



**Ministry  
of Justice**

# **Court Broadcasting**

Impact Assessment

July 2013

<b>Title: Court Broadcasting</b> <b>IA No: MOJ205</b> <b>Lead department or agency: Ministry of Justice</b>  <b>Other departments or agencies:</b> Her Majesty's Court and Tribunals Service, Judicial Office	<b>Impact Assessment (IA)</b>	
	IA No: MOJ205	
	Date 23/05/2013	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Other	
Contact for enquiries: Liz Eaton (020 3334 5619)		

<b>Summary: Intervention and Options</b>	<b>RPC Opinion: N/A</b>
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
Not Quantified (NQ)	NQ	NQ	Out of scope	N/A

**What is the problem under consideration? Why is government intervention necessary?**

There is evidence that public confidence in the Criminal Justice System (CJS) is low and this provides the rationale for increasing access to court proceedings and sentencing decisions for the general public. The Government, in co-operation with broadcasters, is the best placed actor to ensure greater accessibility to court proceedings for the public.

**What are the policy objectives and the intended effects?**

As part of the 2010 Green Paper, *Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders*, the Government made a commitment to make it easier for victims and the public to understand the nature of sentences that are handed down by courts. In line with existing CJS objectives, this policy is intended to increase public knowledge and understanding of - and thus improve confidence in - the CJS, and to ensure that the CJS remains fair and just. It also aims to meet the Government's transparency agenda. These objectives must be balanced with the wider societal objective of ensuring that the preferred level of personal privacy is maintained.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0:** Do nothing  
**Option 1:** Court Broadcasting This option would allow the broadcasting of judges and advocates' arguments in the Criminal and Civil Divisions of the Court of Appeal.

The preferred option is option 1

**Will the policy be reviewed? It will be reviewed. If applicable, set review date:**

Does implementation go beyond minimum EU requirements?		No			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	MicroNo	< 20 No	SmallNo	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: N/A	Non-traded: N/A	

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister: \_\_\_\_\_ Helen Grant \_\_\_\_\_ Date: \_\_\_\_\_ 05/07/2013 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

Description: Court Broadcasting in the Criminal and Civil Divisions of the Court of Appeal

## FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Best Estimate	Negligible	Negligible	Negligible

### Description and scale of key monetised costs by 'main affected groups'

None

### Other key non-monetised costs by 'main affected groups'

HMCTS expect minimal costs to the Government as broadcasters will bear the expense of procuring, installing, maintaining and operating the equipment required for filming and broadcasting from courts.

Costs to Judicial Office and HMCTS when implementing the policy arising from staff training relating to court broadcasting. It is not possible to quantify the costs of training the judges who sit in the Court of Appeal but these are expected to be minimal.

Minimal costs arising from the potential need for Judicial Office or HMCTS to provide ongoing refresher training for the judiciary and/or court staff. Induction material may also need to be prepared for both new and existing court staff that may be affected by court broadcasting measures.

Negligible costs arising from printing of signage and a small number of leaflets to advise members of the public that filming will be taking place will be printed in house by Judicial Office at minimal cost. New leaflets may also be printed on an ad hoc basis as a result of people taking the leaflets out of the courtroom or defacing them.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	NQ	NQ	NQ

### Description and scale of key monetised benefits by 'main affected groups'

None

### Other key non-monetised benefits by 'main affected groups'

It is anticipated that broadcasters will benefit from this proposal and that these benefits will outweigh the costs to them if they are willing to go ahead with the proposal.

Evidence that indicates that when the public feel more informed about issues affecting crime and justice, confidence in the effectiveness of the CJS in bringing people who commit crimes to justice may increase<sup>1</sup>. If this holds, filming and broadcast from courts may lead to an increased level of confidence in the justice system and in sentencing decisions handed down by judges. Increased public engagement with the CJS may also lead to greater public accountability.

Key assumptions/sensitivities/risks

N/A

<sup>1</sup> Cooper and Singer, Ministry of Justice (2008) *Inform, persuade and remind: an evaluation of a project to improve public confidence in the Criminal Justice System* p.13  
<http://webarchive.nationalarchives.gov.uk/20090215180422/http://www.justice.gov.uk/publications/inform-persuade-remind.htm>

Potential risks to the willingness of victims and witnesses to give evidence or appear in court if they are aware that proceedings may be filmed. In order to mitigate the risk, the secondary legislation has been drafted to ensure that victims and witnesses will not be filmed. All current reporting restrictions which are designed to protect victims and witnesses will apply to broadcasting as they do to other media reporting.

Greater transparency within the CJS may present a risk to privacy – cases may receive greater media coverage, and this may impact negatively on the judiciary and parties to a case. However, the judge presiding over the court case will have the discretion to prevent, suspend or stop filming or prevent broadcasting where this may cause undue prejudice to any person, including those not directly involved in the case. They would also be able to stop filming in the event of disruption in court or to protect the interests of justice.

Although it is expected that the broadcast of footage from court will be close to ‘live’ in some cases, there will be safeguards to allow the judge to stop recording or prevent broadcast in the event of unforeseen circumstances. There will be a mechanism to allow the judge to stop filming during a case, if this is necessary. This mechanism will be tested before implementation and the cost of providing it falls within the agreement that broadcasters procure, install, maintain and operate the equipment needed for filming and broadcasting from court.

Potential risk that televising our courts may open the judicial process to sensationalism and trivialise serious processes to a level of media entertainment. In light of this, the Government are not proposing full trials to be filmed. The secondary legislation only allows for judgments and advocates’ arguments to be filmed and broadcast from the Court of Appeal. In addition, where a disruption occurs in the courtroom the court has the power to stop filming. The Government believes that allowing people to see and hear judges’ decisions will increase their knowledge and understanding of the court system without undermining the proper administration of justice. Filmed material will not be permitted to be used for the purposes of satire, light entertainment, advertising or party political broadcast.

Establishing whether the introduction of filming and broadcasting from court has increased public confidence in the CJS may be difficult. Although it is possible to monitor changes in public confidence in the CJS through the Crime Survey for England and Wales this would not allow any attribution to this policy specifically.

**BUSINESS ASSESSMENT (Option 1(a))**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: NQ	Benefits: NQ	Net: NQ	No	N/A

# Evidence Base (for summary sheets)

## Problem under consideration

1. There is evidence from the Crime Survey for England and Wales (2011/12) that public confidence in the Criminal Justice System (CJS) is low. Fewer than half of those surveyed (44%) thought that the CJS as a whole was effective.<sup>2</sup> Furthermore, research published in 2011, undertaken by Ipsos MORI on behalf of the Sentencing Council, indicates that the public have little confidence in sentencing decisions. 65% of the individuals asked thought that sentences handed down by judges and magistrates were too lenient<sup>3</sup>. Low public confidence levels in the CJS have been linked to a lack of knowledge and understanding of the CJS. For example, in another Ipsos MORI study, members of the public who did not feel informed about how antisocial behaviour was being tackled were found to be less confident in the police compared to those who did feel informed by a margin of 24 percentage points<sup>4</sup>.
2. Whilst the courts are open to members of the public in most cases, the majority of hearings take place when many people are at work. We believe that the Government, in co-operation with broadcasters, are best placed to deal with this problem.

## Rationale for intervention

3. The conventional economic approach to Government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society). By increasing transparency through court broadcasting, public confidence may improve which may lead to welfare benefits to society if the public have greater confidence that the CJS is fair and just.
4. This policy aims to increase public engagement with, and understanding of, what happens in courts. The rationale behind broadcasting sentencing decisions is that this should help in raising public confidence in this aspect of the CJS. There are a number of direct reasons for improving public confidence in the Criminal Justice System. Firstly, research suggests that victims' and witnesses who are satisfied with their contact with the CJS are more likely to be willing to engage with the CJS again in future<sup>5</sup>. Secondly, trust in the justice system has been found to shape people's willingness to cooperate with legal authorities<sup>6</sup>.
5. Research undertaken by the Ministry of Justice in 2008<sup>7</sup> indicated that when members of the public feel more informed about crime, they tend to have higher confidence levels. The study found that confidence in whether the CJS was effective in bringing people who commit crimes to

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<sup>2</sup> ONS (2012) *Crime in England & Wales Quarterly First Release to March 2012*, <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-march-2012/stb-crime-stats-end-march-2012.html>

<sup>3</sup> Ipsos MORI/Sentencing Council (2011) *Attitudes to guilty plea sentence reductions* p.39 [http://sentencingcouncil.judiciary.gov.uk/docs/Attitudes\\_to\\_Guilty\\_Plea\\_Sentence\\_Reductions\\_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Guilty_Plea_Sentence_Reductions_(web).pdf) - (To Note: "too lenient" was defined in the survey as either being a "little too lenient" or "much too lenient").

<sup>4</sup> IPSOS Mori (2008) *Closing the Gaps Crime and Public Perceptions* p.8 <http://www.ipsos-mori.com/researchpublications/publications/11/Closing-The-Gaps.aspx>

<sup>5</sup> Franklyn, Ministry of Justice (2012) *Satisfaction and willingness to engage with the Criminal Justice System. Findings from the Witness and Victims Experience Survey, 2009-10*, <https://www.gov.uk/government/publications/satisfaction-and-willingness-to-engage-with-the-criminal-justice-system>

<sup>6</sup> Hough et al (2013) *Attitudes to sentencing and trust in justice*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/203008/Attitudes\\_to\\_Sentencing\\_and\\_Trust\\_in\\_Justice\\_\\_web\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203008/Attitudes_to_Sentencing_and_Trust_in_Justice__web_.pdf)

<sup>7</sup> Cooper and Singer, Ministry of Justice (2008) *Inform, persuade and remind: an evaluation of a project to improve public confidence in the Criminal Justice System* p.13

<http://webarchive.nationalarchives.gov.uk/20090215180422/http://www.justice.gov.uk/publications/inform-persuade-remind.htm>

justice was higher in recipients of an information booklet on crime statistics than non-recipients by a margin of nearly five percentage points.

## Policy objectives

6. As part of the 2010 Green Paper, *Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders*, the Government made a commitment to make it easier for victims and the public to understand the nature of sentences that are handed down by courts<sup>8</sup>. In line with existing CJS objectives, this policy is intended to increase public knowledge and understanding of - and thus improve confidence in - the CJS, and to ensure that the CJS remains fair and just. It also aims to meet the Government's transparency agenda. These objectives must be balanced with the wider societal objective of ensuring that the preferred level of personal privacy is maintained.

## Description of options considered

7. Option 0 is a "do nothing" option. Selection of this option would require no further action.
8. Option 1 is "Court Broadcasting". Section 32 of the Crime and Courts Act 2003 provides that the Lord Chancellor, in concurrence with the Lord Chief Justice, can make an Order allowing for filming and broadcast from courts in specified circumstances, which forms the basis of Option 1. Option 1 would allow the broadcasting of judges and advocates' arguments in the Criminal and Civil Divisions of the Court of Appeal.

## Costs and benefits

### Base case/ Option 0

9. This is the 'do nothing' option where the no further action would be required. Taking no action would mean that the current situation would continue and therefore there would be no costs or benefits in addition to those which are already incurred. Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV)<sup>9</sup>.

### Option 1

#### Costs

10. HMCTS expect that there will be minimal costs to the Government. Broadcasters will bear the expense of procuring, installing, maintaining and operating the equipment required for filming and broadcasting from courts.
11. There will be costs to Judicial Office and HMCTS when implementing the policy. The judiciary and court staff will be required to undertake training relating to court broadcasting. This will involve meeting with broadcasters and also some e-learning. It is not possible to quantify the costs of training the judges who sit in the Court of Appeal but it is expected to be minimal.
12. Judicial Office or HMCTS may need to provide ongoing refresher training for the judiciary and/or court staff. Induction material may need to be prepared for both new and existing court staff that may be affected by court broadcasting measures. Once again, this is only expected to impose minimal costs on HMCTS and Judicial Office.
13. The printing of signage and a small number of leaflets to advise members of the public that filming will be taking place will be printed in house by Judicial Office at minimal cost. New leaflets will be printed on an ad hoc basis as a result of people taking the leaflets out of the

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<sup>8</sup><http://webarchive.nationalarchives.gov.uk/20120119200607/http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>

<sup>9</sup> The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.



courtroom or defacing them. Due to the ad hoc nature of replacing these leaflets, it is not possible to ascertain an accurate estimate for the costs of printing the signage and leaflets but it is expected to be negligible.

## **Benefits**

14. It is anticipated that broadcasters will benefit from this proposal and that these benefits will outweigh the costs to them if they are willing to go ahead with the proposal.
15. There is also some evidence that indicates that when the public feel more informed about issues affecting crime and justice, confidence in the effectiveness of the CJS in bringing people who commit crimes to justice may increase<sup>10</sup>. If this holds, filming and broadcast from courts may lead to an increased level of confidence in the justice system and in sentencing decisions handed down by judges. Increased public engagement with the CJS may also lead to greater public accountability.

## **Risks and assumptions**

16. There are potential risks to the willingness of victims and witnesses to give evidence or appear in court if they are aware that proceedings may be filmed. As such, a central aim is to ensure that victims, witnesses and other parties are affected as little as possible by the implementation of the policy. In order to mitigate the risk, the secondary legislation has been drafted to ensure that victims and witnesses will not be filmed. Only filming of judges and advocates' arguments in the Court of Appeal for Criminal and Civil Divisions will be permitted. All current reporting restrictions which are designed to protect victims and witnesses will apply to broadcasting as they do to other media reporting.
17. Greater transparency within the CJS may present a risk to privacy – cases may receive greater media coverage, and this may impact negatively on the judiciary and parties to a case. However, the judge presiding over the court case will have the discretion to prevent, suspend or stop filming or prevent broadcasting where this may cause undue prejudice to any person, including those not directly involved in the case. They would also be able to stop filming in the event of disruption in court or to protect the interests of justice.
18. Although it is expected that the broadcast of footage from court will be close to 'live' in some cases, there will be safeguards to allow the judge to stop recording or prevent broadcast in the event of unforeseen circumstances. During the pilot exercise in the Court of Appeal in 2004, the judge was provided with a 'stop' button on the bench which could stop filming immediately. Policy/operational officials are working closely with the broadcasters and the judiciary to ensure there is a mechanism to allow the judge to stop filming during a case, if this is necessary. This mechanism will be tested before implementation and the cost of providing it falls within the agreement that broadcasters procure, install, maintain and operate the equipment needed for filming and broadcasting from court.
19. There is a potential risk that televising our courts may open the judicial process to sensationalism and trivialise serious processes to a level of media entertainment. In light of this, the Government are not proposing full trials to be filmed. The secondary legislation only allows for judgments and advocates' arguments to be filmed and broadcast from the Court of Appeal. In addition, where a disruption occurs in the courtroom the court has the power to stop filming. The Government believes that allowing people to see and hear judges' decisions will increase their knowledge and understanding of the court system without undermining the proper administration of justice. Filmed material will not be permitted to be used for the purposes of satire, light entertainment, advertising or party political broadcast.
20. Establishing whether the introduction of filming and broadcasting from court has increased public confidence in the CJS may be difficult. Although it is possible to monitor changes in

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<sup>10</sup> Cooper and Singer, Ministry of Justice (2008) *Inform, persuade and remind: an evaluation of a project to improve public confidence in the Criminal Justice System* p.13  
<http://webarchive.nationalarchives.gov.uk/20090215180422/http://www.justice.gov.uk/publications/inform-persuade-remind.htm>

public confidence in the CJS through the Crime Survey for England and Wales this would not allow any attribution to this policy specifically.

## **Preferred Option**

21. The preferred policy option is option 1, Court Broadcasting in the Criminal and Civil Divisions of the Court of Appeal. This option is hoped to increase public understanding of, and confidence in, the CJS by increasing the exposure that members of the public get to the courts and the justice system. There are expected to be minimal costs to the Government as a result of implementation of this policy, as broadcasters have committed to funding the purchase, installation, operation and maintenance of the equipment required. There may be some other costs to HMCTS and Judicial Office, for example the cost for the judiciary to attend training.



## **Specific Impact Tests**

### **Statutory equality duties**

See the Equality Impact Statement.

### **Competition Assessment**

The legislation allows access to film in the Court of Appeal to parties 'permitted in writing by the Lord Chancellor'. This written permission will be by means of a contract between HMCTS (on behalf of the Lord Chancellor) and the main news broadcasters in England & Wales (BBC, ITN, Sky and the Press Association). These organisations will reach the largest audience, to meet the policy intention of increased transparency. The Government is continuing to work with broadcasters to achieve a process for court broadcasting which achieves its policy aims, in particular achieving the aim of transparency and distribution of footage of proceedings. We have discussed with OFCOM and they do not view the risk of collusion among the broadcasters, and thus the impact on competition, to be a concern.

### **Small Firms Impact Test**

We do not expect any impact to small firms through these proposals

### **Greenhouse Gas Assessment**

Not applicable as the reform has no impact upon the emission of Greenhouse Gases.

### **Wider Environmental Issues**

Not applicable as the reform has no impact upon the environment.

### **Health and Well-being Impact Assessment**

Will your policy have a significant impact on human health by virtue of its effects on the wider determinants of health? : Income; crime; environment; transport; housing; education; employment; agriculture; social cohesion. No.

Will there be a significant impact on any of the following lifestyle related variables: Physical activity; diet; smoking; drugs or alcohol use; sexual behaviour; accidents and stress at home or work? No

Is there likely to be a significant demand on any of the following health and social care services?: Primary care; community services; hospital care; need for medicines; accident or emergency attendances; social services; health protection and preparedness response. No

### **Human Rights**

The proposals are compliant with the Human Rights Act (1998).

### **Justice System Assessment**

The overall impact on the Justice System is outlined in the evidence base of this Impact Assessment.

### **Rural proofing**

Not applicable.

### **Sustainable Development**

We do not anticipate the proposals having any negative effect on the principles of sustainable development.

### **Privacy Impact Test**

Not applicable as no impact expected on privacy.

# Annexes

## Annex 1: Post Implementation Review (PIR) Plan

<p><b>Basis of the review:</b> To review the introduction of court broadcasting within the first year of implementation.</p>
<p><b>Review objective:</b> To assess the implementation process (including any challenges faced and lessons learned) of introducing court broadcasting in the Court of Appeal.</p>
<p><b>Review approach and rationale:</b> It would be very difficult (in terms of design issues and resources required) to accurately assess whether court broadcasting has achieved its aims in terms of measuring any increases in public knowledge of and confidence in the CJS and being able to attribute these to the policy.</p> <p>The review therefore intends to focus on an assessment of the implementation processes and experiences of stakeholders involved in order to learn from any challenges faced and improve the process and experiences of stakeholders if the policy is extended in the future.</p> <p>Information will be gathered via feedback from identified groups (potentially: court staff, the judiciary, victims, witnesses and defendants). If possible the review will also assess the reach of the policy via TV audience figures.</p>
<p><b>Baseline:</b> The Crime Survey for England and Wales provides a baseline for public confidence in the CJS.</p> <p>As this review will focus on the implementation of new processes, the baseline will be experiences in court prior to introducing broadcasting and experiences in courts where broadcasting is not yet being implemented.</p>
<p><b>Success criteria::</b> Success in terms of the implementation of this policy will be measured via an assessment of stakeholders' experiences and ability to adapt and learn lessons from any challenges that have been faced.</p>
<p><b>Monitoring information arrangements:</b> This PIR will not require monitoring information, It will involve a mainly qualitative review undertaken at a particular point in time (potentially 6 months or 12 months following implementation).</p>
<p><b>Reasons for not planning a PIR:</b> N/A</p>