

Remote Hearings - Emerging Issues

Paper 3 - Remote Mock Jury Trials in England and Wales: A summary of the evaluation

Justice Analytical Services

Background

This is the third in a short series of brief papers on the use and effectiveness of remote hearings. The purpose of these papers was to rapidly highlight any emerging lessons on remote hearings that were taking place during the Covid 19 pandemic.

This paper summarises an evaluation of four remote mock jury trials with volunteer participants in England. Please note Paper 2 in this series also mentioned these pilots, this paper explores them in more detail.

Main Points

Like other types of remote hearings, jury trials, the evaluation suggests, can be carried out successfully under certain conditions, but they should not become the default option.

Positives

- The technology worked well because of *'behind the scenes'*¹ technical support and lay participants were thought to be comfortable with the technology after training.
- The solemnity of the event and a *'sense of occasion'* was achieved. The evaluation found this was, in large part, created by the behaviour of the Judges and barristers.
- The pilot evaluation suggested that the remote setting gave **more** dignity to the accused as they were a square on the screen like all the others rather than being in a dock and at the back of the court
- Further, the accused and their lawyer had a separate virtual room where they could be in constant touch with each other and were, the evaluation suggests, much closer than in a physical court.

¹ All direct quotes in the paper, unless otherwise state, are from the evaluation of the mock trials [accessed here](#)

Challenges

The bandwidth of lay participants was crucial to ensuring ‘*fairness*’. If technology failed in any way to keep all participants connected at all times this was considered unfair. The evaluation suggested that ‘*some lay participants {should be} supplied with hardware and high-quality internet access*’

- The creation of a ‘*civic space*’ was thought to be as important as the technology in ensuring the success of remote trials.
- It was found that it could be very difficult for some jurors to find a place in their homes where they could have a both a plain backdrop and be close to a router. Further, expecting someone to be undisturbed and their home to be kept quiet for a period of 3-6 hours so as to create the necessary gravitas for a trial.
- Even where the technology worked well some lay participants found the technology/platform ‘*alienating and stressful*’.
- There were concerns that where jurors were in their own home they could be distracted and could, for example, use the internet for something other than the trial.
- Further, some stress for lay participants came from them being ‘*on their own*’ in the virtual court and the evaluation suggests that vulnerable people could find it too ‘*onerous*’ meaning they would withdraw and juries could become unrepresentative.
- The evaluation highlighted that remote trials could have a negative impact on open justice unless they were live streamed.

Introduction

In order to keep the rule of law during the COVID-19 emergency, court systems across the world adapted to introduce or escalate the amount of business they conducted remotely. This included digital filing of paper work and the use of communication technology to conduct court hearings remotely.

This is the third in a series of papers that were rapidly produced to deliver emerging evidence on remote hearings, their positives and negatives and lessons learned.

The evidence was emerging and could be sketchy: as such these papers were not designed to be comprehensive or rigorous, rather they were designed to deliver any emerging intelligence that could be of use for those developing policy and practice.

Themes discussed

Although not all of the papers set out detail on all of the themes below, these were the issues driving the review:

- Arrangements for remote hearings that common law jurisdictions have put in place
- Lay and professional parties experience of remote hearings
- Positives and negatives of remote hearings and lessons learned

Comparison with findings from Papers 1 and 2.

The first paper on the use of remote hearings in Australia and New Zealand found:

- Although the use of remote hearings had enabled '*justice to be done*' during the COVID emergency, they are inaccessible to significant sections of the population. Further some hearings are not suited to remote practice. Commentators advised caution before their use becomes the norm.

The second paper, which reported on the opinions of five legal experts similarly found:

- There are some positive aspects to conducting remote hearings but the decision to go ahead should be made on a case by case basis with a particular focus on whether or not a remote hearing would mean vulnerable members of society are not being enabled to fully participate in proceedings.

Bringing those two papers together the message is similar.

- Remote hearings were invaluable for keeping the justice system moving during the emergency. They also had potential to be valuable as we emerged from the COVID pandemic, not least as a way to address the ever increasing and concerning backlog. BUT very significant access to justice issues were found - not least digital exclusion (see below) - that need to be taken in to consideration in moving forward with remote hearings
- These papers have found evidence that **digital exclusion** should be seen not just as a lack of the necessary hardware and software, rather the bandwidth of a participants internet is also key AND crucially the '*comfort*' or otherwise participants feel with the technology.

The Mock Jury Trials in England

- Although five ‘hybrid’² remote jury trials had been concluded in Scotland at the time of writing this paper no evidence had been produced from them. As such this paper reports only on pilot mock Jury trials that took place in England.
- This paper reports details of the lessons learned from a pilot of four mock remote Jury trials under the following headings:
 - How the mock trials were conducted
 - Mock trials – Positives
 - Mock trials – Negatives
 - Mock trials - Lessons learned
 - Conclusions

How the mock trials were conducted

- There were four mock jury trials; each was conducted in a slightly different way as learning from the previous trial was applied to the subsequent trials.
- In each of the trials the professional participants were professional volunteers and the lay participants were lay volunteers.
- The participants came together on a shared screen into a shared virtual room in which they all appeared in boxes with the jurors boxes being smaller than the other participants. The accused appeared by way of a video link from a court video hearing room.
- There were additional private virtual rooms, for example, one where the accused and their counsel could confer.
- A facility for sharing documents on screen was also available.

Trials where all participants were in separate places

- For three of the trials all the participants were in separate places including each member of the jury.
- Improvements made after the first trial:
 - (i) better information for lay participants
 - (ii) a pre-trial test call
 - (iii) the creation of a script or ‘crib sheet’ for the judge and clerk
 - (iv) the inclusion of a jury bailiff
 - (v) additional behind the scenes technical support
 - (vi) the allocation of unique numerical identifiers for each jury member
 - (vii) the use of wigs
 - (viii) alteration to the shared view of the courtroom
- For the fourth mock trial a physical ‘jury hub’ was set up. All other participants appeared from separate locations. The accused appeared by way of a video link from a court video hearing room.

² Trials where some participants are in court and others (mostly jurors) are in another room although that may also be in a court building

- The jury hub was set up in a hall hired for the purpose. It was ‘*a pleasant light filled hall*’ which was thought to add to the general feeling of wellbeing. There was outside space for relaxing during breaks.
- Each juror had a desk with two screens on it, all desks were 2.5 meters apart.
- There were four technical assistants on hand in the hall.
- Face masks and hand sanitisers were provided and the toilets were regular cleaned. The jurors brought their own food and drinks.
- The jurors’ hall was made into a ‘*civic space*’ using banners and posters from HMCTS.
- Deliberations were in person, physically distanced.

Mock trial – positives

Technology

- From the second trial onwards the technology worked well because of ‘*behind the scenes*’ technical support.
- Test calls worked well and as the pilot went on the information given to participants improved [[Current guidance](#)].
- Lay participants were thought to be comfortable with the technology after training.

Gravitas and solemnity

- The solemnity of the event and a ‘*sense of occasion*’³ was achieved. The evaluation found this was, in large part, created by the behaviour of the Judges and barristers (see Lessons Learned below)

The accused

- The pilot evaluation suggested that the remote setting gave **more** dignity to the accused as they were a square on the screen like all the others rather than being in a dock and at the back of the court.
- Further the accused and their lawyer had a separate virtual room where they could be in constant touch with each other and were the evaluation suggests much closer than in a physical court.

Mock trials - Negatives

Technology

- Jurors and witnesses needed customised information about – their role, how to use the technology and what to do if something went wrong.
- The bandwidth of lay participants was crucial to ensuring ‘*fairness*’. If technology failed in any way to keep all participants connected at all times this was considered unfair. The evaluation suggested that ‘*some lay participants {should be} supplied with hardware and high-quality internet access*’.

³ All direct quotes in the paper, unless otherwise state, are from the evaluation of the mock trials [accessed here](#)

Gravitas and solemnity

- The creation of a 'civic space' was thought to be as important as the technology in ensuring the success of remote trials.
- Jurors joining from home could be surrounded by personal effects that were distracting and could detract from the solemnity of the occasion.
- It was found that it could be very difficult for some jurors to find a place in their homes where they could have a both a plain backdrop and be close to a router. Further, expecting someone to be undisturbed and their home to be kept quiet for a period of 3-6 hours so as to create the necessary gravitas for a trial.

Issues for lay participants

- Even where the technology worked well some lay participants found the technology/platform '*alienating and stressful*'.
- Further some stress for lay participants came from them being '*on their own*' in the virtual court and the evaluation suggests that vulnerable people could find it too '*onerous*' meaning they would withdraw and juries could become unrepresentative.
- There were concerns that where jurors were in their own home they could be distracted and could, for example, use the internet for something other than the trial.

Open justice

- The evaluation highlighted that remote trials could have a negative impact on open justice unless they were live streamed.

Lessons Learned

Some measures to improve the trials were implemented as the pilots progressed but all of the lessons learned are set out here for convenience.

- '*Backstage technical support*' was key to the success of the pilots. Such support was found most especially useful in the jury hub trial where technical support was physically on hand.
- A '*jury bailiff*' was found to be of use, to ensure that all jurors were present at all times, this saved the Judge having to constantly check.
- The evaluation recommended undertaking an assessment of jurors' hardware, software and bandwidth as all three elements were key for participation.
- Preparation, in both written and video format with a '*virtual walk through*' the geography of the virtual space, how many rooms there were and who could access them proved to be invaluable for the success of the trials.
- The evaluation suggested that an initial statement should be made by the judge, including clear information about how a virtual trial is different from a physical trial.
- People participating from their homes need to be asked to have a plain background and for their face and arms to be visible. This is a potential solution for the difficulties of distractions for both the person and for others in other locations. This also applied to remand centres where it was suggested that heads of such centres need guidance for backgrounds to be plain.

- To ensure the solemnity of the occasion a coat of arms should be hung behind the judge and full court dress should be worn.
- The evaluation suggested that there is a need for a well-designed virtual waiting facility, to move the participants gradually into the court setting. This was necessary for *'the transformation in social tone which should take place when they (participants) enter court'*
- The evaluation warns against a shift to informality.
- The issue of *'screen strain'* was noticeable in the pilot and this suggests that more and more frequent breaks should be factored into remote trials.
- As each of the mock trials was completed in an afternoon the evaluation suggested that remote hearings may not be suitable for longer trials.
- Virtual trials as well as being fair must engender confidence in the legal system and be wary of the digitally excluded.
- Any spaces used for trials should be transformed into a 'civic space', in the case of the pilot the jurors hall was set up with HMCTS banners and posters.
- The trial where the jury were together in a hub dealt with many of the difficulties found in the non-hub trials. In the main this was because of the technicians having control of the IT and the ability to make the space suitable for a solemn occasions.
- Participants not having to set up and deal with issue with the technology themselves, helped both the jurors with less anxiety, fewer distractions and getting rid of the feeling of being alone.
- This also benefited the judge and barristers as they didn't have to concentrate on whether or not the jurors were participating and there were fewer distractions over the jurors behaviour.
- If jury trials were to be conducted with jurors in their own homes the evaluation suggests giving jurors hardware that would only allow them to get into the court rather than being able to browse the internet as well.
- Participants should be fully prepared by giving instructions on the *'solemnity of the occasion'*.

Conclusions

- The evaluation of the remote mock trial pilot suggests, in findings similar to the first two papers in this series, that remote trials (including jury trials) can be successfully completed **under certain conditions**. But they should never become the default option.
- It is important to note that the trials were **mock and used volunteers** and so the findings should be considered in this light.
- There is an urgent need for bringing the lay users voice into any further evaluation of remote trials and hearings in general.

Solemnity and gravitas and civil space

- Where jurors were at home as opposed to in a hub created for the purpose it was difficult to ensure the gravitas considered necessary.
- Where they were in a hub the set-up of the space, the behaviour of the Judge and barristers and the guidance given to the jurors could overcome this issue.

Technology

- The use of the technology was likewise considered problematic where jurors were in their own home without technical support.
- Once again in the jury hub 'backroom' technical support overcame this issue.

Digital exclusion

Three suggestions for overcoming digital exclusion arose from this pilot.

- Firstly, the supply of the relevant equipment that is capable only of the purpose to which it is supplied.
- Secondly, digital training before the trial of all jurors.
- Thirdly 'backroom' support for technology to keep it flowing throughout the proceedings.

Some useful references.

<https://justice.org.uk/wp-content/uploads/2020/04/Mulcahy-Rowden-Virtual-trials-final.pdf>

<https://justice.org.uk/wp-content/uploads/2020/06/Mulcahy-Rowden-second-evaluation-report-JUSTICE-virtual-trial.pdf>

<https://theconversation.com/remote-jury-trials-during-covid-19-what-one-project-found-about-fairness-and-technology-142505>

<https://insidehmcts.blog.gov.uk/2019/06/26/interview-with-sue-newfield-service-manager-fully-video-hearings-project/>

How to access background or source data

The data collected for this <statistical bulletin / social research publication>:

- are available in more detail through Scottish Neighbourhood Statistics
- are available via links in this document
- may be made available on request, subject to consideration of legal and ethical factors. Please contact <email address> for further information.
- cannot be made available by Scottish Government for further analysis as Scottish Government is not the data controller.



© Crown copyright 2020

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.

This report is available on the Scottish Government Publications Website (<http://www.gov.scot/Publications/Recent>)

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-407-4 (web only)

Published by the Scottish Government, December 2020