



Courts and Tribunals Judiciary

Transparency & Open Justice Board Key Objectives Engagement: Explanatory Notes

Background

1. At the Society of Editors Conference in London, on 30 April 2024, the Lady Chief Justice of England & Wales, Baroness Carr, gave the [Keynote Speech](#). She announced the creation of a new Transparency & Open Justice Board (“the Board”) that would examine and seek to modernise the judiciary’s approach to open justice.
2. The Terms of Reference and initial membership of the Board were [announced](#) the same day. Since formation the Board, and following invitations, representatives of the Ministry of Justice (“MoJ”) and HMCTS have joined the Board as observers. The current members of the Board are:

Mr Justice Nicklin (Chair)
Lisa Allera (Head of News, Judicial Office)
Judge Barry Clarke, President of Employment Tribunals
Mrs Justice Cockerill (KBD, Commercial Court & BPC)
Michelle Crotty (Chief Executive Officer, Judicial Office)
His Honour Judge Robert Harrison (Designated Civil Judge, Wales)
Mr Justice Johnson (KBD)
His Honour Judge Kearl KC (Resident Judge, Leeds Crown Court)
Mrs Justice Lieven (Family Division)
Lord Justice Snowden (Court of Appeal)
Mrs Justice Thornton (KBD, Chair of Judicial Communications Committee)
Nicola Reynolds (Deputy Director, Service Owner Future Hearings, HMCTS)
Sarah Rose (Deputy Director, Open Justice and Transparency, Ministry of Justice)
Vanessa Castle (Head of Criminal Justice Team, Judicial Office)
Crystal Hung (Legal Adviser to the Master of the Rolls, Judicial Office)
Harriet Moesli (Principal Strategy Advisor, TOJ Project Lead, Judicial Office)
Deepti Davenport (Project Management Office Manager, Judicial Office)

3. In her speech, Baroness Carr stated that the Board would:

“...set objectives for all Courts and Tribunals, focussing on timely and effective access in terms of listing, documents and public hearings. It will engage with the public and interested parties to make sure that these objectives properly reflect what should be delivered by a modern justice system.”

4. The Terms of Reference for the Board provided that the Board would “*lead and coordinate the promotion of transparency and open justice across the Courts and Tribunals of England & Wales*” and that the Board would, “*following wide engagement with interested parties... finalise the Key Objectives.*”

5. Where the work of the Board is relevant to Tribunals operating in England & Wales, the Senior President of Tribunals will support the same approach being taken in reserved tribunals in Scotland and Northern Ireland unless there is a very good reason not to do so, and subject to any modification that might be necessary due to differences in those jurisdictions.
6. In delivering improvements to open justice and greater transparency, the Board has recognised from the start that it cannot act alone. Many areas, that are critical for the success of the initiative, depend on collaboration with HMCTS and the Ministry of Justice and support from members of the judiciary at all levels. Any changes to procedural rules that apply in Courts and Tribunals are the responsibility of the relevant Rules Committees.

Key Objectives

7. The Board's proposed Key Objectives are published today.
8. The Key Objectives represent the high-level outcomes that, once finalised, will guide the Board's work; will be used to identify areas where changes can and should be made; and, finally, will be used to measure the outcomes from any change programme.
9. The Board is committed to engaging fully with a wide range of interested parties to make sure that the Key Objectives properly reflect what should be delivered by a modern justice system. The Board now seeks engagement with all interested parties on the Key Objectives.
10. It is important to understand that the Key Objectives are the first stage of reform. The Board recognises that, once the Key Objectives are finalised following engagement, that the next phase of the Board's work will be to engage with all Courts and Tribunals and to ask them to carry out an evaluation of the extent to which their current practice and procedure achieve the Key Objectives. Where they do not do so, the relevant Courts and Tribunals will be asked to formulate a change programme that would see the Key Objectives being realised. As part of that reflective exercise, the Courts and Tribunals will be asked to identify any obstacles to achieving the necessary changes. The Board fully recognises and understands that changes may need time and sufficient resources to be achieved fully.
11. The Key Objectives seek to develop and practically to articulate the well-established principles of open justice.¹
12. The Board believes that the principles of open justice have four fundamental components,² and the Key Objectives have been drafted to attempt to reflect these:
 - a. **open courts:** that the public (including representatives of the media) can access court and tribunal hearings – this includes physical access to court and tribunal buildings administered by HMCTS and (where the facilities are available) remote access to hearings;

¹ The former Lord Chief Justice, Lord Burnett, identified several reasons why open justice is important: *R -v- Sarker* [2018] 1 WLR 6023 [29(iv)].

² Drawing upon *R (D) -v- Parole Board for England and Wales* [2019] QB 285 [170].

- b. **open reporting:** that the public and media can freely report on proceedings held in open hearings³, and that any restrictions imposed by the court or tribunal preventing (or postponing) reports of proceedings (including anonymity orders) must (1) have a statutory basis⁴; and (2) fulfil a legitimate aim, be necessary, proportionate, and convincingly established by clear and cogent evidence:⁵
 - c. **open decisions:** that the decision of the Court or Tribunal (and the reasons for it) should be publicly available;⁶ and
 - d. **open documents:** that the core documents relating to proceedings, particularly the evidence and submissions communicated to the court or tribunal, should be available to the public so that they can make sense of proceedings and the decision of the Court or Tribunal.⁷ The importance of this factor is greater in modern litigation because of the increased reliance, in many jurisdictions, upon written witness statements (often standing in place of a witness’s oral evidence) and written submissions. “*The availability of skeleton arguments, and witness statements, deployed in open court hearings is essential to any meaningful concept of open justice*”.⁸
13. The principles of open justice establish that none of these components is absolute. Where a sufficiently weighty countervailing factor is convincingly established, Courts and Tribunals may be required to derogate from open justice. There is no doubt that doing justice must always come first. The Key Objectives do not seek to depart from this important principle, which will continue to be applied on a case-by-case basis.
14. Paragraph 1(1) of the Key Objectives identifies the information that the Board believes should be publicly available about cases that are pending before Courts and Tribunals. The provision of timely information about proceedings is an important dimension of **open courts**.
15. Paragraph 1(2) of the Key Objectives proposes that the public should have access to the core documents relating to proceedings, including the decisions of the Court and Tribunal and, where publicly available, the reasons for any decision. These paragraphs are directed at **open decisions** and **open documents**. The Board recognises that

³ *In re Trinity Mirror plc* [2008] QB 770 [32]-[33]; *In re S (A child)* [2005] 1 AC 593 [30]-[31], [37]; and *Khuja -v- Times Newspapers Ltd* [2019] AC 161 [16].

⁴ *Khuja* [18]; and *R -v- Sarker* [29(i)]: “*At common law, the court has no power to make a [reporting restriction] of proceedings conducted in open court; any such power must be conferred by legislation*”.

⁵ *R (Rai) -v- Winchester Crown Court* [2021] EMLR 21 [23]; and *R (Marandi) -v- Westminster Magistrates’ Court* [2023] 2 CrAppR 15 [17].

⁶ Even where proceedings are held in private, the court’s judgment (or at least part of it) can often be published: see e.g. *R (Mohamed) -v- Secretary of State for Foreign and Commonwealth Affairs (No.2)* [2011] QB 218.

⁷ In civil proceedings, CPR 5.4C presently governs the availability of documents from the records of the Court to non-parties. In *R (Guardian News and Media Ltd) -v- City of Westminster Magistrates’ Court* [2013] QB 618, a newspaper was successful in appealing its failed application for copies of affidavits and witness statements in two extradition proceedings. The documents had been referred to, but not read out, in open court. The Supreme Court dealt with the issue of availability of records of the Court in *Cape Intermediate Holdings Ltd -v- Dring* [2020] AC 629

⁸ *Hayden -v- Associated Newspapers Ltd* [2022] EWHC 2693 (KB) [32].

there are important issues of the stage of the proceedings at which a core document would become publicly available. For example, skeleton arguments and witness statements would ordinarily only become available publicly once they have been relied upon in proceedings in open court. At this stage, the Board is seeking engagement on the broad issue of *principle* as to what documents should be available. Ultimately, issues as to the timing when such documents would become available would be matters to be considered when the Key Objectives are reflected in any changes in the procedural rules.

16. Paragraph 1(3) of the Key Objectives concerns **open courts**. The proposals deal with physical and remote access to hearings held in public, broadcasting and the availability of transcripts.
 - a. Remote access to hearings will always be subject to the Court or Tribunal having available the necessary equipment to facilitate remote access.
 - b. In relation to broadcasting, the Board believes that, in principle, Courts and Tribunals should be able to broadcast those parts of its proceedings that it believes could be broadcast without prejudicing the administration of justice. At present, any expansion in broadcasting in Courts and Tribunals would require either a change of legislation to remove the existing statutory provisions that currently prohibit broadcasting⁹, or exceptions to permit specific broadcasting (e.g. the Statutory Instruments that have permitted broadcasting in the Court of Appeal and of sentencing in some Crown Court cases¹⁰). The Board has already recommended the extension of broadcasting to the Administrative Court and proposals are now a matter for the Ministry of Justice. Any expansion of broadcasting in Courts and Tribunals will need to be done carefully, but the Board believes that it is an objective that should be recognised in the Key Objectives.
 - c. Finally, the Board believes that the availability of transcripts of proceedings is an important dimension of open justice. Presently, transcripts are generally only available (subject to any applicable fees) in respect of Courts and Tribunals ‘of record’; that is Courts and Tribunals the proceedings of which are required to be recorded. The proceedings in Magistrates’ Courts and some Tribunals are not generally recorded, meaning that transcripts are not available. The Board considers that the aim for a modern Court and Tribunal system should be for proceedings in all Courts and Tribunals to be recorded so that, if required, transcripts can be obtained. The Board is aware, through recent engagement with the Tribunal Procedure Committee, that the absence of transcripts in some Tribunals has significant resource implications arising from the need to provide written reasons for decisions where a transcript of a judgment given orally is not available because of the lack of recording. Ultimately, this is a matter for HMCTS/MoJ and is an area in which realisation of the Key Objective is dependent upon resources being available.

⁹ s.41 Criminal Justice Act 1925 and s.9 Contempt of Court Act 1981.

¹⁰ The Court of Appeal (Recording and Broadcasting) Order 2013 and The Crown Court (Recording and Broadcasting) Order 2020

Tell us what you think

17. The Board invites responses to the proposed Key Objectives by answering a series of questions available here [Public Engagement on the Transparency and Open Justice Board's Key Objectives](#).
18. The closing date for responses is 28 February 2025.
19. The Board will publish a summary of the responses received and, once agreed, the finalised Key Objectives.