



Report on the use of Live Links for Remote Hearings

January 2022

Content	Page
Introduction and Background to the engagement exercise	3
The Engagement Process	4
Overview of Responses	5
Summary of Responses and Comments	7
Next Steps	11

Introduction

1. This document provides a summary of responses to the Department of Justice's engagement exercise following the unanimous support of the Executive for the proposed policy to extend the temporary provisions provided for in section 57 and Schedule 27 of the Coronavirus Act 2020 which enables any court or tribunal in this jurisdiction to allow any hearing it deems fit to proceed by way of live links. The engagement occurred before the latest variant of Covid-19, Omicron, had materialised moving the justice system back into pandemic contingency planning as well as justice recovery mode.

2. The purpose of the exercise was to engage, in a socially distanced way, with the most frequent users of live links. The Department wished to alert them to the perceived need, at this time, for a number of six month extensions of these "emergency" legislative provisions and to invite an initial view on whether they supported or were interested in the provisions becoming permanent sometime in the future as well as to provide comment on their experience of the application of the provisions to date.

Background

3. This exercise arose out of the impact of the pandemic on the justice system and the actions taken by those who serve it to try and ensure continuity of business. The Department of Justice for Northern Ireland prepared and obtained legislative provisions within days, so that any court or tribunal in this jurisdiction could allow any hearing it deemed fit to proceed by way of live link.

4. Live links have been extensively used since March 2020 by a wide range of case participants and are considered by judiciary and the main justice agencies as critical to the Northern Ireland Courts and Tribunals Service's (NICTS) ability to maintain its Covid recovery process.

5. The Minister, with the agreement of her Executive colleagues, had already recognised that the current provisions included within Schedule 27 of the Coronavirus Act 2020 would require extending beyond 24 March 2022 to support and facilitate the continuation of the work of the judiciary in the courts and tribunals.

6. The current recovery plan, in particular for the criminal courts, is dependent on the arrangements introduced by section 57 and Schedule 27 of the Coronavirus Act 2020 not expiring on 25 March 2022. There is judicial support that the current live links legislation should not only be extended but that the advances made in terms of remote and hybrid hearings, since the start of the pandemic, should not be lost and live links for remote hearings should remain a permanent option, when considered, suitable and appropriate.

7. Therefore, this was not a 'consultation' in the usual sense. Instead it was an exercise focusing on ascertaining the views of those justice stakeholders, identified as the main users of the provisions, to look at further extending the provisions to

September 2022 via secondary legislation, subject to the agreement of the Northern Ireland Assembly.

8. There have been challenges over the last 21 months and lessons learned as operational decisions were taken with a view to continuing as much court and tribunal business as possible while reducing the risk of exposure to Covid-19 for court users and delivering the benefit of case disposal. Key issues have been court backlogs, the impacts on victims and witnesses, and the impacts for all those accused of offences including those prisoners on remand.

9. The temporary provisions provided for in Schedule 27 of the Coronavirus Act 2020 remain crucial to the delivery of the justice recovery programme. It cannot be denied that continuation of many of these provisions would lend themselves well to a sustained progressive response to the pandemic. It would also assimilate into current practice and procedure the use of the technology provided, in response to the Covid emergency, whilst still prioritising the safeguarding of the key principles of our justice system for users. Accordingly the Department also flagged to consultees that there would be a wider public consultation, sometime in 2022, on the continued use of live links post recovery of the Justice system in a way which facilitates a more digitalised justice sector which is part of the agreed modernisation vision for courts and tribunals.

The Engagement Process

10. In Northern Ireland, there was insufficient time in this Assembly mandate to conduct a public consultation and bring forward primary legislation to enable the continuation of the use of audio and video live links which facilitate the progression of court and tribunal business remotely.

11. The published Westminster Covid-19 Response: Autumn and Winter Plan 2021 acknowledged that remote hearing provisions were a critical part of the government response to the pandemic. It also indicated a clear intention to review in the spring whether any regulations or measures “need to remain in place”. There is a commitment to consult with devolved administrations on that review.

12. The Department in consultation with the Northern Ireland Courts and Tribunals Service decided that an approach should be made to all interested parties who had been the main users of the live link provisions so that user feedback could be obtained, as part of the wider policy development on retaining permanently audio or video links for the receiving of evidence remotely on a wider basis than existed prior to the Coronavirus Act 2020.

13. The Department was interested in identifying hard evidence as to what works well and whether there are areas of concern that require review of current practice or service. The engagement letter provided background information on the recovery strategy for the justice system, the Department’s assessment of the role live links will play in assisting the achievement of the planned recovery, a brief summary of the Department’s approach against the standards established under domestic and international obligations and an outline of how the provisions have been used to date.

14. Sections 89 and 90 (within Part Two of the Coronavirus Act 2020) provide for a Northern Ireland Department to extend for a maximum period of six months, on more than one occasion, within a statutory instrument, any selected provision of that Act. The Department was transparent about the perceived need for consecutive extensions, to bridge the gap between March 2022 and an opportunity to introduce primary legislation within the Assembly following next year's election.

15. The Department highlighted the intention to develop policy on the continued and wider use of live links post recovery with the objective to optimise the benefit of the significant investment made in an enhanced digital court environment while meeting the needs of court users beyond the recovery of the justice system.

16. Respondents were invited to indicate their opinion on not only extending the provisions for remote hearings beyond March 2022 but their attitude to them potentially being made permanent. They were invited to record their view or observations on any additional matters they considered relevant to the proposed extension of live links for remote hearings including their experience of such hearings to date. The privacy notice which accompanied the letter circulated stated:-

“Any information that you provide will be treated in strict confidence and will not be used to identify you. Analysis of responses will be carried out on an anonymous basis under the guidelines of the GDPR.

Anonymised comments may be used in support of policy development and may be published.”

17. The Department will continue to develop recommendations for permanent provisions, with the benefit of projected costings, where appropriate, and discussion with stakeholders who raised issues requiring further detailed consideration. The Department's conclusions and proposals will be reflected in the requisite wider public consultation and engagement exercise on proposed measures for permanent live links legislative provision planned for next year. Any permanent legislative provisions will have to await inclusion within an Assembly bill in the next Assembly mandate.

18. The Department of Justice is grateful to all of those who took the time to respond.

Overview of Responses and Comments

19. A total of 25 responses were received from the 80 organisations or representative bodies who were invited to participate in this engagement exercise. Around 22 indicated they considered the provisions for remote hearings should be extended beyond March 2022. The same 22 were interested in these or similar provisions being made permanent.

20. One respondent indicated they were content for the provisions to be extended but had no interest in any of the provisions being made permanent. This respondent connected this view with the importance it placed on judicial powers being exercised from courts and tribunal buildings. This respondent considered it inappropriate for a judge to conduct hearings from home (or premises other than courts and tribunal buildings) save in unavoidable circumstances.

21. Two respondents, over and above the 22 already mentioned, were also supportive of the provisions being extended but expressed reservations as to the width of the current provisions. These respondents indicated a desire to participate or contribute to the designing of the final provisions which would be made permanent in an Assembly Bill. One of these two respondents were clear they would not be interested in the exact provisions within Schedule 27 being made permanent.

Consultees	Letter Issued	Responses received
Councils	11	2
Health and Social Care Trusts including Legal Directorate	6	0
Education Authorities	5	1
Council Planning Departments	11	1
Professional Representative Bodies	4	3

22. A single respondent did not wish to “tick” the options provided on the response form. The table above provides a summary of the level of returns received from a selection of representative bodies or organisations of a similar nature.

23. The majority of professional respondents saw a continuing role for certain types of remote hearing, although reservations were expressed by a small number on the suitability for a court to receive evidence remotely where the hearing could potentially dispose of all or part of a case or the court was conducting a fact finding hearing in the sphere of family law, including a contested hearing in regard to care or contact orders.

24. Most respondents considered the remote hearing facilities worked well. The majority, including in particular those specifically working with children or victims engaged in court proceedings, were positive about the process. They expressed a

wish to see increased integration of these facilities into the court procedure. Most, if not all, respondents recognised there was a time, cost and ecological benefit to the reception of evidence remotely.

25. The detailed written responses received from a number of respondents addressed a range of issues likely to be more relevant as and when the Department consults on placing the use of live links for receiving evidence or dealing with a case/application remotely, whether in full or part, within an Assembly Bill.

26. The Department has taken note of all comments received and will reflect on those responses as part of its consideration of the next steps. While there were some reservations expressed or areas identified which could be improved, the overall position might be summarised as reflecting the view that the investment and progress made in the use of audio and video live links for reception of evidence or hearings remotely should not go to waste. In excess of 92% of those who responded considered this avenue of communication should be a permanent option whether for individual cases or types of cases provided all participants can effectively participate in the legal proceedings.

Summary of Responses and Comments

27. The following paragraphs summarise the responses received to the engagement questions. The Department has grouped the summary of comments under a number of headings below.

Comments on when and why remote hearing of evidence is appropriate.

28. Those working with victims of crime expressed the belief there is considerable merit in live link and remote proceedings being integrated into the normal outworking of a court to improve access to justice and efficiency. Expressions of support were received for a range of court business or process including:-

- case reviews, interlocutory applications and case management hearings,
- hybrid hearings where part of evidence used live links and part in-person,
- a case proceeding mainly or fully by way of legal submissions or expert evidence,
- first appearances and cases where a plea is made in mitigation,
- short tribunal hearings which are disposed of primarily on the papers submitted to the tribunal, and
- the default position for short or uncontroversial procedural business.

Comments on when and why remote hearing of evidence may not be appropriate.

29. A number of respondents sought recognition for the view that not all hearings, in particular those potentially dispositive of all or part of a case, should not be conducted through the use of live links; in these circumstances the expressed

preference was that the default position should be an in-person hearing for that stage of a case or claim.

30. This preference for attending in person where the hearing is the “final” hearing was raised across the civil and criminal business areas. Some referred to research conducted in England and Wales family courts which showed less support for remote fact finding hearings or contested hearings for interim care or contact orders or final hearings.

31. At least one organisation indicated that where a case they were involved in was contested it conducted that hearing with evidence being given in person, as that allowed for prehearing consultation with multiple witnesses.

32. Another respondent indicated in regard to tribunal proceedings there had been too few oral hearings in the particular business area to give an informed view. However this respondent favoured face to face engagement with the relevant parties or witnesses where there was a risk of deprivation of liberty or the families of an applicant were likely to attend.

33. A number of respondents provided comments, unaccompanied by any empirical data or research, which included:-

- the accuracy of factual testimony could not be effectively tested remotely,
- remote hearings were not a forum where complex matters of law might be effectively argued,
- experience shows that judicial interaction is “different and less satisfactory” in remote hearings from that experienced in “real life”, and
- this type of hearing is less effective at isolating issues and allowing argument to be developed.

Comments on by whom or how it should be determined whether evidence should be received remotely.

34. A variety of suggestions were made as to by whom or how it should be determined whether evidence should be received remotely. These included:-

- if the judge is satisfied “the interests of justice can continue to be effectively met”,
- if flexibility is maintained to ensure human rights considerations are protected including those of children and families within the Family Court,
- if it is preferred by one of the parties,
- only where all parties (including the Court) agree that proceeding in that way would be appropriate, and
- should only be continued for use for certain types of cases and/or those cases should be determined on a “case by case” basis.

Children or other vulnerable persons and receiving evidence remotely.

35. This is a grouping of particular interest to the Department and will include vulnerable adults, children of any age as well as children requiring treatment for health conditions or with specific needs.

36. Some conflicting observations were expressed and views received from respondents. While one respondent identified that the use of sight-link for young witnesses has been limited, another respondent observed families and young people had commented to them on the benefit of live links as joining at an agreed time reduced anxiety and waiting time at court. One respondent expressed the desire to see greater use of Remote Evidence Centres for the reception of evidence from children.

37. A respondent identified they were not in favour of continuing remote hearings when it was not necessary for public health related reasons as they observed remote working and virtual hearings having an adverse impact on the ability of those detained for mental health reasons “to engage meaningfully (or in some cases at all) with the Tribunal”. This respondent also considered it deprived the patient of the opportunity to consult meaningfully with their legal representative during the hearings.

38. Another respondent observed that an informal survey conducted amongst appellants to tribunals welcomed continued use of remote hearings as many of them had vulnerabilities related to “significant medical issues” and saw the live links facility as ensuring their voice was heard. Tribunal users expressed value to retaining this option if preferred by one of the parties given the flexibility and accessibility it provided to claimants, in particular those claimants with physical and travel difficulties. No negative feedback was received on the use of live links in regard to tribunals dealing specifically with children who had specific educational needs.

39. At least one respondent indicated that while, in their experience, hybrid hearings are effective in straightforward cases they had observed difficulties, which included technology issues, lack of access to suitable laptop or mobile/ poor connectivity due to location, experienced by vulnerable applicants.

Desired improvements or requirements to reduce or minimise concerns of respondents.

40. Most respondents appeared content that any of the initial technology difficulties had been largely resolved. A small number mentioned that when connectivity issues arise they result in delaying the hearing. Responses received appear to indicate that experience of technical issues occurred more during tribunal hearings. The impacts identified included occasional dropout in signal, disruption of the hearing and making “a hearing quite disjointed and problematic in its presentation”. However, even with these type of deficiencies most respondents engaged in tribunal business indicated they would not object to remote hearings if this was the preference of other parties to the proceedings. Other respondents reported that clients and practitioners advised that joining remotely was convenient and easy to use.

41. A couple of respondents considered there was a need for more specific policies and procedures in place, including one specifically addressing where cases involve young people.

42. The need for a specific protocol for the use of Sightlink for cases involving young people should address restricting the child's sightline to judge and counsel, an adult being in situ with a young witness to deal with any issues arising as well as the Department exploring ways to increase accessibility.

43. Another respondent considered policies and procedures must also be put in place that ensure that all parties:-

- have access to proper equipment platforms and training,
- have access to Guidance in Plain English,
- can confidentially communicate with one another throughout the hearing, and
- maintain respect for the integrity of the court and court processes.

44. Some drawbacks identified currently and apparently restricted to tribunals included the inability of the PSNI to share CCTV evidence digitally as well as certain tribunal hearings being conducted using WhatsApp. It was indicated by relevant respondents that they hold security concerns about the use of WhatsApp while there is work ongoing to address the issue of PSNI CCTV evidence.

The benefits or drawbacks identified by the use of live links for the disposal of court or tribunal business.

45. The benefits identified were myriad but can be generally summarised as:-

- reducing the impact on people, especially those who are vulnerable, when going through what is already a stressful event,
- better management of time and resources when attending court in this manner,
- savings in time, cost and impact on the environment (reducing the carbon footprint) with the reduction in travelling to and from Court,
- the benefit for children in giving evidence remotely in a child friendly and neutral environment,
- reducing the risk of unplanned encounters with defendants or their relatives,
- the giving of evidence remotely from court meets the requirements of the Victim's Charter obligation of providing separate waiting area from defendants,
- potential saving in costs of staff engaged in transportation,
- the saving in waiting around time for expert witnesses, and
- an overall saving in time for judiciary and practitioners in case management hearings and administrative proceedings.

46. Specific examples provided by respondents included the outworking of a pilot exercise recently completed on the provision of evidence remotely by police officers and police staff from remote evidence centres to the Magistrates' Court in contested hearings. This project has been identified as having the potential to realise substantial savings over an initial five year period. The move away from producing a young person held on remand every 28 days to a court avoids disruption of the education for those young people. Another benefit mentioned was the avoidance of

the need to place already stressed people in the less than ideal environment for holding multiple individuals for lengthy periods, namely court custody holding facilities, throughout the course of a day's court business.

47. The use of live links for remote hearings had been such a positive experience for one respondent it had encouraged the piloting of the use of Zoom/Microsoft Teams for PACE interviews where the suspects are not resident within Northern Ireland and the circumstances of the matter under investigation do not justify an arrest. However, another respondent highlighted that the use of remote evidence does require additional resources and asked that this additional pressure is noted and factored into policy development.

48. A drawback identified, over and above the reservations set out in earlier paragraphs of this summary, came from a professional representative body. The concern expressed was that remote hearings impacted adversely on professional development by reducing the opportunity for learning from observing more experienced members of the profession.

49. Respondents whose business area might, in pre Covid times, have seen lists of cases in the hundreds accompanied by a substantial reliance on discussion or negotiation "at the door of court" being instrumental in facilitating settlements and completing the listed cases on the day of hearing. These respondents advised this is not possible currently where cases are being dealt with remotely. The identified barrier is linked to Sightlink becoming available only when the case is ready to be commenced by the judge.

Next steps

50. The immediate need for an extension of the Schedule 27 provisions to assist addressing the backlog and throughput of cases will be hopefully reflected in the secondary legislation being brought forward under the affirmative resolution procedure early next year. The Department will also have to reflect on and resolve a number of issues raised in response to this engagement exercise.

51. The Department's attention was drawn by some respondents to research conducted in England and Wales on the use of live links in the family courts. The Department was aware of this research and continues to actively monitor developments in research on live links for remote hearings.

52. One respondent highlighted that in regard to the development of a policy for permanent provision for the use of live links they anticipated there would be particular issues with regard to the participation of victims and witnesses. These could require a range of factors to be taken into account: age, disability, mental health, learning difficulties, English as a second language, experience of trauma, socio-economic background considerations and caring responsibilities. Cases involving personal litigants were also mentioned as possibly presenting certain challenges.

53. This respondent believed a "full" analysis on the impact of remote hearings on access to justice and on outcomes was required before any final decision is taken

and contended the longer term design should be based on a “thorough evaluation of how the recent provision serves the need of the justice system as a whole and all of the stakeholders within it”.

54. One tribunal highlighted that appellants are offered hearings “on the papers”, remotely or in-person. The respondent reported that appellants who opt for remote hearings appear to be generally comfortable with the use of technology and the tribunal believes that such participants are not placed at any material disadvantage. However, accepting that knowledge continues to develop in regard to the application of the technology, the respondent considered they would be better placed to comment more fully as time progresses.

55. Another respondent wished to highlight to the Department that although the five-year, three-phased Remote Evidence Centres (REC) programme of delivery is underway there is a keenness to support greater numbers of young witnesses giving their evidence remotely. The impact and outcomes of the two pilot RECs are limited to date but young witnesses who have attended the two pilot sites have provided positive feedback. This respondent would be keen to see creative and technological solutions being explored to enable one REC to cover a number of court areas to increase availability and accessibility for vulnerable witnesses.

56. In addition the Department, in conjunction with NICTS and stakeholders, is operating a pilot scheme for the wider use of remote hearing of evidence for civilian witnesses in Crown Court cases at Foyle currently and into the early months of 2022. The Department is also organising a targeted exercise to manually capture data relating to the practical application of live links in specific court tiers. These data collection exercises, while tailored to fit within resource constraints and business pressures, will help to inform future planning.

57. Further development work and discussion with stakeholders on a number of key issues is required, including:-

- reflecting consideration of relevant developments in other jurisdictions,
- post-consultation meetings with some respondents to clarify specific issues of concern, as well as concerns with any developing policy,
- the Department will screen and, where necessary, assess the policy against its duty under s 75 of the Northern Ireland Act 1998.

58. The Department intends to explore the concerns recorded by those who provided responses although it should be noted that not all comments bear on the proposed legislation or necessarily fall within the competence of the Department to address.