[GB] Broadcasters allowed to film from Crown Court sentencing hearings in England and Wales

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Following a successful pilot scheme, authorised broadcast news channels are now able to air judges' sentencing hearings in Crown Courts across England and Wales. Crown Courts handle serious criminal cases (like murder and rape) and appeals from magistrates' courts. They usually consist of a jury who decides on issues of guilt and a judge who is responsible for sentencing. Further guidance on broadcasting sentencing remarks was published by Her Majesty's Courts and Tribunals Service (HMCTS) on 27 July 2022. This is a further step towards the modernisation of the courts, including journalists' permission to use live text-based communications, like tweeting, in the court room.

Only authorised media can apply to the judge and film sentencing hearings in open court and broadcast their footage (either on TV or in their online news bulletins). These include the BBC, ITN, SKY and PA Media, who can make their footage (including stills from the filming) available to other news outlets. Authorised media parties can only record and broadcast the sentencing remarks of those cases being heard by a High Court judge, a Senior Circuit Judge with significant leadership and management duties (as a Resident Judge), or a Senior Circuit Judge whose base court is the Old Bailey (the Central Criminal Court).

Recording is allowed in accordance with any conditions imposed by judges, who may also consider allowing live broadcasts, if requested by authorised media parties. If such a request is approved, there will be a short (10-second) delay before broadcast to ensure that reporting restrictions are being complied with. So, filming may need to be appropriately edited before leaving the courtroom. Filming is restricted to the judge alone who will be seen on camera as they deliver their sentencing remarks. Any other court user, including victims, witnesses, defendants, jurors, and court staff, cannot be filmed, presumably to respect their privacy and avoid sensationalising cases.

There is also a specific process in place. Authorised media must apply for approval at least five working days before the sentencing hearing. A judge will give a provisional decision, which may be revised on the day of the hearing. However, the criteria for refusing an application or withholding permission are still uncertain. The prosecution, defence, victims, or their relatives cannot make any representations and the judge's decision is final. Broadcasters are required to

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make their footage publicly available online via a hosting platform within one working day of the hearing. Sky News hosts a dedicated YouTube channel for all the recorded hearings. HMCTS retains the copyright of the footage and can access any footage taken by broadcasters.

Importantly, a broadcast of sentencing remarks must be fair and accurate having regard to the overall content of the report as well as the context in which the broadcast is presented. A broadcast cannot be for political purposes; advertising (except where such promotion relates to a report of proceedings that includes a broadcast), light entertainment or satire.

The filming and broadcasting from Crown Courts were given legal grounding by The Crown Court (Recording and Broadcasting) Order 2020, but the implementation of the new measures was delayed by the Covid-19 pandemic. Audiences are now able to see a judge's summary of the case in question, their full reasoning for a particular sentence (including balancing aggravating and mitigating factors in sentencing guidelines) and explanation of the relevant law. The changes aim to promote public engagement with the justice system, increase its transparency and raise awareness of the meaning of the rule of law. However, the Bar Council has previously warned that sentencing "must not become an armchair, spectator sport."

The 2020 Order prescribes the conditions to be satisfied for the visual and sound recording and where these are satisfied, legislation that bans photography and filming in courts and their precincts (section 41 of the Criminal Justice Act 1925), as well as legislation that makes it illegal to record sound in court and broadcast any audio-recording of court proceedings except with the court's permission (section 9 of the Contempt of Court Act 1981), will not apply. The first sentencing that was filmed under the conditions of the 2020 Order was on 28 July 2022 at the Old Bailey. Sarah Munro QC became the first Crown Court judge in England and Wales to be filmed live in court as she jailed 25-year-old Ben Oliver to life for the "ferocious" killing of his bedbound grandfather in a knife attack in May 2022.

Filming in the Supreme Court, which considers complex legal issues about all of UK law, has been permitted since its 2009 inauguration (although this is carried out by the court itself) and the television broadcasting of Court of Appeal proceedings has been possible in specified circumstances since 2013 under the Court of Appeal (Recording and Broadcasting) Order 2013. Broadcasting of entire trials will remain off-limits in contrast to other countries where filming from courts is more common. Recent high-profile examples include the Oscar Pistorius murder trial in South Africa and the Johnny Depp defamation trial in the US.

Broadcasting Crown Court sentencing

https://www.gov.uk/guidance/broadcasting-crown-court-sentencing

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The Crown Court (Recording and Broadcasting) Order 2020

https://www.legislation.gov.uk/uksi/2020/637/contents/made

'Filming in criminal courts moves a step closer with draft legislation'

https://pressgazette.co.uk/filming-in-criminal-courts-moves-step-closer-with-draft-legislation/

'Old Bailey judge jails "ferocious" killer for life in first sentencing live on TV'

https://www.telegraph.co.uk/news/2022/07/28/old-bailey-judge-becomes-first-history-sentence-live-tv/

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