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Court Reporting Consultation
Royal Courts of Justice
Strand
London
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By email: courtreporting@judiciary.gsi.gov.uk

Dear Sirs

Litigation Committee response to the Lord Chief Justice's consultation on the use of live, text-based communications from court

The City of London Law Society ("CLLS") represents approximately 14,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the Lord Chief Justice's consultation on the use of live, text-based communications from court has been prepared by the CLLS Litigation Committee.

Question 1: Is there a legitimate demand for live, text-based communications to be used from the courtroom?

We believe there is a legitimate demand and agree with the points made in the consultation paper that times have changed and technology has advanced. It is impossible to ignore these factors.

Question 2: Under what circumstances should live, text-based communications be permitted from the courtroom?

Such communications should be permitted unless they disrupt the Court process and interfere with the proper administration of justice. We can see that there is significantly more risk of this where criminal cases are involved and agree that the risk of material harm to the conduct of a criminal trial would be a very serious matter. However, in a civil case, proceeding without a jury, the risk of disruption to the legal process is materially diminished and should be capable of being managed.

Question 3: Are there any other risks which derive from the use of live, text-based communications from court?

Not in our view. The key issue is harm to the legal process, either through disruption or, more seriously, substantive damage to the process of a fair hearing (as in the abortion of a criminal trial). All the risks identified in the consultation paper have these as their common denominators.

Without disruption or harm it is difficult to see why such forms of communication should not be permitted. The process of justice must be visible, and accessible, and it must be visible and accessible in compliance with the technological standards of the day.

We should add that where disruption emanates solely from electronic interference, such steps as are reasonably possible should be taken to eliminate the interference. The Court's electrical systems also need to evolve to match present day standards of technology and the expectations of the general public, including the press.

Question 4: How should the courts approach the different risks to proceedings posed by different platforms for live, text-based communications from court?

As the consultation paper records, justice must be seen to be carried out in public, and the public, including journalists, are entitled to comment on legal process as they wish, within the law and subject to the overriding principle of not causing harm.

"Editorial control" (whatever that may mean) should not form part of the deliberation on the permitted use of communications of this kind. We cannot see any distinction between an intemperate report that appears in a "twitter" or "blog" over the lunch adjournment or after the Court hearing has finished for the day, and one that is disseminated "live" from the court room. There is no way of eliminating the risk of such media being used, albeit not directly from the courtroom itself, to publish harmful or contemptuous material. The continuation of present restrictions may mean there is a slight delay in such publication, but it still has the ability to cause harm.

We do agree that instant reporting can increase the risk of sensitive material being published where delay in communication/reporting would have permitted the consideration and, if appropriate, the imposition of a reporting ban. We do not think this risk can be altogether eliminated but live reporting will mean that Counsel must be especially alert to the possibility of sensitive material being raised in Court and, in a proper case, to the need to seek the Court's assistance in restricting publication in advance of any harm being done.

Question 5: How should permitting the use of live, text-based communications from court be reconciled with the prohibition against the use of mobile phones in court?

Subject to the overriding principle of not causing disruption or harm to the judicial process, there is no further warrant for the ban on the use of mobile phones in Court.

If mobile telephones are switched to "silent" and no voice calls are allowed to be made or taken in Court, so that their use is limited to a text-based interactive function, there is no reason why they should not be permitted. (As mentioned above, if there is electrical interference, all reasonable steps should be taken to eliminate it.)

Question 6: Should the use of live, text-based communications from Court be principally for the use of the media?

No. There is every reason why the facility of such communications should be extended to persons other than the media, including legal representatives and their clients who are the users of the Court service. For the reasons explained, the Courts need to respond to the advances in technology. The availability of instant communication is something which all members of the public have come to rely on in their daily lives and which it is not reasonable to continue to ban from Court unless harm is being caused to the judicial process. Instant communication can be very convenient for those taking part in that process, for example, in seeking instructions without having to leave Court.

How should the media be defined?

Since we do not consider that the relaxation of these rules should be limited to the media we have not suggested a definition.

However, if a decision is taken to relax the present restrictions in relation only to the media (as opposed to the general public) then it would be inconsistent with that course to allow non-accredited media to have the facility of instant messaging; there is no reason why student bloggers or social commentators, for example, should have more privileges in this respect than lawyers representing their clients in Court.

We do not believe that imposing a system where applications are made on an individual basis is desirable, not least because it would lead to inconsistencies. This topic is essentially about public access and it is too important to be decided except by general policy.

Should persons other than the accredited media be permitted to engage in live, text-based communications from Court?

Yes, for the reasons explained above.

Yours sincerely

Simon James
Chair, CLLS Litigation Committee

THE CITY OF LONDON LAW SOCIETY
Litigation Committee

Individuals and firms represented on this Committee are as follows:

Simon James (Chairman)	Clifford Chance LLP
Duncan Black	Field Fisher Waterhouse LLP
Richard Clark	Slaughter & May LLP
Tom Coates	Lewis Silkin LLP
Angela Dimsdale Gill	Hogan Lovells International LLP
Geraldine Elliott	Reynolds Porter Chamberlain LLP
Gavin Foggo	Fox Williams LLP
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