CAJ
Committee on the Administration of Justice
Promoting Justice / Protecting Rights

CAJ's submission no. S442

Submission to the Lord Chief Justice's Office Consultation on Note taking and the use of live text-based communications in court in Northern Ireland

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The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

CAJ welcomes the opportunity to respond to this consultation on note-taking and the use of live text-based communications in court in Northern Ireland.

CAJ is a Non-Governmental Organisation practising a 'watch-dog' role in relation to civil liberties and human rights. This involves routinely attending at and observing proceedings which we generally do by the use of interns and volunteers. We ask our representatives to attend the court hearing and report back to us on what happened. We consider this to be a valuable way of monitoring court proceedings as it provides a much fuller and more accurate report of the proceedings than media coverage would allow.

CAJ represented Rights Watch (UK) in judicial review proceedings against the Northern Ireland Courts and Tribunal's Service (NICTS) in October 2014 concerning the implementation of a policy which prohibited the taking of notes in court without the prior permission of the judge hearing the case. This related to its Guidance Note placed on the NICTS website which indicated that any person wishing to take notes in court must obtain the permission of the judge beforehand. It directed that this was to be done by either informing the court clerk or a member of Resource security staff in the courtroom before proceedings start or submitting the request in writing or via email to the Court Office before the relevant court hearing commences. Such a request was to be made as far in advance as possible and required that you state the name and reference number of the case and give your reasons for wanting to take notes.

It was submitted that requesting an individual or organisation to justify a request to take notes before permission was granted was unwarranted. Such a requirement was in particular an onerous one for members of the public who may have an interest in a case and due to lack of familiarity with the policy were prevented from taking notes in proceedings.

After leave was granted in these proceedings the NICTS withdrew the policy and Court Staff were advised that any restrictions on note taking would be by way of judicial decision in individual cases or a matter of judicial practice for a particular court.

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In our view a policy which required observers to seek and obtain permission to take notes from the trial judge is unlawful as a breach of Article 6 and 10 ECHR and the common law principle of open justice. We therefore express our concern at the outset that paragraph 3 at page 4 of this consultation paper states as follows:

'The LCJ considers that the decision of whether there should be any restriction on the taking of notes in court is a judicial decision and a matter to be determined by each individual judge. He has advised the Judiciary that **when a member of the public asks for permission to take notes** the strong presumption should be in favour of the request unless there is some compelling legal reason to derogate from this aspect of open justice and deny permission**.** A judge should reach his determination on a case by case basis but he or she may adopt a practice of requiring permission to take notes to be obtained if he or she considers it appropriate.' (emphasis added)

The second sentence appears to suggest that it remains necessary for an individual to seek permission to take notes in court. This appears to CAJ to be somewhat inconsistent with the information provided by the NICTS, in relation to the judicial review proceedings taken by Rights Watch UK, which was based on the premise that notes can be taken in court unless and until the judge introduces a restriction. We are aware that no similar policies are in place either in England and Wales or in the Republic of Ireland.

In responding to this consultation which addresses the important role of court observation by members of the public, media and other watch-dogs such as Non-Governmental Organisations, the judgment of *R v Sussex Justices ex parte McCarthy* remains as relevant today as it did 90 years ago when it stated that it is:

'...of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.'[1]

Q.1 Do you consider that a Practice Direction would assist understanding of the judicial approach to note taking in court in Northern Ireland?

Yes it may assist in clarifying the approach taken. Given the principle of open justice there should however be a presumption in favour of note taking and other forms of reporting from court without prior permission unless it is in the interests of the administration of justice to restrict it in some way.

[1] [1924] 1 KB 256

Q.2 Do you consider that note takers should be restricted to taking notes on paper or should they be permitted to take notes on electronic devices such as tablets or laptops?

Note taking should include taking notes on electronic devices as long as it does not disrupt proceedings or interfere with the administration of justice.

Q.3 Do you consider this is the most appropriate way in which to let the public know what approach is being taken by the judge in a particular court? Are there any other ways that you feel would better achieve this?

As well as providing details of any Practice Direction online, it would be useful to also have a written notice outside and/or inside court rooms given that not all court users will necessarily check online in advance of attending court. An individual judge may also wish to advise court users of any reporting restrictions which apply to the proceedings.

Q.4 Do you consider the onus should be on the court to make the public aware that publication of details of a case is prohibited or that the onus should be on the person taking notes to find this out?

There should be a notice outside and/or inside the court room indicating that there may be reporting restrictions in place and advising members of the public to confirm details of this with a member of the court staff before carrying out any 'live' reporting.

Q.5 If you consider the onus should be on the court, how should this be effected?

This could be effected by way of a general notice outside and/or inside the court for members of the public which indicates that there may be reporting restrictions in place and inviting them to confirm the position with court staff. An individual judge may also wish to indicate at the start of proceedings if any restrictions apply.

Q.6 Is there a need for LTBC to be used from the courtroom?

In light of the technological developments which inform the means of media communication there is a legitimate demand for this. Given the principle of open justice there should not be a restriction on certain types of reporting unless it is in the interests of justice.

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Q.7 If so, under what circumstances should LTBC be permitted from the courtroom?

LTBC should be permitted unless it will disrupt the court proceedings and/or interfere with the proper administration of justice. There is a more significant risk in criminal cases of material harm to the conduct of a criminal trial.. However, in a civil case, proceeding without a jury, the risk of disruption to the legal process is substantially reduced and should be capable of being managed. To ensure fairness it may be appropriate to restrict transmission of LTBC until after a certain stage in proceedings, for example restricting the reporting of oral evidence until after a witness has been subject to examination by all parties.

LTBC should also only take place where it will not cause interference to a court room speaker system and users of LTBC must ensure compliance with the common law and any statutory restrictions.

Q.8 Aside from the risks outlined in this paper, are there any other risks which derive from the use of LTBC from court?

As has already been identified, there is a need to ensure that there is no damage to the legal process, either through disruption of proceedings or the process of a fair hearing. Unless there is disruption or harm to court proceedings we do not believe there should be an objection to the use of such forms of communication. The process of justice must be visible, and accessible in compliance with current technological standards. All reasonable steps should be taken to eliminate disruption to the court proceedings through electronic interference.

'Live' reporting will mean that if sensitive material is raised in Court, legal practitioners may wish to seek the Court's assistance in restricting publication to prevent any harm to proceedings. There are greater risks associated with shorter messages and therefore clear guidance should be issued in relation to the use of Twitter and any other form of short live updating services.

Q.9 The paper recognises the different technologies which could be used to send LTBC (mobile phones, laptops, tablets). Should the courts permit the use of these technologies? How should the use of LTBC be reconciled with the prohibition against the use of mobile telephones in court given the difficulty this will pose in enforcing this rule?

All court users must comply with the principle of not causing disruption or harm to the judicial process. If mobile telephones are switched to 'silent' and their use is limited

to a text-based interactive function, they should be permitted together with other technologies.

Q.10 Should the use of LTBC from court be principally for the use of the media? How should "the media" be defined? Should the media be able to use LTBC without having to seek the permission of the judge?

No. This should be extended to other court users including legal representatives, their clients and members of the public. A notice outside or inside the court should set out the clear boundaries of the use of LTBC. We do not believe that any individual or organisation should have to seek the permission of the judge unless there are particular reporting restrictions in place.

Q.11 Should persons other than the media be permitted to use LTBC from court? Should this be with or without an application to the court?

Yes. As stated above we do not believe that any individual or organisation should have to seek the permission of the judge unless there are particular reporting restrictions in place.

Q.12 Do you consider there would be merit in the implementation of a register of approved people who may use LTBC from court? Should those seeking entry on that register be required to sign up to a protocol?

Such a register may be difficult to manage and would not be exhaustive. For example it would not include court users who may wish to observe proceedings on an ad hoc basis and use LTBC to report on proceedings. It may be more appropriate to advise court users, through online information and notices in court, that they will be required to sign up to such a protocol before commencing LTBC.

Q.13 Should there be restrictions about what can be sent by LTBC from court?

Yes, it may be appropriate to impose reporting restrictions which are proportionate and necessary to ensure compliance with administration of justice.

Q.14 Should judges be able to withdraw permission at any time?

Yes if the use of LTBC disrupts proceedings or interferes with the administration of justice.

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