

Judicial Office
for Scotland



**Protocol on Recording and Broadcasting of Proceedings in the High
Court of Justiciary and the Court of Session, and the Use of Live Text
Based Communications from Court**

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1. Introduction

Broadcast

1.1 Except where the context otherwise requires, for the purposes of the Protocol, "broadcast" means the transmission to members of the public of a video and/or audio recording; or live streaming. For the purposes of the Protocol, a recording refers to a video and/or audio recording. Broadcast may be for live streaming, news broadcast or documentary production. Individual sections within the Protocol identify the extent to which broadcasting may be permitted for a particular type of case.

Guiding Principle

1.2 The guiding principle is that broadcast of court proceedings is in the interests of open justice and for the information and education of the public.

Judicial Control

1.3 Subject to the guiding principle, whether a hearing should be recorded must remain under judicial control. The court may rule that, in any given case, recording a hearing would not be in the interests of justice.

Fair and Accurate Reporting

1.4 A report or presentation of proceedings that includes a broadcast of a hearing must be fair and accurate, having regard to the overall content of the report or presentation and the context in which the broadcast is presented. It must not be used for: the purposes of a party political broadcast; advertisement or promotion (except where such advertisement or promotion relates to a report or presentation that includes the broadcast); light entertainment; comedy or satirical purposes.

Application Process

1.5 For the purposes of the Protocol, a media party means a journalist registered with the Scottish Courts and Tribunals Service (SCTS), or a party who can provide sufficient, appropriate evidence of relevant journalistic or documentary work. Any media party wishing to record a hearing is required to submit an application using one of the prescribed

forms. Applications must be submitted to Judicial Communications for consideration by the Broadcast Working Group well in advance of the date of commencement of proceedings. On receipt of an application, the Broadcast Working Group must notify the presiding/chairing judge and ask him, or her, to provide to the Broadcast Working Group any comment or response which he, or she, may have on the application within an agreed time. Once the Broadcast Working Group has considered any such comment or response, it must make a recommendation to the Lord Justice General (or Lord Justice Clerk) as to whether the application ought to be approved. The final decision lies with the Lord Justice General or, in the absence of the Lord Justice General, with the Lord Justice Clerk. Approval may permit recording to take place in accordance with sections 2 to 5, or in accordance with any additional conditions as may be specified.

1.6 A decision on the application must be intimated to the media party within an agreed time. In the event of an application being refused, in whole or part, written reasons must be provided by the Broadcast Working Group.

1.7 In the event of an application being refused, in whole or part, the media party may submit an amended application taking into account the reasons for refusal.

1.8 If permission to record is granted, the Broadcast Working Group must appoint an SCTS staff member as a liaison officer. That officer is the point of contact between the media party and the court for all purposes connected with the recording.

1.9 If permission to record proceedings is granted, the presiding/chairing judge retains responsibility for ensuring that: the grant of permission remains appropriate; the recording is carried out on the terms approved by the Broadcast Working Group; and the recording is carried out in a way which does not disrupt court business. If, at any stage in the proceedings, the judge forms the view that to proceed with the recording would constitute a threat to the administration of justice, or that such a risk is present, or that the media party has breached the Protocol or any condition imposed, the presiding/chairing judge may withdraw the permission. If the presiding/chairing judge is considering withdrawing

permission, an opportunity should be afforded to the media party to make representations to the judge before a final decision is reached.

2. Recording and Broadcast of Sentencing

Purpose

2.1 In the case of recording a sentencing diet, this may be for the purpose of a subsequent news broadcast, documentary production, or, where the Broadcast Working Group is satisfied that the case involves a substantial level of public interest, live streaming. In the latter case, a suitable delay must be built in to ensure that any disruption to the proceedings from an unanticipated source is not broadcast live.

Sharing of Recorded Material

2.2 Recording in the court must be undertaken by only one media party. The broadcast material must be shared among the other media parties wishing to broadcast on their respective platforms. The recording of sentencing must be pooled in an accessible way with all media organisations who wish to receive it immediately after proceedings conclude. The media party must put in place suitable arrangements to ensure that those wishing to avail themselves of this facility are able to do so and advise them accordingly.

Camera and Equipment

2.3 The camera must be placed in a location agreed by the presiding judge. A cable may be run from the agreed location to a microphone in front of the judge. The equipment must be operated by no more than one camera operative and one sound technician. Access to the court must normally be granted to the media party for one hour before the start of the court business in which the relevant sentencing diet is due to call to allow the media party to set up the equipment and to run a number of sound checks.

Restrictions

2.4 The following restrictions apply:

- i. The camera must focus only on the judge. No other person may feature in the recording except the macer and clerk of court. The macer and clerk must be advised accordingly and their permission sought in advance of the recording. Any recording of the macer or clerk of court should consist of incidental, non-

close, background shots. Should either decline to give consent, they may still feature in the broadcast, provided that they are disguised in such a manner as to avoid them being identifiable.

- ii. Recording may include the judge walking into the court room and taking his, or her, seat. Recording of the sentencing must only commence when defence counsel concludes the plea in mitigation and the judge requests the accused to stand. The recording must conclude when the judge has passed sentence and rises from the bench.
- iii. The accused must not be recorded.
- iv. The prosecution and defence teams must not be recorded.
- v. Any disruption from the public gallery or any other form of disruption to proceedings must be edited out from the recording prior to transmission of the proceedings.

3. Recording and Broadcast of Civil and Criminal Appeals; and Legal Debates in Civil First Instance Proceedings

Purpose

3.1 In the case of recording civil and criminal appeals and legal debates in civil first instance proceedings, this may be for the purpose of a subsequent news broadcast, documentary production, or, where the Broadcast Working Group is satisfied that the case involves a substantial level of public interest, live streaming.

Sharing of Recorded Material

3.2 Where the recording of the court is for the purpose of live streaming or the making of a news broadcast, the recording must be undertaken by only one media party. The broadcast material must be shared by the media party among the other media parties wishing to broadcast the material on their respective platforms. The recording must be pooled in an accessible way with all media organisations who wish to receive it, immediately after proceedings conclude. The media party must put in place suitable arrangements to ensure that those media organisations wishing to avail themselves of this facility are able to do so and advise them accordingly. This does not apply where the recording is for the production of a documentary, in which case the media party must take account of sections 4 and 5, insofar as they may be applicable.

Cameras and Equipment

3.3 The media party must install cameras at locations within the courtroom approved by the presiding/chairing judge in advance. The media party must consider whether remote operation of the cameras and other equipment is feasible, and may make alternative suggestions to the presiding/chairing judge for consideration. The final decision on the number of camera operatives and sound technicians, if any, to be present in court, and their locations, rests with the presiding/chairing judge.

3.4 Where a satellite truck parked outside the court building is used, the media party may install cabling from the court room to the truck to enable transmission. The media party must ensure that such arrangements fully comply with Health and Safety requirements and must consult with the liaison officer in advance of the installation of the cable.

3.5 The media party may use the court audio system and microphones. At the discretion of the presiding/chairing judge, the media party may be permitted to use additional microphones. Lapel microphones must not be used.

3.6 SCTS must normally permit access to the courtroom by the media party for one hour before the start of the court business in which the relevant hearing is due to call to allow the media party to set up the equipment and to run a number of sound checks.

Restrictions

3.7 The following restrictions apply:

- i. The recording of proceedings must not begin until the macer calls 'court'. Recording must stop when the judge(s) leave(s) court.
- ii. Recording must only be of: submissions of a legal representative; exchanges between a legal representative and the court; the court giving judgment. In the event that evidence is led, the evidence must not be recorded unless approval has been given to record for the purpose of a documentary production.
- iii. Conversations not addressed to the judge(s), including those between any of the following: a judge, macer, clerk of court, and other court officials; legal representatives; and legal representatives and clients, are not intentionally to be recorded and, in the event that they are, must not be broadcast.
- iv. The media party must not record documents (including notebooks or notes) or electronically stored information (including notes displayed on PCs, laptops or tablet devices) being used by the judge(s), clerk, legal representative(s) or a party (parties) in a way which allows them to be read.
- v. The media party must not record photographs being used in court in such a way that allows the specific content of the photograph to be discernible to the viewer.
- vi. The media party must not record or broadcast a recording of members of the public. The media party must not record or broadcast a recording of members

of the media or parties, other than incidental, non-close, background shots of individuals, unless full consent is given.

- vii. The media party must cease recording and/or broadcasting immediately on request from the presiding/chairing judge or any SCTS official acting on behalf of the judge. The media party must only resume recording or broadcasting when invited to do so by the presiding/chairing judge or an SCTS official acting on behalf of the judge.
- viii. The media party must ensure that a delay is built in to the transmission of the material to ensure that any disruption to proceedings from an unanticipated source is not broadcast live.
- ix. If the broadcast is to be suspended during proceedings for breaks, lunch or for any other reason, the media party must indicate this by displaying a suitable image until the broadcast resumes.
- x. A broadcast must not breach any applicable reporting restrictions.

Copyright

3.8 Copyright follows the underlying position in law and the media party must manage future distribution of the recordings in line with this Protocol.

4. Recording and Broadcast of Criminal Jury Trials in the High Court of Justiciary for the Making of a Documentary Production

Purpose

4.1 In the case of the recording of a trial in the High Court of Justiciary, this may be for the purpose of the making of a documentary production only.

General

4.2 A media party must comply with this Protocol when recording any proceedings in a trial, and in the use of any material that the media party has recorded, for the purpose of making a documentary. The Broadcast Working Group may specify additional conditions which must be complied with, in respect of any particular application.

4.3 This Protocol proceeds on the basis that the media party has fully complied with the established application process. The media party must provide, in the application form, such information about the nature of the proposed case, and the media party's reasons for wishing to have access to it, to enable the Broadcast Working Group to determine whether, from the point of view of the court, there is any factor which may render the case unsuitable for recording for documentary purposes. The Broadcast Working Group may require further information to be provided by the media party. The media party must specify, in the application, the number and positions of all television cameras and microphones that are proposed to be placed in the court room, and the extent to which floor space is to be taken up either continuously or intermittently by equipment and cabling. The media party must only use small, remotely operated cameras which can be cabled unobtrusively in order to have minimal impact on court business.

4.4 Any application to vary any of the arrangements for the recording agreed upon must be submitted to the liaison officer.

4.5 Cases involving sexual offences, or alleged sexual offences, must not be the subject of recording for documentary purposes. Children and vulnerable witnesses must not be recorded, identified or broadcast. Proceedings in closed courts must not be recorded or

broadcast. Broadcasting must be delayed until after the conclusion of the trial and any appeal process.

Recording of Proceedings

4.6 The following restrictions apply:

- i. The media party must satisfy the presiding judge that the operation of the cameras will not be obstructive or unduly obtrusive, either visibly or audibly. Microphones must be placed only in such positions and operated only in such a way so as not to pick up any speech which does not form part of the formal proceedings in court. Any such speech unintentionally recorded must not be broadcast. Lapel microphones must not be used.
- ii. The presiding judge has the right to satisfy himself, or herself, that the recording of the proceedings does not interfere with the working of the court and that there is no risk to the administration of justice.
- iii. The media party is able to record in court when the press and/or public are present. If reporting restrictions are in place, no material can be broadcast until after such restrictions have been lifted. It is open to the presiding judge to revoke or qualify permission to record as he, or she, sees fit at any stage in the light of circumstances which emerge in connection with the proceedings. In particular, he, or she, is entitled to require that any part of the proceedings be excluded from being recorded where he, or she, is satisfied that this would not be in accordance with the interests of justice.
- iv. The media party must not use additional lighting when recording in the courtroom.
- v. Where practicable, and in consultation with the liaison officer, the media party must place signs within the court building to the effect that recording is taking place. These must display contact details for the production team in the event that a member of the public, who may be featured in general shots, does not wish to be included in the broadcast.

- vi. Cameras, cables and microphones must be installed at a time mutually agreed with the liaison officer and the media party. SCTS is not liable for any damage or theft of recording equipment. The media party must consult with the liaison officer in regard to the recording arrangements.

The Jury

4.7 The members of the jury must not be recorded or identified.

4.8 The jury must be informed of the recording process at a time and in such manner as instructed by the presiding judge.

Consent Issues

4.9 Before making an application to record, the media party must have made all reasonable efforts to obtain consent, or an indication that consent is forthcoming (or is likely to be forthcoming), from all relevant participants, insofar as they are known to the media party at that time, including legal advisers, parties, court officials and witnesses.

4.10 Subject to an overriding public interest which entitles the judge to authorise broadcasting of a participant without consent, no participant in the trial can appear in an identifiable way in the final broadcast unless he, or she, has given his, or her, express written consent. A distinction may be made between recording and broadcasting. A participant, who does not consent to being included in the broadcast, may still be recorded during the trial. Such a participant must be informed in advance of the recording by the media party that they have permission to record but that, in the absence of consent, that participant must not be identifiable in any subsequent broadcast. This allows the media party to have a complete record of the trial in the event that they need to replace some participants' voices with those of actors or to take other steps to ensure that the narrative of the documentary is complete. This also allows for the possibility that participants may change their minds about appearing in a broadcast once the trial is over. Should such a participant remain opposed to appearing in the broadcast, the media party must take such steps as are necessary, by, for example, blurring and/or substitution of the voice of an actor, to ensure that the participant is not identifiable in any subsequent broadcast.

4.11 The media party must maintain open, honest and straightforward relationships with participants and keep them informed about the progress of the recording, editing and transmission dates throughout what might be a lengthy production process.

4.12 No witness will be put under any pressure to appear in the broadcast.

4.13 The withdrawal by a witness of his, or her, consent to take part in a broadcast does not give rise to a claim by the media party for damages or reimbursement of expenditure against the witness, nor does it give rise to any such claim against the prosecution or the defence or the court administration or any member of it.

Trial Involving Loss of Life

4.14 In the event of the recording of a trial which involves causing the death of a person, the media party must, through the Crown Office and Procurator Fiscal Service (COPFS), inform the family of the deceased of their intentions and advise them about the recording of the trial. If appropriate, the media party may offer the family of the deceased the opportunity to take part in the programme. Whether or not they wish to appear, the media party must keep such families informed of the progress of the recording either directly (if agreed with COPFS), or through an appropriate agency.

Broadcast

4.15 There must be no broadcast of the following:

- i. Any part of the proceedings before the conclusion of the trial, either by conviction or acquittal, and any appeal procedure.
- ii. Any part of the proceedings in respect of which publicity is restricted, whether by law or by any order made by the trial judge, while such conditions are extant.
- iii. Conversations not addressed to the judge, including those between any of the following: the judge, macer, clerk of court and any other court officials; legal representatives; and legal representatives and clients, are not intentionally to be recorded and, in the event that they are recorded, must not be broadcast.

- iv. A close-up view sufficient to identify the contents of any of the books, papers or electronic screens of the presiding judge, the clerk of court, the legal representatives of the parties, the jurors, the witnesses or the accused. Documentary productions in the case shown publicly to the court, or photographs and other exhibits shown to the court, may be recorded with agreement of the judge.
- v. A view of unempanelled jurors, whether prior to, during, or after the balloting of the jury, sufficient to enable individual unempanelled jurors to be identified.

Editing and Editorial Control

4.16 While it is accepted that the media party is not able to relinquish editorial control, it must undertake to build a relationship of trust with all those that they record so that any problems can be dealt with as and when they occur.

4.17 During off-line editing, the media party must arrange a viewing at a mutually convenient time to show a “rough cut” to the presiding judge of the material proposed to be broadcast in order that he, or she, may be satisfied that this Protocol has been adhered to.

4.18 A representative of the Judicial Office for Scotland and the COPFS must also have an opportunity to view rough cuts of the proposed broadcast at a date and time agreed with the media party.

4.19 The media party must amend any genuine errors of fact brought to their attention at these viewings and must consider any other comments which are brought to their attention regarding fairness and accuracy in good faith in accordance with their obligations under the Ofcom Broadcasting Code.

4.20 No part of the documentary recording can be broadcast until after the viewings outlined above have been completed.

4.21 No information obtained during recording, which is either confidential or otherwise exempt from disclosure under Scots law, may be broadcast or otherwise disseminated.

5. Recording and Broadcast of Proofs and Civil Jury Trials in the Court of Session for the Making of a Documentary Production

Purpose

5.1 In the case of the recording of a proof or a civil jury trial in the Court of Session, this may be for the purpose of the making of a documentary production only.

General

5.2 A media party must comply with this Protocol when recording any proof or civil jury trial in the Court of Session and in using any material that the media party has recorded for the purpose of making a documentary. The Broadcast Working Group may identify additional conditions which must be complied with in respect of any individual application.

5.3 This Protocol proceeds on the basis that the media party has fully complied with the established application process. The media party must provide, in the application form, such information about the nature of the proposed case, and the media party's reasons for wishing to have access to it, to enable the Broadcast Working Group to determine whether, from the point of view of the court, there is any factor which may render the case unsuitable for recording for documentary purposes. The Broadcast Working Group may require further information to be provided by the media party. The media party must specify, in the application form, the number and positions of all cameras and microphones to be placed in the court room, and the extent to which floor space is to be taken up either continuously or intermittently by equipment and cabling. The media party must only use small, remotely operated cameras which can be cabled unobtrusively in order to have minimal impact on court business.

5.4 Any application to vary any of the arrangements for recording agreed upon must be submitted to the liaison officer.

5.5 Cases involving family proceedings must not be the subject of recording for documentary purposes. Children and vulnerable witnesses must not be recorded, identified or broadcast. Proceedings in closed court must not be recorded or broadcast. Broadcasting

must be delayed until after the conclusion of the proof or civil jury trial and any appeal process.

Recording of Proceedings

5.6 The following restrictions apply:

- i. The media party must satisfy the presiding judge that the operation of the cameras will not be obstructive or unduly obtrusive, either visibly or audibly. Microphones must be placed only in such positions, and operated in such a way, so as not to pick up speech which does not form part of the formal proceedings in court. Any such speech unintentionally recorded must not be broadcast. Lapel microphones must not be used.
- ii. The presiding judge has the right to satisfy himself, or herself, that the recording of the proceedings does not interfere with the working of the court, and that there is no risk to the administration of justice.
- iii. The media party is able to record in court when the press and/or public are present. If reporting restrictions are in place, no material can be broadcast until after such restrictions have been lifted. It is open to the presiding judge to revoke or qualify permission to record as he, or she, sees fit at any stage in the light of circumstances which emerge in connection with the proceedings. In particular, he, or she, is entitled to require that any part of the proceedings be excluded from recording where he, or she, is satisfied that its recording would not be in accordance with the interests of justice.
- iv. The media party must not use additional lighting when recording in the courtroom.
- v. Where practicable, and in consultation with the liaison officer, the media party must place signs in the court building to the effect that recording is taking place. These should display contact details for the production team in the event that a member of the public, who may be featured in general shots, does not wish to be included in the broadcast.

- vi. Cameras, cables and microphones must be installed at a time mutually agreed between the liaison officer and the media party. SCTS is not liable for any damage or theft of recording equipment. The media party must also consult with the liaison officer in regard to the recording arrangements.

The Jury

5.7 If permission is granted to record a civil jury trial, the members of the jury must not be recorded or identified.

5.8 The jury must be informed of the recording process at a time and in such manner as instructed by the presiding judge.

Consent Issues

5.9 Before making an application to record, the media party must have made all reasonable efforts to obtain consent, or an indication that consent is forthcoming (or is likely to be forthcoming), from all relevant participants, insofar as they are known to the media party at that time, including legal advisers, parties, court officials and witnesses.

5.10 Subject to an overriding public interest which entitles the judge to authorise the broadcasting of a participant without consent, no participant in the proof or civil jury trial can appear in an identifiable way in the final broadcast unless he, or she, has given his, or her, express written consent. A distinction is to be made between recording and broadcasting. A participant, who may not consent to being included in the broadcast, may still be recorded during the proof or civil jury trial. Such a participant must be informed in advance of the recording by the media party that they have permission to record but that, in the absence of consent, that participant is not to be identifiable in any subsequent broadcast. This allows the media party to have a complete record of the proof or civil jury trial in the event that they need to replace some participants' voices with those of actors, or to take other steps to ensure that the narrative of the documentary is complete. This also allows for the possibility that participants may change their minds about appearing in a broadcast once the proceedings are complete. Should such a participant remain opposed to appearing in the broadcast, the media party must take such steps as are necessary, by, for example, blurring

and/or substitution of the voice of an actor, to ensure that the participant is not identifiable in any subsequent broadcast.

5.11 The media party must maintain open, honest and straightforward relationships with participants and keep them informed about the progress of the recording, editing and transmission dates throughout what might be a lengthy production process.

5.12 No witness will be put under any pressure to appear in the broadcast.

5.13 The withdrawal by a witness of his, or her, consent to take part in a broadcast does not give rise to a claim by the media party for damages or reimbursement of expenditure against the witness, nor does it give rise to any such claim against the parties or the court administration or any member of it.

Broadcast

5.14 There must be no broadcast of the following:

- i. Any part of the proceedings before the conclusion of the proof or jury trial, and any appeal procedure.
- ii. Any part of the proceedings in respect of which publicity is restricted, whether by law or by any order made by the judge, while such conditions are extant.
- iii. Conversations not addressed to the judge, including those between any of the following: the judge, macer, clerk of court, and other court officials; or legal representatives; and legal representatives and clients, are not intentionally to be recorded and, in the event that they are recorded, must not be broadcast.
- iv. A close-up view sufficient to identify the contents of any of the books, papers or electronic screens of the presiding judge, the clerk of court, the legal representatives of the parties, the jurors, the witnesses or the parties. Documentary productions in the case shown publicly to the court, or photographs and other exhibits shown to the court, may be recorded with agreement of the judge.

- v. A view of unempanelled jurors, whether prior to, during, or after the balloting of any jury, sufficient to enable individual unempanelled jurors to be identified.

Editing and Editorial Control

5.15 While it is accepted that the media party is not able to relinquish editorial control, it must undertake to build a relationship of trust with all those that they record so that any problems can be dealt with as and when they occur.

5.16 During off-line editing, the media party must arrange a viewing at a mutually convenient time to show a “rough cut” to the presiding judge of the material that is proposed to be broadcast in order that he, or she, may be satisfied that this Protocol has been adhered to.

5.17 A representative of the Judicial Office for Scotland must also have an opportunity to view rough cuts of the proposed broadcast at a date and time agreed with the media party.

5.18 The media party must amend any genuine errors of fact brought to their attention at these viewings and must consider any other comments regarding fairness and accuracy in good faith in accordance with their obligations under the Ofcom Broadcasting Code.

5.19 No part of the documentary recording can be broadcast until after the viewings outlined above have been completed.

5.20 No information obtained during recording, which is either confidential or otherwise exempt from disclosure under Scots law, may be broadcast or otherwise disseminated.

6. The Use of Live Text Based Communication

6.1 This Protocol controls the use in court of live text based forms of communication (LTBC), including mobile email and social media.

- i. The use of LTBC is restricted to journalists. Only journalists who are registered with SCTS may use LTBC without first obtaining permission from the presiding/chairing judge for each separate case. A registered journalist must display his, or her, registration card when tweeting in court. A journalist who is not registered with SCTS must apply to the presiding/chairing judge, through [Judicial Communications](#), for permission to use LTBC.
- ii. LTBC may be used only to produce fair and accurate reports of proceedings in court.
- iii. The presiding/chairing judge has an overriding responsibility to ensure that there is no interference with the proper administration of justice in the court over which he, or she, presides. In the interests of justice the presiding/chairing judge may order that LTBC must not be used in a particular case.
- iv. In any case permission to use LTBC may, in the interests of justice, be withdrawn by the presiding/chairing judge.
- v. All communications must comply with the requirements of the Contempt of Court Act 1981 in relation to the reporting of court proceedings.
- vi. Anything said in court out with the presence of a jury must not be communicated.
- vii. Conversations not addressed to the court, including those between any of the following: the judge, macer, clerk of court, and other court officials; legal representatives; and between legal representatives and clients, are not to be communicated.
- viii. Any device used for LTBC must be an unobtrusive device, which must only be operated when in silent mode.