



YLAL Response to Civil Justice Committee Rapid Consultation on Remote Justice

Background

Young Legal Aid Lawyers ('YLAL') is a group of aspiring and junior lawyers committed to practising in those areas of law, both criminal and civil, that have traditionally been publicly funded. We have around 3,500 members including students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers throughout England and Wales.

We believe that the provision of good quality, publicly funded legal assistance is essential to protecting the interests of the vulnerable in society and upholding the rule of law. As well as campaigning for a sustainable legal aid system, our core objectives are to increase social mobility and diversity within the legal aid sector, to promote the interests of new entrants and junior lawyers and provide a network for people beginning their careers in the legal aid sector.

The Consultation

This is YLAL's response to the Civil Justice Council ('CJC') Rapid Consultation. The CJC launched its consultation on 1 May 2020. YLAL opened a survey of its members to assist with this response on 2 May 2020. The survey closed on Friday 8 May 2020. We received 68 responses to the justice system part of our survey.

The CJC Rapid Consultation requested a response to the following questions:

- What is working well about the current arrangements?
- What is not working well about current arrangements?
- Which types of cases are most suited to which type of hearings and why?
- How does the experience of remote hearings vary depending on the platform that is used?
- What technology is needed to make remote hearings successful?

- What difference does party location make to the experience of the hearing?
- How do remote hearings impact on the ability of representatives to communicate with their clients?
- How do professional court users and litigants feel about remote hearings?
- How do litigants in person experience hearings that are conducted remotely?
- How do remote hearings impact on perceptions of the justice system by those who are users of it?
- How is practice varying across different geographical regions?
- What has been the impact of current arrangements on open justice?
- What other observations would you make about the impact of COVID-19 on the operation of the civil justice system?

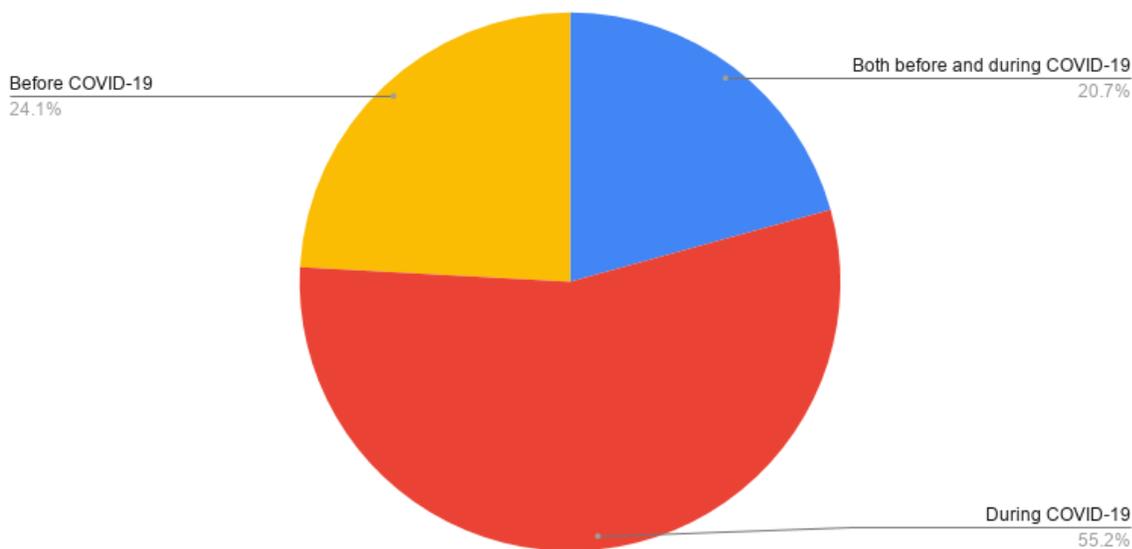
Respondents' Experience of Remote Hearings

As junior legal aid lawyers, YLAL members are well-placed to provide an insight into how remote technology, and its speedy implementation due to the current crisis, is working currently from the perspective of 'professional court users'.

It should be emphasised at the outset that, while the experiences of professional court users are important, YLAL members are unable to speak directly to the experiences of litigants whose views, feelings and experiences are paramount.

20.9% of respondents to YLAL's survey had conducted video hearings, and 20.9% had conducted telephone hearings. Less than half of respondents had done remote hearings prior to COVID-19, and for the remainder, it was a new experience.

Based on your previous answer, have you done remote hearings....



8.1% of respondents said that they thought that the current system of attending courts or tribunals either remotely or in person was working well, 16.1% didn't think it was working well, while the majority (75.8%) felt that it was working well in part.

Respondents commented that it is positive that hearings are able to continue at this time, albeit in a new format, and that it is encouraging that parties have adapted to the new circumstances. It has been extraordinary to witness courts that still use fax setting up complex video hearings with multiple parties. For certain types of hearings, such as case management hearings, remote hearings are seen to provide a practical solution (and indeed have been utilised effectively pre-COVID).

However, many respondents felt that remote hearings are no replacement for in-person hearings. Given the issues associated with remote hearings, some respondents were reluctant to see it as any more than a temporary arrangement:

At the moment, technology is not good enough and there is a danger of a two tier justice system depending on how well each element of the justice system is funded. Whilst some courts will have excellent video and sound quality, others will only have access to a telephone conferencing system. The two cannot be compared. The system needs to be the same quality nationally and in each court (crown, county, mags, coroner) before I will think positively about this.

Although it is generally accepted that remote hearings may be a necessary expedient during the COVID-19 pandemic in some areas of practice, such as Family and Court of Protection ('CoP'), many respondents felt that there is a real risk of injustice should remote hearings become the norm

following the pandemic. Across the board, respondents raised concerns about the impact of remote hearings on justice and cited multiple causes of potential injustice, including:

- the practical inadequacies of technology;
- digital exclusion through lack of means or ability;
- a lack of reasonable adjustments;
- a greater risk that clients will not be represented;
- a reduction in public scrutiny through the dilution of open justice;
- a failure to consider the importance of the experience of being physically in court and the impact that has, particularly in terms of reaching settlement;
- that the persuasiveness of oral evidence and advocacy will be lost; and
- above all, the sense that clients will not feel they have been treated fairly in all cases.

Full responses to the questions on the advantages and disadvantages of remote hearings can be found at Annex 1.

Technology and remote hearings

YLAL members' experiences of technology and remote hearings were mixed. There are some notable advantages to remote hearings and those who had positive experiences of remote hearings felt that the system worked well. Many respondents reported technological issues, however, and noted the obstruction these caused to the standard course of justice:

I dialled into a hearing in the Admin court at the start of the lockdown. Counsel was present but I couldn't hear most of the hearing to take a proper note and the system of dialling in required numerous calls and requests before it was granted.

Video hearing took 30mins to get going, lack of sound, connection dropped off, pic went. Faff.

The consensus is that video hearings are preferable to telephone hearings in that parties can see each others' faces and this helps to build rapport. However, participation in video hearings is often stymied by connection issues which affect sound and/or video quality and can lead to participants being 'kicked out' of a hearing due to a technological glitch, leaving them unable to take part for some time or, in some cases, for the rest of the hearing.

Sound quality in telephone hearings is dependent on signal strength and poor quality lines increase the opportunity for misunderstandings and/or need for repetition. In addition, these hearings become

more complicated when there are a number of individuals involved. Not being able to see or identify speakers causes confusion and overlap, and much is lost in the absence of visual cues.

The move to remote hearings has had mixed effects on access to justice for disabled clients, depending on the nature of their disabilities. One member noted that their client would not have been able to physically attend the Administrative Court due to restrictions on travel. Another member noted that the Special Educational Needs and Disability (SEND) tribunal had not made appropriate reasonable adjustments for a deaf client. The online platform ('Kinly') only displayed the videos of the four people to speak most recently. As the client's BSL interpreter was not speaking there was no way that the client and their interpreter could see each other throughout the hearing. This YLAL member had to use their personal Zoom account to set up a separate video call so that the interpreter and client could communicate during the hearing to ensure that the client could participate.

Concerns were raised about access to justice for clients. Many clients do not have the required technology or technological abilities to engage effectively in a video hearing. This does not appear to be routinely considered by courts when arranging the hearing format.

It was noted that in some prisons and police stations, internet connections are often poor, and court buildings were noted to have low bandwidth.

A respondent commented:

It would seem that HMCTS should have its own video conferencing software or service, designed specifically for hearings. This could include private chats between solicitor and barrister, for example, or the option to have the barristers and the judge and solicitors all on screen, to replicate a proper hearing.

Maintaining confidentiality for clients in detention was noted to be a particular issue:

Issues with sound is a huge problem during interviews (where all parties cannot be heard) and confidentiality of consultations cannot be independently verified.

In addition to performing their ordinary roles during hearings, YLAL members have to spend time prior to and during hearings resolving clients' technological issues, such as helping install software and assisting with re-establishing dropped connections, which detracts from their ability to engage with the process themselves. As one respondent commented:

It would be useful to have guidance... which could be shared with defendants on how to join so it's not up to just us to work out and train them all remotely.

One respondent noted that conducting hearings remotely, rather than in person, forces the parties to think about the content of their bundles, which is advantageous in cutting out unnecessary or superfluous material. While parties have largely been swift to adapt to electronic bundles, however, some judges are still insisting on hard copy bundles, apparently without recognition of the administrative burden this places on practitioners who are unable to access their usual office facilities or utilise admin support. Some members have encountered issues sending electronic bundles to courts which only accept certain file sizes or formats.

Which types of cases are most suited to which type of hearings and why?

In answer to the question 'do you believe remote hearings are suitable for the area of law you are practising in?' 75.9% of the practitioners who participated in the YLAL survey answered 'sometimes', 17.2% answered 'no' and 6.9% answered 'yes.'

Remote hearings are seen as unsuitable where significant client engagement is needed before, during or after the hearing. Additionally, respondents reported concerns that some clients may feel their non-attendance at a remote hearing will be detrimental to their case. Respondents stated that clients ought to be involved in any decision-making as to the suitability of remote hearings now and in the future.

Practitioners who work with vulnerable adults or clients who have multiple or complex needs expressed particular concerns with remote hearings. They reported that some clients need to know they have been seen in order for justice to effectively be done and that some clients do not understand remote technology. There is a concern that this will reduce an individual's ability to access and understand the justice system; a problem which is exacerbated when practitioners are unable to meet their clients and take instructions face to face.

In certain practice areas, justice is seen as a process, not just an outcome and it is viewed as vital to the efficacy of that process that clients feel as meaningfully involved as possible. There is scepticism as to how far this can be achieved remotely by removing the 'human element'.

Family and Court of Protection

From a practitioner's perspective, remote hearings for non-contentious matters and case management in care are generally viewed as potentially appropriate to be heard remotely, where all parties are represented. This is only the view of practitioners, however, and does not take into account the experiences of other court users, including clients. It also includes the important caveat that decisions to conduct hearings remotely must be taken on a case by case basis and will not generally be appropriate where any party is unrepresented.

In contrast to case management, practitioners did not view final hearings as suitable for remote hearing, including but not limited to the following:

- fact finding hearings;
- large, contested hearings in public law children cases;
- hearings where a significant decision is being made;
- hearings where one or more litigant acts in person;
- CoP hearings with clients present.

Where both parties are represented, this makes remote hearings easier. With litigants in person, however, it was expressed that 'remote hearings have been near impossible.'

Domestic violence cases, where the perpetrator can see the victim online, are not seen as appropriate for remote hearings, especially where there is a possibility that the perpetrator might harass the victim or record the proceedings for their own use.

Immigration and Asylum

Remote hearings in immigration and asylum law are viewed as unsuitable, particularly as clients do not usually have access to the requisite technology and often require interpreters. Credibility in most asylum cases is key and respondents to the survey considered it 'imperative' that these hearings are conducted in person to enable an appellant's demeanour to be assessed as part of the evidence.

Concerns were also raised that it is not possible to conduct a remote hearing other than by telephone in the Immigration and Asylum Chamber because representatives of the Secretary of State for the Home Department are unable to utilise Skype for Business.

Generally, interim hearings are considered suitable to be conducted remotely without causing injustice. Immigration practitioners have, however, raised a number of concerns about the introduction of the Reform Online pilot to the First-tier Tribunal (Immigration and Asylum Chamber) without adequate consideration of funding.

Practitioners are now expected to draft a skeleton argument in advance of the Case Management Review Hearing ('CMRH') at the fixed fee rate for attendance which, for a telephone CMRH, is £90. Practitioners are concerned that, where requests are made to extend the directions for a skeleton argument pending clarification from the Legal Aid Agency, these are not routinely granted, which has a considerable impact on fairness and justice to appellants.

In addition, practitioners have raised concerns that telephone CMRHs during COVID-19 typically take longer and require more preparation than oral CMRHs. There is, however, a substantial difference in remuneration between oral and telephone CMRHs; the fees being £166 and £90 respectively.

Housing

Remote hearings where parties have agreed an order or adjournment prior to the hearing are viewed as suitable, saving time and money, and seen as unlikely to affect the client or the outcome for the client. Equally, some interim hearings are generally viewed as being suitable to be conducted remotely without causing significant injustice. Again, this comes with the important caveat that suitability should be assessed on a case by case basis only, and that the accepted norm should still be that hearing will take place in person.

Where there is no agreement between the parties, remote hearings are viewed as unsuitable as, in the majority of cases, it is important that the ‘humanity’ of the defendant is seen by the judge. This is especially important in hearings for breach of a civil injunction and/or committal where a person’s liberty, and potentially their home, is at stake. Many defendants are extremely vulnerable and require face to face support.

Additionally, respondents reported a decrease in the number of agreements reached ‘at the door of court’; although common during in-person hearings, practitioners take the view that an out of court settlement is less likely to be reached by email or phone, especially where matters are complicated and require explanation in person. This type of concern could be brushed aside as anecdotal and is difficult to measure in terms of impact. However, these ‘at the door’ conversations reduce the issues between the parties, and potentially enable settlement. As a result, these save the Court and the parties significant face to face time, and therefore also save money. Considerations of how this can be facilitated and encouraged in a remote setting should be explored.

Public Law

YLAL members’ experiences reflect those highlighted in the Public Law Project’s (PLP) report on judicial review in the Administrative Court during the COVID-19 pandemic.¹ Our members did not provide details of their experiences of judicial review in the Upper Tribunal.

YLAL endorses the following findings from PLP’s 20 April 2020 report:

- There is support for hearings still being able to go ahead and remote hearings have certain strengths. The Administrative Court has demonstrated good practice in a number of areas.
- There are also various technical difficulties arising, as well as more fundamental concerns about open justice and participant engagement.
- Remote hearings are not seen as universally appropriate, even in a jurisdiction with a focus on ‘law-heavy’ disputes. There was significant concern about the use of remote hearings for

¹ <https://publiclawproject.org.uk/latest/judicial-review-during-covid-19/>

cases that involved litigants in person, were particularly complex, or where significant case management had not been completed prior to the hearing.

Inquests

Although Pre-Inquest Review Hearings (PIRHs) may be suitable for remote hearing if all interested persons agree and the bereaved family is represented, there is a general concern among practitioners that this should not be the norm.

Remote hearings are not generally suitable in inquests due to the nature and subject matter of both interim and final hearings, the need for the family to build trust and rapport with the coroner and their team, the need for the family to be at the forefront of the process (particularly if Article 2 ECHR is engaged) and the sensitivity with which the inquest process needs to be handled. Practitioners would welcome guidance that establishes a general rule that PIRHs and inquest hearings will take place in-person unless all interested persons agree to a remote hearing.

One YLAL member reported attending a PIRH which, in principle, went well but was unsettling for the bereaved family. It proved difficult to ensure that both family members could participate, as they live separately and only one of them had the means to attend by Microsoft Teams; the other family member could only attend through loudspeaker on their representative's phone. The difficulties were further exacerbated by low bandwidth in the courtroom, which made it impossible to hear the Coroner at times and further reduced the family's ability to effectively participate. Although the hearing was 'successful' in the sense that progress was made, this YLAL member reported that it was far from ideal for the bereaved family.

In addition, concerns have been raised among practitioners that there is an increasing tendency among coroners to suggest that inquests can be concluded on the papers and to invite submissions from interested persons. This is particularly concerning because many bereaved families do not have access to legal representation at inquest hearings, as inquests are out of scope for the purposes of legal aid; those families will therefore be at a disadvantage in making representations. In addition, practitioners report concerns that these suggestions have been made for purely pragmatic reasons, due to a lack of resources and concern among coroners about the number of inquests that will need to be concluded after the pandemic.

Welfare Benefits Tribunals

Remote hearings are viewed as suitable where cases are 'good on the papers' and for clients who suffer from anxiety, who do not have to attend the court environment.

Remote hearings are not suitable, however, for the many clients who require face to face support and those who benefit from a judge seeing the impact of their conditions in person, which is particularly important when considering the impact of physical disability.

How do remote hearings impact on the ability of representatives to communicate with their clients?

As above, many YLAL members have already undertaken remote hearings. 89.7% of respondents said that remote hearings make it more difficult to communicate with clients. 6.9% said that it depends on the circumstances and the type of hearing as to whether remote hearings make communication with clients more difficult.

The majority of respondents expressed concerns about how they are able to communicate with their clients during remote hearings.

Concerns included the practical side of taking instructions, including being able to telephone clients whilst dialled into a hearing, but this requiring access to two telephones; whether clients have access to the necessary devices to 'attend' the hearing at all; as well as being unaware of clients' surroundings, and whether they are able to have privileged discussions confidentially.

The added difficulties of clients with mental health problems, English as a second language, and assisting these clients remotely to have effective access to a remote hearing means that some members' clients were simply unable to attend a hearing they otherwise would if the hearing had been in person.

Many of our members referred to the general concept of being able to give legal advice on what will often be a life-changing case remotely, rather than face to face.

Our members raised concerns not only about the practical impact on the process and progress of the case; it is equally imperative that they are able to build rapport with their clients and provide support and communication throughout a hearing in order to be effective advocates. This enables full instructions to be taken in an effective and compassionate manner. Remote hearings are making clients remote to their advocates, which in turn may result in additional time and cost to the Court and the justice system more widely; when full instructions cannot be taken and clients' understanding can not be confirmed, there will be more ineffective 'effective' hearings.

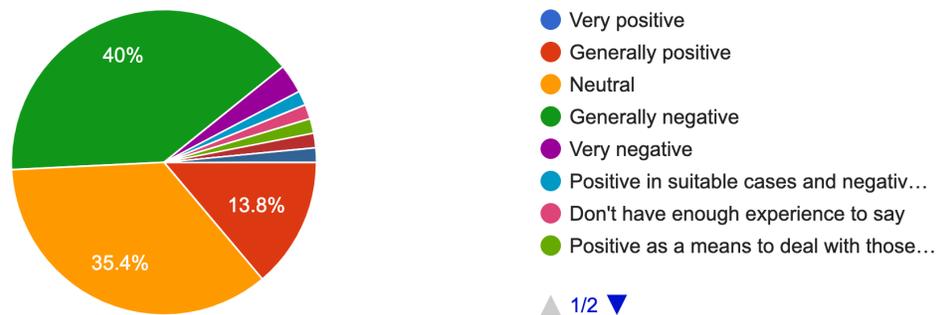
For a full list of respondents' concerns, see Annex 2.

Our members, as legal aid lawyers, are used to working with vulnerable clients, who often need a holistic approach to their legal problems, but also the professional support and reassurance that face to face advice and hearings give. For this reason, YLAL believes that remote hearings should proceed on a case by case basis, and then, only if all parties and the Court agree that it is appropriate that the hearing be held remotely.

How do professional court users and litigants feel about remote hearings?

How do you feel about remote hearings?

65 responses



While 13.8% of respondents feel generally positive about remote hearings, 35.4% of respondents feel neutral and 40% of respondents feel generally negative about the use of remote hearings.

The majority of YLAL members are junior lawyers who have grown up with technology and are generally quick to embrace the use of it. It is not the use of technology itself that our members are concerned about; it is the wide-ranging application and speed at which the move to remote working has occurred without full consideration of the wider implications on our clients, litigants, and access to justice.

As reflected in other sections of this response, while many remote hearings may be considered 'effective' in that they took place, that is where the efficacy ends.

The general consensus among respondents is that the issues caused by and incidental to remote hearings are so significant and their implications so catastrophic to the principle of open and effective justice, that remote hearings should not be used in preference to in-person hearings save in circumstances where the parties agree to a remote hearing or where it is absolutely necessary.

How do litigants in person experience hearings that are conducted remotely?

The responses provided in this document are in line with our membership, and therefore are reflective of the experiences of professional court users, rather than litigants themselves, or litigants in person.

As young legal aid lawyers, due to the changes in the scope and accessibility of legal aid, our members often come into contact with litigants in person within the justice system. Given the speed of the survey, however, we feel other organisations are better placed to provide insight into the experience of litigants in person.

How do remote hearings impact on perceptions of the justice system by those who are users of it?

This is reflected in our responses to other questions within this document.

How is practice varying across different geographical regions?

YLAL is a national organisation, with members across the country. The difference between courts as to issues of court safety, remote hearings and open justice, by both jurisdiction and geographical region, has been noticeable.

At the start of the pandemic, there was considerable variation in practice across geographical regions with some courts slower than others to reduce the number of physical hearings and/or adopt safety measures such as making changes to search procedures, buying in hand sanitiser and ensuring the cleanliness of courtrooms, waiting areas and conference rooms.

Following lockdown, YLAL members reported geographical variation in decision-making as to whether hearings can proceed remotely, as opposed to being dealt with on the papers or adjourned, and the mode of any remote hearing, including considerable variation as to platform.

There seems to be little consensus across jurisdiction or geographical region as to the mode of remote hearing. There has been some change in the criminal justice system with the introduction of the Cloud Video Platform and the availability of Skype/phone facilities for consultation with clients in detention. This has not, however, been replicated in the civil courts, which has led to considerable confusion for practitioners and their clients, and which will undoubtedly lead to confusion among litigants in person.

In some jurisdictions, for example Family and CoP, comprehensive guidance has been issued on the principles to be applied when considering whether to conduct a hearing remotely. Where such guidance has been issued, there tends to be less geographical variation in decision-making. Where, however, comprehensive guidance has not been issued, for example in Inquests or Immigration, there is considerable geographical variation in decision-making with practitioners often being unsure as to how representations on the mode of hearing will be received.

Where hearings are adjourned, YLAL members report variation in the listing of physical hearings; for example, some members have been told that physical hearings are being listed as early as 1 June 2020, whereas others have been told that no physical hearings will be listed before the end of August 2020. This varies by both jurisdiction and geographical region.

What has been the impact of current arrangements on open justice?

In response to our survey, just 1.5% of respondents felt that the current hearings are having a positive impact on open justice.

71.2% of respondents felt that it would have a negative impact, 24.2% very negative impact, and 47% slightly negative impact. See Annex 3 for respondents' full answers to this question.

Open justice is the foundation of an effective legal system. Every law student in the country knows that, *'It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done'* [per Lord Hewart CJ in *R v Sussex Justices*, ex parte McCarthy, [1924] 1 KB 256].

The key concern appears to be that while remote hearings may formally be held in 'public', the practical reality is that they are not.

If remote hearings are to continue, which seems inevitable considering the current pandemic and the availability, development and sophistication of technology, more work is required to ensure that justice remains open.

While the current circumstances require society to adapt, COVID-19 cannot and should not be used as a tool to rush through vast swathes of changes which jeopardize, or even compromise, open justice. An evidence-based approach must be taken to ensure that court users, both professional and lay, members of the public and journalists are able to access courts freely.

The use of technology should be used as an opportunity to increase accessibility and to shine a light on what may have been the darker corners of courtrooms in remote parts of the country.

As reflected in our members' comments, lawyers and their clients often struggle to participate effectively; the ability of journalists and other members of the public to observe proceedings is even more difficult. Without ensuring effective, public access to the courts, the use of remote hearings should be carefully circumscribed.

What other observations would you make about the impact of COVID-19 on the operation of the civil justice system?

In our [first COVID-19 report](#), we noted a wide range of positive and negative experiences in terms of the impact of COVID-19 on remote justice and our members' practices.

There are some welcome changes, such as the increased use of technology where appropriate and the savings in both time and costs for all parties where, for example, straightforward directions hearings are held over the telephone or by video conference. The use of remote hearings for final hearings, however, is generally considered inappropriate by YLAL members.

YLAL believes in the fundamental right of access to justice, which includes the ability to obtain high-quality, affordable legal advice and representation free at the point of access for those who cannot afford it, the ability to effectively participate in proceedings, and the ability of members of the public to access court hearings should they wish.

The response of YLAL members to this consultation shows that further consultation and evidence-based research is required before remote hearings can be considered an adequate or effective replacement for in-person hearings.

15 May 2020

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Annex 1

Answers to questions on the advantages and disadvantages of remote hearings

- Positive: the technology is in place to enable this/ respects the purpose of social distancing. Negative: There are too many teething issues to allow justice to be done at this stage.
- As above, they can be positive to more administrative matters forward, but I think would be more damaging than good if they were used for all hearings across the board.
- They're necessary given the circumstances but I don't think it's appropriate to continue moving forwards.
- Technology is usually poor, access to justice is poor. For short directions hearings it is potentially beneficial but for litigants in person, for giving evidence or for contentious hearings I don't think it works
- I feel positive about remote hearings because they are an effective way of reducing the environmental impact of the justice system by reducing the amount of paper used and the amount of energy spent in travelling long distances for short, interim hearings. No doubt, they will also save costs in the long-run. However, I feel negative about the impact of remote justice on my clients and fear that it will lead to a rise in miscarriages of justice. This is borne out by the 2010 MOJ virtual court pilot outcome evaluation, in which it was found that first appearances from the police station to Magistrates Court can result in perceptions of hasty justice, a reduction in legal representation, and an increase in adverse outcomes for defendants. Although I don't practise crime, it seems to me that the same issues may well apply to civil justice. In addition, there have been a number of JUSTICE reports on the issue of digital exclusion, which will affect the vast majority of my clients.
- In shorter and straightforward cases they are fantastic.
- I do not feel that remote hearings provide a hearing that is as full and fair in terms of access to justice as an in person hearing does. There are problems with technology, LIPs often struggle, and it doesn't always feel like a "proper" hearing despite the significance of the decisions being made. It's perfectly adequate though for case management when all parties are represented.
- More convenient, usually shorter
- As above and many people don't have access to the right technology
- They are necessary during Covid-19
- Underfunding of the justice system means that systems won't be up to scratch and it may fall on the Claimant's solicitor to make sure things go smoothly.
- They are a good solution and save time and costs

- I have only undertaken telephone hearings and it feels like nothing can be achieved. Directions can be set but that is all. If that is all that is required then they are a positive tool.
- Clients often prefer it for certain hearings as saves them coming to court which could lead to prison transfer, can keep hearing focused and short, often means trial counsel can deal whereas requiring an attendance in person might require a stand in and trial counsel is of course preferable for all parties
- My experience of remote hearings has been reasonably good. They have been effective and reasonably well organised. There are benefits for accessibility, convenience and speed but I think there is an impact on fairness and procedure
- Positive - it provides practitioners with flexibility e.g. those with caring responsibilities can conduct a hearing at home. Negative - some clients will simply not be able to access justice as their circumstances prevent them from doing so, for example, if a client is not computer literate
- There is potential for long term use of the remote hearings could be very effective for case progression and mention hearings (especially where the defendant is not required). However there needs to be an improvement of the systems to make them accessible and practically effective.
- Court work is about human beings in vulnerable or difficult situations.
- Client's interests are not prioritised.
- In some instances, they are time and money saving. If both parties are happy with it then it can be a good thing. However, as I said above, I worry about the impact on our vulnerable clients of having to attend a remote hearing with no physical support
- While there are some benefits to having remote hearings, I fear that they will be used as a shiny new toy to mask the chronic underfunding of the criminal justice system over the past decades.
- I think it will be good in some circumstances, means that quick hearings can be dealt without all the travel expenses and waiting involved.
- As above - they have their place, for hearings which would be for lawyers only, but statistics show that defendants are less likely to be, for example, granted bail, when produced over video link. They are also statistically more likely to be given longer sentences. The human element of the criminal justice system is of utmost importance.
- Much more time effective but potentially more alienating for clients
- There is the potential for them to be utilised well, however, the Tribunal system plainly does not have the interests of Applicant or Appellants in its mind, and is solely concerned with its own throughput of work. This, broadly, will lead to significant unfairness for Applicant's and Appellant's generally, as it will lead the Tribunal to force the parties to engage in remote hearings in cases where this is, frankly, wholly inappropriate.

- I think in hearings where both parties are represented and the clients themselves don't need to attend, and the hearings are largely procedural eg case management conferences, then remote hearings are probably sensible so long as the tech is in place. The current situation where parties are often being told the court will not have the papers is just not acceptable, especially for litigants in person who have no means of sending the papers electronically (and who will often have given the only copy of their papers to the court). I imagine it would also have the effect of dehumanising an already distressing process for people who often rely on a judge's sympathy to keep their home. I worry it will be a lot easier for judges to exercise their discretion in favour of a landlord when they do not have a tenant in front of them.
- I think in general they make representing vulnerable clients in desperate situations much more difficult.

Annex 2

Answers to the impact of remote hearings on the ability of representatives to communicate with their clients

- My clients are almost impossible to facilitate engagement with at the best of times. It also often makes the seriousness of the situation hit home if they attend court and so remote hearings are making it more difficult to resolve the matter
- If you aren't with your client, taking instructions can mean calling a client whilst dialled into a hearing and hoping they answer! Not always possible without access to two phones if it's a telephone hearing.
- Phone contact only, more difficult to have a meaningful conference
- Clients are less likely to understand the importance/procedures/substance of the hearing
- My clients usually don't attend remote hearings so are unable to participate
- I am still able to conduct conferences [with clients] before and after remote hearings and endeavour to do so in every case, so in that sense communication is unaffected. However, it is not easy for a client to communicate with me during a remote hearing to let me know if they have any issues or questions, unless they are particularly tech savvy and have multiple means of contacting me, for example by email or telephone. During in person hearings, I often rely on being able to see my client in order to know whether they are comfortable with the hearing or having difficulties. I haven't yet had a remote hearing where I haven't previously met my client in person. I cannot see how you can possibly build rapport and trust with a client remotely during the limited time available before a hearing.
- Pre-court consultation slots are limited in terms of time
- Many of my clients suffer with mental health and/or cognitive vulnerabilities. Trying to navigate digital devices can often be difficult, frustrating and confusing for them. In addition, my clients often need reassurance during hearings and that can be difficult to effectively provide without being there in person.
- Body language and facial expressions are helpful when dealing with an anxious or vulnerable client, my first client speaks English as a second language and we had been unable to get and interpreter in time, this made it much more difficult to speak over the phone. This is easier in an interview room face to face even without an interpreter present.
- Remote communication cannot compare to face to face discussions. Many clients also struggle with technology.
- We can text the client but at same time a lot of clients are not used to this type of format, majority require hand holding and face to face support. Vulnerable clients lose out on moral support, direct contact, reassurance, body language cues from barrister and solicitor and judge. Lay people are more focused in [an] actual court hearing, remote hearings take a long time setting up.
- It depends on the client and their understanding and ability to give instructions by phone and email in advance of the hearing.
- Ability to communicate privileged discussions confidently
- Can't see them, limited time to speak, unaware if truly confidential

- Harder to gauge client reaction/ need for support, harder to arrange pre and post hearing attendances
- It is much harder to build a rapport with a stressed client over a video link or call.
- It is not clear that the client can fully communicate all their needs and concerns (especially when these take place over the phone and you cannot see body language). A lot of communication can be aided by non-verbal communication. Concerns about whether conferences with clients are fully confidential (especially during police station consultations). Being a physical support presence is also very important, especially in cases where clients are vulnerable. There can also be practical difficulties such as poor sound and connections which are not uncommon.
- Issues with technology make it more difficult, and just not being able to sit in the same room and speak; it's not the same supporting and representing someone through such a challenging proceeding when done remotely.
- In family, the connection with a client is so important. So often things come up mid hearing and the client needs to get your attention. Without them being able to email or by providing a personal number to be messaged on this is impossible on a telephone hearing. There is no fluidity which is necessary and makes the process far less daunting.

Annex 3

Answers to questions regarding the impact of the current remote hearing arrangements on open justice

- At the moment, I think it is fine but would resist any attempts to move more complex matters to a remote model. I feel that this would undoubtedly erode the principle of open justice
- Again, the system is still not fit for purpose and not every case is suitable for a remote hearing.
- Clients are being discouraged from dialing in!
- I do family so matters are not public anyway but journalists and academics are complaining re court of protection and criminal hearings with logistics on attendance and signing the confidentiality forms for court of protection cases
- People do not realise what legal advice they may be able to access and they are not being signposted as usual
- Access to justice for vulnerable clients or litigants in person who don't have the technology to participate
- Clients are unable to participate as easily or understand the process. I largely participate in court of protection work which is subject to transparency orders but generally, how is a member of the public going to access a remote hearing?
- I have only attended one remote hearing, but have spoken to colleagues and not one has had a remote hearing with a member of the public or press present. Penelope Gibbs and Lucy Reed have both talked about difficulties of attending remote hearings as a member of the press/public.
- Negative for some clients who cannot read or write or don't have access to technology to allow remote hearings, positive change in DV cases we are granted more non molestation orders remotely then we would have got face to face. It's become easier for clients who cannot leave their home
- Fewer hearings being heard, less judges available
- Hearings aren't actually public in that they aren't live streamed
- Have heard of journalists not being told about hearings - that is concerning. Also no way that I'm aware of for the public to attend.
- Despite arrangements being attempted, open justice is impossible with remote hearings.
- I have seen numerous indications on Twitter that journalists have not been able to attend. There is an element of checks and balances by virtue of courts where people not involved in a case hear it, this doesn't happen in virtual courts and there are risks to this especially for unrepresented defendants

- Much more difficult to observe hearings
- There appears to be no mechanism for family and friends of defendants to be able to log into the system to view proceedings relating to the defendant.
- Not open justice. Clients don't feel as well looked after.
- It is not possible for members of the public to engage in the same way as previously.
- I am concerned that the lack of face to face takes away the personal element to a case, and that decisions will be made that disproportionately negatively affect our client as they are unable to attend court and make sure they are seen. A lot of our cases rely on that personal element
- It is more difficult for the public to know about hearings and for them to be reported on.
- Public are unable to attend court
- At present I have only conducted telephone hearings which worked well. I was furloughed before the video link hearings became more common so have yet to experience these first hand. Colleagues of mine have commented that video first appearances, bail hearings and case management hearings have generally worked well (despite the odd teething problem)
- It is, in reality, close to impossible for the public to attend hearings in the current climate. No matter how the Courts and Tribunals may, in principle, be willing to facilitate attendance, the reality is that there are significant barriers to this.
- How can a telephone or Skype hearing be considered public?