



Informing Progress - Shaping the Future



Open Justice – Recent Developments

(30 January 2025)

The Open Justice conversation is gaining momentum. On 30 January 2025, the Government finally responded to the Call for Evidence: **Open Justice, The Way Forward (May 2023)**. You can find their report at the following [link](#).

Several respondents felt that consideration needed to be given to the delivery of Open Justice in a digital age, given the increased prevalence of online hearings, digital documents, and settlements outside of courts and before formal court proceedings have begun. For those preparing for the extension of the Damages Claims Portal (DCP) into the intermediate and multi-track, there is a telling comment in the report:

'The digitisation of the justice system was mentioned by various respondents as an area that did not have enough scrutiny and they felt that the government should be doing more to publicise and consult on changes, alongside ensuring better stakeholder engagement and more transparent governance and milestones.' (page 52)

This lends weight to a recent call by FOIL and the Association of Consumer Support Organisations (ACSO) for a transparent user survey of the DCP and Online Civil Money Claims platforms. This would provide clearer benchmarks and data to evaluate these pilots and the digital reform programme more generally.

Key themes from the Call for Evidence include:

- The importance of consistency in the way open justice and transparency of the justice system is delivered across courts and jurisdictions.
- Ensuring open justice and transparency principles are embedded as the justice system continues to be digitised.

- The importance of reliable and accessible data to scrutinise the justice system, both on individual cases and across the whole system.
- The need to ensure appropriate safeguards when implementing open justice and transparency policies, ensuring balance with other principles such as the right to privacy and judicial independence.

There is also an ongoing public engagement exercise by the new **Transparency and Open Justice Board** which closes on 28 February 2025. The Board is consulting on a draft set of Key Objectives which can be found at the following [link](#). FOIL will be responding to this exercise.

FOIL's consistent position can be summarised as follows: FOIL is supportive of the general concept or principle of Open Justice. However, appropriate consideration must be given to how and where the burden of facilitating greater openness and transparency falls. This is not solely a question about the resources of the Courts, HMCTS and the Ministry of Justice. It should also be about the burden placed upon litigants. In terms of access to documents, evidence and written submissions, any disclosure to a non-party must serve the underlying foundations for Open Justice (see *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 [42]). This involves knowing the core purpose/reason for any disclosure request. FOIL's position is consistent with the Court of Appeal's decision in *Moss -v- The Upper Tribunal and others* [2024] EWCA Civ 1414.

Finally, we have the ongoing review by the Civil Procedure Rule Committee on a proposal for a new CPR Rule 5.4C (addressing access to court documents by non-parties). Many stakeholders responded in critical terms to the first consultation proposal in March 2024. Members should now ready themselves to respond to a further iteration of the rule by the CPRC.

It is clear is that Open Justice is going to remain an important agenda item for FOIL during 2025. If you have any feedback on any of the matters covered in these policy reviews, please contact: jeffrey.wale@foil.org.uk with your comments.

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