



Informing Progress - Shaping the Future

FOIL UPDATE 13th December 2021



Evaluation of remote hearings during the COVID 19 pandemic

HM Courts & Tribunals Service (HMCTS) has published the results of a survey and evaluation aimed at understanding who attended remote hearings, how public users, the judiciary, legal representatives, court and tribunal (HMCTS) staff, observers and support professionals (including intermediaries and interpreters) experienced remote hearings (before hearing, during hearing and shortly after the hearing) and the attitudes of these stakeholders towards remote hearings.

The report is divided into five principal sections:

Chapter 3 provides a contextual overview of hearings focusing on the profile of public users, location of parties during remote hearings, platforms and devices used for remote hearings, hearing length and experiences of training and guidance.

Chapter 4 focuses on pre-hearing experiences and includes insights on what informs the decision to have a remote or in-person hearing, initial public user perceptions about remote hearings, public access to remote hearings, reasonable adjustments and special measures, pre-hearing information and guidance and pre-hearing preparation and communication for parties.

Chapter 5 focuses on experiences during remote hearings including technical experiences and support, introductions and explanations of ground rules, communication, working with interpreters and wellbeing.

Chapter 6 focuses on views and attitudes including public satisfaction, channel and platform preferences, procedural justice, replicating the court environment, attitudes and behaviours during remote hearings and views about the future use of remote hearings.

Chapter 7 draws conclusions against the evaluation questions which consider if remote hearings work for all jurisdictions and user groups, whether users need extra support during remote hearings and if remote hearings are viewed as fair and appropriate.

Based on the experiences of public court users, the judiciary, legal representatives, and HMCTS staff during the COVID-19 pandemic, the report provides a series of conclusions, while noting that some findings may not be directly applicable to a post pandemic environment. What follows is a summary of those conclusions and focuses on civil cases.

Do remote hearings work for all jurisdictions?

Overall, across all jurisdictions and key demographic groups, public users who attended hearings remotely had an equal or better experience with their hearing than those who attended in-person. Across all jurisdictions, public users attending by audio tended to have less positive experiences than those attending by video. In civil and family courts remote hearings were more likely to use audio than other jurisdictions. Judges sitting in civil and family courts were more likely to report that remote hearings have had an impact on their health and wellbeing compared to other jurisdictions and they were also more likely to report challenges with e-bundles and sharing evidence. They also were more likely to report that remote hearings take longer than in-person hearings. Judges sitting in criminal courts were most likely to express strong preferences for in-person hearings.

Areas identified for development include:

- It may be useful for HMCTS to consider issuing guidance for public users and their representatives on how they can provide relevant information to inform judicial decisions on whether the hearing will be held remotely.
- Given video users' views are more positive than audio users' views overall, where a hearing is deemed suitable for remote participation, video hearings should take precedence over audio hearings in most contexts wherever possible unless there are specific support requests or technical issues. While inevitably some users will need to access by audio because of lack of access to equipment, it will be worth emphasising the advantages of accessing by video to encourage users to join this way wherever possible.
- Whilst extensive guidance on running remote hearings has been issued along with overviews and summaries, some HMCTS staff felt overwhelmed by the information. It is important to reinforce a culture that supports staff time to attend training and absorb and contribute to guidance.
- Training and guidance gaps were identified amongst some groups including management of interpreters and intermediaries, set up and use of platforms, how to lock remote hearings rooms, the management of e-bundles for legal representatives, use of some CVP functions for HMCTS staff and management and storage of documentation for magistrates working at home on their personal computers.
- Ensure that there is guidance for HMCTS staff for high profile cases with significant public interest and requests to join the hearing to raise awareness that central support can be requested.

Do remote hearings work for all user groups?

Overall, remote hearings work well for many user groups. However, more can be done to improve the experiences of public user groups less satisfied with their overall experience, including those

with vulnerable characteristics. It is not necessarily the remote nature of the hearing driving less positive hearing experiences, however, because these groups were also more likely to describe having a less positive experience with in-person hearings. Judges and other professionals felt remote hearings work less well for public users that require an interpreter. This view was reinforced by interpreters, especially those using sign language. It would be useful to review or promote court and tribunal guidance, including ensuring courts consistently ask users about their additional needs to attend the hearing and potentially consider testing connections in advance.

Other suggestions include reviewing the functionality of remote hearing software following the successful work already done within CVP to enable effective interpretation across all platforms, considering how best to improve public user access to devices to participate in remote hearings and encouraging institutions to have private spaces for users in custody, and promote the need for custody staff training for remote hearings.

Do users need additional support for remote hearings?

Existing support is working well for most public users who receive it, but more can be done to widen access to more public users attending hearings remotely. Those who received support were more positive about their experience than those who did not receive support. Communication with legal representatives during remote hearings was a particular area of concern for some users. Support areas to focus on include:

- Increase awareness that vulnerable public users can request to have a carer or support worker attend and provision of an interpreter.
- Promote how requests for support and adjustments for hearings can be made and ensure that requests are responded to in reasonable time ahead of the hearing.
- Increase awareness of step-by-step guidance containing screenshots and how-to guides including short videos about how to join and take part.
- Explore more mechanisms for court users to interact on video hearings with legal representatives, intermediaries, interpreters and others providing support e.g., private chat function or break-out room on CVP.
- Ensure remote hearing joining instructions and links are sent out a reasonable time for the hearing especially where parties are accessing support.
- Basic information (e.g., jurisdiction and hearing type) about the hearing should be provided to interpreters ahead of the hearing and opportunity should be allowed for BSL interpreters to have some interaction with the person they are interpreting for before the hearing starts. The contract team will work with the supplier to ensure that necessary information is provided before the hearing and that BSL interpreters are aware that they can have 10 mins pre-hearing contact. It may be useful to consider allowing more time for hearings with interpreters when scheduling a remote hearing.
- Recommending that the legal profession consider their role in agreeing how to receive instruction from their client.

Do users perceive remote hearings to be fair and appropriate?

The hearing processes, not just the outcome, can contribute to perceptions of fairness. Transparent processes which give consideration to the needs of all participants, support engagement in the process and explain the outcome can influence perceptions of fairness. This applies equally to remote and in-person hearings but approaches to achieving these may differ for different hearing types. Across remote and in-person court users, a similar proportion felt they received a fair hearing, had confidence in how the court or tribunal handled their case and agreed their case was given an appropriate amount of care and attention (varying from 60%-69% across the different measures).

The judiciary however were concerned that remote hearings do not feel sufficiently formal or convey the seriousness of the court proceedings well. It is important to promote guidance to judges and legal representatives on how to encourage users to uphold the formality of the courts during remote hearings, through their introductions. Judges play an important role in facilitating appropriate communication between parties throughout the hearing. They should be encouraged to include the existing script on ground-rules, introduction of all attendees, the running order and acknowledgement of any technology considerations in their introductions to ensure that individuals are clear about how to participate in their hearing and what to do if they have any technical problems.

It is essential that mechanisms are in place to alert judges when an individual drops out of the hearing and the hearing is paused until they are able to reconnect and that a recap is provided where needed. Vulnerable users were more likely to experience challenges in communication with their representative during the hearing. Recommendations identified earlier in this section such as ensuring needs are identified and adjustments made ahead of the hearing and ensuring mechanisms are in place for individuals to interact with legal representatives, intermediaries, interpreters during the hearing are important for ensuring a fair hearing

The report may be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039926/Evaluation_of_remote_hearings_v20.pdf

This publication is intended to provide general guidance only. It is not intended to constitute a definitive or complete statement of the law on any subject and may not reflect recent legal developments. This publication does not constitute legal or professional advice (such as would be given by a solicitors' firm or barrister in private practice) and is not to be used in providing the same. Whilst efforts have been made to ensure that the information in this publication is accurate, all liability (including liability for negligence) for any loss and or damage howsoever arising from the use of this publication or the guidance contained therein, is excluded to the fullest extent permitted by law.