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Virtual courts

Detailed provisions were made in the Prisons and Courts Bill¹ for the use of live video or audio links in specified criminal proceedings. Matters that were currently dealt with in a physical courtroom would be conducted in a “virtual-enabled” hearing – where some of the participants are elsewhere – or in what was then called a “fully virtual” hearing, where there is no physical courtroom and all the participants take part using telephone or video conferencing facilities.

In a fully virtual hearing, the court could direct that the proceedings should be broadcast so that the press and public could follow them. The intention was that they would be shown or heard only in court buildings, where officials can check that they were not being recorded for wider broadcast to the public. Doing so will become an offence.

This raised all sorts of questions. Would these viewing booths be available only in one, “local” court? Or would any number of people be able to visit any court in the country and demand to watch a particularly interesting case taking place miles away? Is the aim to protect the participants or increase transparency?

The latter, according to the then justice minister, Sir Oliver Heald. He promised: “We will also allow access to virtual hearings via video screens in local courts, so that reporters can see those proceedings anywhere in the country.”²

The facility to watch virtual hearings would apply to criminal proceedings – but not of course for the automatic online conviction arrangements, where there is nothing to watch. The government promised to improve listings and publish decisions online.

Although the bill lapsed and no more was heard of it during the rest of 2017, work went ahead on the development of virtual hearings. In a briefing note distributed to court users at a series of “roadshows” in late 2017 and early 2018, HMCTS said the project aimed to offer more choice in how hearings took place. “This covers everything from providing better technology for the kind of video hearing which we are all already familiar with – in which most people are in court, but one or two appear by video link – to options for fully virtual hearings in which everyone can attend remotely, including judges and advocates, using a standard laptop or

tablet rather than needing dedicated equipment. This will also radically increase the flexibility with which defendants appearing by video can have conferences before or after hearings with their representatives.”

However, said HMCTS, virtual hearings would not be compulsory. They were seen as particularly suitable for case-management hearings and for bail applications by defendants being held at police stations.

But if legislation was seen as necessary, how could virtual hearings be held without it? Video hearings are not prohibited, HMCTS told me in January 2018. Officials would have preferred to regularise them through a statutory framework. But they thought they could manage without one, relying instead on the judges’ inherent powers.

An interesting aspect of what’s proposed is that if everyone is on a video link – including the judge – then the applicant or defendant is no longer at a disadvantage compared with those in a courtroom. It should also be easier for applicants and defendants to see whether they are being questioned by an advocate or the judge.

Somebody seems to have decided that the term “virtual court” was not very reassuring to those seeking justice. By the spring of 2018, virtual courts were being called video courts. It followed that the term “fully virtual”, which has some meaning, would have to become fully video, which makes rather less sense.

In February 2018, HMCTS and the Ministry of Justice announced³ that some tax appeals would be heard later in the spring using video hearings. These would take place over the internet, with each participant using a webcam from a location of their choice. For the pilot, the judge would be in a courtroom. But there was no information about the arrangements that would be made when the judge, too, becomes an online presence.

HMCTS said it was working closely with the judiciary to ensure that the “majesty” of a physical courtroom was maintained. The decision to use a video hearing would always be taken by the judge in the case. Private online conversations would be possible before the hearing and the procedure will be the same as in a traditional hearing.

I watched the first civil case to be heard with neither party present in March 2018.⁴ It was an appeal to the first-tier tribunal (tax chamber) against a tax penalty. The taxpayer appeared to be speaking from his home near London while HM Revenue and Customs was represented by an official in Belfast.

Both could be heard and seen on video screens by the judge and anyone attending the hearing at Taylor House, a tribunal centre in London. The parties could also see and – for the most part – hear each other. From time to time, though, there were difficulties with the sound from Belfast.

The hearing was held up and a technician who tried to fix the problem thought that there was insufficient bandwidth at the HMRC offices to provide a reliable connection. An hour and a half had been allowed for the hearing but, with adjournments and requests for the HMRC representative to repeat her remarks, it took over two hours.

Afterwards, HMCTS said: “There was a minor delay due to the quality of one participant’s internet connection but we are pleased there were no issues with the supporting technology or platform.”

In a blog she published in February 2018,⁵ Susan Acland-Hood said that video hearings “will not be used for non-summary criminal trials”. That seems to mean that they will be used for criminal trials in magistrates’ courts.

The HMCTS chief executive added:

We think they will be particularly appropriate for various kinds of ‘progress’ hearings – those which principally involve legal professionals making sure all is in place for the next stage of the case, or agreeing how matters will be conducted. But there are also some cases involving the public for which we believe that fully video hearings could make justice more accessible, by making it easier to attend hearings and reducing the time taken to get there.

But how reliable would the technology be? Earlier that month, a senior judge was furious to find that video links were not working between his court and a prison. He switched courts in a vain attempt to get the system working, suggesting that the fault lay with the court rather than with the prison. The judge, Sir Brian Leveson, was due to hear a judicial review challenge a day later involving the prisoner John Worboys. Sir Brian was so concerned the links might fail again that he ordered Worboys to be brought to court in person, distressing though he knew this would be for any claimants in court who had been assaulted by the former taxi-driver. It was an embarrassingly high-profile example of how HMCTS had failed to get basic technology right.⁶

References

1. <http://services.parliament.uk/bills/2016-17/prisonsandcourts.html>
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3. <https://www.gov.uk/government/news/video-hearing-pilot-launched>
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5. <https://insidehmcts.blog.gov.uk/2018/02/15/video-hearings-can-make-a-difference-for-court-and-tribunal-users>
6. See <http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf> for a critical report on video links by the campaign group Transform Justice.