

Communications

Contents

1 Media relations (including reporting restrictions)

- 1.1 Reporting restrictions
- 1.2 Criminal Procedure Rules Part 16 (restrictions on reporting and public access)
- 1.3 Reporting restrictions on Court of Appeal re-trials
- 1.4 The use of live text-based forms of communication (including Twitter) from Court for the purpose of fair and accurate reporting
- 1.5 Note taking from the public gallery
- 1.6 A protocol on providing court registers and court lists

2 Deaths affecting Courts

- 2.1 Introduction
- 2.2 Process and reporting
- 2.3 Prison and Probation Ombudsman (PPO)

3 Communication with prisoners

1 Media relations

Court staff will often be contacted by the media with requests for information about individual cases, issues in the court or reporting restrictions. HMCTS Press Office has produced detailed guidance for court staff on dealing with the media. It is available on the intranet: [here](#)

Press Office can also be contacted by court staff for advice on 020 3334 6697/8

1.1 Reporting restrictions

The principle of open justice means that, in general, court proceedings should be open to anyone who wants to observe, and journalists may report those proceedings to the wider public. There are certain exceptions to this, which may lead to the press and the public being excluded from all or part of the trial in the interests of justice, morals, public order or national security.

In the High Court, the Crown Court or a magistrates' court, the judge/magistrate has the power to impose temporary or permanent reporting restrictions on certain categories of cases, on application or on the court's own initiative, and a number of automatic statutory reporting restrictions apply.

1.2 Criminal Procedure Rules, Part 16 (Restrictions on reporting and public access)

The new rules at Part 16 concern: the statutory grounds for the making or varying of reporting restrictions at public hearings; restrictions on public access to courtrooms; trials in private; restrictions on making audio recordings of criminal proceedings; and restrictions on using devices such as mobile phones or portable computers to transmit written messages from the courtroom. The rules apply to the exercise of all reporting and access restrictions available to the criminal courts, and include an explicit presumption in favour of open justice that has up until now been contained in case law and, indirectly, in the requirements of the European Convention on Human Rights.

Part 16 importantly sets out the various statutes under which restrictions may be imposed. It should serve as a guide to court staff where there is uncertainty about what restrictions may apply and the court's role in managing their administration. It is available on the Justice website: [here](#)

Where the court has the power to impose a restriction on the reporting of events at a public hearing, or on public access to an otherwise public hearing, or has the power to withhold information from the public during a public hearing, the court may do so on application by a party or on its own initiative. The 'party' who wants the restriction imposed must apply as soon as reasonably practicable, notify any other party, and any other person as the court directs. They must specify the proposed terms, how long the restriction should last, what power the court has to make the order, and why such an order is necessary.

If the application is for the trial to be held in private, court officers must display a notice of the application being made at a prominent location near the courtroom, and give notice of the application to the media according to any other administrative direction given by the court manager.

The media always should be allowed an opportunity, if they want, to make representations to the court about a discretionary reporting restriction that the court is thinking of making or is being asked to make. If the decision to impose the restriction is being taken at a hearing in public, which will usually be the case, then that of itself allows the media a sufficient opportunity to attend and raise any objections that they may have. It is not the responsibility of court staff to give media representatives any more information about what

may happen at that hearing than they usually receive. If, exceptionally, the court is asked to impose a reporting restriction at a hearing in private, or without a hearing at all, then action should be taken to inform the media, in the same way they are informed of an application for a trial to be held in private.

Any reporting restriction imposes potential criminal liability on any media organisation that breaches it and it is therefore essential that the restriction(s) imposed is written up as soon as possible in clear and precise terms, and drawn up as a court order as soon as practicable.

Subject to the requirements of Part 16, local procedures may vary, but as a rule, court staff will be responsible for producing the relevant order and any accompanying notices that will be displayed following an order for reporting restrictions in any type of case. These notices should be drawn up promptly and agreed with the judge/magistrate who made the order.

The following information will be available from the order and should be included in any notice:

- date of order
- name of trial
- who made the order and where
- reason for the decision and the legal basis
- what or who is affected by the order
- how long the order is intended to last
- lifting restrictions in place.

The notice should also mention that if the media wish to challenge the order, they will need to make representations to the judge/magistrates.

Note: orders that are rescinding, replacing, updating or amending a previous order must make this clear, including the status of previous orders. All decisions from the list above must be clearly recorded on the court file and on XHIBIT/CREST

All notices setting out the above information must be clearly displayed on the courtroom door, by daily lists and in the pressroom, if there is one. Copies of the notices should be made and retained on the court file so that queries can be easily answered.

CREST/electronic systems, including public display screens, should also be updated and the listing officer should then ensure that details appear on the court list so all staff and media are alerted to the fact that reporting restrictions are in place.

The media should be able to find out if there are reporting restrictions on a particular case in a timely fashion but court staff should not attempt to interpret the restrictions. The appropriate members of staff should however, be available and briefed to deal with media inquiries, inside and outside of court hours, this could be a nominated press or media lead. Whilst HMCTS is under a duty to ensure any reporting restrictions are accurately recorded and displayed. Newspapers are expected to pay close regard to the reporting restrictions made and carry the risk of contempt of court if they publish information subject to reporting restrictions.

If the media want further clarification, they should seek legal advice. If the media publish an article that is based on inaccurate interpretation by court staff, it could be the provider of

the information that may be held in contempt of court. Court staff should avoid any requests for advice on the interpretation or scope of reporting restrictions.

When appropriate, inform the media that there is a restriction order on communications. If the media wish to challenge the order, the representative will need to make representations to the judge/magistrates. If the order is ignored, then the responsible organisation or representative (as determined by the court) could bear any repercussions.

In October 2009 the JSB (now the Judicial College) published guidance for courts and reporters on 'Reporting restrictions in the criminal courts', which still applies. Though it was written before the new rules were made, it was the basis for the rules and it is compatible with them. It is available on the Judiciary website: [here](#)

Please note that on the Judicial College website the document is inaccurately titled 'Crown Court reporting restrictions', but also applies to the magistrates' courts.

1.3 Crown - Reporting restrictions on Court of Appeal re-trials

In a majority of re-trials ordered by the Court of Appeal Criminal division, a reporting restriction under S4(2) Contempt of Court Act 1981 will be implemented. This is to postpone the publication of any report of the proceeding until after the conclusion of any re-trial is made.

Courts are to notify this office when a re-trial has been concluded, so that the restriction on the judgment originally handed down at the Court of Appeal can be lifted. Notifications of when a re-trial has concluded should be sent to xxxxxxxxxxxx@xxxxx.x.xxx.xxx.xx.

A copy of the letter which will be sent by the registrar to the court manager in the event of a re-trial is attached for information.

Supporting document

- [Retrial letter](#)

1.4 The use of live text-based forms of communication from court for the purposes of fair and accurate reporting (mobile phones, laptops, email, twitter, etc)

Rule 16.9 of the Criminal Procedure Rules governs applications to make sound recordings in court, or to use in court devices for communicating by electronic means. In December 2011 the Lord Chief Justice published practice guidance: 'The Use of Live Text-Based Forms of Communication (including Twitter) from Court for the Purposes of Fair and Accurate Reporting'. It is available on the Judiciary website: [here](#)

Where the court is able to give permission to bring into a hearing (and use) devices for communicating via electronic means or making sound recordings, and is able to give permission to publish such sound recordings, the court may give permission of its own will, or on application.

A person seeking permission should apply as soon as it is reasonably practicable; explaining why they feel the court should permit the use or publication that is proposed and serve notice on each party and on any other person that the court directs. If the court allows the application it may give directions aimed at minimising the risk of contravening a restriction, disrupting or compromising the fairness of the hearing.

If a person makes a sound recording or publishes a sound recording made during a hearing, without permission, the court may ask that person to forfeit the device used, and

the person responsible may be held in contempt of court. A party may also apply to the court for the forfeiture of a device, notifying the user of the device and other parties, and explaining why the court should exercise the power to make forfeiture.

Please note that 'publishing', in the context of this guidance, does not necessarily refer to broadcasting in the wider sense, but can mean communicating information to just a person. Section 9 (1)(b) Contempt of Court Act 1981 (CCA 1981) prohibits the type of general publication described in that subsection; which would prohibit broadcasting, but not 'publication' in the narrower sense. In the context of Rule 16.9 (b), The court can control 'publication' in the narrow sense, by imposing conditions on the making of the recording, but cannot **allow** the sort of general publication specified in s.9(1)(b) CCA 1981.

1.5 Note taking in the public gallery of criminal courts

It is accepted that justice is administered in open court where anyone present may listen to and report what is said. There can be no objection to note taking in the public gallery unless it is done for a wrongful purpose; for example, to brief a witness who is not in court on what has already happened. This may occur in the Crown Court, where witnesses who have yet to give evidence are usually kept out of court and in civil cases in which the judge has directed that a future witness should be out of court while other evidence is given, or the hearing is in chambers.

Court staff need to be alert, but it is not for them to prohibit the practice. Courts should not place notices in the court building forbidding note taking. If any member of the court staff sees a member of the public taking notes and there is some reason to suspect it might be for an improper purpose, he or she should report the matter to the clerk of the court (or to the judge, if the clerk is temporarily absent) and ask for directions. The clerk should, if possible, make enquiries of the member of the public concerned or direct an usher to do so. If the result of the enquiry does not allay suspicion, the matter must then be reported to the judge.

It is the responsibility of the clerk to ensure that enquiries are made politely, and without implying that the member of the public is necessarily doing anything wrong.

1.6 A protocol on providing court registers and court lists

There is a longstanding policy encouraging magistrates' courts to provide copies of the court register and court lists to the media to ensure they are able to accurately report cases heard.

The Government believes that assisting newspapers to report what is happening in their local courts is important for increasing confidence in the criminal justice system. It also supports compliance with obligations under the European Convention on Human Rights to ensure that justice is open and trials are held in public.

The previous Government decided that the courts should not normally charge newspapers for the supply of court registers or court lists, whatever the form in which they are supplied. Following this a protocol on providing the media with magistrates' court registers and court lists was agreed with the media.

Although there is no direct equivalent to the magistrates' court registers in the Crown Court, similar principles are to apply insofar as they can. Given the relatively small number of cases heard in the Crown Court and the fact that they have in the main come from the magistrates' court, it is recognised that newspapers are often already alerted to their content and interest value. Crown Court staff are encouraged to co-operate with local newspapers when they make enquiries.

The protocol is available on the HMCTS intranet: [here](#)

Courts should remain mindful of the sensitivity attached to registers and lists, which could contain case details for cases with reporting restrictions attached. Courts must add a disclaimer when emailing court registers and lists to newspapers and journalists saying:

‘This email contains information intended to assist the accurate reporting of court proceedings. It is vital you ensure that you safeguard the personal information included and abide by reporting restrictions (for example on victims and children). HMCTS will stop sending the data if there is concern about how it will be used.’

Courts must also ensure that any email lists or contact details held for the media are reviewed at least twice a year for accuracy.

2 Deaths affecting courts

2.1 Introduction

By the very nature of court business there will from time to time be occasions when there is a death affecting the courts. In the vast majority of cases such deaths will have limited direct implications for the court - however in all such circumstances it is vital that HMCTS ensures it gets an early grip of the key issues.

There are two main categories of cases:

- A death on court premises (e.g. a fatal medical emergency, an accident, or a suicide);
- A death outside court premises where the court had prior involvement in the case (e.g. a murder where a court had an earlier chance to intervene).

In all such cases the response of the court will usually rest with the senior person on site and the cluster management team, although it is accepted that there may be occasions on which the police will take charge.

Where police are involved, the senior person on site must liaise with, and co-operate with them closely.

2.2 Process and reporting

If there has been a death on court property the first step must be to deal sensitively with the immediate tragedy:

The senior person on site should ensure the police are immediately informed. In addition appropriate steps should be taken to inform the deceased's family (taking account of the sensitivity of such messages). In the majority of such cases it may be appropriate for the police or other agencies to inform the family etc. However the senior person on site should ensure that steps are taken quickly.

In some circumstances (e.g. death of a member of staff) it may be more appropriate for a HMCTS manager to contact the family. It is suggested that where any information is given by HMCTS to the family that a staff member has died suddenly, it should be given in person wherever possible and that two people should attend to do this.

Where a murder or suicide has taken place following or during the period of a hearing there must be:

- an incident report;
- a review of what happened;

- a submission by the senior person on site as soon as possible to the Chief Executives' office (copying in the appropriate Directors - Regional and Central); setting out details; investigation; findings and action; and
- a risk assessment (formal and written) of how similar risks will be mitigated against in the future (hopefully there will be no additional measures that could be taken, but it should be formally noted, not only for our duty of care but also to reassure the staff).

If there is any suggestion or concern that there are potential criticisms of the court, the senior person on site or cluster manager must immediately (but sensitively) ensure that the key facts are captured. This is likely to include:

- identifying a suitable independent individual to investigate the courts role/involvement (It would be sensible if all cluster managers kept a list of suitable independent individuals who could be contacted in these circumstances);
- ensuring that all papers/court files are preserved;
- collecting "statements" - from any staff members (e.g. the legal adviser/court clerk).

2.3 Prison and Probation Ombudsman (PPO)

The Prison and Probation Ombudsman is appointed by the Secretary of State for Justice and is completely independent of the Prison Service, the National Probation Service and the Border and Immigration Agency.

The PPO investigates the circumstances surrounding all deaths of those in the custody of prisons, young offender institutions, secure training centres, immigration removal centres and approved premises.

The PPO also investigates the circumstances surrounding all deaths of people in court premises or accommodation who have been sentenced to or remanded in custody.

When such a death occurs on court premises the PPO must be informed as soon as possible or in any case within 24 hours. Please inform the PPO by contacting the 'on duty investigator' on the following pager number **07654 382649**.

In cases where there is any suggestion or concern that there are potential criticisms of the court, the court should also inform:

- Shaun McNally (Director of Crime)
- Martin Jones (Deputy Director Crime (Crown))
- Chris Jennings (Deputy Director Crime (Magistrates))
- HMCTS Security and Safety, or equivalent unit
- HMCTS Press Office

It may be that ministers will wish to be advised of the circumstances surrounding such a case. Once notified HMCTS Crime Directorate will notify the appropriate minister and advise the court manager and Cluster Manager on what further steps the minister requires to be taken. This may involve a submission to ministers setting out the full facts of the case.

While this note specifically addresses circumstances involving deaths affecting the courts, HMCTS may direct that these procedures be followed in the event of other serious incidents that may require investigation.

3 Communication with prisoners

Many prisoners become involved in civil litigation and even more face divorce proceedings and other family proceedings i.e. care or adoption.

Under prison guidelines, any correspondence between prisoners who are party to legal proceedings and their legal advisers or the Courts is treated as privileged. This means that such letters must not be opened, read or stopped by prison authorities, except in special circumstances.

Envelopes should therefore be clearly marked by Court staff with 'Prison Rule 39' or in the case of YOIs and Juveniles 'YOI Rule 17'.

Court staff are therefore asked to ensure that all correspondence is endorsed in this way.