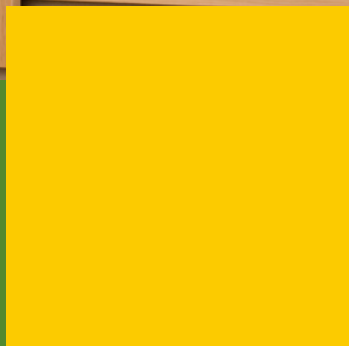
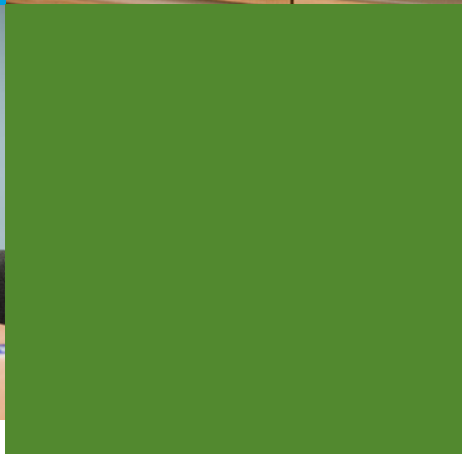




Magistrates Association

Magistrates' courts and Covid-19

Magistrates' experiences in criminal courts during the pandemic



Acknowledgements

We are grateful to the members of the Magistrates' Association who informed this research through the survey and focus groups. We are also grateful for the expertise and assistance provided by Transform Justice in conducting the research and producing this report, and to Dr Natalie Byrom for her reflections on the research.



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| Foreword



The measures introduced to combat the spread of Covid-19 resulted in rapid and fundamental changes to the operation of the justice system. In courts and tribunals across England and Wales procedures were amended, processes adapted and remote hearings adopted at scale.

Across family, civil and administrative justice, rapid consultations were conducted, exploring the impact of these changes largely from the perspective of professional court users. In contrast, the experience of those involved in the delivery of criminal justice was not captured. An official survey commissioned by Her Majesty's Courts and Tribunals Service (HMCTS) in 2021 only recorded responses from 92 judges sitting in crime. As we move towards a "new normal", with policymakers considering which pandemic practices should be retained, this important and timely study of the views of 865 magistrates fills an important gap in our understanding.

Of particular concern are the findings in relation to the experience of vulnerable defendants. The magistrates who responded to this survey raise strong concerns about the suitability of remote hearings for individuals with autistic spectrum disorders or mental health conditions. The experiences reflected in this report mirror findings from a survey of judicial office holders sitting in the Mental Health Tribunal during the pandemic – who reported that proceeding with hearings remotely had exacerbated patients pre-existing symptoms, undermined effective participation and created risks for staff who were facilitating attendance.¹ These issues were foreseeable; in the early months of the pandemic, the Equality and Human Rights Commission (EHRC)² published interim findings from their criminal justice inquiry, which warned that the widespread use of remote hearings could lead to a "justice crisis" for disabled defendants. In their report, the EHRC called on the government to take active steps to identify defendants' needs, put in place reasonable adjustments and collect data to monitor the impact of the use of remote hearings on defendants from protected groups. This comprehensive monitoring did not happen. As a result, we have emerged from what some have described as a "great experiment" in remote justice without the data we need to ensure that vulnerable defendants' rights were protected.

In addition to the absence of data on the characteristics and experience of defendants, the report highlights how little is known about the impact of remote hearings on case outcomes. This issue is not confined to magistrates' courts; across the civil, family and administrative justice system there is not a single study that has explored the impact of Covid-19 measures on the decisions made in individual cases. While the magistrates who responded to this survey expressed confidence that proceeding with hearings remotely had not affected their decision-making, a number of respondents to the survey of judicial office holders in tribunals raised concerns that distractions caused by the technical difficulties created by inadequate technology had impacted on their ability to reach fair and accurate decisions.

In the context of the imminent enactment of the Police, Crime, Sentencing and Courts Bill, which includes measures to support an expanded role for remote hearings across the justice system, the failure to examine the impact of these measures on the ability of courts to deliver their constitutional function should be cause for deep concern. Judicial discretion – the ability of judges to decide when a case is or is not suitable for remote determination – is the primary safeguard included in the Police, Crime, Sentencing and Courts Bill. In this context, reports from responding magistrates raising concern about their theoretical and practical ability to control the way in which cases are listed should be urgently investigated.

Beyond the experience of defendants, the findings describing the impact of remote hearings on the morale of magistrates who responded to this survey are profoundly worrying. Similar impacts on wellbeing were reported by judicial office holders sitting in tribunals during the pandemic. Feelings of tiredness, isolation and stress created by the pressure of managing hearings with inadequate technology were implicated in undermining wellbeing. In the context of plans for an expanded role for magistrates in tackling case backlogs, it is vital that steps are put in place to ensure that magistrates are supported.

The report makes important and balanced recommendations that, if adopted, would support the safe and effective use of remote hearings in the future. Ineffective hearings have a devastating impact on defendants and victims alike, as well as generating delays that can only exacerbate the current case backlog. I echo the authors' plea that we learn what we can from the experience of the past two years, while investing in the data and research needed to build a better evidence base for effective practice. This research is an invaluable contribution to what must be an ongoing conversation about the most appropriate way to harness technology to make the justice system better and fairer.

Dr Natalie Byrom

Director of Research and Learning
at The Legal Education Foundation

Executive summary



In March 2020, the country entered an unprecedented national lockdown affecting every aspect of daily life. Radical changes were made to the running of magistrates' courts in order to keep them functioning.

The changes were understandably implemented in a hurry, without much opportunity for testing and consultation. This haste was reflected in the, at times, suboptimal implementation. Magistrates were willing to accept these measures to keep the wheels of justice turning. Indeed, they continued volunteering throughout the multiple lockdowns. However, now that lockdowns are over – at least for the time-being – it is important to reflect on magistrates' experiences, so that we can learn for the future.

This report explores the experiences and impressions of 865 magistrates who sat in court between March 2020 and November 2021. Evidence was gathered through an online survey, followed by two focus groups. The report provides a snapshot of the experience within magistrates' courts in the criminal jurisdiction during the pandemic. It is not a complete picture. There are other court users, such as legal advisers and court staff, who were also affected by the changes. It also does not cover the experience of magistrates sitting in family courts – this has been looked at separately. However, we believe this research provides an invaluable reflection of the experiences of magistrates as they worked to keep justice going under such challenging circumstances.

The background and main findings of the research are outlined below, followed by a summary of the broad recommendations. These recommendations, based on the evidence provided by magistrates, will inform future Magistrates' Association (MA) policy work on the post-pandemic justice system.

Background

The pandemic led to significant changes in the running of magistrates' courts, in particular:

- increases in the number of magistrates sitting as benches of two
- the use remote links by various court users appearing from their homes, as well as defendants appearing from police and prison custody.

The changes introduced to criminal courts during the pandemic were far-reaching, but all had their roots in pre-pandemic practice. Before Covid-19, magistrates occasionally sat in benches of two rather than three, due to the shortage of available magistrates. Video was used to link defendants in prison to courts for case management and remand hearings. Audio links were rarely, if ever, used. In a few areas, defendants who had been remanded post-charge by the police stayed in police custody for their first court hearing and were linked to the court via video. During the early stages of the pandemic, remote hearings were conducted from police custody suites across England and Wales but ceased in autumn 2020 due to the strain on police resources.

Unsurprisingly, there were a variety of views among our survey respondents about the changes introduced to deal with Covid-19. But, in the main, respondents were negative about their impact. Respondents accepted the changes as addressing emergency needs. While many magistrates considered that there was a place for changes such as remote links both as an emergency measure and in the interests of efficient justice, this was caveated by the firm belief that, post-pandemic, the changes could not continue to be used as extensively as during the height of public health restrictions, and that vast improvements are required to technology and training.

“[Remote links should] probably not be used as extensively, but with the facility of remote working it should mean that matters can proceed without delay and that is an important factor in delivering justice. Of course, this should not be at the expense of justice being compromised.”

Findings

Broad themes emerged from the evidence gathered about remote links and benches of two during the pandemic. These are explained briefly below. We then identify five conclusions about the use of remote links during the pandemic and how the experiences of magistrates can inform and improve future practice.

Benches of two

Benches of two arose from both a shortage of magistrates and necessary social distancing measures. Magistrates had concerns about sitting as a bench of two rather than three. There is no official guidance mandating that magistrates must sit as three, but pre-pandemic they usually did so. Respondents were content to sit as two for some types of administrative hearings, but magistrates raised salient objections to a permanent expansion of their use. Not only does the potential for being unable to reach agreement risk further delays in an overburdened justice system, but the diversity of opinion inherent in sitting as a bench of three was highly valued by respondents, ensuring balanced decisions.

Remote links

Questions on the impact of remote links, where one or more parties does not appear in person at a court building but attends the hearing via a video or audio call, were central to our survey. The key issues included the quality of technology, and the impact on communication with court users, on effective participation and on the respect accorded to the court process.

Technology

Magistrates observed that the technology and infrastructure of remote links in the courts were frequently of poor quality. For most of the pandemic, criminal courts used the HMCTS cloud video platform (CVP) system for video links and traditional phone lines for audio links.

Technical difficulties ranging from complete breakdown to poor audibility were common in magistrates' courts during the survey period. In many courtrooms, the basic technology infrastructure of the courts was inadequate.

The need to resort to audio-only (phone) links when video technology failed was also troubling, given that most magistrates felt audio links were inferior to video links. The insufficient and unsuitable hardware in courtrooms forced courts to use less than ideal methods of communicating during such hearings. The issues encountered had wide ranging impacts, from impeding effective communication to increasing delays and waiting times. Reliance on remote links waned across the survey period and, as time went on, magistrates, court staff and court users became more accustomed to the new technology. However, the technical issues were never satisfactorily resolved.

Prevalence

Video and audio links were used extensively during the pandemic for every type of hearing, including trials. When commenting on prevalence, magistrates outlined the circumstances under which they would be content to see remote link usage continue including which types of hearing were more suited to this. They suggested that a more standardised approach to the types of work undertaken on remote links was needed.

Discretion in using remote links

The judiciary can, theoretically, decide at listing and/or at any other stage whether it is in the interests of justice for any party, or for any professional, involved in a hearing to appear remotely. Despite guidance issued by the Chief Magistrate and the Justices' Clerks' Society that all decisions on the use of remote links should be subject to judicial discretion,ⁱⁱⁱ most magistrates either did not know they had that discretion or did not feel able or inclined to exercise it in this emergency. Magistrates were not explicitly reminded by their senior judges or by court staff that they had this discretion. Many magistrates were, however, confident in halting proceedings when they considered remote links were seriously hampering effective justice.

On a daily basis, magistrates have few means of influencing, in advance of a hearing, whether parties appear on remote links. During the pandemic, the majority of magistrates accepted that the emergency necessitated the use of video and phone connections to prevent people from having to travel to court. In future, magistrates must be consulted on policies for use of remote links and must liaise with court staff to ensure that the use of remote links is always in the public interest.

Hearings and participants best suited to remote links

Many magistrates were unhappy about remote links, however most agreed that they were suitable for some hearings and some parties, but not for others.

Magistrates felt that the appearance of prosecution lawyers and probation officers on remote links in a hearing were generally more acceptable, but preferred that defence advocates appeared in person. Magistrates felt that the quality of advocacy improved when the defence advocate was co-located with the defendant.

Magistrates were more comfortable with administrative hearings being remote (either hybrid or entirely remote) than with substantive hearings where pleas need to be taken, bail decisions made, trials held, or defendants sentenced. The hearings magistrates felt were most suitable for remote were proceeds of crime and the granting of domestic violence protection orders. Magistrates also agreed that remand reviews for defendants in prison were better done on video, given the disproportionate travel time and disruption involved for prisoners.

Communication between court users

Magistrates themselves found it harder to communicate with prosecution, defence, probation services and youth offending teams (YOTs) when these professionals were on remote links. They also noted that professionals and court users experienced greater difficulties in communicating with each other when remote links were used. Magistrates were not party to private conversations between lawyers and others pre-hearing, but they discerned, on the basis of the hearings themselves, that prior communication was often less than adequate. Magistrates reported that communication between prosecution and defence, between defence and defendants and between legal representatives and other parties such as probation officers were all negatively affected by remote participation. Communication difficulties were caused by reduced opportunities for informal discussion such as legal representatives discussing options 'at the door of the court', and the lack of visual cues (in the case of phone links) and of body language cues (in the case of video links). Poor technology also led to communication difficulties.

Effective participation

It is essential that lay court users understand what is being said in court hearings and can give their own views. The magistrates we surveyed perceived that the effective participation of defendants was impeded by remote links. They told us that all defendants were affected, but that particular groups suffered more than others. Remote links were seen as unsuitable for defendants who need to play an active part in their hearing. Magistrates observed that neurodivergent defendants find it particularly difficult to follow proceedings and communicate if appearing remotely. Many respondents felt that such vulnerable defendants should never appear on a remote link in a substantive hearing. Other respondents would add those with English as a second language and unrepresented defendants to the list of those who should never appear on video.

The seriousness of the court

Magistrates identified a trend in that defendants and witnesses who attended court hearings on video or on the phone took the process less seriously than those who attended in person. This was particularly the case for those who appeared from home or from elsewhere in the community.

It was often more difficult for the parties to take the process seriously since they could be, and often were, distracted by other family members and household or work responsibilities. Many parties appeared from inappropriate settings and treated their hearing with less formality than it merited. Parties could not properly see or sense the serious atmosphere in the real courtroom.

Magistrates felt remote links were responsible for undermining respect for the court and that this was a major downside to their use. They feared that if parties did not take the court process seriously, trust in the justice system would be gradually eroded.

Morale

Magistrates' morale has suffered during the pandemic, partly because of the changes in the nature of court hearings. The majority of respondents felt remote links negatively affected their morale, satisfaction in their role and experience of the court process. Magistrates described remoteness not just from the normal court procedure, but also from their communities when conducting hearings using remote links. They were dissatisfied with the support they received, additional training (or lack of) and the use of remote links for convenience rather than need. They perceived that remote links led to a poorer form of justice. Collectively, these factors led some magistrates to consider resigning.

Training

Magistrates' training on the use of remote links, the changes remote links make to communication and effective participation, and the impact of remote links on vulnerable court users were inconsistent across England and Wales. While individual benches made efforts to ensure justices in their areas were prepared, there was little national or standardised training.

Youth courts

Youth courts changed much less in the pandemic than adults' magistrates' courts. Despite the Coronavirus Act 2020 bringing in temporary amendments expanding the circumstances in which remote links could be used in youth court hearings, remote links were consciously avoided in youth courts where possible. Magistrates were alive to the challenges children would face in effectively participating in youth court proceedings where a remote link was used. The various issues with remote links identified by magistrates threaten the ability of defendants under the age of 18 to effectively participate in the proceedings.

Future of remote links

The pandemic provided an opportunity to learn about the shortcomings of remote links and benches of two very quickly. It is vital that the evidence and experience gained over the past two years is used to improve the operation of magistrates' courts, incorporating new ways of working and ensuring quality within the justice system for all.



Recommendations

The impressions of magistrates during this snapshot were mixed. While experiences were, broadly, negative, the pandemic has provided an opportunity to learn. We have, therefore, identified five recommendations from this research.

01**More information is needed on the impact of remote links.**

This research filled a gap by exploring magistrates' experiences. More work must be done to strategically review the place of remote links in criminal justice.

02**Remote links have a place, but must only be used where suitable.**

Where remote links are used, this must be consistent across England and Wales. Detailed guidance for magistrates and legal advisers as to where use of remote links is, and is not, suitable is crucial.

03**The known impacts of remote links must be acknowledged and guidance on effective use produced.**

Remote links negatively impact communication and effective participation, particularly for vulnerable court users. Guidance must acknowledge these shortcomings and ensure best practice.

04**Technology must be improved.**

Stable, reliable and quality technology and connections are vital if remote links are used to deliver justice.

05**Benches of two must only be used where appropriate.**

Benches of two should not be standard practice. Less experienced magistrates must be supported within a bench of three.

| Background



Covid-19 has profoundly changed the criminal justice system. Measures to reduce social contacts led to widespread changes to the operation of all parts of the justice system to protect participants. In addition, some court staff, lawyers, the judiciary, and parties became ill, some seriously, leading to disruption.

In March 2020, parliament enacted the Coronavirus Act 2020 to facilitate greater usage of video and audio links in all criminal courts. The government also decided that the wheels of justice should never stop altogether. Magistrates' courts ran throughout the pandemic, though in spring 2020 only heard essential cases – defendants who had been remanded by the police (who needed to appear in court within maximum 48 hours of the remand decision) and urgent remand reviews and appeals. Non-urgent cases began to be heard again later in the year.

Magistrates were advised not to sit in person in spring 2020 due to concerns about the Covid-19 safety of the courts. Where resources allowed, only district judges sat in person in magistrates' courts initially. Then those magistrates who felt comfortable were asked to return to sitting. Most magistrates then sat in person in their usual courts. HMCTS installed plastic screens to enhance Covid-19 safety, and court users were asked to use masks and to socially distance where possible. To facilitate social distancing (and to account for shortages of magistrates in some areas), magistrates were frequently asked to sit in benches of two rather than three.

The courts were required to balance keeping the wheels of justice moving with keeping all involved in the justice system as safe as possible. One aspect of this balance entailed the courts allowing or encouraging (guidance changed during the Covid-19 period) court users and parties to use phone lines or video links to take part in hearings.

Remote links (both phone and video) were used in a variety of ways:

- Detainees and prisoners were connected to the court by video from prisons or police custody suites.^{iv}
- Witnesses and defendants used phones or laptops to take part in court hearings from their homes or elsewhere in the community.
- Defence and prosecution lawyers and probation officers appeared remotely from their homes or offices.
- Some magistrates and court staff participated in person in court and others joined remotely in hybrid hearings.
- Magistrates and court staff took part from their home in fully remote hearings.

Covid-19 measures were brought in on an emergency basis but, due to the longevity of the pandemic, measures continued to be used to varying degrees until early 2022. Little research has been done into the impact of the emergency measures in magistrates' courts that conduct adult and child criminal proceedings. Senior judges in civil and family courts and in tribunals commissioned research with judges in their jurisdictions on their experiences and views of remote working.^v

Such an exercise was not undertaken in the case of criminal judges. The courts service – HMCTS – did commission research on remote hearings across all jurisdictions, including crime.^{vi} However, few criminal judges and magistrates were included in this study.

The MA was aware of this gap in quantitative research on the effects of Covid-19 reforms on the criminal courts. It is important for the MA to understand the views and experiences of members given the scale of the changes implemented. The MA particularly wanted to gauge the enthusiasm of members for continuing with the emergency changes, given they had to be introduced quickly, with no time for consultation.

Transform Justice had previously conducted research on remote hearings and included magistrates as respondents. The charity offered to support and help fund this research undertaken by the MA. Transform Justice assisted in designing the survey and focus groups, and in analysing and reporting the findings.

→ A note on the family jurisdiction

This research concerned only the criminal courts over which magistrates preside, both adult and youth. Some magistrates also sit in the family jurisdiction and their experiences of the family court differed from the criminal courts. Extensive research has been undertaken on the family jurisdiction, including the views of magistrates, by the Nuffield Family Justice Observatory. Some magistrates who responded to our survey mentioned their experiences in the family as well as the criminal courts. Wherever identifiable, comments about the family jurisdiction have not impacted the conclusions made about the impact of Covid-19 on criminal courts.

| Methodology



The analysis in this report is based on a survey developed and conducted by the MA and Transform Justice, which explored the impact of changes in magistrates' courts from the beginning of the Covid-19 pandemic in March 2020 to October 2021. The survey ran 16 November to 9 December 2021 and was followed up by two focus groups held in January 2022.

Survey

The MA and Transform Justice created the survey using the SmartSurvey online tool. MA members were then invited via email and social media to participate. A total of 865 completed responses were submitted, representing a robust sample of the 13,177 magistrates in England and Wales.^{vii} The length of service and experience of magistrates surveyed was not verified. However, all respondents were sitting magistrates who had sat during the survey period.

The survey contained 19 multiple choice and checkbox questions, alongside numerous opportunities for further commentary, allowing magistrates to respond at length to the various prompts. From this, researchers were able to hear from magistrates, in their own words, what it was like to sit using remote links during the pandemic.

As well as asking about general attitudes towards remote links during Covid-19, the survey focused on five key issues:

1. Benches of two
2. Communication in the court
3. Effective participation
4. Accessibility
5. Magistrate experience

Focus groups

Two focus groups were organised to further enrich the findings from the survey, covering similar topics while allowing more in-depth discussion of certain themes identified in the survey responses.

The 16 participants were recruited from the respondents to the survey. A balance of genders and opinions were sought for each group, as well as the inclusion of some magistrates who sat in youth courts.

The focus groups were independently facilitated by Sophie Reid, a social researcher and facilitator. Each session involved two hours of discussions, during which participants were asked to consider various topics.

The focus groups were transcribed using automated transcription software Otter.ai and then manually checked by a researcher against recordings for accuracy. Analysis of the transcripts was conducted using NVivo qualitative analysis software to identify main themes and code sections of the transcript according to these main themes.

Analysis

The team conducted a thematic analysis of the qualitative responses to the survey using the coding tool Delve. This was used alongside the focus group analysis and the quantitative survey data, to identify patterns and common themes in the responses.

“It is the interpersonal, non-verbal communication that is missing and which could, at worst, potentially lead to a miscarriage of justice and I suspect frequently leads to a slightly unsatisfactory outcome for lay parties.”

| Findings



Technology and infrastructure

Technical difficulties were pervasive in magistrates' courts during the survey period. The issues encountered had wide ranging impacts, from impeding effective communication to increasing delays and waiting times. The overall picture is one of a system that desperately requires improvement if remote links are to provide quality and justice.

Audio remote link technology

Audio-only (phone) links were relied upon in magistrates' courts where the video technology stalled completely or failed to provide a sufficiently stable link to allow proceedings to continue. Figure 1 indicates the prevalence of audio link usage. Around half of the 865 respondents said they had not encountered audio links.^{viii}

Three hundred ninety-eight respondents shared further comments on their experiences of audio links and compared these to experiences with video links. Of these, 56 per cent were negative about audio links, 10 per cent were neutral, 18 per cent had mixed views and 15 per cent were positive.

The majority of magistrates who felt that audio links had worked poorly were frustrated by the technical quality of the phone lines, and by the impact of the poor-quality sound and lack of visual cues. They felt that these factors had a negative effect on effective participation and, thus, on the quality of justice.

However, magistrates frequently commented that remote links including audio only links had allowed them to continue to hear cases that would otherwise have been adjourned because parties or magistrates themselves would not have been able to attend court due to pandemic public health measures.

Magistrates indicated that there were a wide range of hearings where audio links were used, predominately administrative criminal proceedings such as search and mental health warrants, grants and extensions of pre-charge bail applications. Some magistrates felt audio hearings were suitable for some purposes, but most respondents felt audio links were not suitable for trials, cross examination of witnesses and any hearings involving oral evidence.

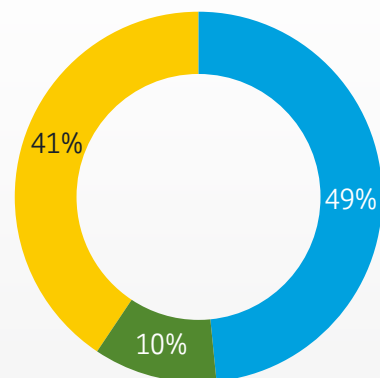
Positive comments

The enthusiasm of the few respondents who were more positive about audio links depended on the type of hearing for which they were used. Warrants, statutory declarations and pre-charge bail hearings were regarded as particularly suitable, given the time saving for police officers and lack of technical problems. A few magistrates felt audio hearings worked well for proceeds of crime and domestic violence prevention order hearings, but this was not a widespread view.

Twelve respondents noted that the audio quality of a phone line could be better than a video link, particularly where participants had poor internet connectivity. However, they also pointed out that the audio quality of phone lines needed to be improved if they were to compete with in-person hearings.



Figure 1: Prevalence of audio links in court



- No audio links encountered
- Entire court via audio link
- One or more party via audio link

Negative comments

Many respondents commented that the courts were not well designed to accommodate audio links for hearings. The phones in courts were, pre-pandemic, used by individual legal advisers to make short calls to administration teams to confirm listings, or to call the cells. Some magistrates said the audio quality of the phone lines was unreliable and often poor.

“My experience of both audio and video is that the court lacks investment in both and that is generally very embarrassing. Distorted sound, frequent disconnections, defective microphones and poor-quality speakers. Audio is definitely [the] worst.”

Respondents described legal advisers having to use personal mobile phones to connect to parties; phone cords not reaching between the legal adviser's desk and the bench; a lack of microphones that could connect to the audio links (phones) on the bench; parties being unable to hear a Presiding Justice due to lack of phones or microphones.¹⁸ Such technical problems sometimes led to legal advisers having to relay information between parties on the phone to the bench and then back again, repeating every comment. The technical difficulties had knock-on effects. Magistrates adjourned some proceedings after being delayed for up to two hours due to technical issues.

“The quality of calls varied the level of seriousness with which the court process was viewed. [The level of seriousness] was much lower than when cases are listed in person or even via video link. The calls eliminate the air of gravitas and no one can really be clear who is actually speaking and what their role might be.”

Many accepted audio links as keeping the wheels of justice moving in the pandemic, but the majority felt that audio links were inferior to both video links and in person hearings.

Impact on effective participation

Concerns about the impact of audio links on effective participation were often triggered by the lack of ability to see parties in the hearing. Parties frequently talked over one another. Magistrates also recalled defendants, witnesses and other court users finding it difficult to understand who was speaking at any given point.

“The inability to access important aspects of non-verbal communication results in an extraordinary failure of best practice which is ultimately not in the interests of justice.”

Magistrates noted that the lack of visual cues meant it was “impossible to check visually on [the] understanding or engagement” of the defendant and felt parties could not “fully take part”. Being unable to see defendants made it difficult to assess whether defendants had fully understood proceedings. Two magistrates also considered that being unable to see the witness made gauging their credibility a very difficult task (see also ‘Judicial discretion’).

Magistrates' concerns as to whether parties understood proceedings on an audio link were accentuated when it came to interpretation. They felt that witnesses and defendants in audio-interpreted hearings were often unable to comprehend proceedings.

Some magistrates with hearing loss noted that use of audio links impeded their own effective participation. They coped with video links through using closed captions and used lip reading to aid comprehension during in-person hearings, but they could not access audio links at all.

“[I was] effectively excluded from continuing my magistrate role... as the technology was not appropriate.”

Video remote link technology

Eight hundred and forty-four magistrates indicated the impact of video remote links on the speed of proceedings and the frequency with which they encountered technical difficulties, if any. Eighty-six per cent of magistrates indicated that they had difficulties when using video remote links for hearings. Sixty-one per cent of magistrates indicated that these difficulties were frequent. Sixty-two per cent of magistrates overall indicated that the use of remote links slowed down proceedings.

Negative impacts

Similarly to the situation with audio only links, the hardware and infrastructure of magistrates' courts for remote video links were heavily criticised by magistrates.

Technology and communication

When asked about communication via remote links, 42 per cent of the 400 magistrates who provided further comments cited issues with technology as a barrier to effective communication.

“The IT problems are enormous: appalling links, distorted audio and, in many cases, lost transmission. If the IT was up to the task then I would have a far different view as I believe remote access can work; it does in my workplace.”

The stress and additional workload on legal advisers and list callers were mentioned across several survey questions. Magistrates commented that legal advisers were required to balance case management with resolving technical issues. Some felt this distracted them from commenting on points of law during a case.

In further comments, magistrates frequently attributed delays to the failure of remote link technology, either resulting from waiting times for connections and other issues to be resolved or from abandoning the remote link altogether and requiring the parties to attend in person at a later date.

“I doubt that I have ever had a day’s sitting without at least two or three breaks due to technical problems. We spend or waste time waiting for connections to be made – often having to retire while everybody gets online.”

“In one recent case, the start of a trial was delayed by over an hour because we could not establish a viable connection for several police witnesses... in the end, they had to attend the court in person.”

Technology issues were exacerbated by the need to swiftly implement the CVP. Prior to the pandemic, HMCTS was using CVP in some limited contexts, mostly for non-criminal work. However, CVP is a video conference software that was not specifically designed for use in remote hearings. HMCTS plans to roll out video hearing software to replace CVP, but the latter was used as a stopgap measure. Where court infrastructure could not support CVP or CVP had not yet been implemented, some magistrates noted that some courts frequently changed direction in terms of which platform was to be used. This led to irrelevant training sessions, disruption and confusion for court staff and magistrates. One magistrate commented that this “compared very poorly against the speed with which other public bodies adapted and responded.”

Positive impacts

Thirty-six per cent of magistrates who commented further on the question held either positive or mixed views on remote links' impact on the management of the court in spite of regular technical difficulties. These magistrates tended to note that the quality of and familiarity with technology improved somewhat over time. Others in this cohort noted that “when the system works, it works well”, but nonetheless bemoaned the technical issues they encountered.

Those who were positive or mixed in their views also tended to note that remote links were appropriate in some but not all hearings. Magistrates who were positive about remote links remarked that administrative hearings worked well remotely.

Three hundred and thirty-two magistrates also commented on whether remote links should continue to be used as extensively as they have been used during the survey period. Seventeen per cent of this group noted that their main objection was the quality of the technology and connection that was used, and if these issues were resolved they would be more supportive of remote links. Some of these respondents considered that the poor quality of the technology in courts was a barrier to effective justice. This sentiment was reiterated in focus groups where it was felt that, if the technology were improved, magistrates would be more comfortable with the use of remote links in a range of circumstances.



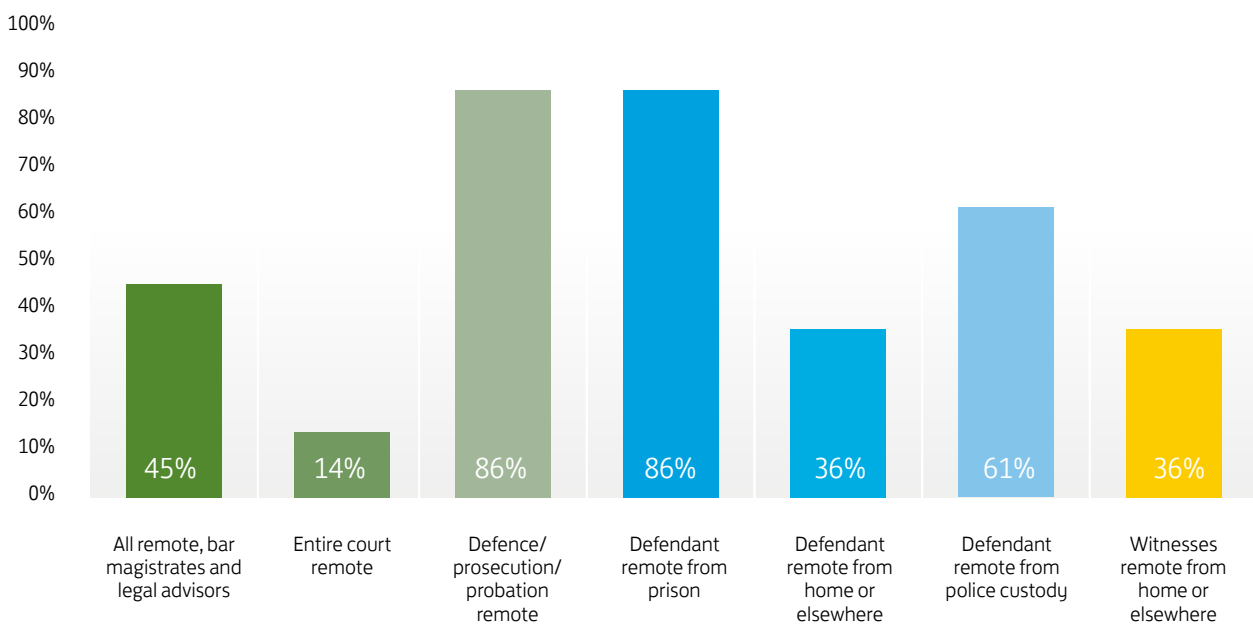
In summary

- Technology in magistrates' courts was ill-equipped for the dramatic increase in use of remote links.
- Efforts were made to cope during the emergency of the pandemic. However, wholesale improvement of the technology available in courtrooms and for court users is necessary.
- Audio-only links prevented effective participation of court users and some magistrates.
- Video links frequently encountered technical difficulties, causing delay and frustration for all involved.
- Magistrates were concerned that technological difficulties negatively impacted communication and effective participation.

Prevalence and future of remote links

Magistrates were asked about the various ways in which remote links had been used in hearings. Eight hundred and fifty-three magistrates specified the different parties they encountered attending court remotely. As can be seen in figure 2, defence, prosecution or probation appeared remotely most frequently – experienced by 86 per cent of magistrates. A similar proportion of respondents also experienced defendants appearing remotely from prison.

Figure 2: Prevalence of the use of remote links during the pandemic, by party



The future of remote links

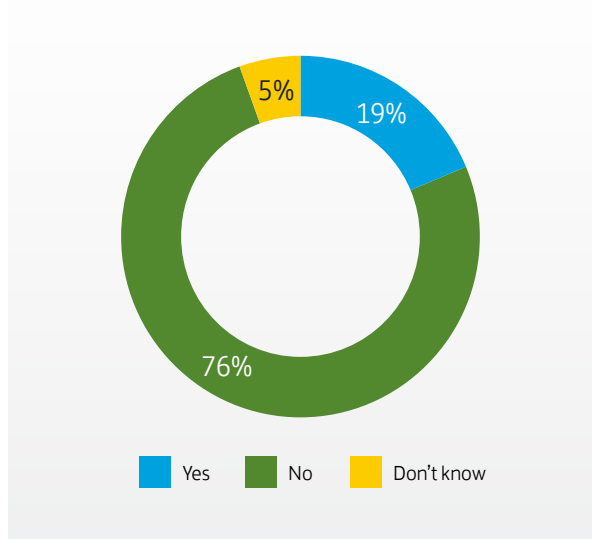
General observations

Despite overall attitudes towards the use of remote links being negative across the survey, few magistrates were opposed to their use entirely. This was unsurprising as remote links have been used in the years preceding the pandemic for links to prisons or for bail applications. This prior experience, together with the rapid expansion of video remote links, allowed magistrates to identify types of hearings and situations in which remote links could and should not be appropriately used (see ‘Suitability of remote links’).

When asked about whether remote links should be used as extensively as during the pandemic, the majority (76 per cent) of the 853 magistrates who responded were opposed.

Three hundred and ninety-eight magistrates also commented on the future of remote links in magistrates’ courts; a mixed picture emerged.

Figure 3: Should remote links continued to be used as extensively as during the pandemic?



Negative comments

Around one quarter of respondents who provided further comments expressed negative opinions about their continued extensive use. Within this group, some magistrates were staunchly opposed and would consider leaving the magistracy if remote links continue to be used as they were in the pandemic.

Some magistrates who were directly opposed to the use of remote links considered that they contributed to an erosion of the principles of local justice. Others commented on difficulties with communication, lack of accessibility, or negative impacts on the dignity of the court.

“The court closure programme has already resulted in an erosion of the principal of summary justice being dispensed locally. Video links, in my opinion, serve to exaggerate that sense of remoteness further.”

Positive comments

The majority of respondents who provided further comments (53 per cent) agreed that there was a place for remote links and were either positive or mixed in their views on their continued use. Many of these believed that remote links can and should be used more extensively than pre-pandemic, but caveated that they should either be restricted to certain kinds of cases or only be used where necessary. Numerous comments continued to highlight the inadequacy of the technology for remote links at present.

While many magistrates considered that the remote links should be used significantly less than in the pandemic and restricted to certain types of hearings, there were those who recognised the benefits of flexibility for police, probation, prison officers and court users – particularly where the hearing is purely administrative.

However, in both the survey and focus groups, some participants were concerned that decisions were being made according to the personal preferences of some magistrates, defence, and prosecution rather than in the best interests of justice.

“While there must still be a place for defendants in custody to be produced remotely and for vulnerable witnesses to appear via live link, there has been a tendency – particularly among defence and prosecution council – to seek to continue the practice of remote attendance. What started as a necessary expedient now appears to be employed as a convenience, to the detriment of the court process.”

Judicial discretion

Guidance makes it clear that judges (including magistrates) have a level of control over whether a remote link is used in any hearing. Directions to use a live link may only be given where magistrates – or legal advisers where the power is delegated⁸ – are satisfied that it is in the interests of justice.^{xi} Magistrates may also rescind the direction to use a live link where it is in the

interests of justice.^{xiii} It is, therefore, their decision whether and in what circumstances video and audio links should be used.

Focus group participants were aware that magistrates had some discretion over whether remote links were used, but felt this was generally difficult to use in practice due to a reluctance to delay proceedings. Magistrates perceived that their control over listings was theoretical, but seldom actual. Cases were usually listed (with or without remote links) by court administration staff before the magistrates arrived at court.

Magistrates in the survey were not asked directly about discretion. However, a small number of respondents suggested that requiring permission or individual evaluation from the court before remote links were booked would improve the operation of remote links. Such comments reflect the powers that magistrates already have (albeit they can be delegated to legal advisers), indicating that these magistrates were unaware they in fact had discretion to refuse a remote link.

“We’ve not had an awful lot of involvement other than case management while you’re actually going through it, and you’ve got the prosecutor and the defence sat there. And other than that... it’s decided for us so you either get on with it or you don’t, and obviously you try and get on with it.”

“[It] is more difficult if it’s a trial because... you’ve spent all that time waiting for something to go ahead, and [if] you’ve got issues with the remote links that becomes more and more pressing to accept and carry on. But I wouldn’t have any hesitation to stop proceedings if I found it necessary to do so.”

Discretion was more often used by magistrates to halt proceedings during the hearing itself if it was felt that the remote setting was jeopardising the fairness of proceedings. Examples included when inappropriate people were with the defendant, or when there were serious technical problems with audio or video.

Many respondents were clearly concerned about the impact on justice of remote links, but few understood that they had, at least theoretically, control as to whether they were used in advance of the hearing.



In summary

- Magistrates believe there is a role for remote links, but that continued heavy reliance on them is not in the interests of justice.
- Judicial discretion on the use of remote links is underused and magistrates are not always aware of their legal control over the use of remote links.

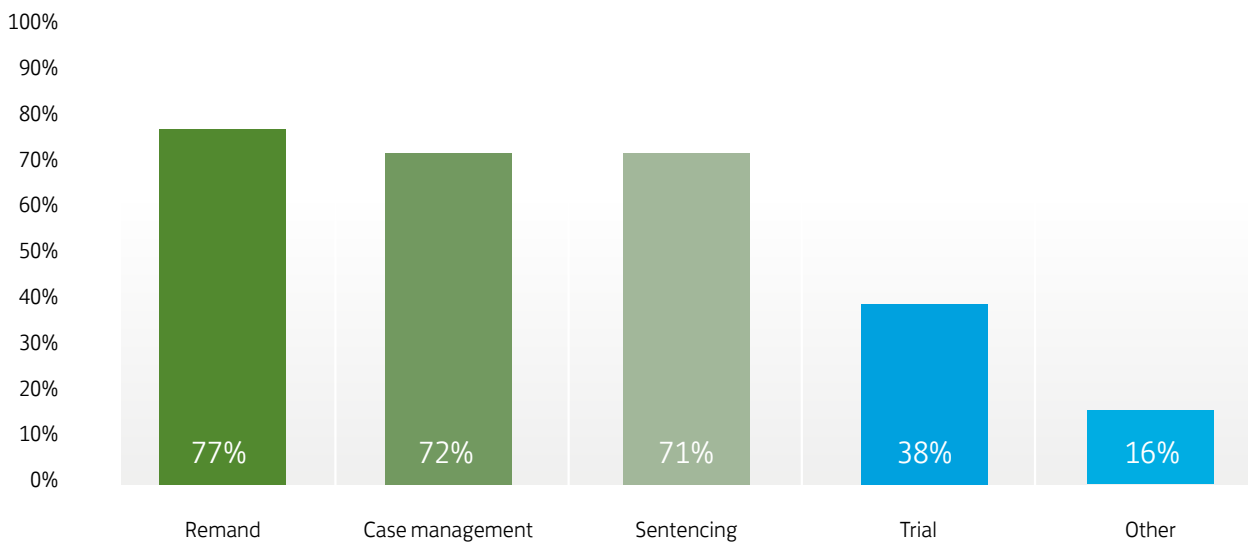
Suitability of remote links

Types of hearings

Eight hundred and forty-three magistrates responded to this question, and their answers are distilled in figure 4. The reported use of remote links in trials was mixed and varied by area. In some regions trials were reported to have taken place with defendants on remote links, while in others this was explicitly prohibited. A small number of focus group participants expressed surprise when hearing trials had been conducted using remote links.



Figure 4: Types of magistrates' court hearings in which remote links were used



Establishing an appropriate use of remote links

Participants in both the focus groups and the survey welcomed the idea of some clear parameters being set for when remote links were appropriate. Due to the relative infancy of using remote links (beyond exceptional circumstances), there was a concern that decisions were being made “on the hoof”, with inconsistency across the country.

The following types of hearings and contexts were generally regarded by survey respondents and focus group participants as suitable for remote hearings:

- Minor traffic offences
- Single justice procedures
- Remand hearings (where the defendant was already on remand)
- Where measures are necessary to enable parties to give evidence (eg in domestic abuse cases)

- Where lay parties are not required to appear
- Administrative hearings generally

Focus groups participants said remote links should not be used in trials for serious crimes or for complex hearings in which many participants would be required to appear by video link.

“Remote links, providing there they are working well, are ok when one party is on the remote link and there is limited integration needed between them and other parties in the court. It seemed to work OK when [the] CPS (the Crown Prosecution Service), a witness, a defendant or a legal representative was remote, but not if more than one party was remote.”

“I think [the cut-off point] has to be somewhere around if there’s the potential for a custodial sentence, then they need to be there in person. If it’s something less serious, then why not? It keeps us more productive. Gets it moving.”

General guidance for use of remote links

Defendants

The complexity and disruption for the defendant of being moved from prison meant that most magistrates considered that remote links were more appropriate for defendants appearing from prison custody than from the community. Focus group participants also considered remote links from the community to be appropriate where defendants would otherwise be unable to appear, such as being abroad and prevented from returning.

“I feel that remote links should only be used when absolutely necessary, for example if the defendant is already in custody – HMP (Her Majesty’s Prison) not police – or special measures are required for trial witnesses.”

“There is a time and place for remote, for example to reduce travel for those in custody, but in my experience it is more helpful if professionals can be available in court to aid discussions.”

“I have no issue with remote links per se, but they should be used where it makes sense, for example in remand hearings from prison to avoid the cost and delay of the defendant having to be brought to court from prison. Where a court user can easily access the court in normal times they should attend in person.”

Magistrates considered the varying needs of defendants, noting that difficulties with defendants’ effective participation using remote links were exacerbated for neurodivergent defendants or those with disabilities (see ‘Remote links and effective participation’).

Legal representatives

Magistrates considered that, where possible, defence advocates should appear in person, and observed benefits for the court process and defendants in such instances. Some considered that, particularly where defendants were not co-located with their representative, the quality of advocacy declined.

“[Remote links] have their place in operating efficiently, but the day definitely runs better if prosecution and defence counsel are in court and defendants and/or victims get a better feel that they have been treated seriously and fairly if they can see the bench.”

“I think that advocates, defendants and ‘non-professional’ witnesses should be in court for all but case management or remand hearings. Remote links are OK for police officers, probation and other ‘professional’ witnesses to help with their overall efficiency.”

A small number of survey respondents appreciated the flexibility legal representatives could achieve by appearing via remote links. They were able to appear in multiple courts across an area without being required to travel. In addition, legal representatives who were shielding or self-isolating were still able to appear, ensuring that justice could continue. However, these respondents were in the minority.

Other court participants

Magistrates observed that some ‘professional participants’, such as police and probation, were generally more efficient over remote links than others, such as the CPS.

“The practice of agreeing that police officers attend via video link is acceptable to me when it is agreed between the parties.”

Suggestions for improving the use of remote links included:

- Expanding the use of remote court waiting and break-out rooms to minimise delay so that the entire court does not have to retire during confidential discussions.
- More technical assistance in the courtrooms where magistrates sit so technical problems can be dealt with swiftly.
- Improved training for magistrates and legal advisers on the use of remote links.



In summary

- There are situations in which remote links are unsuitable, such as trials – unless for special measures.
- In other situations, such as case management and administrative hearings, they are more suitable.
- Standardised practice guidance, informed by research and evidence, should be developed to guide decision-making around whether remote links are suitable in different types of hearings and different situations of court users.
- Court users, particularly defendants, have varying needs. Guidance should be developed, but the decision as to whether to allow remote links should be individually assessed considering the situation and needs of defendants and court users.
- Where possible, legal representative should appear in court. Defence representatives should be co-located with their client.

Communication in court

The Judicial College's Equal Treatment Bench Book states that:

“Effective communication underlies the entire legal process: ensuring that everyone involved understands and is understood. Otherwise, the legal process will be impeded or derailed.”^{xiii}

It is vital that communication issues when using remote links are addressed, including standardising their use and using remote links only in appropriate scenarios.

Magistrates were asked how remote links affected the ease of communication between magistrates and different participants in a hearing.

The majority of the 853 who responded to this question felt they negatively impacted communication with various court participants. Communication with defendants was most significantly impacted, with 76 per cent of magistrates observing that remote links made it more difficult for the bench to communicate with adult defendants. A full breakdown of responses can be seen in figure 5.

Magistrates were also asked about the perceived impact on communication between court users where remote links were used by different parties. The 849 responses were mixed, but follow a similarly negative pattern – with ‘somewhat negative’ being the most common response for the impact on communication between defendants and defence lawyers (43 per cent), legal representatives and other participants (44 per cent), and prosecution and defence (37 per cent). These results are summarised in figure 6.

Figure 5: Impact of remote links on magistrates' communication with other court users

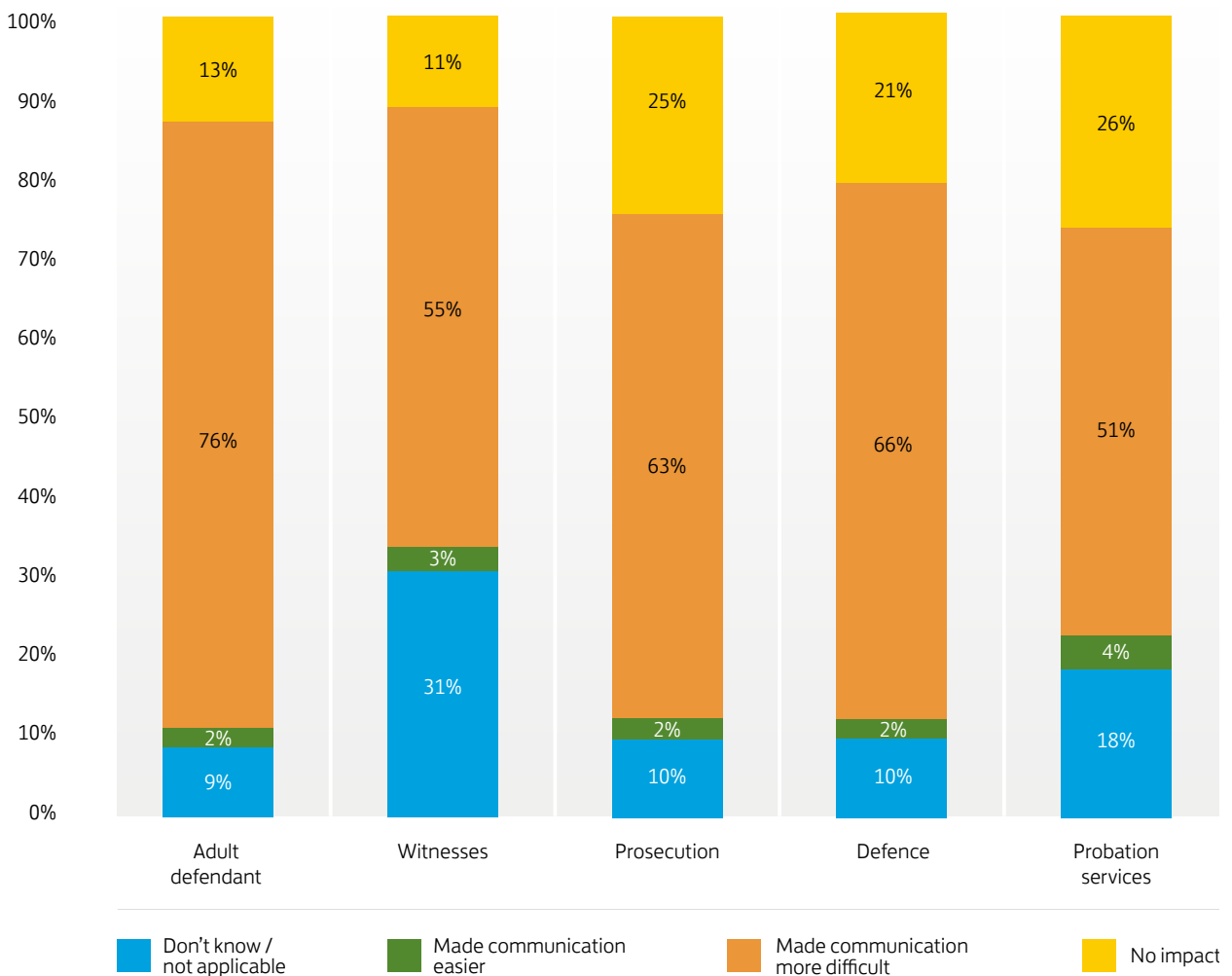
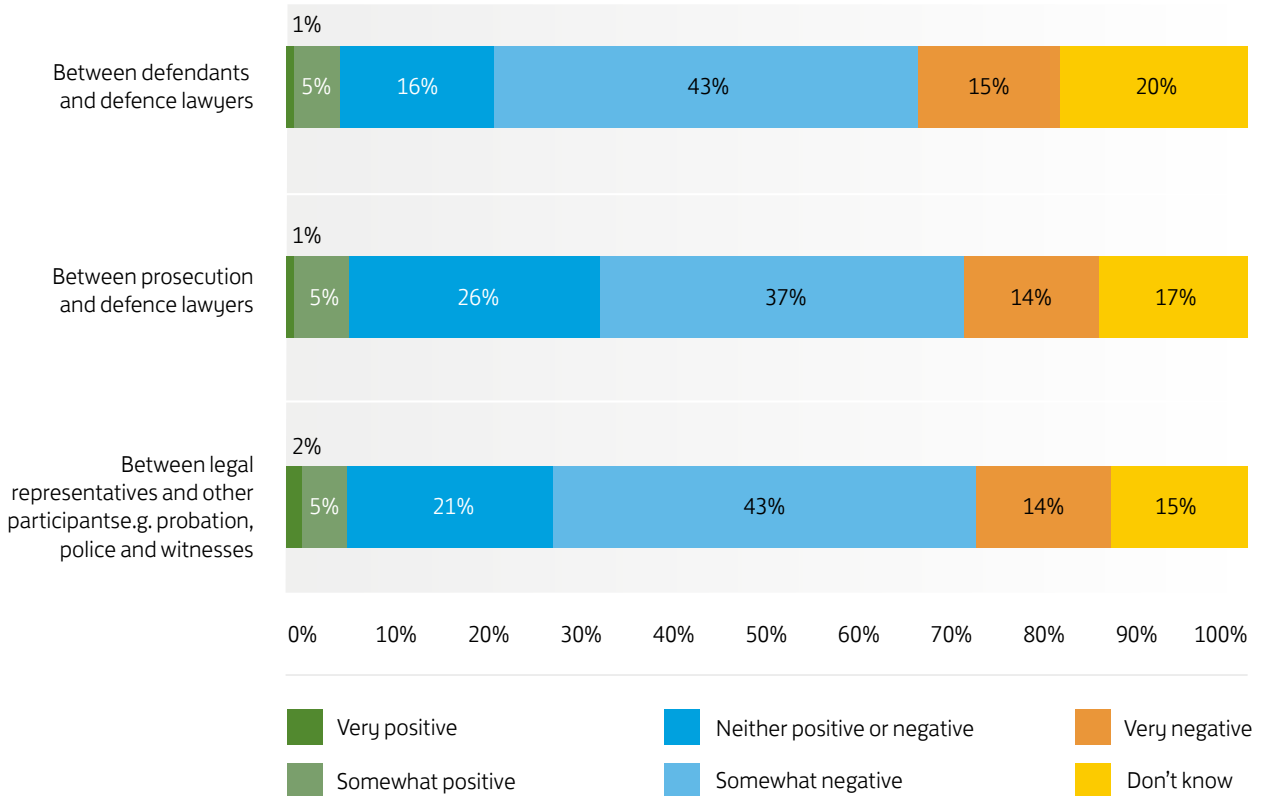


Figure 6: Impact of remote links on communication between court users



General observations

Of the 400 magistrates who provided additional commentary on the efficacy of communication, 67 per cent shared negative reflections, 21 per cent shared mixed or neutral reflections, 6 per cent shared positive reflections and the remainder were not relevant to the question posed.

Negative impacts

Technology

Negative responses emphasised the challenges in communication due to issues with the quality of the bandwidth and the audio/video technology, rather than the use of remote links more generally. Technology issues were mentioned by 170 respondents. Other magistrates commented on inherent issues with using remote link technology, even where technology operates well.

Magistrates referenced having to ask participants to repeat themselves, which slowed down proceedings and caused significant frustration for the parties involved, particularly defendants. Various locations were identified by magistrates as having inadequate facilities that hindered communication, including unsuitable rooms used in police stations and prisons. The majority of those who mentioned video links from prison cited difficulties in engaging with prisoners. Remote links left prisoners “disenfranchised” by the process or struggling to understand what was going on.

“With prisoners there has been marked disengagement with the process. This has been shown by prisoners walking out of proceedings. With a prisoner in the dock, the defence has always been able to respond to comments by the prisoner quickly, effectively and with respect. Using video, when the prisoner raises a query, it is the defence who often indicates to their client that it will be dealt with later. Magistrates must then ensure that the query is dealt with appropriately even if it delays the proceedings.”

Non-verbal cues

The inability to read body language and the lack of non-verbal communication were mentioned by 10 per cent of respondents as a major hindrance to communication between all parties in the remote court. This was a particular issue in communicating with witnesses, where magistrates were trying to make judgements on the reliability and veracity of their statements.

Twenty-seven magistrates mentioned interpreters. All had extremely negative views on their ability to communicate effectively using the remote link, which caused problems with defendants' ability to understand proceedings and led to significant delays.

“It is the interpersonal, non-verbal communication that is missing and which could, at worst, potentially lead to a miscarriage of justice and I suspect frequently leads to a slightly unsatisfactory outcome for lay parties.”

Seriousness

Many magistrates commented on the effect remote links had on the seriousness with which court users approached a hearing. There was a strong feeling within the survey that the level of seriousness impacted how well justice was delivered.

Magistrates described various behaviours from defendants appearing via remote links including: lack of responses from a defendant, stilted responses, general disengagement or unwillingness to talk, slumped posture, and inappropriate settings with multiple distractions when appearing from the community.

Some magistrates were concerned that, for all court users, the use of a video link makes the court “just another internet connection” and, therefore, the message of the court and the seriousness of a criminal prosecution are diminished.

“Many times, the defendants just ‘switched off’ totally, or kept shouting abuse because they said ‘this is not justice’.”

“There seems to be a tendency when remote for people to say as little as possible and appear to be quite removed and unengaged in the process.”

Some of magistrates also considered that the diminished seriousness, gravitas, or dignity of the court impacted public trust in the system. This was felt to be particularly important when giving evidence in trials. Other magistrates commented that they felt responsible for the perception of the court. Magistrates felt that frequent technical difficulties reduced court users' respect for the court and proceedings.

“I don’t think we should underestimate the importance of appearing in court; it is not only about efficiency but also about serving justice... the symbolic significance of the court as a formal important occasion and process [is] lost remotely.”

“The technical difficulties impact the credibility of the court system. There have been times when we have looked completely inept!”

Magistrates described finding it difficult to establish a communication style appropriate to the formality of court when remote links were in use. Defendants and advocates joining from kitchens or noisy locations and wearing casual clothing affected the style, sobriety, and dignity of the court:

“In my view the use of video makes communication more difficult, sometimes due to technology failing, but it also undermines the serious nature of court business and the integrity of the justice system.”

“I have noted that some [not all] defendants appearing remotely, and so not physically being in the courtroom, have had a complete lack of respect for the court, staff and process including but not limited to: appearing while in the bath, being half naked, smoking and treating the process like social media.”

When using audio links in particular, magistrates worried that defendants on the phone did not really understand that they were attending a court hearing – that they were ‘in court’. Consequently, magistrates could find it difficult to get defendants to take the process seriously.

“I felt that the use of remote links made the cases seem like a conveyor belt. I was conscious that people on the links were either not sure about everything that was happening in court or, in some cases, doing other things off-screen at the same time. The gravitas associated with a court hearing wasn’t there, and I don’t consider that a good thing. It felt like some defendants were just tuning in but not taking the proceedings very seriously.”

A small number of magistrates in the focus groups linked the seriousness of the proceedings with reoffending. They believed that, in communicating the seriousness of crime and the harm done to those they sentence, magistrates would deter defendants from reoffending. However, this worked better in person.

“I think being in the formal courtroom plays its role in terms of explaining the importance of the case going forward and someone understanding the seriousness of the situation... I think having that interaction with the Presiding Justice and being able to say this is what’s happening, you know, we don’t want to see you here again, and being very clear about it, I think you would hope would have some impact on them not appearing in court again.”

Management of court

Management of the court was also identified as a difficulty when using remote links; it was challenging, for example, to stop people “butting in”, to shut down discussion when needed, or to ensure that all parties had the opportunity to speak as they would during an in-person hearing. Muting participants was available, but some considered that its use on remote links could be counterproductive. Some magistrates considered that simply muting disruptive defendants “effectively disenfranchise[es] them from participating in the proceedings.” One commented:

“I can manage difficult people in court without any problem but over a link the LA [legal adviser] just mutes them when they become disruptive. This is not fair to the defendant and gives a very negative impression to the court, meaning that they are likely to have a less favourable outcome.”

Some magistrates also specified that the inability to see everyone in court at once made communication more difficult. The proceedings felt more “remote” and, participants – particularly youth defendants – struggled to stay engaged.

“[It was] less easy to establish a rapport and pick up on issues or concerns also harder to shut someone down.”

Magistrates also noted that it was hard to know who was listening in to the proceedings, as often witnesses and defendants had other people in the room to assist them with the link. It is essential that, where needed, witnesses are supported to appear remotely. It is, therefore, also essential that clear guidance on conducting remote links remotely – including appropriate backgrounds, settings, and introductions from all persons including witness supporters – is disseminated to ensure effective remote appearances.

For some magistrates in the survey and focus groups, concerns about defendants and witnesses appearing remotely led to questions around participants potentially being unduly influenced. Several described exceptional examples of poor practice in the use of remote links. Where this was identified, magistrates quickly halted proceedings

but perceived that the prevalence of remote links during the pandemic, particularly where participants appeared from the community, led to more instances of poor and potentially unsafe practice in the use of remote links.

Communication between participants

Many magistrates told us that there were reduced opportunities for communication in remote hearings – specifically around the lack of informal communication that occurred during or before proceedings when court takes place in person. Defendants are unable to “whisper in the defence counsel’s ear” and get explanations of proceedings remotely. There are also reduced opportunities for the defence and prosecution lawyers to have quick confidential discussions or negotiations during and/or prior to the court hearing. This resulted in more breaks as the court retired during confidential discussions, giving a less cohesive “flow” to the sittings.

“I have lost count of the time wasted while the bench retires so those on video can speak to someone else. There is very poor pre-court preparation as prosecutors on video links often do not appear until just before the court starts, the usual negotiations between defence and CPS cannot take place.”

“This could be hugely improved on by improving the processes around the technology, for example consultation links or breakout rooms to be used separately to [the] main courtroom.”

Finally, the Perspex screens installed in the court as an anti-Covid-19 measure were mentioned repeatedly as impeding the view or sound for magistrates and legal advisers, making communication more challenging. This was especially the case when the computer screens were placed too far away from the magistrate to see participants clearly via the link.

Positive impacts

There were few who considered that the use of remote links had a positive impact on communication (six per cent). Twenty-one per cent of the magistrates who provided further feedback expressed mixed or neutral opinions. The most common themes among this cohort were that the communication issues eased as court users and participants became more familiar with the systems. There was a distinction made between most professional participants who adapted to the remote links, and lay witnesses and defendants who were unfamiliar. Some respondents noted that, for more procedural matters, the efficacy of communication was improved. Examples given included warrant applications and case management matters.

“Some situations are well suited, for example, warrant applications, where all participants are ‘professional’ court users.”

“No real difference provided the technology works, which it generally has done.”

Some magistrates who had a positive view of the remote links cited improved accessibility, with remote links allowing greater input and communication from participants such as support workers for vulnerable adults.

“It enables more people to take part, for example more support or key workers and other stakeholders – especially for youths and vulnerable adults; professionals who would not be able to take time off work to attend, but can spare half an hour to join at a specific time.”

Fifty-one per cent of magistrates considered that use of remote links by probation services made communication more difficult. However, some considered that remote links made it easier for probation to be available and report to court. Probation officers generally had high quality equipment and a good understanding of how remote links worked.



In summary

- The majority of magistrates felt that remote links negatively impacted communication with all the court participants that we enquired about.
- Communication with defendants was found to be the most negatively affected by remote links, with 76 per cent of magistrates observing that remote hearings made it more difficult for the bench to communicate with adult defendants.
- These communication issues centre around failures of technology and the lack of vital non-verbal communication in court proceedings.
- The overwhelmingly negative comments made about technology make clear that more work needs to be done to ensure the experience of connecting remotely is much smoother. While technology can and must be improved, there remain inherent communication issues when using remote links that cannot be rectified by improved technology.



Remote links and effective participation

We asked magistrates about their perception of the impact of remote links on the effective participation of various types of defendants in court.

Effective participation is regarded as essential by magistrates, court users and others as essential to the delivery of justice.^{xiv} The concept is relatively poorly defined in English law, but a study from the University of Bristol – informed by interviews with magistrates – identified that participation by a court user entails any or all of the following:

- Providing and/or eliciting information for the court
- Being informed about proceedings and, crucially, understanding proceedings
- Being legally represented
- Protection of well-being and accommodations where a user is vulnerable
- Being 'managed', so as to avoid disruption to proceedings
- Presence at the hearing^{xv}

A definition in relation to defendants has been produced by The Howard League for Penal Reform, which states that the requirements for effective participation include:

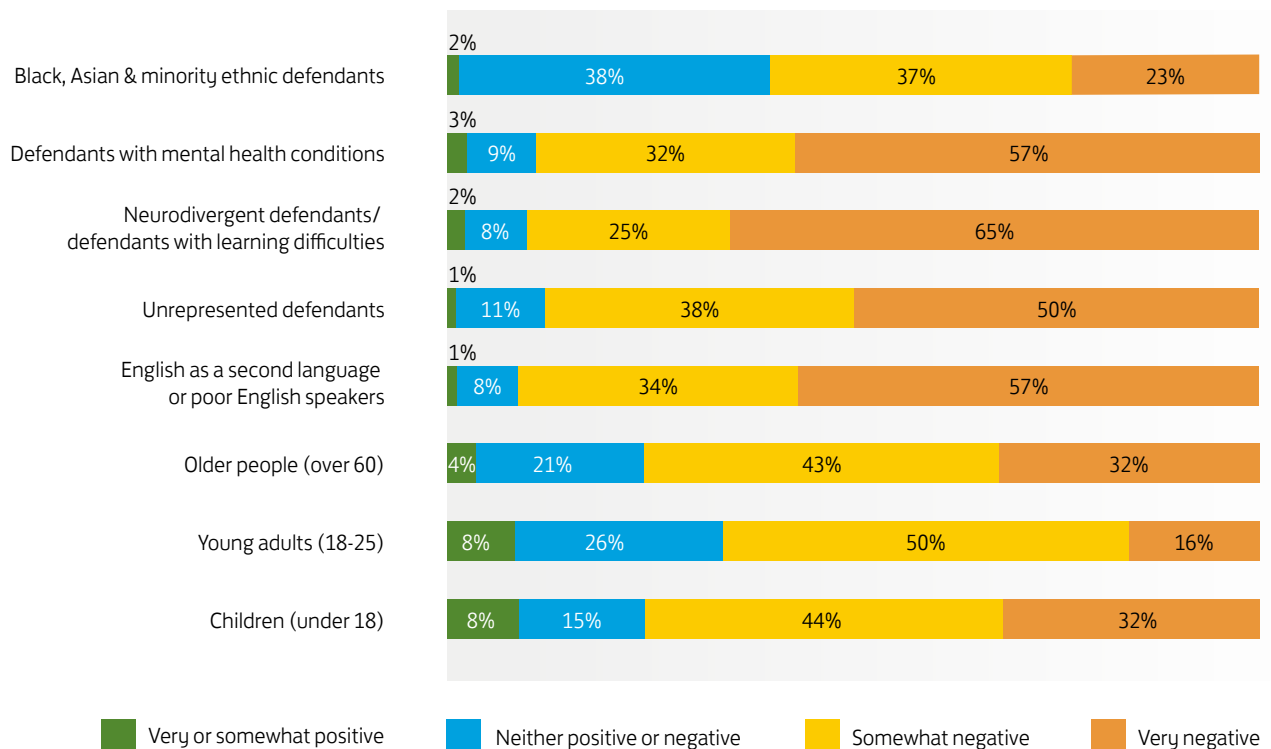
“... that the defendant can plead with understanding, can follow the proceedings... can question the evidence, and can instruct counsel.”^{xvi}

Magistrates' responses to the survey indicate that remote links impact the ability of court users to effectively participate in many of the ways outlined above.

The breakdown of responses to this survey question can be seen in figure 7.^{xvii} Figure 7 displays the total responses for each category but excludes 'Don't know' responses. The general trends indicate an overall negative view with 'very negative' being the most common response for defendants for whom English is a second language (ESOL) or is challenging to communicate with verbally (47 per cent), unrepresented defendants (39 per cent) and defendants with mental health conditions (37 per cent). 'Somewhat negative' was the most common response for young adults (37 per cent) and older people (34 per cent).



Figure 7: What impact have remote links had on the following types of defendants' effective participation?



General observations

Two hundred and seven magistrates provided further elaboration in the comments; 47 per cent described how remote links negatively affected effective participation, 19 per cent had mixed or neutral views, four per cent felt positively and 26 per cent were not relevant to the question asked.^{xviii} Magistrates recognised that the effect on participation was dependent on the court, the type of offence and the quality of the link.

The relatively high level of 'don't know' responses, in addition to magistrates' comments, indicates that assessing effective participation is not a straightforward task, and one that remote links have made more difficult. In pre-pandemic times, magistrates relied heavily on body language and non-verbal signals to parse defendants' understanding and engagement, as well as to identify their levels of anxiety. This was particularly important with neurodivergent defendants or those with mental health conditions, for whom remote links present unique challenges.

Negative comments

Interpreters and ESOL

As with the responses to questions on communication, 27 respondents noted that where defendants who had English as a second language or required a translator and a remote link was used, this particularly hampered effective participation. For example, those with strong accents were often harder to understand over the remote link if the audio quality was poor, and the delays in the audio affected the clarity and comprehension levels when using interpreters.

Age of defendants

Magistrates reported that the quality of engagement among older defendants, especially those with hearing impairments, was eroded. Magistrates in the survey and in focus groups noted that there was generally no hearing loop available:

"[The defendant was] very uncertain of themselves and... it was the primary task just to be able to hear and that almost overshadowed what, you know, they were trying to say, just to get to the point where they can actually hear a few words... I felt that the actual conditions themselves overshadowed the fact that they were there to defend [themselves]."

It was also noted in the focus group that older defendants were more unfamiliar with, and lacked confidence in using, the technology and, therefore, could be more reticent over video link.

"For older people working with technology may add a layer of stress to the process if they are not confident."

Respondents commented that young people are generally more accustomed to using the technology deployed and, therefore, found it easier to adapt and participate effectively when compared to older defendants.

Unrepresented defendants were particularly negatively affected. One magistrate commented:

"In a small number of cases, it also feels like unrepresented defendants in particular have struggled to identify whom is whom on the video link, and it is not always entirely clear to the bench!"

Difficulties in ensuring defendants understood proceedings

Nearly a quarter of respondents in the comments considered that it was more difficult for benches to assess whether defendants were able to effectively participate and fully understand proceedings when using the remote link. Magistrates also commented that it was challenging to support defendants who might be distressed.

Specifically, the lack of non-verbal cues and ability to read body language and expressions was identified by these respondents as making any assessment of this understanding more difficult. Some respondents also suggested that the lack of body language could contribute to a participant appearing not engaged, when this was not the case.

"As a magistrate I lose the ability to observe body language and facial expression to indicate understanding of the court process."

"We get a lot of information from how someone looks or stands etc. and hearing voice intonation gets lost as well."

"It is very difficult to reassure defendants when they struggle to see you and [the] body language of other participants in court."

Vulnerable defendants

Magistrates felt that remote links compounded the existing difficulties and disadvantages experienced by certain groups. A small number of magistrates also commented on defendants' mental health difficulties, expressing particular concern that they may be further marginalised by the remote court process:

“Those with mental health or learning difficulties find it challenging to understand the process of the proceedings and interrupt “

“Language and neurodiversity issues abound in our courts and it is hard for many participants to follow what is going on. This impacts on what they say and how they understand and participate in proceedings”.

Participants in focus groups reported that these defendants felt more overwhelmed and disconnected by remote links, and that a better support network could be provided in court to help them “understand the process as well and explain what’s happening in the courtroom.” However, views on whether the support network in the court or the supportive atmosphere of being in a familiar environment – and, therefore, appearing via remote link – was more beneficial, varied depending on the defendant.

Identifying vulnerabilities

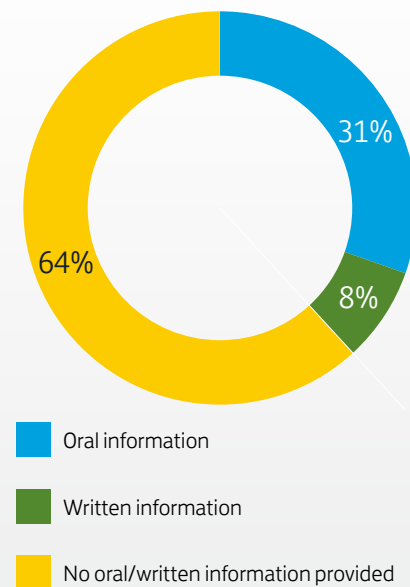
Remote links reduced magistrates' ability to identify those with mental health conditions. Without this identification, suitable adjustments could not be made to facilitate effective participation.

“I am concerned that video links mask the difficulties alluded to. The participation rate of all defendants completed over video is much reduced. I am used to looking for signs of unease or wishing to stop the proceeding for a brief break. I am used to adjusting my language and tone depending on the reaction of a defendant. These things [are] much more difficult to identify on a screen and make the necessary accommodation.”

This perceived reduction in the consistency of provision of information about defendants' vulnerabilities was reflected in the general survey response. Figure 8 shows the types of information received by magistrates about defendants' vulnerabilities ahead of, or during, the hearing.



Figure 8: Information provided to magistrates on defendants' vulnerabilities



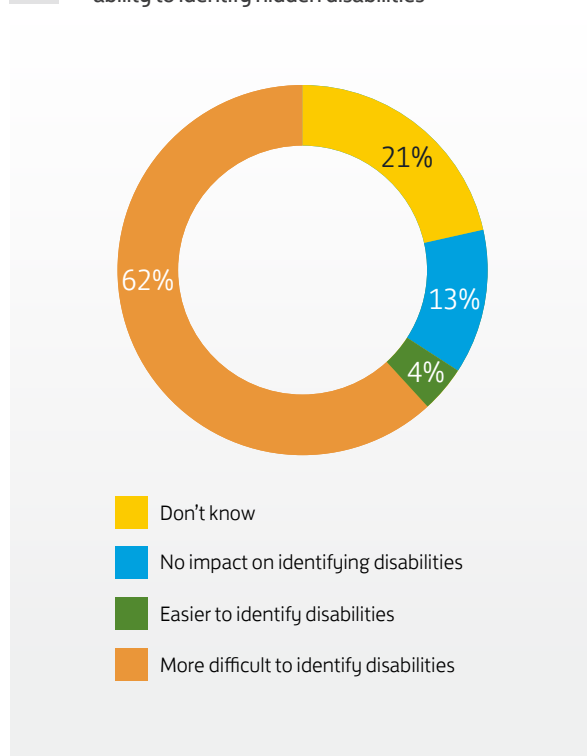
Lack of provision of information about the defendants' vulnerabilities may occur because this information is not known by legal representatives or probation. Given that defendants with underlying vulnerabilities who appear remotely may be less able to effectively participate, it is crucial that, wherever possible, vulnerabilities are identified and relayed to the bench so adjustments may be made. If there are no vulnerabilities identified by legal representatives or probation officers, or if defendant chooses not to disclose vulnerabilities, this too should be explicitly mentioned to the bench.

Several magistrates recounted instances where vulnerabilities became evident during the hearing itself and commented that information was “inconsistent and unreliable”. One magistrate noted that they were “not confident that we always receive the information about a defendant's difficulties in the same way we have in the past.” Magistrates described efforts to overcome these difficulties:

“We ended up making it a routine to assess the defendant and/or witnesses and make a generalised judgment of their capacity, but this was not really satisfactory and, on occasion, we stopped proceedings because we had doubts that defendants had an understanding of proceedings.”

As indicated by Figure 9, the majority (62 per cent) of the 828 magistrates who responded to this question considered that video appearance made it more difficult to identify whether defendants had a disability – such as a learning difficulty, a mental health condition or a type of neurodivergence – when no other relevant information had been provided.

Figure 9: Impact of remote links on magistrates' ability to identify hidden disabilities



One hundred magistrates provided further comments on identifying disability.

“The inability to access important aspects of non-verbal communication results in an extraordinary failure of best practice, which is ultimately not in the interests of justice. Those with learning difficulties or mental health or neurodivergent conditions are put at a greater disadvantage and pressure under these conditions.”

Magistrates also commented that remote links could deeply entrench the disadvantages faced by vulnerable defendants in understanding and engaging with court processes, which can “in some cases severely disadvantage court users and in particular defendants and witnesses”.

Effect on defendant behaviour

Magistrates reported that defendants on remote links appeared more passive, with the disconnection leading to their input being marginalised in the wider court processes, and they were less likely to interject when they did not understand proceedings.

Magistrates observed that defendants appearing remotely seem less likely to raise matters with the court, making it harder to notice, and respond to, gaps in understanding.

“Defendants and witnesses [are] unlikely to speak up if they cannot hear or do not understand, which may not be picked up by the court or advocates.”

Respondents mentioned defendants were “less able to ask questions” and appeared disconnected from the proceedings. Magistrates found it more difficult to build a rapport or relationship with the defendant and their supporters remotely, rendering it harder to make them feel at ease and listened to, causing agitation and frustration.

“Defendants often get angry, upset, frustrated – feeling even more helpless than when present in court [when] putting their points over.”

“My experience with dealing with defendants dialling in from their own homes is that they have got agitated as proceedings have progressed and an already stressful situation becomes more stressful for them.”

Positive comments

Few observed positive impacts of remote links on the effective participation of defendants, with 19 per cent of comments mixed or neutral, and only four per cent positive.

Magistrates disagreed about how remote attendance affected those who are nervous and/or anxious to come before the court. Some commented that appearing remotely reduced the pressure and made people feel more at ease in a familiar environment:

“...[remote links] can also assist people who have direct fears about testifying or require additional support or guidance in terms of process, and makes the process significantly less formal.”

“Remote links can take away some of the anxiety of being in a formal court setting, especially if it means the person can have someone with them while on the link.”

Other respondents cited hearings where adjustments had been made for vulnerable defendants appearing by video link – sometimes as a result of defence applications. Reasonable adjustments included having support workers co-located with defendants or adapting court practice.

“Additional time is given for those who are perceived to be having difficulties with the remote processes, but the systems are too unreliable to ensure understanding and fairness.”

“I feel for some individuals, particularly defendants with some form of incapacity or mental health problems. Not having to physically be in the courtroom has been helpful, and one could liken it to witness special measures.”

Feedback regarding remote interpreters was generally negative, but one magistrate thought that, by extending the acceptable use of interpretation services to cover remote hearings, there was much better guaranteed access to interpretation services, and that they could be found at shorter notice.

“Using remote technology in one particular case enabled progress to be made when it became apparent that the translator appointed was the wrong one... an online interpreter was found at short notice.”



In summary

- Magistrates were concerned about effective participation for all the types of defendants identified, with the most negatively affected being ESOL or those with poor English language skills and unrepresented defendants (where 47 per cent and 39 per cent, respectively, chose ‘very negative’) and defendants with mental health conditions (37 per cent).
- Sixty-two per cent of magistrates considered that video appearance made it more difficult to identify whether defendants had a disability, which has wide ranging implications for the group’s effective participation in remote hearings.
- While magistrates’ insights on effective participation are invaluable, they called for further research to be carried out focused on the perspective of the defendant to enable a more holistic understanding of their effective participation.

Use of benches of two and impact on proceedings

Increased frequency of benches of two

Of the 855 magistrates who answered a question on the frequency of using benches of two, 87 per cent indicated that they had sat as a bench of two more frequently during the pandemic than before March 2020. Very few respondents indicated that they either had not sat or did not know if they had sat as a bench of two more frequently during this period. Just three and a half per cent of respondents indicated that they had not sat as a bench of two between March 2020 and November 2021.

Impact of benches of two

The responses of the 818 magistrates who reflected on the impact of sitting as a bench of two were very mixed. Magistrates were able to select multiple responses to this question including whether proceedings sped up or slowed down, decision-making was easier or harder, and/or there was no impact at all.

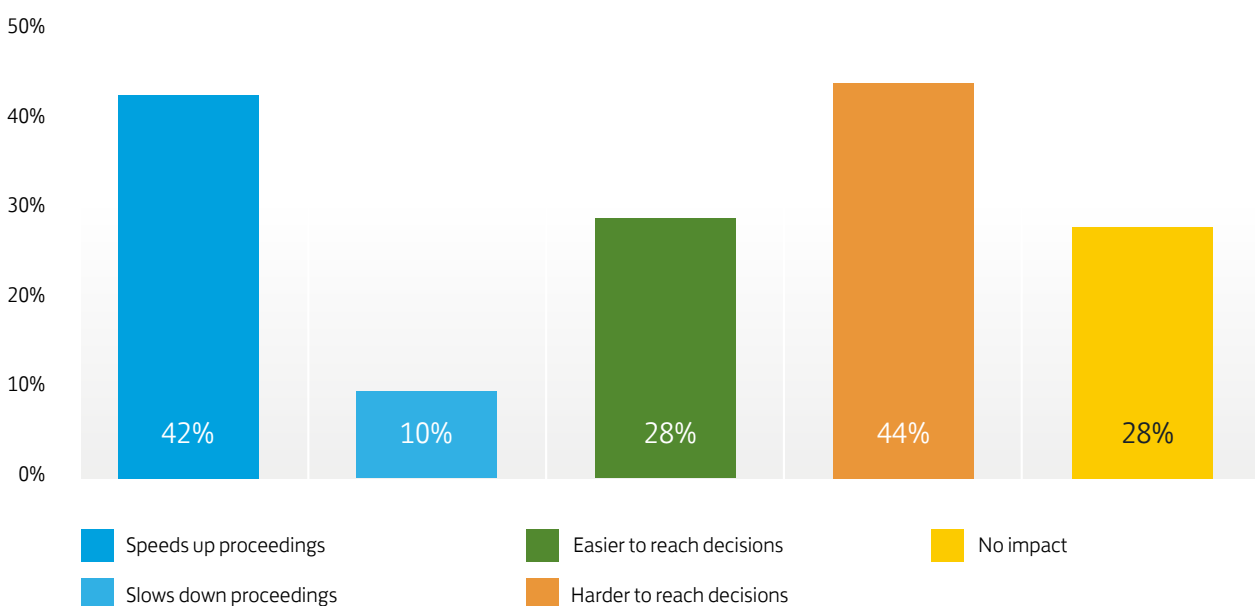
The most common theme was that decision-making was harder as a bench of two. However, a similar proportion of magistrates considered that making decisions was faster as a bench of two.

Some magistrates selected multiple, seemingly contradictory, options choosing both 'makes decisions easier' and 'makes decisions harder'. This phenomenon in the responses, together with the mixed picture that emerges from the multiple-choice, tracks with a frequent theme occurring in the open-ended comments that the impact of benches of two on proceedings was very mixed. Magistrates may well have experienced benches of two in variety of court settings, giving rise to the range of answers.

General observations

Eighty per cent of magistrates who provided additional comments had mixed or negative views on the use of benches of two. Much appeared to depend on the type of hearing and the individual circumstances of the case. Where magistrates were easily in agreement, the experience was positive, easier, or had little impact on proceedings. However, where magistrates heard a case and had differing views, the lack of a third or deciding vote made the decision-making process more difficult or slower.

Figure 10: Effect of benches of two on proceedings



“With straightforward sentencing or case management hearings, sitting as a bench of two made no difference or was slightly quicker. However, for more complex sentencing and most bail decisions, input from a third magistrate is very beneficial to the decision-making process and... you can reach a majority verdict if you disagree.”

Thirty-nine per cent of magistrates across the spectrum of positive, negative and mixed views noted that there was an inherent risk of disagreement between two magistrates, which might be difficult to resolve. While this was widely apprehended, few had actually experienced any significant disagreements with their colleague when sitting as a bench of two. However, where two magistrates could not reach a decision, this could add significant delay, including re-hearings.

Thirty-four per cent of magistrates commented that sitting as a bench of two sped up proceedings. However, this was not seen as a positive by many magistrates who observed negative effects on outcomes or on the fairness of the process. A small number of magistrates who commented that benches of two sped up the decision-making process also pointed out that there was a balance to be struck between speed and fairness.

“While I have indicated that it speeds up proceedings and makes reaching decisions easier, this has to have been at the expense of justice. In my view, it is preferable to take a little longer and have the views of [three] justices.”

Many magistrates, of differing views, observed that benches of two were, in some areas, necessary for the continuation of justice. Some noted that this was due to magistrates not being able to sit while others commented that this was the case prior to the pandemic as well as during the period March 2020 to November 2021.

Negative impacts

Many magistrates were concerned by the reduced diversity of opinion on a bench of two. Nearly 17 per cent of respondents said that benches of three are a deliberate choice to ensure that there is a richer view and more perspectives on the situation that, in turn, some magistrates perceived ensures a just outcome.

“The premise of having three magistrates sitting together provides balance to the decisions that are made.”

“With three magistrates there is more experience to draw on, which can help facilitate effective discussions.”

Other magistrates commented on the changed dynamics and impact on fairness when sitting as two. Magistrates expressed this both in the survey and focus groups. Benches of two means there are fewer people to consult, but both magistrates are aware that there must be compromise, or total agreement or an adjournment for a re-hearing. Some magistrates noted that a confident Presiding Justice could “dominate” or unconsciously influence the other magistrate, particularly where the winger was less experienced. One magistrate characterised a bench of two as “removing a critical check and balance in the system”. Some magistrates commented that this issue was exacerbated by the knowledge that in the event of a hung bench, a case may have to be re-heard causing delay.

“The premise of having three magistrates sitting together provides balance to the decisions that are made. While at times it may be inevitable... to only have a bench of two, the lack of balance could lead to... a potentially contentious outcome.”

“[Benches of two are also] not good for any new magistrates who are unfamiliar with processes and may feel a bit overwhelmed as the decision-making is so important and may be swayed by the chair if they are not confident.”

There was also a reported negative impact on the different roles performed by magistrates, particularly where one magistrate on the bench was less experienced. Some noted that a bench of two created greater pressure on a winger to manage the administrative elements. Benches of two also reduced the efficacy of training and mentoring, and resulted in an increased burden on magistrates – particularly for a Presiding Justice when presiding and mentoring simultaneously.

“There is a much-increased burden on magistrates when sitting as a bench of two. While I have found little impact on decision-making, the additional burden placed on [Presiding Justices] who are also asked to undertake mentoring duties and conduct appraisals while taking the chair is unsustainable. There is also the impact of ongoing maintenance of competence as [fewer] magistrates are sitting over any particular period.”

The difficulties encountered by magistrates in appraising and mentoring in addition to presiding over proceedings led to areas suspending appraisals over the initial period of the pandemic.

Positive impacts

A smaller proportion of the magistrates who provided further feedback on benches of two considered that benches of two either had a positive (13 per cent) or simply little overall impact on the proceedings (5 per cent). The most common themes among this cohort were that, particularly for administrative matters, a bench of two made decision-making easier and faster as well as reduced the need to retire.

Some magistrates who had a positive view advocated for benches of two to sit on less complex matters such as not guilty anticipated pleas, remand, traffic, non-CPS cases, and breaches. These magistrates considered that benches of three for straightforward matters were a waste of resources and should be reserved for more complex hearings such as trials.

Most magistrates who commented considered that, in the emergent nature of the pandemic, benches of two were a necessary measure that facilitated social distancing and allowed justice to continue. Benches of two will continue to be used where necessary. Given the shortages of magistrates in some areas, exacerbated by pandemic restrictions, benches of two "at times may be inevitable". There is work to be done to ensure that benches of two are not used for trials but only for more straightforward decision-making or administrative hearings. Fairness, balance, and accuracy must not be sacrificed for the sake of efficiency.



In summary:

- Benches of two were used more frequently in the pandemic and led to a reduced diversity of opinion on the bench.
- Magistrates are concerned that benches of two are not always suitable depending on the type of hearing and experience of magistrates.

Youth courts

One hundred and fifty-three survey respondents indicated that they had sat in a youth court during the survey period. One hundred and thirteen (74 per cent) of these magistrates had experienced remote links in youth court. Each focus group also included at least one magistrate who had sat in youth court during the survey period and was invited to comment specifically on remote links in youth courts.

General observations

Despite the Coronavirus Act 2020 bringing in temporary amendments that expanded the circumstances in which remote links could be used in youth court hearings, remote links were consciously avoided in youth courts where possible.^{xix}

Of the 113 magistrates who experienced remote links in youth court, magistrates most commonly reported sitting where links were used by defence or prosecution lawyers or by YOTs. Sixty-eight magistrates provided further comments.

Negative observations

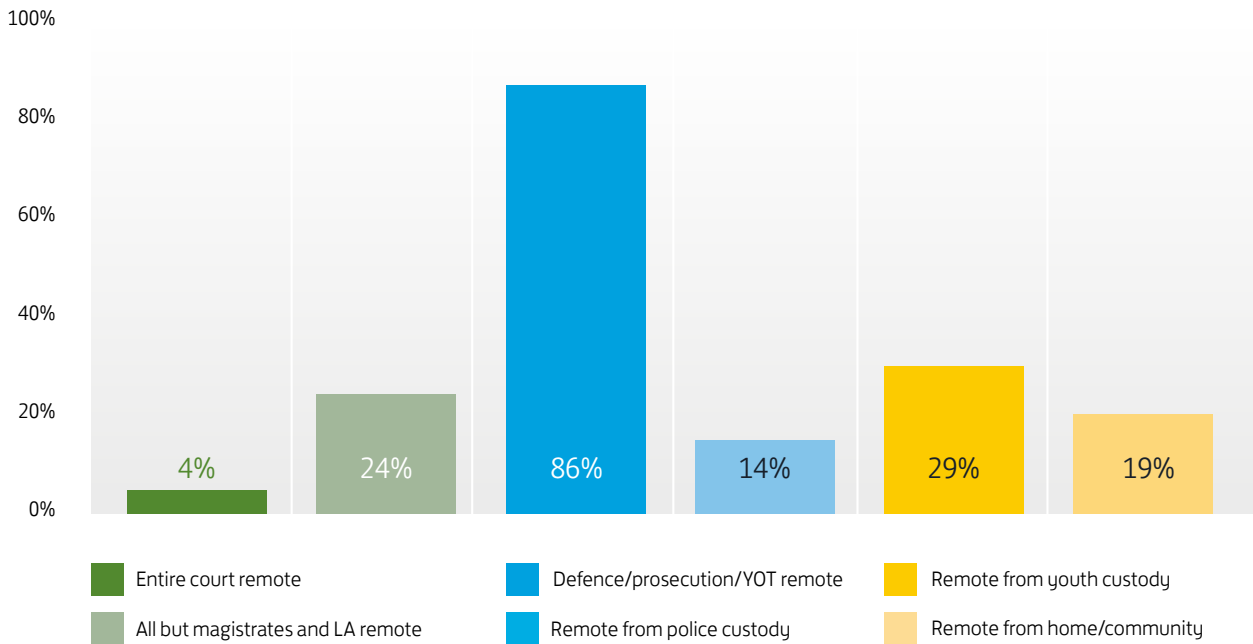
The majority of magistrates who commented on their experience of remote links in youth courts were either negative (44 per cent) or noted that remote links were not used in youth courts (21 per cent). Magistrates commented particularly on the difficulties experienced in communicating with children. They also reported that children found it more difficult to understand proceedings, while they themselves struggled to "meaningfully engage" with the children remotely. One magistrate commented that this particularly affected a child's understanding of the approach of the youth court:

"Without all parties in court together, [it was] impossible to have a conversation and let the [child] know we were working for the best result for him/her."

Others considered that it was difficult for children to concentrate on proceedings when multiple parties appeared via remote link, and to understand the different roles each party played. A small number of magistrates also commented that young people took proceedings less seriously when hearings took place via remote link.

"It makes judging the individuals more challenging as their 'behaviour' towards the seriousness of the court process is less and our ability to judge the body language is lessened."

Figure 11: Use of remote links in youth court, by participant



Positive observations

There were very few magistrates who considered any positives arising from the use of remote links in youth courts (four per cent). There was a slightly larger cohort who had mixed views on the use of remote links in specific instances (18 per cent). Thirteen per cent of responses were neutral or irrelevant.

Some magistrates with mixed views commented that the remote attendance of YOT workers was helpful for the efficiency of proceedings. They pointed out the benefits of having as many relevant stakeholders attend a hearing as possible and that this may be more easily achieved remotely.

“We often had one YOT worker in court and another attending remotely. This works very well, as the remote attendee can cover proceedings if the in-court person is talking with defendants outside the courtroom.”

One magistrate considered that remote links were preferable where hearings were administrative or likely to be adjourned while awaiting a National Referral Mechanism reasonable or conclusive grounds decision,^{xx} particularly where the young defendant would have been required to travel a long distance to the court. Most of those who had mixed views considered that the use of links from custody, prison and/or police station was sometimes appropriate, but thought in-person hearings for youth court best in most instances.

“Remote links have their place, for example the prisoner remaining in prison. But advocates are less effective when using links, and evidence is often harder to discern. The quality and reliability, and ease of establishment of links must be improved if courts are to benefit from an expansion of their use.”

In summary

- There was widespread recognition that remote links in youth courts were rarely suitable, and that their use would negatively impact the quality of justice for children and young people.
- Increased flexibility for YOTs and avoidance of disruption for children already in custody was recognised as a positive, but most magistrates considered that use of remote links in youth courts should be limited.

Volunteering in the pandemic – the impact on magistrates

Eight hundred and forty-eight magistrates responded to the question inviting them to indicate, on a sliding scale, the impact of remote link use on their morale, confidence, satisfaction and overall experience of court proceedings. Throughout the survey, in response to various questions, magistrates further commented on the impact remote links had had on their role.

General observations

Most magistrates found that the pandemic had negatively affected how they felt about their role and the court process. As displayed in figure 12, the majority considered that their confidence was unaffected during the pandemic. However, a notable proportion (32 per cent) indicated that their confidence declined.

Morale and satisfaction with the magistrate role were significantly, negatively affected. The biggest negative impact was seen in magistrates' overall experience of court process with 68 per cent finding their experience was negatively to very negatively affected.

Negative observations

Morale and confidence

Several magistrates commented on morale during the pandemic, noting that the difficulties they faced – including through remote links – had caused them to consider resigning from the role. Others noted that the use and management of remote link rollouts in the courts had impacted their morale.

“As a magistrate, the experience of teamwork in the courtroom – legal professionals included – makes the day worthwhile, stimulating and enjoyable, and creates the sense of doing something for the community. That was lost during the pandemic. The experience was unpleasant and functional.”

Magistrates expressed concern throughout the survey about the quality of justice. Some commented on their discomfort with delivering justice remotely, or that they felt a poorer form of justice was being delivered remotely, which impacted their morale. Others indicated that colleagues in their area had resigned because of this.



Figure 12: The impact of the use of remote link on magistrates' attitudes



“...the technical issues over remote links and the exacerbated feeling of disconnect that the defendants must have from the judicial process, along with the bench’s feeling of remoteness from the defendant... is a feeling... that makes me... a little uncomfortable with the current situation.”

Most magistrates did not feel the use of remote links made them any less confident in their role. This was reinforced by magistrates’ responses when asked about the impact of remote links on outcomes. The majority of survey and focus group participants were confident that, despite their concerns about the impact on defendants and the difficulties with communication, remote links did not make a difference to the decisions they made as magistrates. However, it is notable that around 30 per cent did feel that their confidence had been negatively affected.

Training on remote links

Eighty-six per cent of survey respondents indicated that they received no additional training on the use of remote links or how their use might alter the way magistrates approach their judicial functions.

Magistrates who commented further on the training they received were evenly split between those who were positive, negative, or mixed about the training. Their comments indicate that, if any training was provided, this was organised locally by their bench. There does not appear to have been any centralised or national training requirement for the use of remote links. Examples of good practice were noted within the Surrey, South Northumbria and Cleveland, Durham and Northumbria benches. For example, one magistrate noted that the Surrey bench provided excellent training that was followed up with offers of one-to-one sessions where issues arose.

Some magistrates commented that the provision of training in their area was poor or that it was difficult to characterise as training. For some, training consisted of email chains while others were provided with videos and supplementary materials.

“...some written materials were provided, although I recall that these seemed largely focused on [the] technical operation of the system. I recall reading some briefs on the intranet regarding the impact of video links on open justice and a few notices sent by various leadership teams, but there wasn’t a huge amount of obvious advice or training.”

“Lack of any training. A remote training package would have been better than nothing. We were simply expected to put up and shut up. As we, the magistrates, are volunteers this made me think of resigning.”

Others noted that they simply learned by trial and error. For example, a number of magistrates in the focus groups commented they developed their own strategies for ameliorating communication issues with defendants who appeared via remote link.

“I find myself asking the defendant to repeat back to me what I’ve said. I’m doing that far more often on remote hearings than I ever do in person, because in person, you can get a feeling of whether they’ve understood or not.”

A small number of magistrates commented that training was conducted, but that it was focused on the technical operation of the system with no supplementary training on how remote links might affect court users. Some said that training for magistrates must improve if remote link use is to continue, and identified training needs including:

- How magistrates present themselves on remote links, including basic requirements such as appropriate camera angles, lighting and ensuring that they have a clear picture and audio prior to commencing proceedings.
- Training for Presiding Justices on remote “presenting”.
- Management of the court where remote links are used, ensuring all can be heard and do not speak over one another.

Positive observations

A strongly and consistently expressed theme throughout this study was that magistrates valued playing a role in keeping the wheels of justice turning during the pandemic. Magistrates who expressed frustrations with aspects of the court process, technology or benches of two often accompanied their criticism with an acknowledgement that remote links were necessary to keep courts going while significant restrictions were in place.

“Remote links were a useful means of keeping the courts running during the pandemic, but they slow down proceedings and make communication – particularly between prosecution and defence – slower and less efficient.”

“All court users, magistrates, lawyers, probation and legal advisers have done their best... technical difficulties as well as some language [and] comprehension difficulties have often led to slower and less satisfactory hearings. On a positive note, for those shielding or recovering from Covid-19 it has made many more court procedures possible, rather than constantly adjourning.”

“While I believe that remote links have been a positive in terms of maintaining the delivery of magistrates’ court justice, I would prefer that hearings were conducted in person by default... This is a difficult balance, and on balance I would prefer less extensive use of remote links in future.”

Flexibility

A small number of magistrates throughout the survey indicated that remote links had provided more flexibility for them. Remote links allowed shielding magistrates to continue to volunteer and appear at short notice in courts far from home. These magistrates hoped remote links could continue for these types of hearings.

Magistrates also commented on flexibility for other professionals throughout the survey. However, the same magistrates commented that while flexibility was a benefit of remote links, this must be balanced with the needs of court users and their inherent communication and participation issues.

“There is significant benefit to using technology to avoid the need for participants to be physically present in certain situations. This needs to be balanced against the requirement to ensure that the participants can properly take part in proceedings. In my view, the focus should be on this latter point, rather than attempting to fight against the tide of technology.”

“Remote links have their place, but they reduce the gravity of coming to court. They make communication more difficult and it’s difficult to have confidence that defendants have understood properly.”



In summary

- It is essential that magistrates feel they are a valued and crucial part of the justice system. Magistrates’ morale was impacted during the pandemic.
- There are some benefits to using remote links in terms of flexibility for magistrates and other court users.
- Magistrates must be well equipped, trained and satisfied with the way in which remote links are used in courts. Training must be more robust than the varied practice during the pandemic.
- The role of remote links in courts must be wholesale reviewed once the threat of further restrictions has eased. A considered balance must be struck between the potential utility of remote links and ensuring that hearings proceed justly and fairly so that “nobody is disadvantaged in any way.”

“I am concerned that video links mask [vulnerabilities]. The participation rate of all defendants completed over video is much reduced. I am used to looking for signs of unease or wishing to stop the proceeding for a brief break, I am used to adjusting my language and tone depending on the reaction of a defendant. These things are much more difficult to identify on a screen and make the necessary accommodation.”



Conclusions and recommendations



The courts, like other public sector systems, were not prepared for the first lockdown. Measures like remote links and benches of two existed before the pandemic. However, courts, court staff and magistrates were not equipped for the overnight emergency expansion of these measures.

Magistrates understood the need for radical changes in order to keep the courts functioning. The emergent situation required fast paced change that, perhaps inevitably, led to some changes being poorly thought-through prior to a fast-paced implementation. However, in the main, respondents were negative about remote links and benches of two during the pandemic.

Magistrates concerns about remote links centred on the impact on procedural justice and effective participation. Both were heavily impacted by the quality of technology available in courtrooms. The courts were not equipped with either the hardware or software to deal with high-quality phone conference calls or with multiple video links. Often lay and professional users did not have the right equipment or sufficient good quality internet to be able to take part in remote hearings. Many of those appearing at court were unfamiliar with the technology, including defendants, witnesses, advocates, court staff and members of the judiciary. There was little training for magistrates in how to use remote links, how remote links affect communication and effective participation, or the court management these links required. There were few technical staff available when problems did occur. The technology was too often not fit for purpose.

Technology issues exacerbated the problems inherent in any remote hearing – the disconnect between the court and the person interacting with the court, whether lay or professional. When the court user was on the phone, magistrates had no visual cues at all; when on video, magistrates missed seeing the whole person and their body language. Magistrates felt this disconnect impeded defendants' understanding of proceedings and their own ability to discern the nuance in the communications of defendants and witnesses. They said vulnerable and disabled defendants needed particular support, but in many cases their needs were not identified in time to give that support. The issues arising from the rapid expansion in the use of technology could have been eased by robust and effective training in remote working and communications skills when using remote links.

Magistrates observed that the practical problems and the informal circumstances of remote defendants and witnesses created issues – that remote justice could rob court hearings of the seriousness they deserved. Unless court hearings can be imbued with seriousness, the justice system risks losing credibility. Magistrates further described remoteness not just from the normal court procedure, but also from their communities when conducting hearings using remote links.

In theory, magistrates have control over listings and, thus, over decisions about whether remote links should be used in individual cases and in general. However, many who responded to our survey did not perceive they had any real power over the listings system, in theory nor in practice. This lack of agency contributed to a general dissatisfaction with justice in the Covid-19 period and a fall in morale. Many considered that sitting as two, rather than three, in all but straightforward or administrative hearings risked reducing balance, accuracy and fairness in proceedings.

Magistrates felt that sitting as two and using remote links made delivering justice much more difficult, but not impossible. Few respondents thought that outcomes had been compromised. However, most did not wish to repeat the Covid-19 period in magistrates' courts, nor see pandemic measures perpetuated. Magistrates endorsed the future use of remote links and sitting as two in very particular circumstances, but wanted influence over when such measures were used. They were also embarrassed by the poor technological quality of the links, whether video or phone.

It is acceptable that, in the context of the early stages of the pandemic during which changes were wrought very quickly, it was not feasible to broadly consult magistrates. However, where changes are being considered in non-emergency situations, magistrates must be consulted about changes to the courts in which they sit. Judicial discretion over the contexts in which remote links are appropriate must be meaningful for magistrates, whether through consultation on standardised guidance or a mechanism to sift cases. Benches of two will continue to be used where necessary. It is, however, vital that there are sufficient magistrates to ensure that benches of three are the norm.

The pandemic provided an opportunity to learn about the shortcomings of remote links and benches of two very quickly. It is vital that the evidence and experience gained over the past two years is used to improve the operation of magistrates' courts, incorporating new ways of working and ensuring quality within the justice system.

Recommendations

The following recommendations follow from magistrates' views on remote links and other measures during the Covid-19 period. The pandemic was an emergent situation during which radical change was hurriedly implemented. While measures introduced in this way were negatively perceived by many magistrates, there is a place for these changes when implemented consciously and effectively, incorporating feedback from magistrates and court users. These recommendations, therefore, focus on what the future of the magistrates' courts should be post-pandemic.

01

More information is needed on the impact of remote links

- The Ministry of Justice and HMCTS must work with representatives of the judiciary to strategically review the appropriate place of remote links. This work should analyse the impact of remote links on speed of hearings and on decisions regarding plea, remand, conviction and sentencing. In addition, an observational and ethnographic study should be conducted to assess the impact of remote hearings on the effective participation of witnesses and defendants.
- A separate study should focus on the impact of remote links on defendants under the age of 18.

02

Remote links have a place, but must only be used where suitable

- There must be standardised and more detailed guidance for magistrates, legal advisers, and listing officers on the kinds of cases where remote links can be used effectively and efficiently and where remote links are not suitable.
- Magistrates must be involved in drafting the guidance, including any produced under a new section 51 of the Criminal Justice Act 2003, which will be amended by the Police, Crime, Sentencing and Courts Bill.
- Continued use of remote links should only take place where it is necessary and in the interests of justice to do so – for example, for witnesses in special measures situations.
- Remote links should not be used for trials, unless for special measures for witnesses.
- The use of remote links is more appropriate for administrative matters where body language and interpersonal communication are less vital than in other types of hearings, such as trials.
- The position of avoiding remote links for youth courts is correct and should continue. The use of remote links should not be expanded in youth courts after the lapse of the temporary amendments in the Coronavirus Act 2020.
- Better information on the vulnerabilities or disabilities of defendants should be provided to listing officers and magistrates prior to hearings to enable proper exercise of judicial discretion on whether remote links are suitable.

03

The known impacts of remote links must be acknowledged and guidance on effective use produced

- Evidence-based guidance on effective participation should be produced to assist magistrates and court staff in supporting court users where remote links are being considered. This should include what reasonable adjustments should be used in the case of disabled defendants and witnesses.
- Where remote links are used, more guidance is required for magistrates, court staff and court users on remote procedure and appropriate behaviour. In particular, training must cover the basic requirements for appropriate settings, lighting, camera angles, checking audio and picture quality, and the importance of ensuring a quality remote link for effective communication and ensuring a quality judicial process.
- Magistrates' training should include how to exercise judicial discretion including over-listing, and how to address the challenges of using remote links. This should feature training on:
 - Communication
 - Effective participation
 - Vulnerable defendants
 - The appropriateness of using remote links in certain situations
 - The implementation of reasonable adjustments.

04

Technology must be improved

- Courtrooms must have improved technological infrastructure, ensuring stable internet and high-quality video and audio links in the courtroom.
- Dedicated IT support must be available for all courtrooms.

05

Benches of two must only be used where appropriate

- There must be greater consistency in how benches of two are used across England and Wales.
- Use of benches of two should be restricted to administrative proceedings and never used where a defendant's liberty is at stake.
- Magistrates who have not yet passed their first appraisal should not sit as a bench of two.

Endnotes

- i https://www.judiciary.uk/wp-content/uploads/2021/06/2021_06_02_Exec_Summary_Understanding-the-impact-of-COVID-19-on-tribunals-the-experiences-of-judges.pdf pp6.
- ii <https://www.equalityhumanrights.com/en/our-work/news/preventing-health-crisis-becoming-justice-crisis>.
- iii Chief Magistrate and JCS, Guide to the availability of live links in magistrates' courts under their criminal and civil jurisdiction (22nd January 2021).
- iv Police forces ceased running virtual remand hearings from police custody suites in October 2020 due to the strain on resources <<https://www.lawgazette.co.uk/news/police-forces-pull-support-for-virtual-remand-hearings/5106062.article>> (accessed 25/03/2022).
- v N Byrom, S Beardon, A Kendrick, The impact of COVID-19 measures on the civil justice system (Civil Justice Council, 2020); Nuffield Family Justice Observatory, Remote hearings in the family justice system (2020); N Byrom and S Beardon, Understanding the impact of COVID-19 on tribunal hearings: the experience of tribunal judges (Legal Education Foundation 2021).
- vi J Clark, Evaluation of remote hearings during the COVID 19 pandemic (HMCTS, December 2020).
- vii As of 1 April 2020. Ministry of Justice, Diversity of the judiciary 2020 statistics (2020).
- viii Some respondents experienced both one party and the entire court on audio link in different hearings.
- ix The presiding justice is the magistrate who sits in the centre and speaks on the bench's behalf in court.
- x Rule 3A, Magistrates' Courts Rules 1981.
- xi Schedule 23 and 24, Coronavirus Act 2020.
- xii Schedule 23 and 24, Coronavirus Act 2020.
- xiii Judicial College, Equal Treatment Bench Book (February 2021), 6.
- xiv J Jacobson and P Cooper (eds), Policy Briefing: Participation in Courts and Tribunals: Concepts, Realities and Aspirations, (Bristol 2020), 2.
- xv J Jacobson and P Cooper (eds), Participation in Courts and Tribunals: Concepts, Realities and Aspirations, (Bristol 2020).
- xvi A Kirby, J Jacobson and G Hunter, 'How can defendants participate more effectively in the court process' Howard League Working Papers (2014), 6.
- xvii The exclusion of 'Don't know' responses resulted in differing total responses for each category represented in Figure 7. Total numbers of responses for each category in Figure 7 (excluding don't know responses) are: Children 165, Young adults 605, Black, Asian & minority ethnic defendants 509, Older people 646, Neurodivergent defendants 416, Defendants with mental health conditions 550, Unrepresented defendants 664, English as a second language 690.
- xviii Irrelevant responses were any which answered a different question to that which was posed, were blank or commented on the family jurisdiction.
- xix Schedule 24, Coronavirus Act 2020.
- xx The National Referral Mechanism (NRM) is a system for identifying potential victims of modern slavery. A reasonable and subsequently conclusive grounds decision can impact criminal proceedings due to the availability of a section 45 defence (Modern Slavery Act 2015) to some offences where a person is identified as a victim of modern slavery. Referrals are frequently encountered in Youth Court in the context of County Lines activity.

“With straightforward sentencing or case management hearings, sitting as a bench of two made no difference or was slightly quicker. However, for more complex sentencing and most bail decisions, input from a third magistrate is very beneficial to the decision-making process and... you can reach a majority verdict if you disagree.”



**We are the
independent voice
of magistrates in
England and Wales**