methods by which information about proceedings was disseminated; how reporters adapted their professional routines in this new and challenging context; and the perceptions of court reporters regarding the maintenance of the principle of open justice in remote courts during a time of crisis.
- This snapshot of the lived experience of journalists’ court reporting suggests that, ultimately, reporters felt they (and the courts) had coped well in a crisis and had mainly fulfilled their function of informing the public of the workings of criminal courts. However, they did raise significant concerns around the long-term repercussions of virtual hearings, in terms of open justice and in-depth reporting (a concept which we have previously termed ‘Justice Reporting’) (Chamberlain et al; 2021).
- Although, the number of hearings reporters were able to access and cover increased through virtual delivery, this was primarily made workable due to pre-existing professional relationships with court staff and professional working in the justice system. Such relationships offered both access to and sufficient information on hearings, enabling the production of useful reports and thereby supporting the principle of open justice.
- However, reporters were concerned that, over time, these relationships would deteriorate or be severed completely, which could detrimentally affect their ability to engage with hearings and produce quality, in-depth reports. There was also a suggestion that any prospective observers of hearings beyond these established networks of relationships – were, in practice, shut out of hearings during the first lockdown, and not simply due to the chaotic nature of circumstances.
- Journalists also highlighted the competing value of virtual and physical court reporting. Whilst virtual proceedings allowed for more frequent access, it was also more challenging to assess the atmosphere of a virtual court room, the credibility of defendants and witnesses, and to interact with relevant people. They therefore felt that this affected the quality and depth of their reporting.
- Based on our findings, we make a number of recommendations that should be considered in any wider roll-out of virtual courts, detailed in the [Recommendations](#) below, and at the end of this report.
- The findings of this report are of relevance beyond the pandemic; it is clear that virtual courts will play an increasingly important role in delivering justice in England and Wales and it is crucial to

understand their impact on the justice process. Whilst some general work has been undertaken on this in the context of Covid-19 (by HM Courts and Tribunals Service in late 2021), this report is currently the only one to focus on a pivotal actor in upholding virtual open justice – the court reporter. Whilst it highlights some pressing issues, more research is needed to fully understand how virtual courts operated and might operate in the future whilst remaining accessible and transparent for both journalist and the public.

- The role of court reporters in upholding open justice is more critical than ever in the context of virtual hearings. The concerns raised in the report therefore need to be addressed adequately if it can be claimed that virtual delivery of justice does not significantly interfere with the long-standing and fundamental principle of open justice, particularly if those charged with administering the court system wish to move more swiftly towards virtual courts on a larger scale in the future. Doing so will help to create clear, accessible and standardised protocols and procedures for accessing remote hearings, grounded in evidence, and designed with both journalists and members of the public in mind.

RECOMMENDATIONS (also see SECTION 5)

As remote hearings are developed and expanded further, open justice concerns should be at the centre of their implementation. The following recommendations fall into six broad themes (indicated below): a ‘fit for purpose’ infrastructure; clear protocols of implementation; easy access to information; maintaining and developing relationships; public engagement and outreach; and further research.

Recommendation 1: A fit for purpose infrastructure

- Provide sustained and appropriate financial investment in the technology required for effective remote courts, including streaming platform and interface; and in court equipment (for example, TVs, cameras, microphones, lighting).
- Issue best practice guidelines for courts on the set up and positioning of audio-visual devices for remote hearings, with regular review based on user feedback.

Recommendation 2: Clear protocols of implementation

- Develop clear, accessible and standardised protocols and procedures for accessing remote hearings, designed with both journalists and members of the public in mind.¹
- Ensure these protocols and procedures are accessible for non-specialist users; infrequent users; and vulnerable users (for example, those with learning differences).
- Establish clear guidance and training for court staff on facilitating access to remote hearings for journalists and the public, emphasising the importance of open justice.
- Consider offering (when appropriate) a remote attendance option for journalists and members of the public for hearings which are being held in physical courts.
- Ensure that contingency protocols exist for upholding journalistic access to hearings when technology fails.

¹ The recently published *Reporters' Charter* (HMCTS 2022a) and its mention of remote access is certainly welcome in this context.

Recommendation 3: Easy access to information

- Ensure prominent and clear information about access procedures for specific hearings, for example by maintaining a dedicated, publicly accessible online (as well as physical) space for a court's listings, with specific links to hearings included.²
- Maintain online daily court listings that are publicly available; accessible and comprehensible to all; and are adequately detailed (for example, identifying the alleged offence in a hearing).
- Consider creating a dedicated 'information store' for hearings information and materials, which can be accessed by journalists independently, thereby reducing burden on courts whilst enabling journalists to access information needed for their role.

Recommendation 4: Maintaining and developing relationships

- Consider, broadly, how courts can be made more available to journalists and the public outside of the immediate context of in person court proceedings.
- Explore methods by which communication and relationship-building between courts and journalists can be facilitated, prior to, during and after remote hearings.
- Ensure, as far as possible, that opportunities for clarification and additional inquiry by journalists which naturally occurring in physical hearings are either replaced by appropriate tools in the online system (e.g., active monitoring of chat boxes); or compensated for by other means (e.g., sharing of contacts for hearing attendees, provision of additional information via email on request).
- Consider mandating the appointment of a dedicated 'remote hearings officer' at each court centre which holds remote hearings, to provide an identifiable person who can coordinate the conduct of remote hearings; and liaise with journalists and members of the public wishing to access to remote hearings.

Recommendation 5: Public engagement and outreach

- Consider methods by which it can be emphasised for courts at all levels (including Magistrates' Courts) that it is necessary and important to adopt a proactive and engaged approach to facilitating access to remote hearings for journalists and the public.
- Encourage journalist and public access to remote hearings through awareness raising of accessibility of remote hearings; for example, through social or local media.

Recommendation 6: Further research

- To ensure that open justice concerns are at the centre of developing remote courts, we recommend commissioning further research into the impact of remote hearings on the various actors in criminal proceedings and use these findings to evaluate and adapt implementation.

² The principle of access to this kind of information has already been established for some time in the recently updated *Protocol on sharing court lists, registers and documents with the media* (HMCTS 2022b).

ABBREVIATIONS

E&W - England and Wales

HMCTS – HM Courts and Tribunals Service

CVP – Cloud Video Platform

MOJ – Ministry of Justice

1 Introduction

In March 2020, the UK government announced unprecedented ‘lockdown’ measures, designed to control the spread of the global Covid-19 pandemic. This was followed by emergency legislation that (*inter alia*) severely limited the number of operating courts in E&W and the number of cases listed for criminal courts, as well as introducing severe restrictions on access to such proceedings for the public and journalists. Since the news media plays a pivotal role ‘in facilitating open justice’ (Bosland and Townend, 2019), this development was highly significant to the maintenance of the much-vaunted principle of open justice. Arguably, the role of journalism has only increased in importance during the pandemic, not only as a source of crucial public health information but as a method of understanding how well key aspects of public life continue to operate – including criminal justice. Prior to the pandemic, there was a widely held notion that court reporting had collapsed, both in frequency and depth. Indeed, previous empirical work by the authors of this report has shown that, despite the crucial function of news media in ensuring open justice in criminal proceedings, few cases are reported, especially in the ‘lower’ courts – particularly Magistrates’ Courts (Chamberlain et al 2021).

In response to the Covid-19 lockdown announced by the Government in March 2020, HMCTS moved quickly to introduce almost entirely ‘virtual’ court proceedings; that is, hearings conducted using audio-visual technology which allows remote participation. Beyond HMCTS’ own general evaluation of remote hearings during the pandemic (HMCTS, 2021), little is currently known about how these arrangements impacted on journalists charged with upholding the principle of open justice in criminal courts. Considering the likelihood that such hearings will increase in occurrence in the future (see for example the changes placed on a permanent statutory basis by the Police, Crime, Sentencing and Courts Act 2022), it is crucial to understand what this means for journalists and their role as watchdogs of open justice, not only during the unique circumstances of the pandemic but beyond. Based on interviews with court reporters and editors who were working for national and local media, both print and broadcast, this report builds an original picture of the limitations and affordances of virtual courts for journalists working during the unprecedented circumstances of Spring 2020; and explores the implications for the principle of open justice. As such, it offers novel research on experiences of virtual criminal proceedings, filling a gap in the existing literature on court reporting and open justice. It closes with recommendations based on the findings presented.

2 Background and Context

2.1 The development of virtual hearings in E&W

First used in the early 1990s, virtual hearings – using live streamed audio-video links and often referred to as ‘remote’ or ‘online’ hearings – have been increasingly utilised by courts to enable attendance at proceedings by various parties from various locations outside of the physical courtroom (Gibbs 2017: 5). For example, defendants have been able to appear at hearings whilst in prison for some years; police officers can give evidence from police stations; and witnesses can testify away from the courtroom in which a trial takes place. Video links, and by extension the ‘virtualisation’ of criminal proceedings, can be and have been deployed at various stages of the court process – from first appearance, through to sentence. There are clearly both advantages and disadvantages to virtual hearings (see Fielding et al 2020). They can (in theory) deliver cost savings and potentially enable more efficient proceedings. For example, having the facility to live stream a defendant from a prison for relatively minor proceedings can save money and time otherwise spent on transportation (which may not be local to the court), whilst still enabling their attendance. Another clear benefit is the protection which virtual hearings provide for vulnerable witnesses, removing the stress of giving evidence in court – particularly in sensitive cases (see, for example, special measures available under Part 2, Youth Justice and Criminal Evidence Act 1999). However, virtual hearings are not without problems. Technology can fail; if video links are faulty or unavailable, a hearing may need to be delayed or postponed, negating any efficiency gains. Virtual hearings may also be inappropriate for certain kinds of cases, with jury trials being an area of debate in this regard (see Mulcahy et al 2020).

Notwithstanding the above concerns, the general concept of virtual hearings is seen as a central part of the future of the criminal courts, as envisaged by both central Government and the executive agencies of the criminal justice system. The scope of virtual hearings has expanded significantly since the early 2010s, as part of a programme of digitalising criminal justice. In 2018, HMCTS announced a £1 billion programme designed to ‘change and improve our court and tribunal services to bring new technology and modern ways of working’ (HMCTS 2018). However, reviewing the reform programme, the House of Commons Public Accounts Committee (PAC) concluded that HMCTS had ‘not adequately considered how the reforms will impact access to, and the fairness of, the justice system for the people using it, many of whom are vulnerable’, and that ‘the roll-out of virtual hearings could introduce bias and lead to unfair outcomes’ (PAC 2018). In general, there was concern that the zeal driving the reform programme had led HMCTS to underestimate the scale and complexity of its objectives (National Audit Office 2018), with the PAC concluding that it had ‘little confidence that HMCTS can successfully deliver this hugely ambitious programme to bring the court system into the modern age’ (PAC 2018). Prior to the pandemic, much of the programme remained far from completion, and virtual hearings represented a supplementary – rather than central – way of conducting criminal proceedings. It should be noted that this long-term programme of development envisaged that open justice – and its maintenance through media reporting – would remain an important feature of criminal proceedings, for example, proposed in-court screens or ‘viewing booths’ for reporters and the public to observe virtual hearings, under the Prisons and Courts Bill 2017 (see Cross 2017). These proposals were, in essence, enacted by the Police, Crime, Sentencing and Courts Act 2022, which received Royal Assent in April 2022.

2.2 The response of the criminal justice system to the first Covid-19 lockdown

In response to the swift spread of Covid-19 across the UK, on 23 March 2020 the Government (via a nationally televised address by Prime Minister Boris Johnson) announced national ‘lockdown’ measures, affecting almost all parts of public life. These included a general ‘stay at home’ order, with a small number of limited exceptions; the closure of non-essential shops, businesses and services; and a prohibition on public gatherings (Prime Minister’s Office, 2020). The Coronavirus Act 2020 (25 March) and the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (26 March) were quickly passed by Parliament, placing such measures on a legal basis; and were accompanied by the introduction of a variety of criminal offences and extensive enforcement powers for the police. The criminal justice system, of course, represented a vital state service that needed to continue to operate in some form, most obviously policing. However, the adjudicative branch of the criminal justice system – that is, courts and tribunals – was more profoundly affected by the restrictions. HMCTS outlined severely limited schedules for all courts and heavily restricted access to such proceedings, announcing that ‘the work of courts and tribunals would be consolidated into fewer buildings and that 157 priority court and tribunal buildings would remain open for essential face-to-face hearings’ – less than half of the court estate in E&W (House of Lords 2021). From 23 March, no new jury trials were allowed to start in the Crown Court.

More generally, the judiciary were tasked with prioritising the cases that would continue to be dealt with (both face-to-face and virtually) based on urgency and importance – primarily, ‘hearings related to custody, detention and bail, and urgent applications for matters such as terrorism and domestic violence’ (HMCTS, 2020). To facilitate this, the law on the use of technology to conduct hearings was amended by the aforementioned legislation; and HMCTS ‘rapidly expanded audio and video technology capability, enabling judges to conduct remote hearings to a far greater degree’ (HMCTS, 2020) - initially by using Skype for Business and (after a few weeks) through the roll-out of its own Cloud Video Platform (CVP; for more, see HMCTS 2021). Unsurprisingly, the number of virtual criminal court hearings dramatically increased during the initial weeks of the first lockdown; between late March and late April 2020, audio and video hearings increased fivefold, with just under 90% of hearings being conducted virtually (House of Lords, 2021).

Whilst the above changes enabled the courts to ‘keep the wheels of justice turning’ (House of Lords, 2021), court reporters were not explicitly identified as being essential to this process. Those deemed ‘essential to the running of the justice system’ (such as frontline HMCTS staff, judges, magistrates and lawyers) were classified as critical workers able to travel to their place of work (UK Government 2020). Journalists were included in the general category of critical workers, for the purposes of ‘public service broadcasting’ (Ibid.) – though what sorts of journalism and subject matter fell within this category were not specified. Some interpretations suggested this primarily related to Covid-19 related reporting (Press Gazette 2020), implying that court reporters fell outside the scope of critical worker status. Nonetheless, HMCTS published a (now unavailable) policy on maintaining open justice during the initial weeks of the first lockdown, outlining several ways in which the principle would be maintained (including remote third-party access to hearings). This suggested a well-intentioned commitment to allowing access for journalists and upholding the principle during the pandemic, though lacking in logistical specificity. This lack of clarity; the unclear status of court reporters; and lack of direct information on how this was operating in practice

raise concerns about the reality of openness and transparency in criminal court hearings during the first lockdown and, generally, how well open justice might be maintained in a virtual environment.

2.3 Open justice and media reporting of criminal courts

Crime reporting generally and court reporting specifically have long been staples of professional journalism practice. The latter activity is particularly important to the realisation and workability of the long-established concept of open justice. Described as a ‘constitutional principle of the highest importance’ (*Al-Rawi* [2011]: [84]), open justice rests on the idea that court proceedings should be ‘open to all the world’ (*Scott v Scott* [1913]: 429) and that justice must ‘not only be done but should manifestly and undoubtedly be seen to be done’ (*R v Sussex Justices, Ex parte McCarthy* [1924]: 259). At the heart of this is the general rule that ‘[t]he public must be able to enter any court to see that justice is being done in that court’ (*R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2011]: [38]). However, it is well recognised that ‘[i]n reality, very few citizens can scrutinise the judicial process’ (*Ibid*: [38]), with the number of members of the public visiting court having slowly shrunk (*Mulcahy*, 2011). Instead, the ‘seeing’ of justice being done is now a function ‘performed by the media, whether newspapers or television, acting on behalf of the body of citizens’ (*R (Mohamed)*: [38]).

The media therefore plays a pivotal role ‘in facilitating open justice’ because ‘members of the public rely predominantly upon court reporting by the mainstream media to receive information about the operation of the courts’ (Bosland and Townend, 2019). As Johnston summarises, ‘the mediated reality that comes from the news media or, increasingly, the courts’ own media... [is] how most people come to know courts’ (Johnston, 2018). The courts have taken care to repeatedly emphasise the importance of court reporting. Lord Diplock stated that the principle of open justice ‘requires that nothing should be done to discourage this’ (*Attorney-General v Leavelle Magazine* [1979]: 449), whilst Lord Judge argued that ‘[w]ithout the commitment of an independent media the operation of the principle of open justice would be irremediably diminished’ (*R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs*: [38]). More recently, Lord Sumption arguably went further, asserting that ‘press reporting of legal proceedings is an extension of the concept of open justice, and is inseparable from it’ (*Khuja v Times Newspapers Limited* [2017]: [16]). In this context it is important to highlight that HMCTS is actively engaged in facilitating access to proceedings for journalists, as is evident from the aforementioned *Reporters’ Charter* (HMCTS 2022a) as well as a range of guidance (HMCTS 2022c).

Crime and court reporting has long been a mainstay of both national and local newspapers. It can be argued coverage is in the public interest for the reasons discussed above, but also that it is something the public is interested in. Crime ‘draws clicks’. Operationally, there are two key reasons that courts have been covered by local press and national press. First, crime and court stories contain many of what have been identified as ‘news values’ (Galtung and Ruge, 1970); that is, criteria which are (often unconsciously) operationalised by news producers to decide what is newsworthy or not. Court stories are replete with potential news values. Research specifically on the news values of crime and court reporting has identified immediacy, dramatisation, personification, simplification, titillation, conventionalism, structured access and novelty as being central (Chibnall 1977). Court reporting also lends itself to news values of shareability on social media (Harcup and O’Neill, 2016), as live blogging and tweeting of court hearings is now allowed (Davies 2011). There are, however, specific criticisms of the operationalising of these values in covering

criminal court hearings. The practice of concentrating on extreme cases leads to the public gaining a skewed version of the range and nature of most of the cases heard by courts. Research on the types of cases covered found that the more salacious cases, especially around sex offences and murders, were of particular interest to newspapers, even more so if there were children involved (Soothill and Walby, 1991; Jones and Wardle, 2008; Moran 2014).

The court reporter is the epitome of the ‘beat’ reporter. Most of the reporters interviewed for the study discussed in this article *only* did court reporting. Some also did crime and general reporting or editing, which is not unsurprising given the staffing levels in 21st Century local newsrooms as titles are rationalised and centralised (Mayhew 2019). Though for those working in national newsrooms this is a less acute issue. Prior to the Covid-19 pandemic, there had been concerns about the existential threat to court reporting as an activity, with both academics and journalists reporting a dramatic decline in reporters routinely attending court (Reynolds 2016; Thornton 2016). The lack of reporters has led to traditional news values being side-lined – instead, stories are press release led. For example, in previous research by the authors, a week-long survey of the cases heard in one Magistrates’ Court found that only 3 out of the 240 cases were reported (that is, publicly disseminated) - one by a journalist, the other two via HMCTS and police press releases (Chamberlain et al 2021).

The practice of attending court and reporting has not been significantly changed by the arrival of digital technology. The modes of dissemination have been influenced by the affordances of technology; for example, live tweeting and/or blogging of cases in E&W (Davies, 2011) and other jurisdictions such as Sweden, Denmark (Flower & Ahlefeldt 2021) and Canada (Small & Puddister, 2020). However, the method of newsgathering in this context has been largely untouched by technology. As Jones argues (2021) ‘the innovations of live text-based communication and smartphone photography notwithstanding, court reporting remains the preserve of professional journalists working in the traditional written media’, and that ‘court reporters are gathering the same sorts of information from the same kinds of people in the same sorts of stories as they ever did’ (Jones 2021). Part of the reason for this is that reporting, pre-pandemic, required a journalist’s physical presence in court (though of course with plans to adapt this to the emergent virtual justice agenda – see Section 2.1). Additionally, court reporting requires specialised knowledge, for example in relation to reporting restrictions; failure to comply with such restrictions can lead to a journalist becoming the story rather than reporting on it (cf. The Guardian 2019). Court reporting is challenging in that reporters need to be ‘in the know’, not only in terms of legal and procedural knowledge, but also regarding appropriate court personnel who can assist (an issue which was repeatedly referred to by the participants for this research).

Despite the importance of the role of journalism for open justice, there is very little research about the day-to-day work of court reporters (with Jones’ recent contribution a welcome addition (Jones 2021)). In the context of this report – focused as it is on reporting on virtual hearings – the body of research in this area was, of course, carried out prior to the pandemic. If virtual hearings in criminal courts are to be expanded, there is a need for better understanding of the practicalities of and impact on court reporting. The study detailed in this report sought to do so in the unique context of the Covid-19 pandemic and the major changes described above.

3 Objectives, Scope and Methodology

The following sections report on the findings of the study summarised at the start of this report, thereby providing a unique and vital insight into ‘virtual’ court reporting during this difficult period for journalists and the criminal justice system. The study sought to address two questions:

1. What were experiences of criminal court reporters during the first Covid-19 lockdown?
2. How did journalists understand the wider implications for court reporting and open justice of virtual hearings?

To do so, the authors gathered qualitative data via interviews with nine court reporters – that is, professional journalists reporting for mainstream news media outlets who regularly report on criminal proceedings and did so during the period under study (March 2020 through to the time of interview). The respondents were recruited through personal contacts and snowball sampling, drawn from local and national press and broadcast organisations in E&W. All respondents had been court reporters prior to lockdown and had continued to work as court reporters throughout. One respondent was excluded from analysis, as they primarily reported on non-criminal proceedings; whilst they provided comment on court reporting in this context, the authors were primarily concerned with gathering data on direct, lived experience.

The interviews were conducted during July and August 2020, within a short period and within a few months of the initial lockdown period – which, at the time, represented the most intense and restrictive period thus far during the pandemic. The rationale for doing so was a desire to gather fresh and accurate accounts of court reporting during the study period, and thereby capture ‘a moment in time’ – namely, the experience of undertaking this work during the initial shock of lockdown and the swift adjustment to near-universal virtual hearings. Interviews were carried out via video conferencing platforms, with two of the authors present in each - one leading the interview and a second taking notes. The interviews were semi-structured, an approach taken as it would allow for a more direct route to the subject area and to addressing the research questions (McCracken, 1988). The interviews were conducted in a ‘free format’ to ‘encourage interactive dialogue’, making the exchanges feel closer to a conversation than an interrogation and thus encouraging authentic responses (Deacon et al 1999: 63). During each interview, respondents were asked several pre-determined open questions, based on the research objectives outlined above; followed by free-flowing exchanges, based on the responses received.

Initial questions were concerned with basic information about demographics (for example, employment, experience, etc). Thereafter, questions fell into one of two categories. The first focused on respondents’ direct experience of and assessment of court reporting during the period of study. These covered issues like working routines during lockdown, the perceived benefits of the shift to virtual hearings for their role as court reporters, and difficulties experienced in reporting on hearings during this period. The second category of questions were hypothetical, asking for respondents’ views on the future of virtual hearings in the context of their experiences; and any consequences which they perceived for the principle of open justice, both at the time and going forward. It is important to stress that the study, and the findings from it, is concerned with the *perceptions* of court reporters, based on their own experiences. Talking to journalists can give valuable insight into what concerns them and how they perceive their working

environment. This is applicable in the context of this study, particularly considering the dearth of other sources of information on this topic at the time of the study (and, indeed, at the time of writing).

After transcription, the interview data was coded around several themes. The themes used were determined in two ways. First, themes were derived from the research questions and, subsequently, the questions deployed in interview. These were then refined and added to by drawing on grounded theory approaches – that is, themes which became apparent to the researchers during the interviews were noted; and were also identified during initial review of the transcripts. These were then discussed and agreed by researchers. Each theme was then used to code the transcripts, with each transcript being coded independently by two of the researchers. The themes coded were as follows:

- access to courts and court information;
- relationships between journalists and others involved in court proceedings;
- journalistic routines;
- the use of technology;
- open justice;
- long-term viability of reporting in virtual courts

The key findings drawn from across these coded themes will be discussed below. Ethical clearance for the study was sought from the University of the West of England Faculty Research Ethics Committee, which was approved in June 2020.

4 Findings

This section presents the main findings of the study, organised around the themes identified above. They highlight and discuss several topics including the day-to-day routines of court reporters during the initial phase of lockdown; the benefits and disadvantages of virtual hearings for journalists, as identified by the respondents; and the wider implications for open justice as a workable principle. The findings integrate various quotations from the interviews, as well as observations and critical comments by the researchers. The material gathered suggests that there is a vital connection between the way court reporting is done on a day-to-day basis and the various practices and routines that underpin it; and that a significant and long-term disruption to the latter requires a significant re-evaluation of how court reporting is practised and, consequentially, whether open justice is effectively maintained.

Studying the disruption caused by the Covid-19 pandemic to court reporting practice provides an insight into how a changed mode of delivery of justice – from an ‘in-real-live’ court room setting to a virtual one – required radically different routines and practices, with a perceived impact (with negative and positive aspects) on open justice. The virtual mode of delivering justice may require additional affordances to be implemented to enable journalists to achieve their journalistic goals and, in doing so, fulfil their wider role in facilitating open justice.

4.1 Access to Courts

Throughout the period studied, there were three means of accessing courts discussed by the respondents – physical, phone (briefly) and virtual (that is, live, online streaming via a platform such as Skype, Zoom or (from April 2020 onwards) CVP. Initially, accessing courts in any form appeared to be extremely difficult. The responses of the court reporters suggested that, in the first weeks following the national lockdown, most courts were physically closed to anyone other than critical workers (none of the respondents described themselves in these terms); and that virtual means of accessing hearings for court reporters were not in place. There were some examples of hearings being conducted via teleconferencing. Within a few weeks, most respondents had begun to regularly access court hearings by virtual means (generally from home by personal computer), with none attending physically. Once physical attendance became possible again (generally from May 2020 onwards), the way in which such hearings were accessed was markedly different.

In the context of virtual access, the primary problems were technical and logistical. In the early stages of lockdown, it appeared that the courts did not “have a working system to let journalists know how to dial in to hearings” (according to one respondent). As such, even if hearings were streamed and theoretically accessible to reporters, it was unclear how this was to be done. As one reporter put it “even trying to find the person that would send you the Skype link was hard”. It was suggested that “more experienced courts” made appropriate arrangements for virtual access “reasonably fast”, implying variation in facilitating access for reporters depending on court location. It is, however, worth noting that in making such assessments, respondents tended to praise their ‘own’ court and express scepticism about unfamiliar ones, raising the possibility of bias in their evaluation. Whilst protocols for access appeared to vary, it was generally the case that reporters would either be provided with or request an access link for a particular

hearing (in some cases having to produce press cards to validate their status). This would then allow them to enter a hearing, using the relevant platform. In the initial stages, this generally appeared to be either Skype, Zoom or Teams; once CVP became more widely available (from late April 2020 onwards) this supplanted these platforms for all hearings which respondents attended virtually. Whilst reporters appeared to think the protocols, once settled, were reliable for them, they noted that access for non-journalists was likely much more difficult, suggesting that their role (and the relationships connected to it) provided them with a form of access privilege when compared to the public. This of course has implications for the principle of open justice and perhaps emphasised the importance of media access during this period for upholding this principle (see Section 5.5).

Once the most serious initial problems had been addressed and the protocols for access were clearer, reporters were enthusiastic about virtual attendance, particularly using CVP. Virtual access meant that respondents could 'attend' more than one hearing simultaneously, increasing both the ease with which they could report on hearings and the volume of cases covered. It removed the necessity of traveling (deemed particularly unhelpful for short hearings or in busy urban areas) and allowed them to write up copy as hearings progressed, increasing their productivity and speed. As the pandemic progressed and some reporters returned to physical attendance, a form of hybrid reporting developed – with a mix with some reporters being in court, some at home, and some undertaking both. It was noted by one respondent that those at home had advantages, in that they could produce final copy more quickly and therefore 'beat' physically attending competitors to a story.

Once reporters were allowed to return to court rooms, pandemic related restrictions such as social distancing were implemented; this sometimes meant that multiple court rooms were needed for one hearing:

“So, in courtroom one there was the judge, the prosecution, the defence and the defendants. And then in court room 2 there was the witnesses, the police and the journalists. They'd closed off most of the seating, so the journalist had one chair in each corner of the room and... every other chair was taped off. The witnesses were all in the middle... And then they piped in the hearing from the other courtroom, via a TV and audio as well.”

This arrangement meant that whilst this reporter was physically in a court room, they were still accessing the hearings virtually via a TV screen. This came with accompanying issues; for example, the respondent described “not being able to see the person who's talking and only having it come through one tinny speaker on the opposite side of the room” which made it “really difficult to follow the narrative” and a “real struggle to keep up”. Additionally, it meant that “means you can't even talk to the witnesses afterwards or you know grab people for a quick interview”. The latter point, however, was equally true for virtual hearings and was seen as a particular weakness of such arrangements.

In some instances, physical distancing in courts restricted the ability of some journalists to attend due to maximum numbers allowed within the court rooms. However, this was only an issue (as is the case normally) when there was a high-profile case. In such cases, reporters were admitted on a 'first come/first serve' basis – again, as is normal practice – and where numbers of attendees were high, the multiple court room setup previously described was used. It was noted that a 'regular' local reporter would, in some cases, get preferential treatment and be allowed to sit in the same court room as the key players in a case

(that is, judge, defendant, lawyers, and witnesses). Overall, the impression was that physical attendance in these circumstances was far from ideal for reporting; it was unfavourably compared with both virtual hearings from home and “pre locked down” reporting.

4.2 Access to Information

Access to information related to two key matters: access as a pre-requisite to accessing hearings *per se* (for example, obtaining links to hearings); and access to information about the substance of a hearing for reporting purposes. Analysis of the data collected identified several themes:

- benefits and disadvantages of online hearings for identifying reportable cases
- variable processes for accessing information about hearings, which evolved over time
- more information about available hearings; but limited ability to obtain rich detail for reporting
- Onus on reporters to seek information, rather than it being proactively provided by courts

Identifying ‘reportable’ hearings

The respondents’ comments indicated that the shift to largely virtual hearings from March 2020 onwards offered both benefits and disadvantages in terms of identifying ‘reportable’ hearings – that is, hearings which were likely to have some aspect which would make them appropriate for publication. Several respondents noted that online court lists were available throughout the first lockdown, providing general information on available hearings. One respondent explained that an accessible list of online hearings quickly became the norm, providing more detail on case type, timing, order and accessibility options (that is, whether it would be a virtual hearing or physical hearing). This was described as a “court reporter’s dream”, as it meant that they could quickly and conveniently identify hearings that were most likely to be of interest to them. Whilst this appeared to be regarded as generally positive for identifying reportable cases, this was not necessarily useful for obtaining detailed information for reporting purposes.

Variable processes for accessing information about hearings, which evolved over time

Respondents suggested that there was an initial lack of clarity about protocols for attending online hearings, which made accessing them difficult (see Section 4.1 above). After some time this appeared to improve once the systems in place were established and reporters (and court staff) became familiar with them. Protocols used varied by court and region with most involving some form of exchange between the reporter and a court staff member to obtain a link to the appropriate hearing. Information on such protocols were viewed variably, with some respondents describing information as timely and clear; whilst others appeared to be more complex and provided late (or at times, not at all). Respondents suggested that these processes evolved over time, and quickly – from disorganised and unclear in the first few weeks of lockdown, to simpler and accessible information on hearings as courts adapted to the new way of working.

More information about available hearings; but limited ability to obtain rich detail for reporting

Overall, responses suggested that reporters could access a broader range of basic information about available hearings during the study period; but not depth of information about the hearings themselves. Whilst more information about what hearings were generally happening became the norm quite quickly,

respondents reported significant limitations on the ability to obtain rich detail for reporting. Some specific case details were made available that had not been before (for example, attendees at a hearing were named on screen). However, respondents highlighted the inability to easily clarify information or seek further detail in virtual hearings because of the format and ‘discrete’ nature of them – that is, a streamed broadcast would simply stop, and the participants became immediately unavailable. They highlighted the inability to obtain ‘tip offs’ (see Section 4.3) on upcoming cases or information about last minute changes to schedules, increasing the chances of missing a reportable hearing. They highlighted that they had lost the ability to simply ‘sit and listen’ in court, which was a crucial method of picking up rich stories (particularly in Magistrates’ Courts) – presumably because such information only became apparent in the actual hearing and was not obvious from superficial hearing details available in court listings. This process and the advantages of physical presence were explained by one respondent:

“Being inside a press room on your laptop or being sat on your laptop at home... You can't pick up five stellar, very, very strong court stories from that, whereas if you were to go to a court on one day and didn't have much else on but you saw there was a list... of plea and trial preparation hearings or you saw there's a couple of sentencings or a trial you could just sit in the press gallery of that court and before you know it you had about five different stories you didn't have before; you had a list of the follow up dates, a list of diary dates...

All of that is achieved by literally just sitting there and seeing what happens, and you can't get that same thing when you're online... It's just not a rolling cycle. It's more scheduled... for journalistic purposes, I would want to be in court all the time I think physically... because of the stories crossing and the contacts you can build and relationships you get to make there. The ease of access now to online system is very helpful and it's helped me out a lot, it's helped our publication a lot when we're short on stories. But there is nothing quite like reporting physically at courts I think.”

They highlighted that physical attendance prior to the pandemic had been better for accessing all the above information - but when they were able to attend court physically again, this lacked the same usefulness because of the small numbers of people physically attending at court and the pandemic-related limitations described in Section 4.1. Several respondents also highlighted the inability to obtain ‘visual information’ (such as CCTV footage) for reporting purposes, due to the technical limitations of doing so via virtual hearings. All the above factors combined to restrict, to some extent, the ability of the respondents to produce detailed and rich accounts of the hearings they observed, with a potential impact on the quality and usefulness of the report produced.

Onus remained on reporters to seek information, rather than it being proactively provided

Virtually all respondents suggested that whilst information about hearings was broadly accessible, the onus was generally on them to seek it out. Online courts lists were available pre-pandemic and represented an example of openly available information. However, detailed information on hearings was generally not made publicly available; this meant reporters had to identify the right person to contact to obtain such details which could initially be difficult (particularly in an unfamiliar court). This reaffirmed the gatekeeping issue mentioned above. One respondent suggested that, whilst court staff were accommodating and helpful, they had not generally been proactive about disseminating information about hearings, with little “outreach”. There was speculation that the lack of proactivity reflected a

resistance to inviting outsiders to attend hearings (reporters or otherwise). The knowledge of court staff regarding hearings was variable (both between staff at each court and in different regions), and could affect access to information for reporters, sometimes with significant consequences (for one respondent, the need for a published retraction). One respondent suggested that the problems of accessing such information – dependent as they were on independent actors outside of reporter control – “amplified” the need for reporters to have access to an online ‘information store’ about hearings. It is worth noting that such issues would also apply to members of the public; as such, an information store of this kind should arguably be equally accessible to this wider audience.

4.3 Relationships

Journalists rely on building relationships with court staff, lawyers and judges as well as victims and witnesses, probation and police services. Several respondents described “the usual tradecraft of court reporting”, which included conversations in corridors to check information obtained in hearings or inquire how cases were proceeding. This activity was regarded as vital for journalists to be able to follow hearings and report effectively. If the respondent had a pre-existing relationship with court staff, accessing information about hearings or seeking further information was therefore easier, but this was hampered by the virtual environment. The importance of relationships is, of course, not specific to court reporting. The complexities of the relationship between journalists and their sources are a key area of concern for the field of journalism studies. A key point to highlight about this relationship in the context of E&W court reporting is that, due to the overall constraints placed on court reporting to avoid the collapsing of trials at the start of the pandemic, the issue of trust was particularly important. Interviewees highlighted that this trust was based on real-life encounters over time, and they expressed concerns that this fostering of relationships may not be possible in a virtual-only context in the long term.

It was speculated by one respondent that that court staff may have been ‘gatekeeping’ access to information, depending on factors like relationship, as well as attitude towards the reporters generally. Another explained how staff questioned the reporter’s need for access to information, particularly additional detail about cases. Others suggested that staff were very accommodating (possibly more than pre-pandemic), and had an ‘in this together’ attitude, with reporters as equals (alongside lawyers, judges, and the parties) in receiving hearing information. However, there was considerable anxiety about how long this kind of working could be effective, as building trust with the various people in court was seen as extremely difficult in virtual hearings.

As one reporter put it:

“I feel like it's been sustained on momentum. So, it's cases that had already started, it was people that already knew each other. If you had to do this for three years, then when the PA reporter changes because she gets a better job or somebody else comes in, then suddenly there's somebody that nobody knows, new lawyers coming in who don't know people, don't trust people, new Court staff. You can see that the ability for the system to keep going and for the public still to be having the press there and listening in will slowly decline.”

It was suggested that if you were not “part of the club” – that is, familiar with court staff – then the scope for exclusion as a court reporter was significant. There were some instances in which respondents had problems with (or at least expressed criticism of) unfamiliar courts, with some speculation that other courts did not do as well as their ‘own’ court. However, it is important to note the caution expressed in Section 4.1 about potential bias in this context. It is arguable that this form of exceptionalism, in which the reporters ‘own’ court performed well whilst unfamiliar courts did not, might have been connected to the lack of any pre-established personal relationship with the latter. Indeed, there was an emphasis on the importance of personal relationships with court staff being crucial simply to effectively navigate the *ad hoc* systems that were in place during the study period and to obtain any information and access they needed to undertake the role of reporting.

In the interviews some journalists outlined ways in which they managed to mitigate against the limitations of the virtual environment; for instance, by contacting people directly via email. However, they tended to do so for fact-checking certain aspects raised in court rather than for more in-depth conversations. Moreover, this would require knowledge of a contact; where no prior relationship with them exists or where their identity is unclear, this kind of follow up would not be possible. The knowledge of court staff was variable (between actual member of staff at court and region) and could affect access to information for reporters. Some respondents highlighted that staff provided inaccurate information about protocols and cases (which could, at times, have significant consequences – for example, the need for a retraction to be published for one respondent). Overall, the interviews suggested there is a crucial link between access to information to do “proper journalism” (see Section 4.4); it is also connected to the wider issues of the journalist as a representative of the public in the context of ensuring open justice remains a working principle rather than a presentational one. It implies that maintaining such links would not be sustainable in the long-term in a virtual environment, with consequences for court reporting and, by extension, open justice.

4.4 Routines

The cohort of respondents were passionate and enthusiastic court reporters (nearly all exclusively working in this area), covering large areas of the country for primarily local or regional print/online news. They reported mainly on Crown Court proceedings during the study period, with some reporting in Magistrates’ Courts depending on geographical region. Only one was furloughed (but continued to attend court despite this); and all characterised themselves as very busy through lockdown, with many hearings being covered over the course of the pandemic. In the first few weeks of the initial lockdown, they were engaged almost universally in limited or no coverage, with courts either being shut; not having systems for reporters to get to hearings; or lacking clarity on how to do so. Routines completely changed for all reporters almost immediately in late March 2020. Pre pandemic, the reporters would generally attend physically every day, to identify cases (either pre-selected or found at court); and then write up these up later in the same day. After lockdown was announced, most were either working on non-court reporting matters or picking up any hearings that were running – in essence, this represented a limbo period with extremely limited coverage and reporting. Within a few weeks, courts began hearing a small selection of cases remotely. Most reporters would attend these virtually (often needing to request to do so through various processes).

A couple of reporters attended physically in courts to watch remote hearings. Most reporters eventually settled into a pattern of covering cases remotely from home daily, achieving this by looking at daily lists and requesting access for the next day's hearings. All reporters noted the benefits of this: it allowed coverage of a broader range of hearings in different courts at the same time and the ability to produce copy whilst observing hearings. This meant that more stories could be identified and written up more quickly. This was overall seen as an easier and stress-free approach to court reporting, removing travel concerns and limitations of physical presence. However, downsides included the inability to simply pick up cases by attending in court all day; being unable to interact in an effective and consistent manner with other parties to cases; and the inability to pick up extra details and clarify issues. Such challenges could therefore limit journalists' ability to interact with relevant potential sources easily through their co-presence in the court building. One respondent stated:

"A lot of that kind of court reporting is not your sort of 'turn up, write it down and sort of spew it out'. But this is sort of trying to gather little details, which will open up areas for your own kind of investigative reporting, that kind of court work. That very intimate way of reporting needs to be in court, needs to quietly have a chat afterwards with a police officer or a defence lawyer. That is clearly impossible in the Skype environment... That kind of proper journalism as opposed to sort of just taking notes and writing it up, is essentially on hold."

Most reporters said they were 'in court' (that is, accessing hearings either remotely or physically) much less initially, but that this eventually increased and probably outstripped pre-pandemic reporting. Few missed hearings they wanted to access. Whilst the method of delivering hearings was different, it appeared most had not changed their approach to reporting (that is, make notes, write up into copy) – this had in fact become more efficient. Whilst most recognised the benefits of working online, they also felt that court reporting should be done, primarily, in court physically. By the time of the interviews, all reporters had returned to physical attendance almost exclusively or largely – with social distancing and various other adjustments – primarily because courts drastically reduced the use remote hearings and required physical attendance. Some felt that the benefits of remote hearings could be retained for shorter hearings, which could be covered without disproportionate inconvenience to press or entirely undermining the gravity of hearings. Notwithstanding this, the following quote encapsulates the dislocation felt by reporters working in this context:

"I had concerns when the courts shut down initially... But we have been able to carry on in a limited way, but it's still an endlessly strange experience to sit here drinking tea while someone gets sent down for 10 years on the laptop... It's very strange."

4.5 Open Justice

The cohort of respondents generally felt that whilst open justice had undoubtedly been affected by lockdown, it had been broadly maintained in principle via the involvement of the press in virtual hearings. All the respondents recognised the importance of external scrutiny of criminal courts generally and during this time, and generally felt that the courts had made efforts to ensure that the press were able to access hearings and uphold the principle of open justice. However, public access was considered quite different. Respondents felt that the public had essentially had no access whatsoever to virtual hearings for most of

lockdown, for two reasons: through a lack of proactivity on the part of courts to ‘outreach’ and advertise open courts; and through examples of active ‘gatekeeping’, for example by asking for press cards before providing links to hearings. In this sense, open justice continued to operate in some form for the press but not for the public at large. Respondents speculated on why this might be. Some felt it was because members of the public generally do not attend, and therefore the courts regarded this as something not worth facilitating. Several suggested it was because of concerns about being able to control public behaviour in hearings – particularly the inability to prevent recording of virtual hearings. It is important to emphasise that these were the perceptions of the reporters. However, some contemporary accounts via social media do suggest this perception was justified (see, for example, a Tweet by Penelope Gibbs of Transform Justice on April 7th, 2020, in which she reported ‘trying for more than a week to access magistrates’ hearings digitally... technically possible, but I have not yet been allowed’).

Whilst respondents thought it was of concern that the public had, in their view, been excluded from accessing hearings, they felt this was not generally a problem as the press acted as their ‘eyes and ears’ during this period. Journalists act as representatives of the public, witnessing the delivery of open justice and reporting to the public on it. In general, because journalism has been assigned this role, journalists have some privileges in the courts of E&W, highlighted by the efforts of courts to facilitate access for them. In the interviews, journalists highlighted how they perceived that the responsibility they felt in relation to this role had increased, due to the constraints to public access the of virtual hearings (discussed in Section 5.1):

“[T]he thing, lock-down, the switch to CVP has certainly limited public access. ... Crown Court, anyone can walk in and sit in any case they want. You don't have to explain who you are, why you want to be there. And OK you can't make notes. But apart from that you can just sit there and watch anything from a rape trial to a, you know, careless driving. You can't do that with CVP for very obvious reasons, I think, because there's no control. ...

You couldn't make the feed available freely and then stop people recording it. ... The lack of public access, it is a concern. ... In reality nobody ever goes, but they can if they want. But now you can't. You know you can't now see what's happening, which put a bit of pressure on us. We're supposed to be there to be the eyes and ears, and it's a sort of a cliché, but the eyes and ears of the public. That's certainly the case now, 'cause no one else is there.”

Regardless of whether or how virtual hearings were made available to wider members of the public by a specific court, even journalists found it challenging to access the hearings they wanted to at times. However, in the quote above, the journalist suggested that limiting wider accessibility was the only option to avoid members of the public not understanding (or deliberately disregarding) the rules that govern the observation and reporting of trials, with scope for observers to commit contempt of court and potentially leading to trials collapsing. Indeed, in the wake of some high-profile cases, controlling such matters is arguably a source of some anxiety for courts (see discussion in Chamberlain et al 2021: 2408). However, if limiting wider access to virtual courts is the only option to ensure due process, it suggests that a purer form of open justice is a proportionate sacrifice. It is journalists, the interviewee suggests here, that must step in and step up on behalf of a public shut out of hearings.

Even for the press, it was generally felt that open justice was, in practice, suspended during the very initial phase of lockdown, with no clear ability to access to cases (and at times, resistance to allowing press to do so). Once the systems/protocols for allowing press to join hearings had been clarified, respondents felt they generally had good access – most notably to a much broader range of cases than pre-pandemic, due to the ability to access hearings that might otherwise be missed or could not justifiably be attended. This was considered positive for open justice. However, it was noted that the inability to scrutinise cases more deeply by interacting with participants directly (something common pre-pandemic) meant that reporting could not be as detailed. Additionally, issues with technology could at times make it difficult to properly access and therefore report on hearings, due to poor quality of audio or inability to see defendants. These limitations therefore diluted open justice in terms of its quality, hindering rather than helping. It was also noted that, if press (like the public) were not ‘in the know’ or part of an ‘inner circle’, access could be unfairly restricted. As such, this suggested that court staff could act as arbitrary gatekeepers. Arguably, this may have purely been due to well-intentioned concerns about the protection of court proceedings; but the suggestion that familiarity and relationship played a role in such decision-making also implies that an over-cautious approach to access may also have been the result – conscious or not – of undue suspicion of people outside of the aforementioned ‘inner circle’. In short, ‘strangers’ may have been regarded as less trustworthy and therefore been denied access.

Overall, it was felt that *some* use of virtual hearings post-pandemic was likely and probably positive; this was because limited use for less serious hearings (for example, case management) could allow press to gain easy access to hearings and provide a fuller picture of the case to the public via reporting. However, there might also be a risk that press could be cut out of such hearings, making them effectively invisible. None felt that continuing virtual hearings for all or most cases would be positive for open justice. This was felt to deviate too far from traditional notions of collective, scrutinised justice; it was felt that getting back to physical attendance with people in the same room would be the ideal. It was also noted that virtual hearings limited their ability to assess the credibility of witnesses and defendants in the court proceedings. One journalist explained their concern thus:

“How do you judge someone's testimony when you're watching them on a, on a laptop as opposed to sitting 12 feet away from them across the courtroom, eyeballing them? Thinking is this person lying, this person telling the truth. How do you do that remotely so that I don't think anyone's really got to the bottom of trying to do trials remotely, and that would be an absolute nightmare.”

The concern here is about how ‘in-real-live’ reporting facilitates aspects considered essential to fulfil one’s role, that are not facilitated through the online system. Though it is a question of personal perception, assessing credibility through directly witnessing or observing is part of the rationale for conducting justice in open court (Judicial College 2016).

Another journalist took this issue of witnessing the proceedings a step further and raised the issue of potential manipulation or abuse of process that virtual hearings could facilitate (or at least obscure):

“In a fantasy Stasi-kind-of-East-Germany world, you know, then a defendant could be beaten to within an inch of his life, appear in court completely bruised, or even have a proxy hearing in their place 'cause they've been killed the night before, and the media wouldn't know that, because we

wouldn't see whether the defendant was present and couldn't see what kind of conditions they were in."

There is no suggestion here that this is currently an issue in E&W criminal court hearings. As has been highlighted above, various parties, including defendants, have (on a small scale) appeared via video-link in court proceedings for many years, without suggestion that this is an endemic problem. However, the quotation highlights the potential for miscarriages, malpractice, negligence or simple mistake to occur and be missed due to the limitations on third party scrutiny of hearings, with a potential negative impact on public trust. This would be especially concerning if virtual courts were to become the standard mode of delivery, which is not anticipated but certainly not beyond the realms of possibility (see Part 13 of the Police, Crime, Sentencing and Courts Act 2022; and analysis by Hoyano 2021). The two issues raised here already place journalistic practice in a wider context of open justice - that is, the journalist as a special kind of witness to 'proper' open justice being done, with the consequent application of 'comprehensive, relentless, and unavoidable public oversight' through publicity (Postema, 2014).

4.6 Technology

Respondents reflected on how technology had eased the logistics of reporting in a general sense, in a way that had not previously been possible previously.

"You were able to do Crown Court in the morning and... magistrates at the same time. Then you are also able to dial into hearing at [another] Crown Court for proceedings for something.

It's becoming an awful lot easier to... dial into different courts, and you know you're not having to travel to [another court] for a [pre-trial preparation hearing] on an attempted murder. You can just dial in."

Virtual attendance allowed reporters to view multiple hearings; switch between hearings quickly; and avoid practical issues of travel. As a result, this made the general role of court reporting easier. It was suggested this could be 'potentially amazingly helpful for open justice' because it broadened the range of coverage beyond the usual types of hearings reporters might focus on:

"You're able to cover more of those cases and you're also able to justify covering and some of the case management hearings that you can't actively report upon but do give you a much stronger understanding of the progression of a case."

A common theme was the dichotomous nature of technology as a method of reporting on hearings, in that it either greatly enhanced the ability to report; or represented an impassable obstacle.

"[There] was such technical difficulties at the Crown Court... which meant that we couldn't attend the first [hearing] because they couldn't get the technology to work, and all the journalists were kicked out of the hearing. And the second one we were able to do remotely via dialling in, which was if anything easier and quicker than court reporting used to be because I was able to type and listen at the same time."

When technology issues were a problem, one respondent felt this represented a significant threat to open justice and the role of court reporting as the practical embodiment of this principle.

“It’s totally possible that a court case of high public interest that we would have wanted to cover could have slipped through the cracks because we weren’t able to actually connect to the system and cover it as we would have liked to.”

At the same time, several respondents suggested that if the issues with the technology used for accessing hearing became reliable enough, they could be,

“a new way to hold court reporting in the future... which realistically could open them up to a wider audience... anyone in the world would be able to dial in and be a witness. So there is potential to increase how public these public hearings are held.”

All the above suggest, generally, that *broader* access to hearings – that is, greater numbers of different types of hearings – was facilitated by virtual courts, when technology functioned properly.

On balance though, most of the respondents did not feel that the use of technology to facilitate court reporting (or conduct hearings generally) was robust enough at the time of the study, with a typical quote being, ‘as it stands right now I think it’s been a hindrance, and it’s possible that we could have missed something good because of the technology’. In short, when technology functioned, open justice was enhanced – when it did not, it was severely restricted. Notwithstanding this, one respondent did reflect on how far the courts’ use of technology had come in such a short space of time (reflecting the description of progress of virtual courts in Section 2.1 above):

“The tech was appalling... you’re going from a standing start to where they are in pretty quick time is... pretty impressive. But it’s really exposed how poor the tech was, the infrastructure... it was just appalling, and that’s really been exposed. Now you’ve seen how the courts are being caught short. The technology just isn’t up to the challenge, so given what they were starting with, they’ve done a great job to actually get anything up and running to be honest.”

Without commenting on whether remote hearings were positive *per se*, this respondent argued that the continuation of virtual courts ‘would require huge investment’:

“[I]f you do want to go down the remote route, the video route, increasingly... you’re gonna have to spend a lot of money to get the kit up to standard and there’s a question about access, you know. If you’re at home, you don’t have fast Internet access, you need to get that, if you need to get involved in court proceedings. How do you do that?”

This therefore highlights two important issues in relation to virtual courts: the necessary investment needed by the state to ensure it is consistently fit for purpose; and the issues of equal access to justice presented by requiring lay persons (such as defendants and witnesses) to attend virtually – in short, the how this would work in light of the much larger issue of digital poverty (see Digital Poverty Alliance 2021).

The interviews highlighted the detached, side-lined role of reporters in virtual hearings, which either obstructed or prevented them from being able undertake more proactive reporting activity:

“You’re... sort of a non-participant, easy to be forgotten, forgotten about and the, you know, there are times when you have to sort of yell, “excuse me” over the line and just sort of--The interjection, the actual mechanics of interjecting into a court hearing can be a little awkward.... I’ve had occasions where I wanted to say something, and judges already left by the time I’ve interjected. So I had to call the hearing back on. And then other occasions where I’ve wanted to ask the clerk a question like ‘how do I spell this person’s name’, and the judges still sat on the bench.”

All respondents encountered, at some point, technical issues with virtual hearings, such as video or audio problems. However, all the reporters recognised the difficulty of adapting quickly to the circumstances presented by lockdown and generally praised local court staff for providing the right information to access hearings and addressing access problems.

“I think one of the things that’s been interesting about this has been actually, you might think, well, the courts would not be adaptable. They’re all sort of terribly old-fashioned, and so on. It’s been quite interesting how adaptable the courts have been, I mean, they never stopped working.

They quickly found ways. I mean Skype - can you imagine, you know, the idea that you have a hearing on Skype a year ago? It would be like, well, we can’t do that. What’s the security issues around Skype.... They just had to just embrace it.”

4.7 Longevity

In relation to the longevity of virtual hearings as a means of conducting hearings, several respondents highlighted that the concept was far from new (discussed above in Section 2.1):

“Even before lockdown like these hearings were happening, they just weren’t catering for the volume of people that lock down forced it to. [B]efore, we’d have a video hearing, you’d have a barrister or defendant, everyone else would be in court. But the lock down just made everyone jump on the link.”

Respondents suggested that the pandemic had simply ‘accelerated the development of this video system by about 18 months’, and that the use of such hearings would continue in some form once the pandemic was no longer a factor, as they represented part of longer-term agenda (for both HMCTS and the judiciary). This was considered a logical development in relation to certain types of cases. It was felt that this was for ‘procedural hearings where it’ll make sense if everyone is happy with the CVP or other systems’ or when essential parties to proceedings (such as lawyers) could not physically attend, a court might reasonably conclude that ‘rather than delaying the hearing, let’s do it remotely just like we did in lock down’.

Another respondent implied that efficient use of time – a pressing concern for criminal courts facing a large backlog – would certainly be a factor in the use of virtual hearings going forward:

“It can’t go back to business as usual. And then should it? You know... a barrister turning up for a for a five-minute mention just to set a date for the next hearing... Is there any need for the

barristers to be in court to do that? When they could just dial in from the chambers and do it remotely? So I think we will see increasing use of... more technology."

However, some responses also suggested that any shift towards virtual hearings would not be swift or universal. It was argued that 'for big cases they will still be held in person for sure', but other responses suggested that courts had a somewhat intransigent and traditional view of how hearings should work, particularly in the lower courts:

"In Magistrates Court it is 100% going back to the way the way it was... the District Judges are really unhappy if people, if lawyers appear over the video link, and they're increasingly unhappy about probation officers."

Notwithstanding the potential for a 'lasting legacy' that was positive for open justice, respondents were not optimistic about the level of access via virtual hearings being maintained post-pandemic:

"I don't see why the courts will bother with that once they're all back in the room, why are they going to add on this layer of... other people can dial in... I'm not convinced that they'll suddenly make available for members of the public or the press... that can't make it to court."

Indeed, one respondent observed that 'institutional pushback within the court service' had already begun at the time of the interviews, suggesting 'it's either coming top down or it's just across the board that they are starting to resist the idea of journalists dialling in.' Whilst the respondent did speculate directly on why this was, they did believe that virtual access for reporters had been facilitated out of necessity during the initial period of lockdown; but that once this immediate situation eased and pandemic restrictions were relaxed, some courts began 'pulling up the drawbridge'. This therefore implies a perceived unwillingness on the part of courts to fully facilitate court reporting, particularly since the technology to do so remained available and in use by some parties (such as lawyers) in proceedings at the time of the interviews. One respondent suggested that this form of unequal treatment for the press needed to be challenged, particularly because it was not a new problem:

"I think... I'd probably go hard line and say, well, if we're not allowed to join, nobody should be able to, and that [would] probably focus some minds... they set up telephone hearings way back when a few years ago, but... they refused to let journalists on to telephone hearings... And we had to go and sit in an empty room and... basically listened to a conference call across the courtroom... It was weird and it didn't work and there was no reason to cut us out."

These responses seem to suggest that a perception that courts not only have a broadly reactionary attitude towards virtual hearings in a general sense but are only likely to accommodate and facilitate open justice within a traditional operational framework. This view of virtual hearings was also apparent amongst some of the respondents. Whilst it was recognised by one respondent that virtual hearings 'could have some advantages, particularly for people who are trying to cover lots of courts', they concluded that 'the more we go back to as it was before the better' and that they did not believe there was a 'Covid bonus' for court reporting. The rationale behind this was as follows:

"I think there probably is a new generation of reporters that's very sort of they like their tech and being able to sort of sit in Hipster Cafe and do all their reporting from their backsides.... I don't go

to court to take notes. I go to court for the people, to see the defendant, to get a sense for how the parties think the case is going. To therefore temper my coverage... that's better done in person."

As such, this respondent felt that robust, in-depth coverage was not achievable via virtual hearings, highlighting the connection with people ('those kind of discussions in the corridors') as key to fully understanding a hearing and reporting appropriately. This also presented an interesting perspective of a generational divide between amongst court reporters, with the 'new generation' being more invested in (and perhaps more equipped for) remote, technology-driven court reporting. However, this respondent felt that a shift towards this form of reporting would represent 'fake open justice' and would be unsustainable in the longer term due to the disconnection between the courts and those reporting on them.

Overall, respondents seemed to have a slightly more moderate view of virtual hearings in the long term; this was exemplified by one respondent who stated that whilst they 'certainly wouldn't be... sort of moving to a system where I'd be relying on remote hearings as a sort of a way of life', they did represent 'a very valuable add-on.' In short, virtual hearings would not be the main method of reporting on hearings but did offer advantages which complemented the more traditional approach of physical attendance. The importance of the direct connection to people also appeared to be of personal importance for respondents – that is, it went beyond professional notions of effective court reporting:

"You just cannot beat it. You know, the reaction of the, of the defendant. You know, the feel of the court, of course you do miss, 'cause it's, it's, it's a very personal experience, being in court, you know. It's, it's almost visceral sometimes. We do miss that when you're watching a three inch square, a little headshot with somebody in the corner of the laptop. You do miss that and you do miss... what happens around the case."

It is perhaps worth noting that the level of passion and commitment inspired by this sort of work is arguably essential to the long-term efficacy of court reporting considering the fact it does not necessarily attract high status or remuneration within the context of journalistic activity.

Reflecting on what might need to change in the long term if virtual hearings were to become 'a standard part of courts procedures', a key concern was access to and clarity of information, particularly considering the principle of open justice and legal restrictions in relation to recording of proceedings. One respondent suggested:

"You would have to make sure that [there was]... a notice up in every listing office saying: 'you must send links to anybody who asks. We offer an open court.' You may want to put an advisory on [it]... so just as there are posters up in public gallery saying no photographs... A simple email which said, here's the link, but please remember, contempt of court may apply, so don't ever put on a blog or social media anything that you hear in a court hearing unless you're a professional journalist who knows what they're doing and never take pictures of the screen."

It was also suggested by another respondent that journalists needed to have 'access to the digital case system, which is where the court files are', arguing that:

“This whole experience has only amplified the sense in that... when you're on a remote hearing... getting access to those sort of things, having a quick word with the lawyer, is so much harder... if you could just log in, see what's on the case file... I think it would encourage more people to go, if they knew that there was... some sort of information store where they could check out a case.”

It was felt that some use of virtual hearings post-pandemic was likely and probably positive; this was because limited use for less serious hearings (for example, case management) could allow press to gain easy access to hearings and provide a fuller picture of a case to the public via reporting. However, there might also be a risk that press could be cut out of such hearings, making them effectively invisible. It was also felt that virtual hearings in the context of the first lockdown represented “troubleshooting mode”, rather than a well-considered, well executed, and long-term approach. None felt that continuing virtual hearings for all or most cases would be positive for open justice. This was felt to deviate too far from traditional notions of collective, scrutinised justice; it was felt that getting back to physical attendance with people in the same room would be the ideal.

5 Recommendations

To conclude this report, we would like to return to the recommendations outlined at the beginning. As remote hearings are developed and expanded further, open justice concerns should be at the centre of their implementation. The following recommendations fall into six broad themes (indicated below): a ‘fit for purpose’ infrastructure; clear protocols of implementation; easy access to information; maintaining and developing relationships; public engagement and outreach; and further research.

Recommendation 1: A fit for purpose infrastructure

- Provide sustained and appropriate financial investment in the technology required for effective remote courts, including streaming platform and interface; and in court equipment (for example, TVs, cameras, microphones, lighting).
- Issue best practice guidelines for courts on the set up and positioning of audio-visual devices for remote hearings, with regular review based on user feedback.

Recommendation 2: Clear protocols of implementation

- Develop clear, accessible and standardised protocols and procedures for accessing remote hearings, designed with both journalists and members of the public in mind.³
- Ensure these protocols and procedures are accessible for non-specialist users; infrequent users; and vulnerable users (for example, those with learning differences).
- Establish clear guidance and training for court staff on facilitating access to remote hearings for journalists and the public, emphasising the importance of open justice.
- Consider offering (when appropriate) a remote attendance option for journalists and members of the public for hearings which are being held in physical courts.
- Ensure that contingency protocols exist for upholding journalistic access to hearings when technology fails.

Recommendation 3: Easy access to information

- Ensure prominent and clear information about access procedures for specific hearings, for example by maintaining a dedicated, publicly accessible online (as well as physical) space for a court’s listings, with specific links to hearings included.⁴
- Maintain online daily court listings that are publicly available; accessible and comprehensible to all; and are adequately detailed (for example, identifying the alleged offence in a hearing).
- Consider creating a dedicated ‘information store’ for hearings information and materials, which can be accessed by journalists independently, thereby reducing burden on courts whilst enabling journalists to access information needed for their role.

³ The recently published *Reporters’ Charter* (HMCTS 2022a) and its mention of remote access is certainly welcome in this context.

⁴ The principle of access to this kind of information has already been established for some time in the recently updated *Protocol on sharing court lists, registers and documents with the media* (HMCTS 2022b).

Recommendation 4: Maintaining and developing relationships

- Consider, broadly, how courts can be made more available to journalists and the public outside of the immediate context of in person court proceedings.
- Explore methods by which communication and relationship-building between courts and journalists can be facilitated, prior to, during and after remote hearings.
- Ensure, as far as possible, that opportunities for clarification and additional inquiry by journalists which naturally occurring in physical hearings are either replaced by appropriate tools in the online system (e.g., active monitoring of chat boxes); or compensated for by other means (e.g., sharing of contacts for hearing attendees, provision of additional information via email on request).
- Consider mandating the appointment of a dedicated ‘remote hearings officer’ at each court centre which holds remote hearings, to provide an identifiable person who can coordinate the conduct of remote hearings; and liaise with journalists and members of the public wishing to access to remote hearings.

Recommendation 5: Public engagement and outreach

- Consider methods by which it can be emphasised for courts at all levels (including Magistrates’ Courts) that it is necessary and important to adopt a proactive and engaged approach to facilitating access to remote hearings for journalists and the public.
- Encourage journalist and public access to remote hearings through awareness raising of accessibility of remote hearings; for example, through social or local media.

Recommendation 6: Further research

- To ensure that open justice concerns are at the centre of developing remote courts, we recommend commissioning further research into the impact of remote hearings on the various actors in criminal proceedings and use these findings to evaluate and adapt implementation.

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