



## **JUSTICE Response to HMCTS Survey on Conducting Video Hearings**

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### **For further information contact**

Jodie Blackstock, Legal Director  
email: [jblackstock@justice.org.uk](mailto:jblackstock@justice.org.uk) direct line: 020 7762 6436

JUSTICE, 59 Carter Lane, London EC4V 5AQ tel: 020 7329 5100  
fax: 020 7329 5055 email: [admin@justice.org.uk](mailto:admin@justice.org.uk) website: [www.justice.org.uk](http://www.justice.org.uk)

## Introduction

1. JUSTICE considers that any fully remote hearings taking place during the Covid-19 pandemic must be procedurally fair. We provide responses to questions posed by HMCTS below which draws on our research, including 18 responses so far to a survey of the experiences of the JUSTICE membership, across many first instance and appellate jurisdictions with remote hearings during the Covid-19 pandemic, our Working Party reports which have considered vulnerability and online justice processes, the experiences of Intermediaries for Justice, desk based research and the ongoing testing of a mock virtual jury trial simulation facilitated by JUSTICE.<sup>1</sup>
2. To enable fully video hearings to take place, careful attention is needed to ensure proceedings will be fair. We note below issues and possible solutions to achieve this aim.
3. There are five main areas where we have identified solutions to potential challenges:
  - a. **Technology** – the video platforms currently being used for video hearings vary. Skype for Business seems to be a popular choice, but this platform is soon to be replaced by Microsoft Teams. However, since HMCTS is expanding the capacity of the Cloud Video Platform, this is where technical capability must be focussed. Whichever platform is used, modifications to the traditional approach to hearings are needed, and technical support is essential for remotely delivered hearings.
  - b. **Formality** – court hearings convey legitimacy and the majesty of the law through various rituals, costumes and signs of deference to the court, all of which will need to be adopted in remote hearings.
  - c. **Support for Litigants in Person and vulnerable court users** –Some users will not be able to access remotely delivered justice but for those who can but require support to participate, tailored approaches from

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<sup>1</sup> For which a second test will be held on Friday 17 April.

HMCTS and other support agencies will be needed to facilitate their participation.

- d. **Open justice** – open justice is a fundamental principle of the common law and right to a fair trial under the ECHR, but the current situation will require changes to how open justice is delivered. Recordings, live streaming, prompt upload of transcripts and proactively liaising with media outlets are all necessary in the current climate to guarantee open justice.
- e. **Administration and communication** – while it is understandable that shifting hearings online has often taken place last minute due to the fast-changing nature of the Covid-19 situation, clarity is needed over who is responsible for convening the remote hearing, particularly when technical issues arise.

#### **A. Access to justice/trust in justice**

*A1: How many LiPs will be unable to access video hearings at all and which services are most at risk? (Hardware, connectivity, IT skills). Specifically how do we best assist those litigants who have vulnerabilities, digital and non-digital? Will device access accommodate mobile phones or will a larger screen be required?*

- 4. LiPs are likely to be more digitally excluded than the general population. Research by the Legal Education Foundation found that only 50% of those entitled to civil legal aid pre-2013 would be willing and able to operate online.<sup>2</sup> Some who have access to the internet may lack the digital literacy to participate effectively in online justice.<sup>3</sup> For those, specific support will be necessary, which

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<sup>2</sup> The Bach Commission on Access to Justice, The crisis in the justice system in England and Wales (November 2016), available at <https://researchbriefings.files.parliament.uk/documents/LLN-2017-0093/LLN-2017-0093.pdf> p. 16.

<sup>3</sup> There are varying levels of digital competency in society reflecting different support needs for online and remote justice. The UK Consumer Digital Index suggests that while 62% of the population are “Digital First” (use multiple devices, shop, stream and manage money online) 25% are “Digitally Competent” but would prefer face to face support and a further 12% are Digitally Disengaged, with little or no digital behaviour, ‘UK Consumer Digital Index 2019’ (Lloyd’s Bank, 2019) p. 10 available at [https://www.lloydsbank.com/assets/media/pdfs/banking\\_with\\_us/whats-happening/lb-consumer-digital-index-2019-report.pdf](https://www.lloydsbank.com/assets/media/pdfs/banking_with_us/whats-happening/lb-consumer-digital-index-2019-report.pdf)

we explore in further depth below. However, we consider that there is likely to have been a huge acceleration in uptake of and confidence in using video technologies as a result of the pandemic, and more people will now be comfortable with engaging in communication over video link.

5. One Tribunal judge told us that telephone conferences are preferable to video conferences or other methods using computers because the claimants are often disadvantaged and more likely to have phones than computers. For shorter hearings, video conferencing tools need to be accessible by mobile phone. However, this will only work for hearings with few participants. Moreover, we would have concerns about using mobile phones where witness evidence is needed, due to the small size of the screen.

*A2: Will LiPs be able to dry test run technology 24 hours in advance?*

6. All participants must be able to familiarise themselves with the technology ahead of the hearing, like a court familiarisation visit. A test video or audio call should be available prior to the day of the hearing with the technical support team.
7. One practitioner who had been involved in a remote hearing told us that witnesses had felt overwhelmed and anxious at the responsibility of connecting and the fear of the technology not working. Witnesses must not be forgotten, and they should have access to test runs as well as litigants. Represented litigants may also feel nervous about technology, as may legal professionals, judges and court staff. As such, they would also benefit from a test run.
8. Participants should also receive detailed instructions as to how the hearing will work in a virtual space, the adaptations expected of them and how to prepare the room they join from. As with in-person hearings, simple language must be used to explain the processes. The information should be available in a step-by-step guide provided well in advance of the hearing. We have produced this for the JUSTICE mock remote jury trial and would be happy to share.

9. On the day of the hearing itself, sufficient time must be built in for people to join prior to the listed start time to ensure they feel comfortable that the technology is working.
10. Backup methods of communication should be prepared in the event that the chosen platform is not suitable. We have heard about one inquest hearing where witnesses from the NHS were unable to use Skype for Business as the required plug-in was blocked by their professional laptops. The example underscores the importance of having arrangements in place to proceed through an alternative video platform, or by telephone if appropriate.

*A3: How will we identify LiPs device access/connectivity/confidence levels?*

*A4: How will digital support be provided to LiPs?*

*A5: How do we maximise the ability of litigants to participate effectively in AV hearings?*

11. The day before (or ideally earlier) a hearing involving videoconferencing, a digital support officer or the AV solutions technician should check in with the parties as to how they are connected to the hearing (i.e. laptop, tablet, mobile – if the latter, connected to Wi-Fi or data). There should be frequent check-ins from a judge with all parties, as to whether any technical issues have arisen and whether participants have been able to effectively stream the hearing and understand it. Convention for raising problems must be agreed – for example a chat function, raising a hand or a private WhatsApp group.
12. Many lawyers have felt that they were not given adequate time to prepare for a remote hearing. This problem will be much worse for LiPs. Adequate time before the hearing needs to be dedicated to finding out if and how the user will be connecting to the hearing.
13. Intermediaries and those working with mental health tribunal users note the serious problem of not being able to assess users over video or telephone. Even if assessments are done in person, if personal protective equipment is

used then it is still difficult to assess facial expression. The problems are exacerbated with children.

14. One Registered Intermediary suggested the following four-stage assessment:  
(1) information gathering (including info on tech available, capabilities of vulnerable person and who may be available to assist at their end), finding out what tech will be used in court if that is known, (2) speaking to the vulnerable person by phone to check tech is in place and to introduce yourself (in criminal cases with Officer In the Case on the line too.) Then once tech is in place, (3) assess to see if they can use the tech and if they can, conduct full assessment. (4) Finally, specify that a face-to-face assessment will need to take place if the matter does not go forward whilst the Covid-19 situation is ongoing.

*A6: How do we encourage litigants to access the same level of support (from legal professionals and other advice) that they would in a F2F hearing?*

15. Effective signposting to sources of online legal information, such as [advicenow.org.uk](http://advicenow.org.uk), and independent legal advice providers working remotely, is now more important than ever. The signposting team within HMCTS should work closely with the advice sector, potentially through the Litigants in Person Engagement Group, to develop prominent, jurisdictional specific signposts to sources of advice and information that can be accessed remotely. It may be prudent to explore whether “virtual duty desks” can be established through current video platforms or Cloud Video Platform.

*A7: How do we ensure the reasonable adjustments are identified as effectively as in a F2F hearing, i.e. on the day identification?*

16. In principle, existing processes should identify the need for reasonable adjustments, notwithstanding the absence of face to face hearings, because this is ordinarily established by way of questionnaire.

17. However, video hearings may add complications to vulnerabilities. In the absence of an earlier face-to-face opportunity to explore the prospect of user vulnerability, judges and court staff should routinely check whether anything might inhibit a person's ability to participate and necessitate assistance or an adjustment.
18. Once identified, careful thought will need to be given to how these can be facilitated in video hearings.
19. One response to our survey of user experiences noted that video hearings are difficult for some users with paranoia who may feel like they are being watched or listened into. They felt that there was a need for psychiatrist to meet the person and panel to observe the person in a hearing, which might be helpful, for example, in the Mental Health Tribunal.
20. Working with intermediary and other support services for guidance will be essential and introducing questions as to user need earlier in the process will help ensure adjustments can be made as early as possible.
21. More broadly, there should be close monitoring of the use and experiences of users with protected characteristics to identify trends and areas which need particular attention through the current crisis and beyond.

*A8: How do we maximise public confidence in the system when the default hearing mode is AV?*

22. Openness and transparency are the most obvious way of maximising public confidence and are addressed below.
23. Another important factor will be clear and regular updates on the Gov.uk website, Twitter page and accessible information about the format of hearing sent in advance to all parties.
24. Public information about how AV hearings are operating on Gov.uk – about how to take part and how participants will be guided through - will also assist.

Information on the number of hearings taking place through AV and the way these are operating may also help develop public confidence.

*A9: What specific vulnerabilities prejudice litigants in AV hearings?*

25. There are various vulnerabilities likely to prejudice litigants in remote hearings.

For example:

- a. Blind and deaf people;
- b. Those with neurodiverse conditions;
- c. Those with mental health problems;
- d. Those who are digitally excluded, whether by virtue of:<sup>4</sup>
  - i. poor internet connectivity related to geographic infrastructure shortfalls (i.e. remote areas of Wales);
  - ii. individual poverty impeding their ability to pay for and access internet, phone data etc;
  - iii. residing in closed environments such as prisons and immigration facilities, who do not have 24/7 access to internet devices; and
  - iv. age: elderly people tend to experience a lower level of digital competency and confidence than the general population.<sup>5</sup>

*A10: How do we improve the perception of seriousness of AV proceedings? How will the solemnity of proceedings be replicated?; What guidance/rules will we have on backgrounds?*

26. Remote justice can amplify the 'informal' aspect of courtroom interaction because it is equally accessible to everyone online. Perhaps, for some parties this humanises the legal process. For others, this kind of levity threatens the formal justice process and diminishes the legitimacy of the court: it can work to

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<sup>4</sup> See JUSTICE (2018), *Preventing Digital Exclusion from Online Justice* available at <https://justice.org.uk/wp-content/uploads/2018/06/Preventing-Digital-Exclusion-from-Online-Justice.pdf>

<sup>5</sup> See Lloyd's Bank note 2 above.



underline the impartiality of the process by displaying how 'pally' some of these professionals are with one another.

27. Creating the court environment is important to establishing the solemnity of proceedings. The formality must be emphasised ahead of a person entering the call -people should join initially in a waiting room facility and should receive guidance on joining – their appearance, finding a private room and having a blank background.
28. All participants should dress as if they were going to court. Users should find a private room and minimise background noise.
29. The judge should display a court logo background while other participants should have blurred or plain backgrounds. It is important that users do not feel distracted or anxious about joining a hearing via video– either because they feel as if they will be judged by the background of their accommodation or because they feel intimidated by displays of wealth in other users' backgrounds.
30. One suggestion made after JUSTICE's first mock remote jury trial was for a standardised approach to positioning of users in front of the camera.<sup>6</sup> This could be achieved by the same technology in photoboosts where the user must 'fit' within an outline drawn on-screen. Greater uniformity will assist in improving a perception of seriousness and solemnity.
31. The opening statement of the judge can play an important role in establishing the tone of the hearing.<sup>7</sup> For jury trials and witnesses, an oath or affirmation must still be taken. One response to our survey suggested sending religious books to users who do not have one at home on a loan basis, though it may be more pragmatic to merely ask, in current circumstances, for an affirmation.

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<sup>6</sup> We understand that the video hearing platform that will ultimately be used by HMCTS for online hearings as part of the Reform Programme will feature the judge fixed in the top right-hand corner of all participants' screens.

<sup>7</sup> Transparency Project, [Remote Justice: A Judge's perspective](#) (7 April 2020).

*A11: How do we ensure that in AV hearings litigants have the same opportunity to communicate with their legal representative as in a F2F hearing?*

32. Communication between a litigant and a professional representative will ideally be within a breakout room function within the video conferencing technology. If this is not available, there needs to be a confirmed alternative method of communication, e.g. mobile telephone, and the opportunity to virtually breakaway [i.e. by muting and disable the video in the court hearing video connection] whilst instructions are being taken. How this will be achieved should be confirmed at the beginning of any hearing if the client and representative are not co-located. This is particularly important where the lay user is co-located in a socially distanced court with a judge or coroner, but their legal representative is appearing virtually.

33. There have been concerns that channels of communication with representatives or supporters (e.g. McKenzie Friends) may be very easily used during evidence, such as text and email which can be open at the same time as the video hearing.<sup>8</sup> The rules around communication during evidence should be clarified with the witness before taking of live evidence. This is especially important if a party is giving evidence which may run over a lunch break or overnight.

34. The communication channels between a party and anyone assisting them to understand the hearing (e.g. an interpreter or intermediary) must be checked at the start of any hearing.

35. Counsel and legal teams chatting during breaks should be kept at a minimum or via a secure, private chat to allow counsel for instance to leave the plenary and speak privately while they wait for the hearing to begin. It might distress parties or witnesses to listen in on casual conversations.

*A12: How do we ensure litigants are following proceedings with the same degree of attention and accuracy as in a F2F hearing?*

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<sup>8</sup> *Ibid.*

36. It has been regularly reported to us that remote hearings can be extremely tiring. Short, regular breaks should be scheduled, and all parties should be told at the start of a hearing that regular breaks will be a feature of the remote hearing.

37. It is important to note that fully video hearings make the proceedings far more immediate, which encourages attention in the participants. Likewise, each participant can see themselves on the screen, which naturally produces self-regulation.

38. Judges should also check that the lay parties are following the process. Rather than a yes/no, perhaps asking a party about a particular aspect of the process to assess understanding will be more successful.

39. *Contempt* – judges and lawyers would need to check on whether jurors are concentrating. They could ask jurors to submit questions of witnesses to keep them focussed. Questions are really useful to check juror understanding.

*A13: How do we maximise the effectiveness of interpreters in AV hearings*

40. One lawyer conducting a cross-examination through an interpreter highlighted the importance of the interpreter having access to all the relevant documents during the hearing.

41. Interpreters will also require breaks in speech to enable interpretation to take place, as simultaneous interpretation will not be possible. This is usual for any multi-lingual conferencing and is perfectly achievable but may need more breaks in the hearing to allow for concentration span.

*A14: What should we do to prepare for people wanting to challenge the result of a hearing that took place while the COVID-19 measures were in place. There may be some Article 6/open justice/procedural fairness-type appeals?*

42. While it will not guard against future appeals, it would be helpful to have information on the gov.uk website about how HMCTS is making changes with Article 6 ECHR at the forefront of their thinking. The concept of proportionality in open justice measures discussed below may assist here.

43. Capacity will need to be made in the appeal courts to take cases on these grounds. However, carefully thinking through how courts can ensure effective participation, and encouraging judges to make these checks throughout a hearing, is the best way to avoid appeals.

## **B. Open justice**

*B1: How do we differently convene a public hearing now that a physical courtroom is not an option?*

44. How a hearing should be convened remotely depends on (1) the jurisdiction; (2) the nature of the hearing; (3) vulnerabilities of litigants; and (4) technological constraints. In any case, it is important to carefully consider where each participant appears on the screen – separating lay participants between legal representatives and court staff if possible. Special measures will also need to be carefully considered, with pre-recorded evidence where necessary.

45. Academic observation of the hearings is needed to monitor procedural justice. The first JUSTICE mock remote jury trial was observed by Professor Linda Mulcahy from the University of Oxford and Dr Emma Rowan from Oxford Brookes University who have provided initial evaluation and ongoing recommendations.

46. Advocates, judges, court staff and parties (the latter, if willing) could be asked to complete surveys on their experience, and it will be essential that any survey capture procedural justice metrics from parties, such as:<sup>9</sup>

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<sup>9</sup> See for example LaGratta and Jensen, 'Measuring Perceptions of Fairness: An Evaluation Toolkit', (The Center for Court Innovation and the Bureau of Justice Assistance, 2015) available at [https://www.courtinnovation.org/sites/default/files/documents/P\\_J\\_Evaluation.pdf](https://www.courtinnovation.org/sites/default/files/documents/P_J_Evaluation.pdf)

- a. Did the participant feel that they had a voice in the process;
- b. Did they feel they were listened to;
- c. Did they feel they were able to effectively participate; and
- d. Could they understand the reasoning and logic behind the final decision?

47. We are happy to share the questionnaire circulated to participants in the JUSTICE mock remote jury trial for information.

*B2: How can video hearings be conducted in a way consistent with s1 Open Courts Act 2013?*

48. The power is by way of an order from the Lord Chancellor under s.32 Crime and Courts Act 2003. However, the Coronavirus Act 2020 provides that, in relation to proceedings which are wholly video or audio, the judge *may* order they are broadcast to the public. (See Schedule 25, section 1 applies to all courts and section 2 to all tribunals).

49. There needs to be a separate stream through YouTube or similar platform, embedded in the Courts and Tribunals website, through which members of the public can watch proceedings.

*B3: How do we replicate court listings in the digital environment so journalists and other interested parties can identify cases of interest?*

50. Ideally there should be a courts hearings page with a daily cause list for each jurisdiction, then court, with links to what is being broadcast?<sup>10</sup> One court user suggested to us that listing summaries akin to those used by the Supreme Court, but in a shorter form, might usefully be adopted.

51. In the meantime, a daily courts list should replicate the ability of a court visitor to “pop their head in the door” of the court and listen in. Doing this via livestream

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<sup>10</sup> Such as Supreme Court TV <https://www.supremecourt.uk/watch/uksc-2019-0057/judgment.html>

over YouTube would mean there would be no disruption to the case regardless of how many people are observing.

*B4: How will be journalists and others be made aware of hearings and identified in advance of hearings?; How do we increase the transparency to hearings in the way a court reporter might identify something interesting, i.e. daily cause lists are not adequate for this*

52. More detailed listings will be essential for journalists to know which hearings to join. In private hearings or hearings with reporting restrictions, all efforts as would be appropriate in a physical hearing must be made to include the press as muted and non-visible participants of the virtual proceedings<sup>11</sup> – again, most easily achieved by a private, live stream link, which is password protected. Reporting restrictions should be reflected in the court list or there could be a page with orders that have been made, like in Scotland.<sup>12</sup>

*B5: How do we resolve privacy related issues due to live broadcast, e.g. cases of national security or those involving juveniles?*

53. As discussed below, the principle of proportionality should be applied in these cases where national security or the privacy of juveniles outweighs the principle of open justice. In the interest of balancing open justice against the national security or privacy imperative in such cases, those parts of the proceedings that are open should be capable of being livestreamed.

*B6: How will recordings to remote hearings be downloaded and stored in a central location and record kept to allow future access? Specifically, what cloud storage and filing system will be used?*

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<sup>11</sup> The Press Association observed and reported on Mostyn J's fully remote Court of Protection case on 18 March 2020.

<sup>12</sup> See <https://www.scotcourts.gov.uk/current-business/court-notice/contempt-of-court-orders>

54. Potentially the National Archives, as long as a secure and data protected facility is used.

*B7: How will recording issues be identified and brought to the attention of the court?*

55. The problem of not knowing who to alert when things go wrong during a remote hearing has been raised several times. All users should be informed of a uniform protocol for alerting the clerk or HMCTS hearing administrator/DSO during a hearing so as not to disrupt proceedings. Technical support should be provided throughout the hearing.

*B8: Under what conditions should we conclude that practical obstacles justify us to proceed by way of a private hearing?*

56. Some jurisdictions will be unable to livestream proceedings, by virtue of resourcing, capacity and the methods used to deliver remote hearings. For instance, the First-tier Tribunal (Social Security and Child Support) is conducting a significant number of its hearings via teleconference, and such hearings are less amenable to the level of openness offered through a video hearing livestreamed to YouTube. Ideally, these proceedings should migrate to video hearings where possible.

57. Practice Direction 51Y has been issued under rule 51.2 of the CPR, and provides that:

*During the period in which this Direction is in force, where the court directs that proceedings are to be conducted wholly as video or audio proceedings and it is not practicable for the hearing to be broadcast in a court building, the court may direct that the hearing must take place in private where it is necessary to do so to secure the proper administration of justice*

58. This PD acknowledges that there will be some derogation from the principle of open justice as traditionally understood, but that any hearing conducted privately must be recorded.

59. We consider that an overarching principle should be clearly set out, establishing that proportionate measures should be used to guarantee open justice:

- a. Open justice is a fundamental principle of common law, the right to a fair trial under Article 6 ECHR and is necessary for public confidence in the administration of the courts and tribunals.
- b. The Covid-19 crisis is a public health emergency, that requires derogation from the principle that all hearings must be held face-to-face in a court or tribunal building in order to maintain the administration of justice.
- c. In those circumstances, open justice must still be maintained, but will have to be governed by the realities and capabilities of each jurisdiction
- d. Superior courts are likely to be able to livestream their remote hearings and should do so. Daily cause lists should feature prominently on those jurisdiction's home page and be emailed out to media outlets overnight, to allow them to access the stream.
- e. For those jurisdictions without capacity to livestream, there needs to be an overarching principle governing the delivery of open justice. Each jurisdiction should offer the best form of open justice available to it in the circumstances, based on resourcing, capacity and how hearings are being conducted. Options include audio or video recordings, or at the very least transcripts or summaries of the proceedings uploaded as soon as possible to jurisdictional specific websites. When recording, tools which require resetting every half an hour such as Skype for Business should be avoided as this could be distracting.<sup>13</sup>

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<sup>13</sup> Transparency Project, [Remote Justice: A Judge's perspective](#) (7 April 2020)

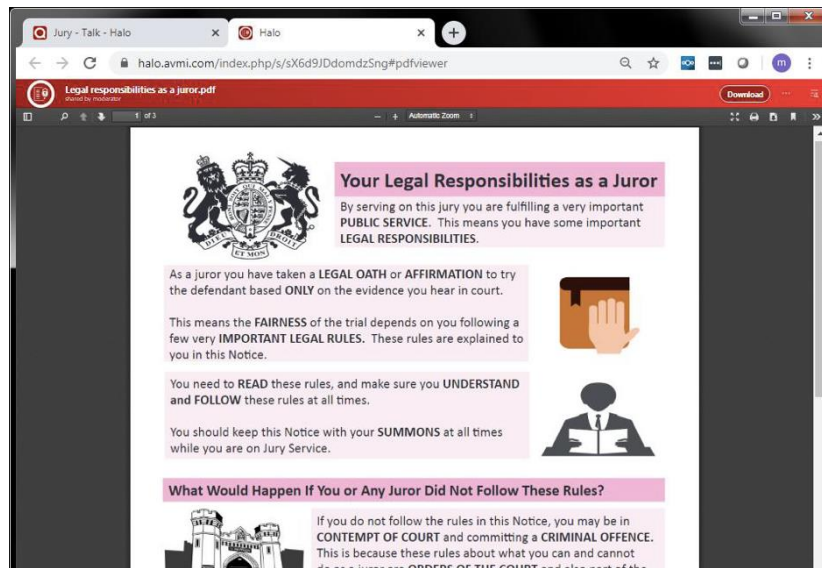


- f. Open justice should dictate that where hearings are being held privately as allowed for under PD 51Y, transcripts should be uploaded, perhaps using programmes such as Otter, as promptly as possible. Written judgments and summaries of judgments should also be made public.

*B9: How do we provide access to court documents e.g. witness statements; How will users separately view documentation?*

60. Some hearings have used document management programmes like Opus 2. Otherwise, the advice has been to keep PDFs small, hyperlink the contents and download any files before the hearing because of the bandwidth taken up by video calls.

61. During the JUSTICE mock remote jury trial, we used the Cisco platform for the video hearing. We provided the jury with a bundle on a private link that opened in a separate tab or window in their web browser that they could access at any point via a link in the private chat function with judge and court clerk. This enabled very clear images of each exhibit and document to be viewed.



62. For trials where documents are to be shared on screen and marked it will be helpful for at least the judges, advocates and litigants in person to have two screens – one for the hearing and one for the documents.

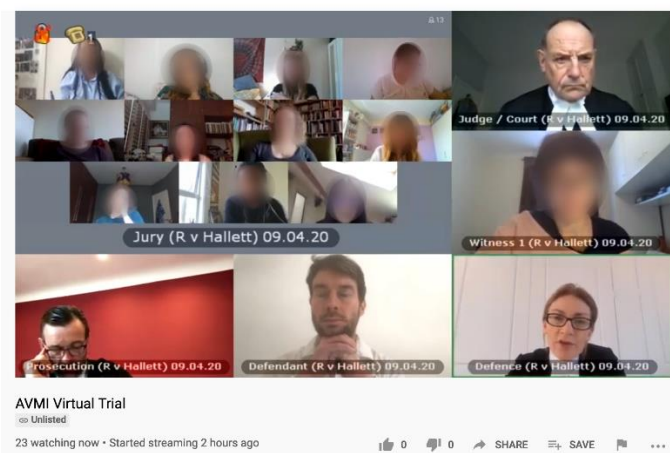
*B10: How do we keep observers "standing" separate as they might in a court gallery and to allow them to enter and leave without disruption*

63. As indicated above, the public should not join the hearing in the same way as parties. This will keep observers and participants with standing separate, in a similar way to the court and the gallery in physical court spaces, allowing people to listen and leave as they choose with no disruption. For instance, the Supreme Court, Court of Appeal and the [High Court \(Business and Property\)](#) are all capable of and have live streamed proceedings onto YouTube, where observers can access the livestream and leave without any interruption to proceedings. The cause lists will need sufficient detail of the issues – e.g. offence or kind of hearing.

64. The view of the virtual courtroom which should logically be broadcast should be that of a passive participant, with no sight of any interparty “chat” function.

65. In the JUSTICE mock remote jury trial, we live streamed to a link on YouTube so that invited people could observe. As the image below shows, 23 people were doing so.

66. As for separating participants *within* the hearing, such as the jury, we achieved this in the JUSTICE mock remote jury trial by ‘empanelling’ them as shown below. It should be noted that this was a time-consuming process which should be accounted for before trial. The order in which the jurors appeared also changed after breaks depending on who logged back on first.



## C. Practical questions

*C1: How do we best help people address the challenges to access a safe and private space while at home if there are other people using the space?*

67. This will need to be explored in the test call ahead of the hearing and detailed in the instructions. Witnesses and jurors should be asked to show the clerk that their room is empty and mobile phone turned off prior to joining the hearing room.

68. In some cases, there may be a serious risk that a person will be put under pressure from others in their home, for instance, in domestic abuse cases. While court users should be advised of the need for privacy, this will not always be possible. If the risk cannot be averted, through finding an alternative venue for the person to appear from, then the hearing will need to be postponed.

*C2: How will we identify and set the ground rules for AV hearings, i.e. turn taking, privacy, alerting court to technical issues, clarity on prohibition of recording or broadcast*

69. As we set out above, detailed instructions are necessary to establish the appropriate ritual to the proceedings and contempt rules.

70. The Crime and Courts Act 2003 and the Coronavirus Act 2020 criminalise any unauthorised recording or transmissions of broadcasts. There should be a warning at the bottom of the screen, as is already the case in the Court of Appeal Civil Division.<sup>14</sup>

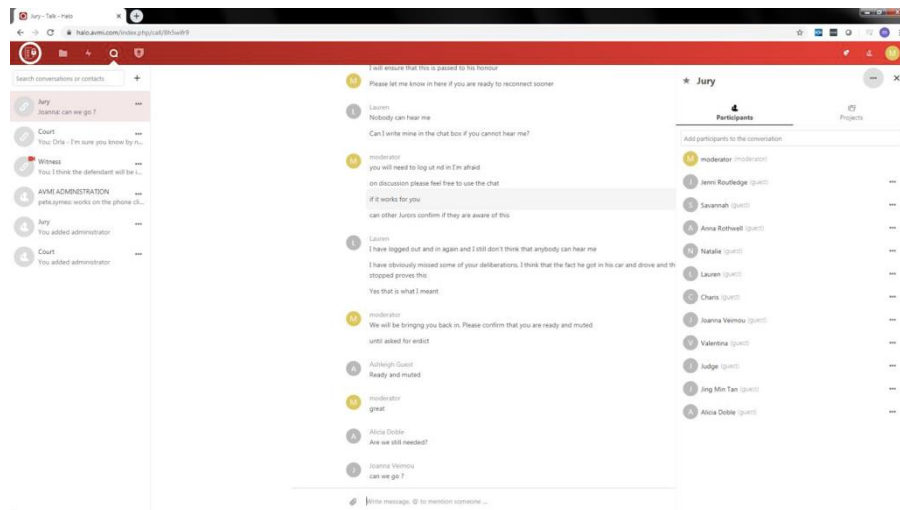
71. In the JUSTICE mock remote jury trial, the initial evaluation report highlighted the importance of establishing common methods of communicating that

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<sup>14</sup> See for example its last broadcast on 18 March 2020 ([https://www.youtube.com/watch?v=A8G45z\\_vJck](https://www.youtube.com/watch?v=A8G45z_vJck)).

something had gone wrong or confirming that they could hear (for instance by raising hands or a thumbs-up).

72. The chat function shown below enabled the jury to alert the clerk to technical issues.



*C3: What will be the flexibility on allowing others in the room for IT and/or limitations of user accommodation? How will it be determined that witnesses are giving evidence in privacy? (e.g. camera view of doors in room)*

73. Ideally, there will only be others in the room if they are needed for assistance, for instance for support, interpretation or sign language.

74. For jury deliberation this will need to take place in a virtual breakout room. Witnesses must give evidence with no one in their room. As we indicate above, there will need to be a 360-degree check of their room to ensure it is private. Jurors and witnesses can be asked to sit with the door in view so that if anyone enters, this can be addressed. The jurors in the JUSTICE mock remote jury trial also showed that they had turned off their mobile phones.

75. Notwithstanding the need for these security measures, the mock trial revealed how difficult it would be to converse with another person in the same room, given the immediacy of the proceedings on screen.

76. Ultimately, a great deal of trust is already placed on jurors that they are not using the internet or communicating with others in the breaks during a trial. That same trust will need to be applied here.

*C4: How often and how long will breaks be?*

77. Frequent breaks allowing participants to get some fresh air and time away from the screen has been described as essential by those who have taken part in remote hearings because of the additional concentration skills required. Breaks should be carefully planned, and timings observed to ensure that the hearings do not fall behind schedule.

*C5: How will HMCTS communicate all these changes?*

78. Regular updates on the gov.uk and Twitter pages will be important. As noted above, contacting all the parties well in advance of the hearing is essential, as well as providing email and phone contact information for parties to communicate with the court/tribunal.

*C6: How will the speaker be identified, e.g. through labelling of participants on screen? can we facilitate user familiarisation through the introduction of a virtual waiting room?*

79. Cameras of participants should always be on (subject to special measures). However, in the well reported CoP case, cameras were switched off to avoid all the movements of parties being distracting during evidence, and also because of bandwidth problems. Even if the latter limits some cameras, the judge, the advocate speaking and the lay party(ies) should always be visible.<sup>15</sup>

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<sup>15</sup> <https://www.pressgazette.co.uk/journalists-praise-courts-for-open-justice-via-video-link-during-coronavirus-crisis/> But Compare, <http://www.transparencyproject.org.uk/remote-justice-a-family-perspective/> "For me, there was a marked lack of empathy displayed for Sarah throughout this hearing (Sarah's own legal team excluded, of course). This was partly – perhaps largely – accounted for by the fact that, except when Sarah was giving her witness statement and being cross-examined, she was not visible to other participants. Due to bandwidth problems, the judge asked everyone (except himself) to turn off video-cameras unless they were giving evidence or questioning a witness. Nobody – except those of us in the room with her – could see how upset Sarah became at various points and so they didn't modify their behaviour to avoid causing her unnecessary distress."

80. Other difficulties include not always knowing who is speaking - participants must be named and labelled appropriately by role. The HMCTS administrator should have the ability to label participants in each box in which they appear. See how this was done in the images above of the JUSTICE mock remote jury trial.

*C7: Advice and guidance on muting microphones if user isn't participating for periods of time?*

81. Microphones should be muted when not speaking. The hearing administrator/judge should be able to mute participants' microphones. If participants own headsets with microphones, these can help to minimise background noise.

82. One user found that the platforms which allow for muting and unmuting by holding down the space bar are particularly useful.

*C8: How will HMCTS provide technical support and guidance for hearings?*

83. Court staff are going to need to do this themselves. They will need training to be familiar with the technology and to manage problems during a hearing. This will need multiple practice runs ahead of real hearings. IT support and equipment – including laptops, monitors for dual screens and mobile wi-fi hubs that can be sent out to participants - must be readily available and scaled up.

84. In the JUSTICE mock remote jury trial, support was provided by AVMI solutions, which already provides technical support to the CPS for witnesses in court and electronic presentation of evidence. The jury were provided with private 'chat' functions which enabled them to communicate with the clerk. Technical problems could be raised in this way.

*C9: Will "virtual break out rooms" be provided for confidential communication between parties?*

85. Inter-parties communication is critical to ensuring issues are narrowed at court. This should be through breakout rooms, but if not, separate prehearing meetings should be encouraged to be set up between parties (in appropriate cases, i.e. not in LiP cases where there is any kind of domestic abuse alleged).

*C10: How will witnesses be met ahead of the main hearing?*

86. If the witnesses are being called by a represented party, the court needs to clarify in advance of the hearing whose responsibility it is to contact the witness test their bandwidth and get them set up on the video platform, this should be the court technical support staff.

87. At directions hearings when a video hearing has been decided upon, it will be very useful to have a hearing list, with estimated examination times for each witness. Witnesses can then be told when approximately they will be called.

88. Advocates must meet witnesses ahead of the hearing as they would usually do for in-person proceedings – a video call must either be arranged by the party representatives or the court to enable this to happen.

89. Before joining the call, witnesses should be placed in a waiting room where they will be reminded as to what will happen in the call. When they join, the judge should instruct them on the set up, court etiquette and how to raise any problems.

*C11: What responsibility will LiPs/HMCTS have for their witnesses in terms of virtual connection to court proceedings?*

90. If the party calling a witness is an LiP, the court should offer to do this for the party.

JUSTICE

15 April 2020