

- 6B.7 Court staff should be prepared to answer any enquiry about a specific case; but it is and will remain the responsibility of anyone reporting a case to ensure that no breach of any order occurs and the onus rests on such person to make enquiry in case of doubt.

**CPD I General matters 6C: USE OF LIVE TEXT-BASED FORMS OF COMMUNICATION (INCLUDING TWITTER) FROM COURT FOR THE PURPOSES OF FAIR AND ACCURATE REPORTING**

- 6C.1 This part clarifies 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 England and Wales. For the purpose of this part these means of communication are referred to, compendiously, as 'live text-based communications'. It is consistent with the legislative structure which:
- (a) prohibits:
    - (i) the taking of photographs in court (section 41 of the Criminal Justice Act 1925);
    - (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); and
  - (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.

**General Principles**

- 6C.2 The judge has an overriding responsibility to ensure that proceedings are conducted consistently, with the proper administration of justice, and to avoid any improper interference with its processes.
- 6C.3 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, set out in paragraph 6C.1(a), on photography in court and on making sound recordings of court proceedings.
- 6C.4 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.

- 6C.5 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 6A.2. The same factors are likely to be relevant when consideration is being given to the exercise of this discretion in civil or family proceedings.

**Use of Live Text-based Communications: General Considerations**

- 6C.6 The normal, indeed almost invariable, rule has been that mobile phones must be turned off in court. There is however no statutory prohibition on the use of live text-based communications in open court.
- 6C.7 Where a member of the public, who is in court, wishes to use live text-based communications during court proceedings an application for permission to activate and use, in silent mode, a mobile phone, small laptop or similar piece of equipment, solely in order to make live text-based communications of the proceedings will need to be made. The application may be made formally or informally (for instance by communicating a request to the judge through court staff).
- 6C.8 It is presumed that a representative of the media or a legal commentator using live text-based communications from court does not pose a danger of interference to the proper administration of justice in the individual case. This is because 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. As such, a representative of the media or a legal commentator who wishes to use live text-based communications from court may do so without making an application to the court.
- 6C.9 When considering, either generally on its own motion, or following a formal application or informal request by a member of the public, whether to permit live text-based communications, and if so by whom, the paramount question for the judge will be whether the application may interfere with the proper administration of justice.
- 6C.10 In considering the question of permission, the factors listed in paragraph 6A.2 are likely to be relevant.
- 6C.11 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 the 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, by distracting or worrying them.

- 6C.12 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.
- 6C.13 Subject to these considerations, the use of an unobtrusive, hand-held, 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.
- 6C.14 Permission to use live text-based communications from court may be withdrawn by the court at any time.

#### **CPD I General matters 6D: TAKING NOTES IN COURT**

- 6D.1 As long as it does not interfere with the proper administration of justice, anyone who attends a court hearing may quietly take notes, on paper or by silent electronic means. If that person is a participant, including an expert witness who is in the courtroom under CrimPR 24.4(2)(a)(ii) or 25.11(2)(a)(ii), note taking may be an essential aid to that person's own or (if they are a representative) to their client's effective participation. If that person is a reporter or a member of the public, attending a hearing to which, by definition, they have been admitted, note taking is a feature of the principle of open justice. The permission of the court is not required, and the distinctions between members of the public and others which are drawn at paragraphs 6C.7 and 6C.8 of these Practice Directions do not apply.
- 6D.2 However, where there is reason to suspect that the taking of notes may be for an unlawful purpose, or that it may disrupt the proceedings, then it is entirely proper for court staff to make appropriate enquiries, and ultimately it is within the power of the court to prohibit note taking by a specified individual or individuals in the court room if that is necessary and proportionate to prevent unlawful conduct. If, for example, there is reason to believe that notes are being taken in order to influence the testimony of a witness who is due to give evidence, perhaps by briefing that witness on what another witness has said, then because such conduct is unlawful (it is likely to be in contempt of