



INTERIM PRACTICE GUIDANCE: THE USE OF LIVE TEXT-BASED FORMS OF COMMUNICATION (INCLUDING TWITTER) FROM COURT FOR THE PURPOSES OF FAIR AND ACCURATE REPORTING

Preamble

1. This interim guidance applies to court proceedings which are open to the public and to those parts of the proceedings which are not subject to reporting restrictions.
2. There is a degree of uncertainty about the use which may be made of live text-based communications, such as mobile email, social media (including Twitter) and internet enabled laptops in and from courts throughout the jurisdiction. For the purposes of this interim guidance these means of communication are referred to, compendiously, as live, text-based communications.
3. A consultation relating to the use of live, text-based communications will be conducted shortly. Those who will be consulted include the Judiciary, the Secretary of State for Justice, the Attorney General, the Director of Public Prosecutions, the Bar Council, the Law Society, the Press Complaints Commission, and the Society of Editors in addition to interested members of the public via the Judiciary website.
4. Pending the outcome of the consultation, this interim guidance should be considered by courts, litigants, their legal representatives and the media if and when any application is made to the court to permit the use of live, text-based communications. If any difficulties arise in respect of the use of such communications, or the outcome of the consultation becomes known, it may become necessary to issue a formal Practice Direction.

5. This interim guidance is intended to be consistent with, and has been drafted in light of, the legislative structure which:
 - a. prohibits,
 - i. the taking of photographs in court (section 41 of the Criminal Justice Act 1925); and,
 - ii. the use of sound recording equipment in court unless the leave of the judge has first been obtained (section 9 of the Contempt of Court Act 1981).
 - b. Requires compliance with the strict prohibition rules created by sections 1, 2 and 4 of the Contempt of Court Act 1981 in relation to the reporting of court proceedings.

It has immediate effect.

General Principles

6. The judge has an overriding responsibility to ensure that proceedings are conducted consistently with the proper administration of justice, and so as to avoid any improper interference with its processes.
7. A fundamental aspect of the proper administration of justice is the principle of open justice. Fair and accurate reporting of court proceedings forms part of that principle. The principle is however subject to well-known statutory and discretionary exceptions. Two such exceptions are the prohibitions on photography in court and on making sound recordings of court proceedings.
8. The statutory prohibition on photography in court, by any means, is absolute. There is no judicial discretion to suspend or dispense with it. Any equipment which has photographic capability must not have that function activated.
9. Sound recordings are also prohibited unless, in the exercise of its discretion, the court permits such equipment to be used. In criminal proceedings, some of the factors relevant to the exercise of that discretion are contained in

Paragraph I.2.2 of the Consolidated Criminal Practice Direction. The same factors are likely to be relevant when consideration is being given to the exercise of this discretion in civil or family proceedings. The use of live, text-based communications from court should be approached in the same way.

10. There is no statutory prohibition on the use of live text-based communications in open court. But before such use is permitted, the court must be satisfied that its use does not pose a danger of interference to the proper administration of justice in the individual case.
11. Subject to this consideration, the use of an unobtrusive, hand held, virtually silent piece of modern equipment for the purposes of simultaneous reporting of proceedings to the outside world as they unfold in court is generally unlikely to interfere with the proper administration of justice.

Use of Live, Text-based Communications: General Considerations

12. The normal, indeed almost invariable, rule has been that mobile phones must be turned off in court. An application, whether formally or informally made (for instance by communicating a request to the judge through court staff) can be made by an individual in court to activate and use a mobile phone, small laptop or similar piece of equipment, solely in order to make live text-based communications of the proceedings.
13. When considering, either on its own motion, or following a formal application or informal request, whether to permit live text-based communications, and if so by whom, the paramount question will be whether the application may interfere with the proper administration of Justice. The most obvious purpose of permitting the use of live, text-based communications would be to enable the media to produce fair and accurate reports of the proceedings.
14. Without being exhaustive, the danger to the administration of justice is likely to be at its most acute in the context of criminal trials e.g., where witnesses who are out of court may be informed of what has already happened in court

and so coached or briefed before they then give evidence, or where information posted on, for instance, Twitter about inadmissible evidence may influence members of a jury. However, the danger is not confined to criminal proceedings; in civil and sometimes family proceedings, simultaneous reporting from the courtroom may create pressure on witnesses, distracting or worrying them.

15. Two further considerations are material:

- a. if, having given permission for such use, the court proceedings are adversely affected, permission may be withdrawn; and,
- b. it may be necessary for the judge to limit live, text-based communications to representatives of the media for journalistic purposes but to disallow its use by the wider public in court. That may arise if it is necessary, for example, to limit the number of mobile electronic devices in use at any given time because of the potential for electronic interference with the court's own sound recording equipment, or because the widespread use of such devices in court may cause a distraction in the proceedings.

16. The operation of this interim guidance will be monitored and inform the consultation process referred to above.

Lord Judge

The Lord Chief Justice of England and Wales

20 December 2010