

REMOTE WORKING RESPONSE

30.05. 21

1. The bar began to use remote hearings by telephone before Covid 19. These were often broadcast in open court using suitable equipment and were used for pre-trial hearings
2. Since Covid 19, in March 2020, the Coronavirus Act 2020 introduced temporary provisions to extend the circumstances in which audio and video live links could be used in criminal proceedings. The 2020 Act is due to expire in March 2022 and the CBA wishes to capitalise on the gains made in the use of remote and online hearings and ensure that there are only extremely limited circumstances in which counsel is required to attend court for pre-trial hearings lasting less than 60 mins.
3. The CBA has worked with all court centres to manage many non-trial hearings by CVP remotely throughout the pandemic. This has ensured in most cases that trial counsel have been able to attend court and provide meaningful input into any pre-trial preparation. This is particularly important when cases are frequently moved due to the backlog as pre-trial hearings with continuity of counsel means that when cases are called on for trial they are trial ready with all issues having been identified in advance.

Advantages and Disadvantages of remote hearings

4. The advantages of remote hearings for all court users cannot be underestimated they are:
 - i) Trial counsel attending in the vast majority of pre-trial hearings or post trial confiscation hearings
 - ii) Less cost to the public purse / taxpayer because there are no travel costs for counsel

- iii) Less time wasted as pre-trial issues have been identified by trial cases
- iv) Allowing a diverse profession to work because those with caring responsibilities are able to work in circumstances where they might otherwise be unable to do so
- v) Allowing those who work further away from a court centre to attend court despite the distance.
- vi) The wellbeing of barristers is taken into consideration
- vii) Barristers and Judges who may need to shield for health or age reasons are not being put under undue stress or pressure.
- viii) Listings are much less likely to be missed or less likely to be ineffective.
- ix) Sentencing is greatly assisted by the Probation service appearing over CVP with far less risk of nil-reports for sentencing.

5. The disadvantages are as we understand them to have been expressed are:

- i) Problems with the technology - this can be ameliorated by using a telephone without the need for counsel to be seen on a video
- ii) Difficulties in counsel having the ability to have a pre-trial conference with clients in custody due to limited online links in prisons.

Savings to the public purse

6. The MOJ impact assessment for Police, Crime, Sentencing and Courts Bill 2021 - Increasing efficiency and accessibility in the courts and tribunal system (dated 08.03.21) summarises the increase in technology and video and audio hearings.

7. The impact assessment estimates the saving to the public purse “under the assumed baseline in this IA the benefit to government is estimated to be approximately £82.1m per year”. This will be by extending the statutory functions of Prisoner Escort and Custody Service (PECS) to enable officers to manage Video Remand Hearings (VRH) in police stations and by modifying and making permanent the temporary provisions in the Coronavirus Act 2020 to:

- extend the use of video and audio hearings and remote participation in hearings in the criminal jurisdiction;

- ensure that video and audio hearings in all jurisdictions can be observed by members of the public but prohibit observers making unauthorised recordings or transmissions of these proceedings.
8. Individuals will no longer have to travel to court/tribunal, leading to annual saved travel time of approximately £1.1m. There would on its assessment be associated savings of £0.2m in the cost of travel.
 9. The ‘*Wider Impacts*’ are summarised as: “a reduction in travel will lead to reduced carbon emissions, estimated to be a benefit of £0.01m”¹.
 10. The impact assessment also identifies several other advantages which are summarised as:
 - *HMCTS*: Allowing hearings to be heard outside of court or in smaller courtrooms will lead to efficiency savings as the estate can be used more effectively.
 - *CPS, Police*: Increased flexibility and efficiency as individuals such as prosecutors may no longer need to attend a number of different courts in a single day but could take part online from a single location.
 - *Criminal Courts Users*: Increased accessibility of the justice system. Reduced reliance on physical HMCTS estate may also lead to the courts and tribunals running more efficiently.
 - *The Public*: The Open Justice element of the measures will increase the transparency of the justice system and allow those who wish to see and hear proceedings to do so.”
 11. The CBA recognises that these savings are valuable to both court users, the MOJ and the taxpayer. Although such hearings do not additionally remunerate defence advocates for attendance because they are bound up in the overall case fee and provide a limited remuneration and fixed fee for prosecution advocates, it is perhaps understandable that advocates are reluctant to attend court in person because the fees are so limited. Other professionals including trades people require a minimum fee which is far more than the bar receives.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967765/MOJ_Courts_IA_FINAL_FEB_2021.pdf

Diversity of the Profession

12. The diversity of the profession has long troubled ministers and the profession. It is apparent that during pandemic the use of remote hearings has meant the diversity of the profession working has been improved. Those with caring responsibilities have found it easier to continue to work which helps to ensure their career progression. The diversity of the profession is maintained if women and ethnic minority groups are able to continue working and progressing their careers by working on cases which they would otherwise not be able to work on because the costs of attending court are prohibitive when compared with the costs of providing substitute childcare.
13. Women in Criminal Law has surveyed its members and its findings show that that all are in favour of retaining CVP for appropriate hearings. WICL received a total of 480 responses to this survey. The largest groups of respondents were barristers of seven years' call and above (207 respondents) and solicitors of five years' PQE or more (102 respondents). 88 respondents were pupil barristers and barristers below seven years' call, whilst 24 were trainee solicitors or solicitors below five years' PQE. The lower rate of responsiveness from solicitors is likely due to the fact that solicitors are less likely to appear in court on a daily basis (although we recognise that many solicitors and HCAs do appear in the Magistrates' and Crown Courts) and also that solicitors are generally salaried and are therefore less likely to see their income immediately impacted by EOH. We also received a small number of responses from HMCTS staff, paralegals, legal executives and members of the judiciary.
Just over 72% of respondents were female.

Number of respondents who indicated their views on EOH: 311

Against EOH	-	274 (88%)
In support of EOH	-	12 (3.9%)
Neutral to EOH	-	25 (8%)

[The full Result Report can be accessed here](#)

Wellbeing of Barristers

14. The wellbeing of barristers should also be considered when deciding whether to extend the use of such hearings. The CBA asks government to consider whether it is feasible to require a barrister to attend court for a severely limited fee or no additional fee, often travelling at least 2 hours in a round trip and thereby being unable to attend to any other work commitments, in all of their cases.
15. Physical attendance at court means that counsel can attend only one or two courts each day and can also only work on a limited number of cases per day unless they have all their work in one court. This means that counsel cannot attend conferences remotely in other cases, carry out pre-trial preparation or attend pre-trial hearings when conducting trials or hearings in person elsewhere.
16. The use of CVP / remote telephone hearings means that counsel working in other trials can seek to accommodate the hearing during the working day, either shortly before sitting with a jury or afterwards.
17. The wellbeing of counsel has also been significantly improved by being able to attend court remotely due to the reduction in travel time and reduction in time spent liaising with other counsel.
18. Although the junior bar had previously covered pre-trial hearings in place of more senior counsel, this often required trial counsel to liaise with junior counsel covering the hearing late at night or out of hours and it also did not allow for unforeseen matters raised by the Judge to be dealt with adequately because trial counsel was not in attendance. CVP allows for trial counsel to attend be able to deal with all questions.
19. Whilst short pre-trial hearings may in exceptional cases require the attendance of the trial advocate the Criminal Bar Association wishes to ensure that this becomes the exception circuit wide rather than the rule.
20. The Criminal Bar are therefore assisted by not being placed in the difficult position of having to travel to court for hearing that could very easily be

completed remotely thereby avoiding the stress of travelling long distances for short hearings.

Birmingham Crown Court – Maple House Nightingale Court

21. We understand that recently, Birmingham Crown Court has ordered defence counsel to attend in person when appearing in the Nightingale Court (Maple House). This is not to assist with taking instructions or similar functions of a barrister. The reason is to chaperone defendants because there is no security at Maple House.
22. This is completely unacceptable for all concerned. Barristers are not insured to act as chaperones. Criminal barristers regularly undertake work when they are poorly remunerated but they should not have to undertake further unpaid work acting as chaperones which is not the role of defence counsel.
23. The imposition upon defence counsel also places the judiciary and other court users at risk. Without trained security staff in place, if there is an incident that takes place, the majority of criminal barristers do not have the training necessary to protect the judiciary or other users.

Probation Service

24. We are informed by the Probation Service that retaining CVP will result in large cost savings in relation to the Probation services, which are a vital part in the effective operation of the Crown Court. By retaining CVP probation officers will be able to continue to work from home and save the cost of travel to court centres. The following has been conveyed by the Probation service to the CBA:
25. The continuance of CVP will allow probation officers to have more time to conduct interviews and provide any necessary input to the courts as required, rather than spending time travelling.
26. Encouraging the use of CVP will also mean it is very likely there will be fewer missed appointments with defendants as conducting an interview over CVP is far easier, more convenient and efficient than both parties being required to travel, sometimes long distances, to have the interview.

27. Allowing probation to continue to use CVP will also mean that when probation officers are giving any required input to the courts, they will have access to far more information in front of them on their computer than if they are required to attend court in person.