

Annex 1 – Remote attendance Guidance

Remote Attendance by Advocates in the Crown Court. Lord Chief Justice’s Guidance 14th February 2022 (Updated April 2024)

The pandemic has seen the increased use of technology to facilitate remote attendance at hearings and contains valuable lessons as to the relative advantages and limitations of remote attendance as compared with in-person attendance.

Judges have had to balance a large number of competing considerations when deciding whether attendance should be in-person or remote, often in challenging and fast-changing circumstances. A variety of protocols have been issued by Resident Judges at various times in different courts tailored to suit local conditions and circumstances.

This national guidance is not a prescriptive practice direction but intended simply to assist in promoting consistency and predictability of approach to the question of remote attendance in the Crown Court, whilst recognising the need for flexibility in the individual case and to suit local conditions.

It will be kept under regular review in the light of accumulated evidence and experience as to the utility and effectiveness of remote hearings.

Guidance

1. The court’s duty of furthering the overriding objective by active case management includes making use of technology (CrimPR 3.2). Where it is lawful and in the interests of justice to do so, courts should exercise their powers to conduct hearings by live-link (CrimPD 3N).
2. The decision as to whether participants attend a hearing remotely or in-person is a judicial decision and a matter for the discretion of the judge in each case applying the “interests of justice” test in the light of all the circumstances. This is a statutory requirement.
3. The interests of justice are very broad and wider than the circumstances of the individual case and holding an effective hearing. They include the efficient despatch of business overall and the availability of judicial, staff, technical and other resources. The relevant circumstances properly to be taken into account may vary widely in different courts at different times.
4. It is good practice for courts to communicate regularly with their court users, prisons and others to establish ways of working which suit local conditions and to indicate

how judges at a court centre are likely to approach the decisions as to remote attendance. Each court will establish a process for dealing with live-link attendance.

5. Any hearing in which a witness is to give evidence, whether in person or remotely, will normally require the advocates who are to examine or cross-examine that witness to be present in court (i.e. trials, Newton hearings, POCA hearings and appeals against conviction) unless the court otherwise orders.
6. Any hearing which a defendant is required to attend in person will normally require the defence advocate also to be physically present at court. All hearings where the defendant attends remotely will require the defence advocate to be able to communicate confidentially with the defendant immediately before and after the hearing.
7. Mentions, bail applications where the defendant is attending by prison video link, ground rules hearings, CTL extensions, uncontested POCAs and hearings involving short legal argument only, will generally be suitable for remote attendance by all advocates, unless the court otherwise orders. Freestanding bail applications in the absence of defendants will normally be conducted remotely unless the court otherwise orders. Bail applications heard in this way will be treated as being in chambers which means that solicitors without higher rights may conduct them.
8. PTPHs will normally require the attendance in person of advocates for both prosecution and defence, unless the court is satisfied that (a) there has been effective engagement between the CPS and defence, (b) a conference has taken place at which the defendant has been given appropriate advice on plea, and (c) all relevant preparations have been completed in advance of the PTPH date. Experience has shown that, in order to be effective, PTPHs require early engagement and full compliance with Better Case Management principles.
9. Sentence hearings will require consideration on a case-by-case basis. The matters referred to in paragraph 6 above, together with the seriousness of the charge, the intention of victims or their families to attend, the amount of public interest, and many other factors will determine whether it is appropriate for any advocate to attend in person or remotely.
10. Courts will continue to endeavour to make arrangements for listing which balance the interests of all parties, including advocates, and the need to conduct the business of the court effectively and efficiently. It must be understood that those arrangements, by time marking, or otherwise, are likely to vary from court-to-court and day-to-day according to the needs of the court, victims, defendants, and others involved and the prevailing circumstances.

General Conditions for Remote Attendance by Advocates

1. Advocates should ensure that they attend in a quiet and private location with good quality broadband and technical equipment and without distracting backgrounds.

They must be able to see and be seen, to hear and be heard. The same standards of dress and conduct are required as in court.

2. Advocates who appear remotely should upload contact details and be able to operate the technical equipment involved, and, for example, to be able to upload documents before and during the hearing if required and, if necessary, to show CCTV or other digital material to the court.
3. The court must be able to communicate with all advocates appearing in a list throughout the time when that list is being heard. Email addresses and mobile phone numbers must be uploaded or lodged with the court in accordance with the arrangements made by that court, and these devices must be switched on so that the advocate can be reached by email or text at all times up to the time when their last case in that list is complete.
4. The principle of criminal listing is, and has always been, that the advocate must be ready and available as soon as the court calls the case on. This applies equally to remote hearings. It is, and has always been, the professional responsibility of the advocate to ensure that they do not take on an inappropriate number of commitments so that they cannot comply with this. The judges hearing lists are likely to wish to help as far as they can in current circumstances; but, as has always been the case, advocates should not assume that the court will accommodate their other work without obtaining the prior permission of the judges concerned.

Lord Burnett of Maldon,
Lord Chief Justice of England and Wales
14 February 2022